

APPREHENDING THE MEANING AND APPLICATION OF RES GESTAE IN COMMON LAW COUNTRIES AND PAKISTAN

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ABSTRACT

The objective of the present study is to analyze the scope, statutory status and judicial application of res gestae in common law countries and Pakistan. After a doctrinal analysis, the current study found that evidence related to uncharged offences, facts, events, acts, statements, and declarations about physical sensations and mental conditions might be given in evidence under the doctrine of res gestae if there was no chance of fabrication. Moreover, the study found that various statutes of common law countries indirectly incorporated the doctrine of res gestae. The study further established that in India and Pakistan, evidence related to facts forming part of the same transaction and facts which were not part of the same transaction but throw light, or give context or explain the fact in issue or relevant fact might be given in evidence. However, these facts must be connected with a fact in issue or relevant fact in terms of proximity of time, place and unity, or the facts must be related to continuity of action, purpose or design of fact in issue or relevant facts.

Keywords: Hearsay Evidence, Res Gestae, Admissibility of Hearsay, Same Transaction.

INTRODUCTION

The phrase "Res Gestae" was initially coined to create an exception to the hearsay rule to admit such hearsay statements in evidence which were linked with the fact in issue. The application of res gestae, in the beginning, was not approved by prominent researchers like Wigmore and McCormick, who believed that the doctrine was of no use and even risky since the evidence admitted under the doctrine might be permitted under other rules of evidence (Furman & England, 2009, p. 35). It is important to understand the scope of hearsay rule before grasping the meaning of res gestae. The literature on the hearsay rule reveals that present sense impressions, excited utterances, and statements related to existing mental, emotional, or physical conditions were considered hearsay evidence and excluded from judicial consideration. As a response, the doctrine of res gestae was used to admit such hearsay evidence which explain the admissibility of words which are now labeled as verbal acts or verbal parts of acts (Blair, 1997, p. 350). The term "res gestae" literally means "things done," however, it is used in law to admit such hearsay evidence which provides context to the fact in issue. The beginning of the doctrine is traceable in the early 1800s to admit such statements in evidence which were made at the time of the happening of an event. The reliability of such statements rested on their spontaneity with the main event, and such statements are necessary to complete the story of events by witnesses (McCormick, 1992, § 268). However, mere proximity or spontaneity is not the only requirement to make such evidence admissible, and it is also necessary that such evidence must either throw light on the context of the charge framed or provide the details of various events resulting from the main event. In addition, the res gestae has been used to accommodate and manage the interaction between the rules related to the relevancy of evidence and evidence of other acts (Furman & England, 2009, p. 35-36). The term res gestae is widely applied and covers various facts. Various authors have discussed

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multiple contexts and senses in which the term was and is applied. For instance, According to Phipson (1976), *res gestae* encompasses four different kinds of facts: the constituent elements of the fact in issue, the specifications of such a fact, the surrounding context of the principal fact, and the overall entirety that consists of both the principal fact and the circumstances involved (Phipson, 1976 p. 54-55).

There are various reasons why certain facts were held admissible and otherwise inadmissible. For instance, *res gestae* has allowed witnesses to narrate their story naturally by giving the natural details of the facts in issue, the term has made the spontaneity of statements as the criterion to check the trustworthiness of declaration, and lastly, the vagueness of the term has allowed courts to expand the application of the doctrine (McCormick, 1954, § 274). Professor Thayer (1881) stated that the phrase is imprecise because businesspeople were unable to refrain from over-analyzing it due to the pressures of their jobs (Thayer, 1881, p. 10).

However, the term's vagueness has made it difficult to synthesize various conflicting judicial decisions (Barnes, 1891, p. 1). The same problem has been acknowledged by analysts who maintain that the doctrinal underpinning of the doctrine has never been contested, but its application has been the issue (Keat, 2021, p.327). In addition, the doctrine is charged on the ground that its looseness has made it possible to admit otherwise inadmissible evidence, especially the evidence related to accused's bad character (Imwinkelreid, 2010, p. 723). There is a shortage of written material on the definition and application of *res gestae* in Pakistani law, despite the phrase's ambiguity and the myriad of challenges connected to its use. As a result, the present study intends to fill this gap by exploring the scope, statutory status and judicial application of *res gestae* in common law countries and Pakistan. The present study has the following three research questions: What is the scope of *res gestae*? How is the doctrine developed and applied in USA, UK and India? How has the doctrine been incorporated in QSO and applied by Pakistani courts? Other than the introductory section, this article has four major sections. The second section discusses the scope of *res gestae*, and the third section analyses the statutory and judicial application of the doctrine in the UK, USA and India. Similarly, the fourth section examines the statutory and judicial application of *res gestae* in Pakistan, and the last section concludes the article.

