

Judicial Adaptation To Changing Norms Of Evidence In Pakistan And India: Digital Reality Integration With Res Gestae

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Abstract: *The domain of evidentiary standards and mechanisms has been profoundly revamped through the rapid advancement in digital technologies and has equally impacted legal systems across the globe. Specifically, in the context of Pakistan and India, courts have started facing challenging when it comes to the integration of digital standards within the traditional evidentiary legal framework. This paper attempts to discover the judicial incorporation of changing rules governing evidence with a specific attention towards the notion of ‘res gestae’, a doctrine which is fundamentally rooted in the canons of spontaneity and contemporaneity. It evaluates how courts in both of the jurisdictions have incorporated and enhanced the application of res gestae to accommodate digital evidence as well, for instance, CCTV footage, metadata, WhatsApp messaging, GPS tracking as well as audio/video recordings. The analysis is based on the interpretation of relevant provisions of Qanun-e-Shahadat Order (1984) and its equivalent Indian Evidence Act of 1872, in the light of evolving global jurisprudence. This paper critically examines the rift between reliability, credibility, and authenticity when it comes to admission of digital documents under the guise of res gestae. It also elaborates the judicial developments and shifts concerning the evidentiary fairness without undermining procedural integrity. The paper argues that it is crucial to harmonize traditional doctrines in an increasingly digital ecosystem, so that evidentiary standards could be modernized and res gestae be used as a flexible doctrinal concept as reimagined in a legal framework guided by digital technologies.*

Keywords: Digital evidence, res gestae, evidence, digital technologies, legal systems.

Introduction

The principles of common law encapsulate the doctrine Res Gestae which significantly impacts the admissibility of statements and actions that have a close nexus with a fact in dispute. In the context of Pakistan and India, contemporary courts struggle with the application of this 19th-century principle of evidence given the technological advances of the 21st century. The modern forms of communication, including digital communications, metadata, timestamps, social media messages, and real-time interactions stretch the bounds of what is traditionally deemed contemporaneous and spontaneous as per Res Gestae. It also explores the strains between the hearsay exclusions and digital evidence, the admissibility of real-time electronic communications, and the nuanced construction of digital metadata. Technology has resulted in the ready availability of emails, text messages, call logs, video recordings,

social media uploads, and even metadata (Taylor et al., 2010). However, numerous legal doctrines stem from fundamental principles that were developed long before the rise of technology. Digital traces- newsletters, chat logs, metadata footnotes, the works-have elbowed their way into litigation faster than a policy can catch its breath. That blunt reality is now the raw material, and whichever way the judges drift tomorrow, the datasets are already waiting.

Digital criminality introduces evidence-capture techniques that legal scholars never anticipated, and those innovations inevitably pressure the older rules. Take the common-law notion of Res Gestae, for instance: that doctrine admits remarks or gestures made in the heat of a crisis by treating them as almost part of the event itself (Coffey, 2022). In India the concept survived in Section 6 of the Evidence Act, 1872, while the Pakistani Qanun-e-Shahadat Order, 1984, restates it under Article 19, both framing it as a fact forming part of the same transaction. A further layer of complication arrives from Section 65B of the same Indian statute, which mandates insulated electronic logs for tendering anything in pixels; two headline cases, *Anvar P.V. v. P.K. Basheer* and *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, show both the promise and the muddled aftermath.

1. THE SCOPE OF RES GESTAE AND CONFLICT WITH HEARSAY RULE

Res Gestae translates to “things done” and in legal discourse pertains to events or circumstances that so intimately link with a fact in issue that they constitute a part of the same transaction. In Pakistan's Qanun-e-Shahadat Order of 1984, Article 19 and in the Indian Evidence Act of 1872, Section 6 both provide for the same principle where evidence of parts of a transaction, irrespective of its hearsay nature, is allowed is admissible.

In both legal systems, the courts have relied upon the immediacy as well as the spontaneity of events to accept such statements. For example, exclamations made at the height of some violent executions or actions taken immediately before or right after the execution, if pertinent and closely related, are considered a part of one event and therefore admissible.

The main rationale for the Res Gestae doctrine rests precisely because it is an exception to the hearsay rule. The hearsay rule forbids out-of-court statements sought to be tendered in evidence to prove some fact that is asserted. Nevertheless, statements that fall under Res Gestae are presumed to be reliable because they are uttered in the heat of the moment which allows very little time for fabrication. In *Anvar P.V. v P.K. Basheer (2014)*, the Supreme Court of India has explained that electronic evidence must be verified through compliance with the procedural gate as set in Section 65B of the Indian Evidence Act. In the same manner, Pakistani courts have demanded evidence verifying the trustworthiness and source of such digital statements even when argued under Res Gestae. This portrays that the hearsay exceptions for digital materials are interpreted much more stringently.

