THE JOURNAL OF RESEARCH REVIEW

P-ISSN: 3006-2632	E-ISSN: 3006-2640
Vol. 1. No. 04 (Oct-Dec) 2024	Page 615-622

Interpreting Res Gestae In The Digital Age: Doctrinal Applications In Pakistan And India

Sheza Iqbal	Legal Associate at Axis Law Chambers, Lahore, Pakistan shezaiqbal1632k@gmail.com
Syed Shaharyar Ahmed	Partner at Ibrar Law Associates, Lahore, Pakistan shaharyargcu@gmail.com
Muhammad Umar Zahid (Corresponding Author)	Senior Lecturer, College of Law, The University of Lahore muhammad.zahid@law.uol.edu.pk

Abstract: *Res Gestae is a concept originating from common law that provides one of the most important exceptions to hearsay evidence. It permits certain utterances made spontaneously to be admitted as evidence if they are sufficiently connected to the principal event, often described as part of a transaction. The rise of new mediums for real-time interaction and the ability to leave digital traces of activities have changed the way facts happen and how they are documented. Because of this, there is an urgent need to rethink how the principle of Res Gestae is interpreted and applied. This study aims to examine how the courts of Pakistan and India have tried to bend or are still trying to bend the classic Res Gestae principle to suit modern forms of evidence such as CCTV footage, electronic messages, call recordings, and posts on social media platforms. This study analyzes reasoning in important rulings across both jurisdictions approached by both national courts to understand emerging patterns of judicial creativity and the challenges caused by digital spontaneity and manipulation and underlying metadata. Additionally, it seeks to determine if statements or events captured through digital means of recording satisfy the fundamental requirements of spontaneity, contemporaneity, and relevance as outlined in Res Gestae. Special consideration is given to cases related to terrorism, sexual violence, and cyber-crimes which are heavily influenced by digital evidence. The paper through comparative legal analysis exposes judicial creativity and legislative inaction gaps, highlighting the need for enhanced statutory fairness concerning the admissibility of digital Res Gestae evidence.*

Keywords: res gestae, digital evidence, evidence, hearsay

Introduction

The res gestae doctrine is a pivotal part of the common law system of evidence and has been codified in Pakistan and India. It was originally an exception to the hearsay rule as it permitted the admission of certain statement(s) made spontaneously and contemporaneously with the undertaking of an act. As legal systems interact with newer forms of evidence such as text messages, social media posts, metadata, or videos, their applicability and interpretation of res gestae become important concerns (Dhull, 2018).

This rule rests upon the tendency of human nature wherein words uttered in volatile situations and heated contexts are very likely to be truthful and perceptive of reality, hence, trustworthy. This provides a significant rationale to the exception arising to the hearsay rule which is deemed to exclude out of court statements to protect unreliable evidence. The doctrine does not introduce unrestricted

admissibility; admissibility requires some demonstrable link with the statement and the event to avoid undisputed evidential value. Pakistan and Indian courts still face the challenge of integrating newer forms of evidence text messages or social media posts within conventional standards of evidence. Examine the growing incorporation of digital evidence in the legal field along with the legal doctrine of res gestae in both jurisdictions, in the context of its evolution, legal compilation, and its usage in courts (Gwom & Ndana, 2019).

The Latin term res gestae is defined as "things done". Historically it encompasses events and undertaking actions which are situated under a defined scrutinized transaction during court proceedings. Its origins can be traced back to English commons law. In order to allow spontaneous remarks made during periods of high excitement to not be excluded on grounds of hearsay, English commons law created a way to incorporate them seamlessly. It has been established that rational justifying remarks accompany relevant acts and therefore form parts of the event and so, permittable constitute evidence (Majeed et al., 2023). The restriction of admissible statements to those made at the exact moment an event occurs was ruled by Queen v Bedingfield (1879), a case which controversially narrowed the reach of res gestae. The utterance "Oh dear aunt, see what [he] has done to me!" post event was deemed too temporal to qualify as contemporaneous to the event and thus deemed inadmissible. Nonetheless, over time, common law jurisdictions have broadened the understanding of this doctrine to reflect the more purposive approach of spontaneity and emotional closeness. The digital age has radically altered the nature of evidence. Communication is now instantaneous, global, and often electronically recorded through messaging apps, emails, social media, call logs, and surveillance systems. These digital trails have the potential to capture events as they unfold or provide near-instantaneous reactions to incidents (Dhull, 2018). Yet the very qualities that make digital evidence seemingly reliable—speed, availability, and detail—also raise critical questions about admissibility under *Res Gestae*. Is a WhatsApp message sent seconds after a crime spontaneous enough to qualify under the doctrine? Can CCTV footage or a live social media broadcast be considered part of the "same transaction"? Such questions challenge the conventional understanding of "spontaneity" and "contemporaneity" that are central to the doctrine's applicability.