Scope of Res Gestae

This section relates to the first research question of the present study, and it discusses the scope of *res gestae*, i.e. the facts which may be received in evidence under the doctrine. The researchers of the present study have examined various ancient and modern writings to enlist the facts which have been or may be admitted under the doctrine of *res gestae*.

To start with, there is unanimity among legal analysts that all the facts which are the part of same transaction may be admitted in evidence despite the other exclusionary rules of evidence. However, the term "same transaction" has been vague, elastic and complicated. Various analysts have clarified the meaning of the same transaction and pointed out numerous facts which may be received in evidence under the doctrine of *res gestae*. For instance, Thayer (1881) believed that seven types of facts might be given in evidence under this doctrine. These seven categories of facts included evidence about the fact in issue, the declaratory evidence of each fact which provide details regarding constituting fact, event, or transaction, evidence of various distinctive facts, events, and transactions which constitute a large whole, events of one whole composite version of the transaction, evidence of a total whole 'representing the principal fact with its entire bulk of circumstances, evidence of surrounding circumstances, and, evidence of a principal fact and some of its relevant surroundings (Thayer, 1881, p. 10-11). Similarly, Barnes (1891) argued that the term "same transaction" allowed giving evidence regarding constituting elements of facts in issue, or relevant facts, the surrounding circumstances which illustrated the fact in issue and their incidents. In addition to this, relying on Chase, he added that the evidence (declaration or acts) was received as the part of the same transaction since such evidence demonstrated the character, displayed the motive, object, purpose or nature or described the origin, explained its significance and those facts which manifested the relations of parties concerned (Barnes, 1891, p. 70). Similarly, Gorman (1989) claimed that four different types of facts are covered under the *res gestae*. First, declarations related to present sense impressions; second, excited utterances, thirdly, statements related to present bodily conditions and declarations associated with present mental conditions (William Gorman, 1989, p. 96-97). On the same line of reasoning, Mook (1995) pointed out that the doctrine of *res gestae* covered spontaneous exclamations like excited utterances, present sense impressions, statements which were part of the fact

in issue, and statements which were related to mental or physical conditions (Mook, 1995, p. 994). Blair (1997) pointed out that conduct, words, and actions are the subject of *res gestae*. However, he added that such conduct, words and actions must be associated with fact in issue and must have occurred so close in terms of time, place and substance that they are all part of one transaction. He explained that conduct and the accompanying words would be relevant if both were part of the same transaction (Blair, 1997, p. 349-350). David (1998) pointed out that the doctrine of *res gestae* might help establish the state of mind like belief, intention, knowledge and opinion (David, 1998, p. 304).

Similarly, Dennis (2002) argued that the actors' statements accompanying and explaining the act would be admissible if the act was a fact in issue (Dennis, 2002, p. 587). Adrian and Paul (2014) believe that facts, statements of facts, or opinions associated with fact in issue (which may be an event, act or state of affairs) in terms of circumstances, place and time are received in evidence under the doctrine of *res gestae* (Adrian, Paul, 2014 p.370). Likewise, M. Monir (2013) holds the view that *res gestae* is a broad term which is used to allow admission of inseparable surrounding or accompanying circumstances (including acts or declarations) associated with fact in issue and such acts or words are necessary to explain the nature of the fact in issue (Monir, 2013, p. 49).