2. THE ARGUMENT FOR RATIONALE BEHIND THE USE OF DIGITAL COMMUNICATIONS

As described previously, the overall concept is that the timing of utterances tends to reduce the likelihood of concocted statements. In the digital world, “real time” communication is undertaken through live chats, voice notes, instant messages, and even social media platforms. The Indian judiciary system is attempting to find middle ground with these forms of communication. Courts have been demanding issuance of a Certificate using Section 65B of the Indian Evidence Act 1872 to ascertain the trustworthiness and time-stamping of such electronic messages. However, regardless of their immediate nature, these communications often do not fit within Res Gestae.

Like many other issues, Pakistan's courts also require unquestionable proof of the relationship between the time and the place origin of such digital communication and the event being addressed. Under Article 164 of the Qanun-e-Shahadat Order 1984, electronic evidence is considered admissible if it can be proved to be genuine. However, in order for it to be admissible under Res Geste, the courts have

insisted that the communication must take place at the same time or immediately after the fact in question and must not be a result of contemplation.

3. ANALYSIS OF METADATA AND DIGITAL TIMELINES

The concealed data within digital files, or metadata, is pivotal to verifying digital evidence's authenticity, timeliness, and provenance. Pertaining to *Res Gestae*, it may assist in substantiating that a statement or deed was perpetuated as a part of a holistic, uninterrupted process. Metadata-the hidden trail woven into every digital photograph or text-plays a crucial role in determining whether a file can be trusted (Coffey, 2022). Whether treated as *Res Gestae* or classic corroboration, its persuasive weight rests on spontaneity and simultaneity. Raw timestamps and file sizes remain next to meaningless until a forensic analyst verifies them. Indian judges echo the point, but many still try to sever metadata from the main narrative and brush it aside when other proof is weak. Some justices warn that the information might have been altered without anyone noticing. In both arenas, confidence in metadata is creeping upward, yet the delay signals how slowly doctrine adapts to technology that feels old by the next calendar year (Mayernik, 2019).

4. INSTITUTIONAL AND DOCTRINAL RESISTANCE TO DIGITAL EVOLUTION

Judicial authorities in both Pakistan and India have leaned hesitantly against the tide of digital investigation, allowing antique doctrines-like *Res Gestae*-to push back against constitutional promises of a fair trial. Skepticism over the intrinsic reliability of bytes and pixels is compounded by dilapidated courtroom hardware and a notable scarcity of forensic training for judges and counsel alike. In Pakistan the Qanun-e-Shahadat Order of 1984 teetered toward modernization by acknowledging electronic proof, yet courtroom practice remains sporadic and uneven across trial circuits. The higher bench remains skeptical of WhatsApp voice notes or public feed screen-grabs, privileging musty ideas of co-presence and spontaneity outlined in *Res Gestae*. Unless digital statements can be mirrored by independent testimony, their admission stalls (Casey, 2011).

India faces a similar impasse even after the 2000 Information Technology Act adjusted the 1872 Indian Evidence Act to recognize electronic material. The courts still stumble over rudimentary questions of chain-of-custody and verifiability long after the statute-books declared such issues settled. Storm clouds still gather in the courtroom whenever a lawyer tries to slide a screenshot or a WhatsApp audio clip onto the evidence table. Judges pick at the edges-relay chain of custody, failure to certify, maybe even the color balance on the photograph-and the whole thing stalls. Without some geek in the witness box to unpack the bytes, the judge defaults to old-school intuition and the exhibit collapses under the weight of its own digital grease (Underwood, 2019).

Judges on both sides of the Radcliffe Line now tread water between legal principle and technological fact. Everyone wants to cradle the fairness doctrine built into *Res Gestae*, but that goodwill frays the moment the judge stops knowing what a packet-switch graph even looks like. Slice the caselaw any way you like-most of it reads like alternate universes, bonded together only by the same statute book and utterly different coding languages (Underwood, 2019).

5. THE IMPACT OF JUDICIAL DISCRETION IN RESOLVING THE DOCTRINAL DIVIDE

Due to the absence of any coherent legislative policy incorporating *Res Gestae* into digital evidence, judicial discretion has become the primary approach through which courts resolve these conflicts. Judges in both Pakistan and India have had to go to the length of interpreting laws far outside their originally intended boundaries due to the ever-advancing technology. Judicial discretion is evident in the invocation of Article 164 of the Qanun-e-Shahadat Order 1984 by Pakistan courts that permits the use of modern devices for the presentation of evidence. This has been broadened to cover not only electronic documents but also CCTV footage and digital communications. The admission of such

evidence under Res Gestae depends on how convincingly the evidence is shown to be spontaneous and closely connected to the fact in dispute. Courts can be relied upon to look for corroborative evidence in the form of digital timestamps, third party verification, or forensic analysis (Hameed, 2021).

In India, the same practice is followed in Section 6 and Section 65B of The Indian Evidence Act. Courts have admitted digital recordings more than verbal testimony under Res Gestae with proper certifications and when they show an uninterrupted sequence. Their supreme court in *K.S. Puttaswamy v Union of India (2017)* noted the technologies impact on legal processes, which suggests open mindedness towards change from the courts. Notwithstanding, unregulated reliance on this form of evidence creates unpredictability. One judge might accept that a WhatsApp message sent during a business transaction qualifies under Res Gestae. Another judge might refuse to accept the same evidence on the grounds that the message was custodially authenticated. This evidentiary gap accentuates the lack of rational judicial policy or in some cases, parliamentary legislation (Jain, 2018).