Faced with these multifaceted issues, courts in India and Pakistan have taken judicial notice of them. The case law indicates both comprehensive fragmentation and absence of cohesive norm guiding legislature. Some courts have gone to extremes in their application of the doctrine in these cases, while others stubbornly refused to recognize that critical information may be digitized and disregarded the evidence altogether. The fundamental issue here is that the evidence laws inherited from colonial times do not accommodate the reality of digital evidence. The outcome is a plethora of judgments which fail to bridge the gap between traditional legal system and technological transformation (Coffey, 2022).

This research study attempts a critical and comparative evaluation regarding the interpretation of Res Gestae in the context of digital evidence in Pakistan and India. It analyzes major judicial decisions and studies the application of the doctrine in both jurisdictions with regard to cases that involve digitally recorded evidence like AVs, Social media posts, and messages. Moreover, it examines the coherence of the canon and the legal weight of its interpretations, especially in cases involving terrorism, violence against women, and technology crimes where digital evidence is crucial. To this end, the paper traces the evolution of Res Gestae while simultaneously arguing contextual gaps that need resolving for evidence-based frameworks in South Asia. With clearer definitions and judicial parameters, an evolving paradigm of technology and its application in law, particularly the controversial doctrine can be more justly and meaningfully employed by both countries.

1. DIGITAL EVIDENCE: CHARACTERISTICS AND CHALLENGES FOR RES GESTAE

Compared to oral or written statements, evidence in digital form is different due to the processes

involved in its capturing. Its mutability, asynchrony, and impersonality are defining characteristics. Unlike real-time utterances, digital utterances can be composed, edited, deleted, or forwarded. Because of these characteristics, the traditional criteria for Res Gestae, particularly the immediacy requirement, is undermined (Spencer, 2007). Furthermore, digital evidence is often accompanied by metadata, timestamps, and custody tracking which raises questions regarding reliability. The forensic difficulties in authentically validating digital data enhances the probability of courts accepting digitally altered evidence if rigid standards are not enforced. Blanket assumptions should not be made regarding the scope of Res Gestae without adapting to advancements in forensic science, new patterns of communication, and shifts in cross-disciplinary boundaries (Coffey, 2022).

2. CODIFICATION IN PAKISTAN AND INDIA

Pakistan incorporated res gestae in Article 19 of their evidence acts:

Section 6 of the Indian Evidence Act, 1872:

"Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant…"

Article 19 of the Qanun-e-Shahadat Order, 1984 (Pakistan):

"Relevancy of facts forming part of some transaction.

Facts which though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places. …"

There is almost no difference in the wording of the two statutes which allows us to conduct a comparative study of their jurisprudential analyses. The idea of 'same transaction' has been interpreted to mean continuity of action, nearness in time and space, and a logical connection between events and statements. These concepts support the admissibility of statements that form part of the same transaction, yet all three lack consideration regarding the case presented by digital evidence. As a result, the application of Res Gestae to digital formats remains left to judicial discretion, often decided on a case-by-case basis (Majeed et al., 2022).