The discussion in the above paragraphs leads to the following six conclusions about the facts which may be given in evidence under the doctrine of *res gestae*. Firstly, the evidence under the doctrine may be received in evidence if it relates to spontaneous utterances. However, Wigmore stressed that such utterances must have been spontaneous, without any premeditation or forethought, and while the mind was receptive to its natural impulses. He defined "spontaneous utterances" as statements made either at the moment when main event occurred or immediately after the fact in issue had occurred. He added that these utterances must have been made so shortly after the disputed occurrence actually occurred and it was reasonable to conclude that exciting influence was still there at the time these declarations were made. Secondly, *res gestae* allows admission of such evidence which is otherwise hearsay evidence. For instance, the Indian Supreme Court elaborated on the nature and prerequisite for *res gestae* in *Javed Alam versus the State of Chhattisgarh*. The court pointed out that the *res gestae* is an exception to the hearsay rule, and its application requires that statement be spontaneous and part of the same transaction (2009 6 SCC 450). Third, the doctrine was originally created as a hearsay idea, and it has since been used to clarify why evidence of unindicted activities undertaken in juxtaposition with the offence for which a defendant is being prosecuted is allowed to be presented in court. Fourth, Statements, acts, or facts in civil and criminal proceedings that are intimately related in time, location, and events with some other act, event, or state of affairs in dispute can be considered to fall under the purview of the *res gestae* legal doctrine. Fifth, the evidence related to conduct, words, events, state of affairs and actions may be given under the doctrine of *res gestae*. However, conduct, words and actions must be associated with fact in issue and must have occurred closely in terms of time, place and substance. Lastly, the *res gestae* doctrine applies in civil and criminal cases.

Statutory Status and Judicial Application of Res Gestae in Common Law Countries

This section relates to the second research question of the present study, and it examines the statutory status and judicial application of this doctrine in the UK, USA and India. For that purpose, the researchers of the present study analyzed various statutory provisions and numerous landmark judicial decisions of the UK, USA and India to comprehend the statutory and judicial treatment of the doctrine in these countries.

Judicial Application and Statutory Status in UK

The first English case in which the term *res gestae* was used is *Home Tookes'* case (1794) in which the accused was tried for high treason. Tookes was against the war with France and demanded specific political reforms, resulting in his arrest. The defence counsel tendered a letter from another society intended to prove certain propositions in court. The prosecution contended that the letter should be received if it came under *res gestae*. However, the letter was excluded on the ground that the accused was not a member of that society. It is essential to point out that the term *res gestae* in this case was not argued or contested as a legal concept, but it was used as a common word. The second significant case on the *res gestae* is *Aveson v. Lord Kinnaird* (1805) in which the English court admitted the evidence of physical sensation of the maker which she made to her friend a few days ago. The fact in issue in the case was whether the plaintiff's wife was healthy at the time of signing an insurance policy. One of the parties produced a witness who testified that she told him ten days before signing the said policy that she was not well. The court held that her friend's testimony was admissible

since he had overheard her talking about how unwell she had been for the previous 10 days. It is essential to point out that the court admitted the evidence though it was related to physical sensation and was not contemporary but rather made a few days ago. The same principle has been re-applied in *R versus Black* (1922) in which the court held that the requirement of contemporariness is not applied to physical sensation or feelings of the maker. The third landmark case on *res gestae* in which spontaneity of utterances was held the prerequisite to receiving evidence under *res gestae* is *Agassiz v. London Tramway Company* (1873). In this case, the plaintiff sustained a physical injury while sitting in a tram and consequently filed a suit against the company because of the driver's negligence. After the accident, he produced a witness who testified that he heard the tram's conductor that many passengers had already filed complaints against the driver's negligent driving. The court refused to allow this evidence by pointing out that the conductor uttered these words after the incident and not at the time of the incident, so these were not admissible. Another important case on *res gestae* in which the court held the principle that the actor must have made the utterances and not by the third person is *Howe versus Malkin* (1879). In this case, a person was doing certain acts on the land, and at the same time another person made a statement regarding the land's boundaries. The counsel intended to tender these statements as evidence under *res gestae*; however, the court refused to admit the statement as it was not made by the person performing the act (This, however, cannot be accepted as a general statement of law because, at the very least in the context of criminal prosecutions, declarations made by victims, bystanders, and perpetrators are frequently admitted in evidence within this subject).