In the case of Rattan Singh v State of Himachal Pradesh AIR 1997 SC 768, the Supreme Court of India admitted a statement made by a victim immediately after a violent act, qualifying it under Section 6, on the grounds that the utterance was made spontaneously and at the time of the violence. In Pakistan, Muhammad Umar v The State PLD 2019 SC 845 restated that statements have to be "spontaneous, contemporaneous and untainted by manipulation or fabrication" in order to be classified as res gestae. The court stressed that the passage of time and outside factors can obliterate the evidentiary weight of such statements. The lack of clearly defined rules concerning legislative frameworks pertaining to digital evidence leads to ambiguity and divergence. Both nations are now confronted with the urgent need to amend their legislation to explicitly accommodate the use of electronically stored information and communications, which would promote consistency and coherence in legal theory and practice (Majeed et al., 2022).

3. INTERFACING RES GESTAE WITH DIGITAL EVIDENCE

With the advent of new age modes of communication, the issue arises as to whether digital expressions can be regarded as spontaneous utterances that occur in the course of giving a statement and as such, are included under res gestae. To illustrate: A tweet posted milliseconds after observing a criminal offense. A WhatsApp text issued in the heat of a violent encounter. Facebook live stream showing an event as it is unfolding.

In Muhammad Iqbal v The State 2022 SCMR 141, the Supreme Court of Pakistan admitted A Facebook post showing the accused in real time during the mob lynching as evidence. The Court held that

materials posted at the time of the occurrence are part of the same transaction and therefore, admissible based on Section 6. The same situation is faced by Indian jurisdictions in relation to Section 6 and digital integration. In State (NCT of Delhi) v Navjot Sandhu (2005) 11 SCC 600 (popularly known as the Parliament Attack Case), the Supreme Court integrated call data records and intercepted telephone dialogues into a single subsystem for the purpose of analysis, adjudging them relevant under sections 6 and 8 of the Indian Evidence Act.

4. JUDICIAL INTERPRETATION AND EVOLVING PRECEDENTS: OBSTACLES AND PRACTICAL CHALLENGES

Judicial interpretation is crucial for adjusting how Res Gestae aligns with new evidentiary forms within a technological context. In India and Pakistan, courts have utilized Res Gestae as an exception to hearsay evidence in a manner that is overly narrow. However, an increasing number of judicial decisions portray a more realistic approach to the value of evidence within digital communications. It is recognized that statements made through digital means may, on some occasions, be spontaneous and trustworthy enough to qualify as Res Gestae. The absence of authoritative precedents and systematic frameworks often leads to inconsistent decisions in the legal system's predictability. The judicial evolution in this regard is still ongoing as there continues to be attempts to find the balance between the respect for fundamental evidentiary rules and the need for modernization (Coffey, 2022).

Alongside these judicial advancements, there continues to remain several practical challenges. For instance, Digital evidence is susceptible to being altered. Courts need to determine whether the evidence has been tampered with. A timestamp's automation raises the question of whether a timestamp can assess the spontaneity of an event. This could also fall under the issue of context, however, on its own lies the question of: Whether or not context can rely solely on verification of time and date? In terms of verification for time and date towards posting, delay in sending or posting messages acts as a time buffer where spontaneity is readily stripped spontaneity. For instance, a message sent well after the expected spontaneous time of a few minutes or hours posted later does not fulfill the subject of commenting spontaneity (Majeed et al., 2023). Under the digital recognition system, authenticity stands exposed to systemic encryption layering aimed to authenticate the sequencing events captured chronologically but without naming or claiming the authorship of correspondents' function. The technical integration, context validity with substantiation viability—metadata alongside the electron record retrieval system—is what sustains essays aimlessly capturing chains without acknowledged authors (Majeed et al., 2023).

Other than South Asia, the United Kingdom along with its kin countries such as the United States, Canada and Australia developed cross-border innovations pertaining to jurisdiction issues around the integration of cross-border digital evidential leading into the hearsay exception resembling res gestae. Several legal systems have carved out clear exceptions for that instinctive burst of speech we casually call excited utterances or, in a drier menu of terms, present sense impressions. Their day-to-day courtroom work reveals a plain truth: spontaneity and reliability must still tug at the sleeve of any forensic checklist before a screen shot or a text bubble crosses the threshold of official admissibility (Mook, 1995).

Back in 2003, the United Kingdom rewrote a chunk of its Criminal Justice Act, trading the old hearsay straitjacket for a menu of flexible openings that, among other things, lets screen-capture proof stroll in the door even when it looks nothing like the classical exceptions. Federal Rules of Evidence 803(1) and 803(2) hold the same ground in America, classing present sense impressions and excited utterances as functional twins of the older res gestae idea. US v. Ferber, 966 F. Supp. 90 (D. Mass. 1997), shows how courts have begun treating typed-out blurtations on smartphones with roughly the same urgency once reserved for ink on paper. The precedent set in 1997-think of the 911 tape that suddenly became exhibit A-shows how recording technology can sidestep the paper-trail grind and act in real time.

Institutional gaps ripple outward, undercutting the very consistency that lawyers swear by, so the fixes are less optional than overdue. Streamlined operating manuals, bigger coffers for equipment, and workshops that drag magistrates into the bits-and-bytes weeds could finally drop digital proof into the same doctrinal lane as paper affidavits (Mook, 1995).

5. PRIVACY, DATA PROTECTION AND ETHICAL ASPECTS

The gathering of electronically transmitted material almost always invades private space, since the content-phones, email threads, cloud backups-bristles with the sort of details one normally locks away. Constitutional alarm bells ring as soon as the state presses the record button, yet most courts still harvest the data before considering the harm. Neither India nor Pakistan has moved far down the enforcement road, and both continue to draft-and-draft-new data-protection blueprints. Domestic legislators know they are racing against time, but the papers pile up faster than consensus (Shearwat, 2020).

Judicial panels alone cannot dismiss the privacy quarrel by waving a legal wand; they must weigh the citizen's right to seclusion against the prosecutor's hunger for proof in every single proceeding. If judges fail to police the entry point, fundamental human rights suffer the first bruise. Misuse springs from abundance: once the files are open, the temptation to over-use them grows by the hour. Courts therefore need sturdy gates-mechanisms and formal checks-to keep equity from slipping into a black hole (Chatterjee, 2019).

6. RECOMMENDATIONS AND REFORMS

Modern policy-making in cyberspace usually begins with a draft model policy on electronic evidence, runs through a checklist of forensic benchmarks, and circles back to intra-agency collaboration among cybercrime units and digital forensic labs. Each of those steps demands the participation of lawyers, investigators, and occasionally even policy wonks from the ministries of telecom or interior, reuniting them around the same table more than once.

Judicial training programs that feature hands-on workshops with judges and prosecutors inevitably mingle with public-outreach campaigns aimed at citizens. When people see, firsthand, how the courts handle cell-phone selfies, their long-standing doubts about digital proof begin to ease. Lawmakers cannot write statutes in 2023 the same way they did in 1995 and expect the words to survive another quarter-century. Penal and evidence codes must keep responding to fresh gizmos-smart speakers today, who-knows-what next year-rather than waiting until a crisis demands a redraft.

Courts then need a standing protocol for asking whether the eruption of a tweet or WhatsApp voice note really met the spontaneity bar, a move that signals judges cannot leave that call to clerks alone. At the authentication layer, a technical standard for hash values and audit logs should pace current industry practice instead of chasing it. If records-management vendors can tie their chains-of-custody logs to ISO stamps, so can the rules. In statutory terms, either rewrite Section 6 of the Evidence Act or borrow the spirit of India's Section 65B and the US Federal Rules of Evidence-plain language beats perfect originality, every time. Pakistan especially would benefit from spelling out how certified e-record systems slot into the overall architecture of proof, treating them as living entities under evidence doctrine rather than passing ghosts of paper files.