The fifth celebrated case on *res gestae* is *R versus Beddingfield* (1879) in which the court established the principles that utterances must have been spontaneous either with the act or fact in issue. If these were made after the act, these would not be admitted in evidence. In this case, the accused killed a woman by cutting her throat when she refused to have sexual relations with him. After sustaining the injury on her throat, the woman came out of the room and told her aunt that the accused cut her throat. The prosecution produced her aunt in the court to testify these facts. However, the court pointed out that the injured lady did not make the utterances at the time of the assault. Instead, she made these utterances after the deadly assault; hence her aunt's statement could not be received in evidence. The following critical English case on *res gestae* is *Ratten versus R* (1972), which overruled the principle held in *Beddingfield's* case. In this case, the accused made gunshot fires at his wife, who subsequently made a telephone call to rescue authorities, told them the whole indecent and requested an ambulance. The prosecution intended to produce the telephone operator as a witness; however, the defence counsel raised two objections. First, the defense argued that the statement was made after the incident; second, it was hearsay evidence. However, the court admitted the operator's statement and held that it was not necessary that the statement must have been made at the time of event. The court further held that a statement which was made spontaneously, even shortly after the incident, would be relevant and admissible if there was no chance or opportunity of fabrication, deliberation and concoction. The seventh significant case is *R versus Andrew* (1987), which not only confirmed but also refined the law laid down in *Ratten versus R* and also provided a test to check the possibility of fabrication. The court held that before admitting evidence of utterances under *res gestae*, the judges must satisfy themselves that there was no possibility of concoction. The court also provided a six-point test to determine the chances of concoction. First, the court held that the surrounding circumstances in which statement was made must be examined. Second, the event must be unusual, startling or dramatic; third, the effects of an event must dominate the thought of the maker of the statement; fourth, the statement must be the natural reaction of the event. Fifthly, there must be no real opportunity for reflection on the event; sixthly, it is not necessary that the statement must be contemporary; it will suffice if it is made in approximate conditions. The court also clarified the meaning of spontaneous by observing that statement must be made so closely that it may be associated with the event that incited the utterances.

The concept of *res gestae* was incorporated into the law in England by section 118(4) of the Criminal Justice Act 2003. This was done so that the concept could be given a legislative status in England. The provision states that a statement may be admitted as evidence if it was made by a person who was so emotionally overpowered by an event that the possibility of concoction or distortion may be disregarded; if the statement was accompanied by an act that may be properly evaluated as evidence only if considered in conjunction with the statement; or if the statement relates to a physical sensation or a mental state. The provision states that a statement may be admitted as evidence if it was made by a person who was so (such as intention or emotion).

Judicial Application and Statutory Status in America

The first American case in which the phrase *res gestae* was used is *Leeds versus Marine Insurance Company* (1817), in which the court held that agents' admission would be admissible evidence if these were part of *res gestae*. Similarly, in the *United States versus Gooding* (1827) the court admitted the statements of the co-accused, who was a party to the conspiracy, by declaring that these statements were part of *res gestae*. Another significant case on *res gestae* in America is *Proprietors of Charles River Bridge versus Proprietors of Warren Bridge* (1837). The supreme court received the report prepared by the legislative committee in evidence that dealt with the parties and the subject matter. The court held that *res gestae* referred to the surrounding circumstances of fact in issue. On the same line of reasoning, the American courts kept refining and developing the doctrine of *res gestae* in various judicial decisions. For instance, the courts allowed using the evidence related to the existing state of mind under the doctrine of *res gestae* in *Propellor Niagra versus Cordes* (1858), excited utterances in *Norwich Transp. Co. versus Flint* (1871), statement related to completeness in *Rea v. State of Missouri* (1873) and statements of the opponent party in *US versus Gausson* (1873).

The doctrine of *res gestae* has been incorporated in various sections of the Federal Rules of Evidence. For instance, rules 106, 801 and 803 of the Federal Rules of Evidence deal with the application of *res gestae* in judicial proceedings. According to Rule 106, if a party introduces all or part of the writing or recorded statement, an opposing party has the right to request the contemporaneous presentation of any other part of the writing or documented assertion. In a similar vein, rule 801 includes a list of three remarks that are formally considered hearsay but will nevertheless be accepted as evidence. It states that the following statements may be used as evidence: a statement made by the opposing party in a personal or representative capacity; a statement made by a party's agent or employee on a matter that falls within the scope and existence of that relationship; and a statement made by the opposing party's coconspirator during and in furtherance of the conspiracy. However, another portion of the law indicates that these declarations will not be sufficient to prove the declarant's authority, the existence or breadth of the relationship, the existence of the conspiracy or participation, or any of these things. Similarly, rule 803 also contains the following three statements, which are hearsay but may be received in evidence. First, a statement made by an observer that describes or explains an occurrence or state of affairs, provided that the statement was made either at the time or shortly after the observer noticed it. Second, an exciting declaration in relation to a shocking occurrence or circumstance was made by the declarant when they were under the stress of excitement that the occurrence caused. Third, a declaration of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotive, perceptual, or physical condition (such as mental feeling, pain, or bodily health), although this does not contain a statement of recollection or conviction to establish the fact recalled or realized.

Judicial Application and Statutory Status in India

Various judicial decisions in India have explained, elucidated and illustrated the application of *res gestae*. However, the following five cases are discussed in the following lines to demonstrate how Indian courts have clarified the application of *res gestae* in India. The first case is *Hadu versus State* (1951), which described the conditions for the admissibility of acts forming part of the same transaction. The court held that if a transaction consisted of different acts, these acts may be treated as part of the same transaction if they are connected by the proximity of time, proximity or unity of place, continuity of action and community of purpose or design. The second critical case is *Thakur Das versus State of HP* (1992), which provided the facts which are covered under *res gestae*. The court held that every fact that is part of the same transaction is relevant to the fact in issue even if such fact is not fact in issue or such fact might be excluded on the ground hearsay evidence. The third case is *Gentela Vijayavardhan Rao versus State of Andhra Pradesh* (1996). Not only did the court elucidate the nature of the facts that could be accepted under *res gestae*, but it also supplied the criteria that can be used to assess whether or not a statement was a part of the transaction. The court came to the conclusion that the statement that was admitted as part of the same transaction linked with utterances is not about the previous event, but rather it is the occurrence actually communicating through an individual, and that this eliminates the idea that there was any plan behind it. The court also provided a test to determine whether a statement was a part of the same transaction or to the possibility of fabrication in the utterances intended to be received under *res gestae*. The court held that the surrounding circumstances of each case must be considered to determine whether a statement was a part of the same transaction. The court added that such statements should be intimately connected

with the fact in issue and must be spontaneous utterances or reactions inspired by the event. However, the court added that there must not be any opportunity for the maker to fabricate or concoct the statement related to his utterances or reaction to the event. Another significant case on *res gestae* was decided by the Indian Supreme Court in *Sukhar versus the State of Uttar Pradesh* (1999) which established and affirmed two crucial principles. Firstly, if one transaction constitutes various offences, each offence might be used as evidence to prove the other offences. Secondly, the court affirmed the prerequisite for receiving a statement under *res gestae*. The Supreme Court reached the conclusion that one crime might be used as evidence to indicate the nature of another crime where many crimes are part of the same transaction. The court allowed the use of the evidence of possession of the stolen property to prove the murder (in this case both robbery and murder was committed by the accused). The court also held that if a statement is to be received as part of the same transaction, it must fulfil two conditions. Firstly, statements must be made during the transaction, and secondly, the statement must be so spontaneous that it must exclude the possibility of fabrication. Likewise, in *Bhairon Singh versus State of Madhya Pradesh* (2009), the court gave the ruling that in order for a statement to be considered admissible under section 6 as being a component of the same transaction, the statement must have been made at the same time as the actions themselves or soon after they were completed.

Various Indian authors have discussed the doctrine of *Res Gestae* in the context of the Indian Evidence Act 1872. For instance, Monir (2013) believes that whatever is treated as *res gestae* in English textbooks has been incorporated in sections 6, 7, 8, 9 and 14 of the Indian Evidence Act. In addition, he mentions that the function of *res gestae* is to fill in any gaps that may exist in the chain of evidence provided by the lone witness. It is important to emphasize that section 6 states all of the facts that are not in issue are relevant facts if they are connected with a fact that is in issue in such a way that they are a part of the same transaction, regardless of whether they happened at the same time and place or occurred at different times and places. This provision is relevant because it states that all of the facts that are not in issue are relevant facts. Similarly, Section 7 declares numerous facts as relevant which are not though the part of the same transaction, yet are connected with fact in issue in five different manners with the transaction namely, facts related to the occasion of fact in issue or relevant fact, or cause of fact in issue or relevant fact or effect of fact in issue or relevant fact or facts which afford the opportunity of the occurrence of fact in issue or relevant fact or facts constituting the state of things under which any fact in issue or relevant fact happened. Similarly, section 8 states that any fact which shows or constitutes the motive of any fact in issue or relevant fact, or which shows or constitute the preparation of fact in issue or relevant fact and the conduct of parties to the proceedings are also relevant facts. However, the section provides three conditions for the relevancy of conduct. Firstly, previous or subsequent conduct of parties to proceedings or a victim of a crime must influence or must be influenced by any fact in issue or relevant fact. Secondly, mere statements of parties or victims of crime will not amount to conduct unless those statements accompany and explain acts other than statements. However, a mere statement may be admitted in evidence if these are covered under other provisions of the Evidence Act. Thirdly, when the actions of a person are at issue, any remark that is communicated to that person or stated in his presence and hearing that has the potential to influence those actions is relevant. A similar declaration is made in section 9, which states that facts which are required to clarify or introduce a fact in issue or relevant fact, facts which support or rebut an inference suggested by a fact in issue or relevant fact, facts which establish the identity of anything or person, facts which fix the time or place of the happening of a fact in issue or relevant fact, or facts which show the relation of parties by whom such a fact was performed are relevant facts. The same section also provided that those facts are also relevant which establish the identity of anything or person. Correspondingly, section 14 states that facts which show the existence of any specific state of mind (not a general state of mind) towards a specific person (like intention, knowledge, good or bad faith etc.) or show the existence of any state of body or bodily feelings if such states are either fact in issue or relevant fact, are relevant facts.