7. CONCLUSION

In short, the classic, almost musical formulation of res gestae is being pulled into the digital beat without much rehearsal time, yet neither country can leave the stage unprepared. That quiet transformation is already audible in courtrooms; the question is whether the rule books will catch up before the next software release arrives. The guiding idea behind the spontaneous-statement doctrine remains unchanged: unfiltered remarks may qualify as proof in court. Yet those remarks-how they surface and

under what pressures-have shifted dramatically under social media and constant connectivity. Both Pakistan and India face a double bind: they must build impregnable dikes against unreliable material while somehow pinning down the ever-slippery digital landscape. Four pillars must hold this ambitious effort aloft-legislative precision, judicial inventiveness, sound forensic science, and ethical courage. Judges will have to rethink old rules on the fly; something like res gestae cannot simply be shelved because the technology looks strange. Neither country can short-change fairness nor blindly follow gadgets, yet both desperately need codes that marry local canon with the rough consensus of global norms. The Res Gestae doctrine though built on common law foundations continues to shape modern evidentiary systems, especially in criminal law where the spontaneity of utterances or actions is likely to provide greater clarity to the truth than a recited narrative.

The evolution of digital technology has brought a shift to the nature, source, and form of evidence. The courts in India and Pakistan are now regularly faced with the issue of presenting the transaction of communication and events digitally, including audio-visual recordings, text messages, social media posts, and even live streams. Thus, the main question is whether this digital content can adhere to the well-accepted principles of spontaneity, contemporaneity, and relevance, which define Res Gestae. This paper explores the gaps posed by digital evidence within the boundaries of Res Gestae as prescribed in Section 6 of the Indian Evidence Act, 1872, and Article 19 of the Qanun-e-Shahadat Order, 1984. The findings indicate a tension between preservation of the legal principles' authoritative value and the need to resort to technologically advanced media for evidence. Courts in both countries have at times tried to adapt the doctrine to include digital evidence; however, these attempts are too few and there is no consistent legal framework. The situation is further worsened by the lack of legislative action to rectify the digital spontaneity and authentication issues.

In addition, the complexities of the digital era can be an addition because they are unfamiliar with traditional evidentiary frameworks. For instance, concepts such as premeditated digital interactions or delays on some messages cuts off the perspective of whether the statement was made spontaneously or not. Although metadata, timestamps, and location tracking provide necessary advantage, courts usually do not possess the requisite knowledge or statutory guidance to properly evaluate such evidence within the Res Gestae framework. This form of legal uncertainty carries the risk of excluding relevant evidence while accepting unreliable data which directly contradicts the objective of achieving substantive justice. In light of this, urgent action is necessary to address the issue. Both India and Pakistan need to amend their judicial practices and evidentiary laws to set more definitive criteria for using digital evidence within the Res Gestae exception. This involves outlining what "spontaneity" means within the boundaries of electronic communication as well as digital signature procedures, and judicial technical training. Other jurisdictions like the United Kingdom and the United States which have more rigorously scrutinized and developed their hearsay exceptions in the presence of digital evidence should be utilized as support for South Asian legal systems. In closing, the principles underpinning Res Gestae can still serve as mechanisms for uncovered truth in judicial proceedings. However, its effective use in the modern world calls for change in its principles, clearer laws, and flexible courts. As Pakistan and India wrestle with the growing challenges posed by the use of electronic evidence, updating the rules of evidence will be crucial in balancing modern-day needs with the need for justice. Only then can Res Gestae continue to fulfill its primary function—truth safeguarding within the evidentiary framework.

BIBLIOGRAPHY

Chatterjee, S. (2019). Is data privacy a fundamental right in India? *International Journal of Law and Management*, *61*(1), 170–190. https://doi.org/10.1108/ijlma-01-2018-0013

Coffey, R. (2022). Fight, flight, freeze. . .or lie? Rethinking the principles of res gestae evidence in light of its revival. *The International Journal of Evidence & Proof*, *27*(1), 51–82. https://doi.org/10.1177/13657127221139505

Council of Europe. (2018). *Convention 108+ on data protection*. Retrieved from https://www.coe.int/en/web/data-protection/convention108-and-protocol

Criminal Justice Act 2003 (U.K.). Retrieved from https://www.legislation.gov.uk/ukpga/2003/44/contents

Dhull, K. (2018). Res Gestae: Essence of law. *International Journal of Advanced Research and Development*, *3*(1), 664–665. http://www.advancedjournal.com/archives/2018/vol3/issue1/3-1-289