Judicial Application and Statutory Status in Pakistan

Having discussed and analyzed the academic, statutory and judicial description of *res gestae* in three common law countries, the present section intends to address the third research question by analyzing the statutory and judicial application of the doctrine in Pakistan. The discussion begins with a brief description of the statutory status of *res gestae* in Pakistan. Then it will discuss important cases to explain or illustrate how Pakistani courts view and apply the doctrine.

It is essential to point out that after the independence, Pakistan inherited the Indian Evidence Act, 1872, and its application continued till 1984 when Qanoon e Shahadat Order replaced it. It is important to note that QSO retained a significant portion of the Indian Evidence Act. The sections in the Indian Evidence Act related to res gestae as discussed in the above section, are the same except for their numbers. In QSO, articles 19,20,21,22 and 27 deal with res gestae and the content of these articles is the same as discussed in the above section dealing with the statutory status of res gestae in India.

Various judicial decisions in Pakistan discuss the application and the scope of res gestae, and the following nine cases reflect the Pakistani courts' jurisprudence about the doctrine. The first case is *Sher Gil versus State* (1976) in which the court discussed the nature and conditions of res gestae. In this case, the accused fired at the deceased, who was going to the flour mill with his friends. The deceased (then injured) ran on the ground while running towards the flour mill, where two witnesses approached him. The then-injured deceased told them the names of the accused and died later. The deceased also reported the matter to the police and the report was objected to by the defence on the ground that it was made after half an hour of the incident. However, the court held that the evidence of the witnesses whom the deceased told the assailant's names very shortly after the incident is admissible as res gestae since it was almost contemporaneous with the transaction itself. Similarly, the court also held that the report was made at the police station after half an hour of the incident, eliminating the chances of fabrication or false implication. The second important case is *Habib ur Rehman alias Raja Batool versus State* (1992). In this case, many people gathered at the place of occurrence after the accused fired at the deceased. These people told the event to two witnesses who arrived shortly after the event and deposed in the court about the occurrence. The defence objected that their testimony was hearsay; however, the Supreme Court held that their testimony could not be treated as hearsay because anything said immediately after the occurrence by the people gathered is admissible under res gestae. The third case is *Sultan versus State* (1993) in which the accused killed the deceased in the presence of a witness who ran to the village and told the whole story to the villagers. The defence objected the testimony of one of the villagers whom the eyewitness told the story. However, the Supreme Court held that the testimonies of the eyewitness and the villager were admissible as they formed res gestae. The court observed that the testimony of the villager fell within the definition of "hearsay". Still, it is admissible as it has been provided in article 19 that whatever is said by the bystanders or the accused or witnesses at or about the time and place of occurrence, it is admissible and direct evidence under res gestae.

The fourth significant case in which the court did not receive a statement as res gestae is *Shabbir Hussain versus State* (2003). In this case, two witnesses rushed towards the deceased's house after hearing hue and crying. When they reached there, they saw that the accused had killed three family members and injured one female witness. The Supreme Court held that the statement of the injured lady cannot be received under res gestae under article 19 of QS as neither she deposed having told the witnesses immediately after the occurrence that she saw the appellant also murdering the deceased nor the prosecution witnesses deposed that the injured lady so told them.