Draft Personal Data Protection Bill 2021 (Pakistan). Retrieved from https://moitt.gov.pk/SiteImage/Misc/files/25821%20DPA%20Bill%20Consultation%20Draft_docx.pdf

Gwom, S., & Ndana, J. (2019). The Common law doctrine of res gestae under English Law and Nigerian Law of Evidence: an expansive exploration. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.3437926

Indian Evidence Act 1872. Retrieved from https://www.indiacode.nic.in/bitstream/123456789/15351/1/iea_1872.pdf

International Organization for Standardization. (2012). *ISO/IEC 27037:2012 guidelines for identification, collection, acquisition and preservation of digital evidence*. ISO.

Kharak Singh v. State of U.P., AIR 1963 SC 1295 (India). Retrieved from https://indiankanoon.org/doc/619152

Majeed, N., Hilal, A., & Ilyas, R. (2023). FROM EVIDENTIAL DATA TO EVIDENCE: PRODUCTION, ADMISSION AND EVALUATION OF EVIDENTIAL DATA IN THE JUDICIAL PROCESS OF PROOF. *Pakistan Journal of Social Research*, *05*(02), 955–965. https://doi.org/10.52567/pjsr.v5i02.1208

Majeed, N., Hilal, A., & Rashed, R. M. U. (2022). APPREHENDING THE MEANING AND APPLICATION OF RES GESTAE IN COMMON LAW COUNTRIES AND PAKISTAN. *Pakistan Journal of Social Research*, *04*(03), 901–909. https://doi.org/10.52567/pjsr.v4i03.968

Mook, A. B. (1995). Death of Res gestae and other developments in Missouri hearsay law, the. *Missouri Law Review*, *60*(4), 8. https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=3254&context=mlr

Muhammad Umar v. The State, PLD 2019 SC 845 (Pakistan).

Personal Data Protection Bill 2019 (India). Retrieved from https://prsindia.org/files/bills_acts/bills_parliament/2019/Personal%20Data%20Protection%20Bill,%202019.pdf

Qanun-e-Shahadat Order 1984 (Pakistan). Retrieved from https://punjabpolice.gov.pk/system/files/qanun-e-shahadat-order-1984.pdf

R v. Andrews, [1987] AC 281 (H.L. 1986–87) (U.K.). Retrieved from https://www.scribd.com/doc/124648748/R-v-Andrews-1987

R v. Bedingfield, (1879) 14 Cox C.C. 341 (U.K.). Retrieved from https://thecasesummary.com/r-v-bedingfield-en

Rattan Singh v. State of Himachal Pradesh, AIR 1997 SC 768 (India). Retrieved from https://indiankanoon.org/doc/767636

Ratten v. The Queen, [1972] A.C. 378 (P.C.). Retrieved from https://www.casemine.com/judgement/uk/5b2897cf2c94e06b9e19b888

Seharwat, V. (2020). Drone Privacy Laws: A comparative of the US, UK, and India. In *Emerald Publishing Limited eBooks* (pp. 103–148). https://doi.org/10.1108/978-1-80043-248-220200005

Spencer, K. (2007). The common enterprise exception to the hearsay rule. *The International Journal of Evidence & Proof*, *11*(2), 106–133. https://doi.org/10.1350/ijep.2007.11.2.106

Sukharam v. State of Rajasthan, AIR 1973 SC 342 (India). Retrieved from https://indiankanoon.org/doc/953964

Tariq Bashir v. The State, PLD 2021 Lah 33 (Pakistan).

Teper v. The Queen, [1952] A.C. 480 (P.C.). Retrieved from https://uk.practicallaw.thomsonreuters.com/D-021-8421?transitionType=Default&contextData=(sc.Default)&firstPage=true

U.S. Federal Rules of Evidence. Retrieved from https://www.uscourts.gov/forms-rules/current-rules-practice-procedure/federal-rules-evidence

U.S. v. Ferber, 966 F. Supp. 90 (D. Mass. 1997). Retrieved from https://law.justia.com/cases/federal/district-courts/FSupp/966/90/1371387