Similarly, in *Muhammad versus State* (2022), the accused killed the deceased in the presence of the deceased's sister and wife. These two ladies told the whole incident to the people who gathered there shortly after the incident. The prosecution produced the witnesses in court, but the defence objected to their testimony as hearsay. The court decided that the statements of the witnesses were protected by article 19 of the Qanun-e-Shahadat on the basis of the principle of 'res gestae,' as soon after the incident, they were attracted to the hue and cries of the residents of the house, and on their emergence, they were briefed that unknown individuals had gunned down the deceased with a request to get the attendance of the complainant. The court held that the statements of the witnesses were covered under article 19 of the QSO. Another significant case discussing the application of res gestae is *Kamran versus State* (2022). In this case, the security guard of the school committed rape on six years old girl who told the whole story to her parents and relatives. The victim's mother testified to this fact in court; however, the defence objected that the victim's statement was not spontaneous as she told the story three hours after the incident, which created the possibility of fabrication. The court dismissed the objection and held that statement was sufficiently 'spontaneous' if it was so closely associated with the event that it could fairly be stated that the event still dominated the declarant's mind. The court also observed that before admitting evidence under article 19, it is necessary that the event triggering excitement due to which the statement was made must be operative and dominating

in the maker's mind. In addition, the court observed that the trial courts should apply the rule of *res gestae* liberally where children are sexually abused.

Similarly, Rashed alias Chand versus State (2022) is another crucial case on *res gestae* in which the court received the evidence under *res gestae* of the accused's departure from the place of occurrence. In this case, three unknown accused killed a session judge by entering his house. The deceased judge's domestic servant saw the accused when they were leaving the house after killing the judge. In addition, the judge's wife told the whole story to the servant when he entered the house. The court admitted both portions of the servant's statement under *res gestae*, i.e. seeing the accused fleeing from home and being told by the judge's wife about their involvement in the murder. Another vital case on *res gestae* is Saqib Khan versus State (2022) in which the court ignored the delay of one day in making the report of rape to the police. In this case, the accused committed rape on 6/7 years old girl who told the whole story to her mother and uncle. They informed the police the next day. The court admitted the testimony of her uncle and mother under the doctrine of *res gestae* under article 19. The medical report completely supported the statements of the victim's mother and uncle. Another important point that emerged in this case, is that the court ignored the delay in lodging the first information report by observing that the victim's father was abroad, the mother was dependent on her in-laws, and the social and domestic issues linked with such incidents. Similarly, in Abdul Kareem versus State (2022), the deceased's brother approached his injured brother after the accused gunned him down. The witness's injured brother told him the assailant's name and the whole occurrence. The defence objected to this portion by saying it was hearsay; however, the court held that the statement was made spontaneously, so it was admissible under *res gestae*.

CONCLUSIONS

The discussion in the present article leads to the following ten conclusions. It is important to point out that the six conclusions are related to *res Gestae* in the UK and USA, and the rest of the four conclusions are about the doctrine in India and Pakistan. First, the doctrine of *Res Gestae* is an exception to hearsay evidence, and it allows courts to admit evidence related to other offences or acts which are not part of the charge framed against the accused but it relates to the transaction of the offence with which an accused is charged. Second, the evidence under *Res Gestae* is allowed to enable courts to fully understand an event's happening by looking into the prevailing circumstances and context of the event under consideration. Third, the evidence received under *Res Gestae* is closely connected or associated with a fact in issue in terms of time, place and circumstances. Four, the evidence under *Res Gestae* is admitted to illustrate or furnish a complete story of the crime charged. Five, the evidence related to the circumstances, facts, utterances related to physical sensations, mental condition and declarations which have emerged from the crime charged is admissible under the doctrine. Six, the declaration of the doer, the victim or the bystanders is received under the doctrine. Seven, two categories of facts are relevant in the context of Indian Evidence Act and QSO; firstly, the facts which are the part of the same transaction and secondly, the facts which are not the part of the same transaction but throw light, or give context or explain the fact in issue or relevant fact. Eight, under the Indian Evidence Act and QSO, the facts constituting the same transaction must be connected with fact in issue or relevant fact in terms of proximity of time, place and unity, or the facts must be related to continuity of action, purpose or design. Nine, the surrounding circumstances of a transaction must be examined to determine whether a statement is a part of the same transaction or not. Ten, the statements will be admitted in evidence under *res gestae* if there is no possibility of fabrication.

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