In both jurisdictions, higher courts have a pivotal role to play in setting precedents that govern spontaneity and the chain of custody associated in talking digital timestamps under Res Gestae. Such precedent-setting would harmonize the standard for admissibility of digital evidence and minimize the opposite reliance on subjective notions across courts.

6. OBSTACLES IN THE APPLICATION OF ‘RES GESTAE’ IN RELATION TO DIGITAL EVIDENCE

The evolution of technology and communication has brought about new concepts of documenting, behavioral evidence, and record-keeping which traditional legal doctrines such as Res Gestae are ill-suited to apply to. Rather, it is often the result of machines, rendering the content devoid of the automation necessary to fulfill the Res Gestae criteria. A major concern when applying Res Gestae to digital evidence is determining the boundary of spontaneity within a digitally framed construct. Take the case where a person is committing a crime and either of the two options: sending a voice note or a text message is performed. May that message be considered part of the transaction in accordance with Article 6 of Pakistan’s Qanun-e-Shahadat Order 1984 or Article 19 of India’s Evidence Act 1872? Answers have yet to be determined by the courts. The digital age has initiated changes to the manner people interact and communicate; fabrication or misrepresentation becomes all the more plausible (Jain, 2018).

Secondly, the problem of contemporaneity is even more intricate within digital environments. Unlike face-to-face comments that capture the essence of a moment in time, digital processes offer timestamps or metadata indicating the moment of creation, alteration, and sharing. Texts contain tools for precision but conceal delays, edits, or cuts that could question whether the evidence is contemporaneous. Take, for example, a tweet posted five minutes after a vehicular incident. Depending on the amount of judicial discretion exercised, it either falls within the same transactional period or outside it (Wahyudi & Winanti, 2025).

Thirdly, auto-generated evidence still poses a challenge within the scope of digital evidence. Footage from video surveillance systems, GPS tracking, or automatic logging systems feature data authored by machines rather than humans. While these types of evidence are reliable, they do not qualify as “statements” in the human sense; hence, they may not be categorized under Res Gestae. Courts need to decide whether such data can be equated to spontaneous acts or whether entirely different criteria for admissibility apply. A related difficulty is contemporaneity, a core element of Res Gestae. While timestamps on digital content offer some indication of contemporaneity, courts have yet to arrive at uniform standards to establish whether the doctrinal requirement is met. Furthermore, different forms of digital content like social media platform stories that disappear after a certain period or pre-programmed tweets add complexity to the issue. Puranik observes that courts have to create new criteria based on “digital contemporaneity” which depend more on the realities of technology and less on rigid

close timing. This problem worsens with automated logs, GPS trails, or inputs from IoT devices (Bebortta et al., 2020).

Although such data may be reliable and mechanically spontaneous, the absence of human agency in *Res Gestae* poses a problem. Kerr defends that while this evidence may bear great probative weight, its exclusion under *Res Gestae* is doctrinally unjustified, requiring either a new exception, or broadened definitions resulting from statutory revision. Moreover, challenges concerning the authenticity and integrity of digital records pose continuous legal challenges. In Pakistan, Article 164 of Qanune Shahadat Order 1984 permits the use of modern devices, however, it does not provide any specific safeguards or procedures to authorize the verification processes of digital materials. In like manner, section 65B of the Indian Evidence Act mandates the issuance of a certificate for the electronic evidence submission which, while aiming to safeguard the authenticity of evidence, ends up disregarding authentic evidence pertaining to the case simply because the provided evidence does not meet requirements (Bebortta et al., 2020).

To conclude, the incorporation of digital evidence within the *Res Gestae* paradigm poses numerous doctrinal and procedural challenges. In both Pakistan and India, the courts need to abandon legalistic formalism and a shadow-boxing approach to interpret *Res Gestae* in a more flexible manner, considering the implications of digitally mediated communication. A blend of these changes would need to come from a singular legislative initiative, judicial creativity, and proactive scholarship to ensure that the doctrine of evidence is not left stagnant due to rapid technological advancements.

7. DIGITAL EVIDENCE'S LEGAL BOUNDARIES IN PAKISTAN AND INDIA

Judges, drafters, and desk-bound policymakers have chipped away at the statutes, making piecemeal fixes and gradual overhauls that paint a technological gloss on older codes. New laws aimed squarely at cybercrime sit beside centuries-old evidentiary rules, yet the shelf space they occupy seldom matches the gaps they intend to fill. The result is a messy overlap of text, blurred procedures, and court orders that speak different dialects, even from bench to bench. Pakistan's primary document of evidentiary law, Qanun-e-Shahadat Order 1984 (QSO), is taken from The Indian Evidence Act of 1872. As with all colonial era laws, it needed local adaptation, which in this case was Pakistan's context. The QSO contains stipulations regarding utterances and documents being admitted into evidence. As with all pre-digital paradigm laws, it lacks the ability to address electronic data.

In response to PECA 2016, Pakistan's legislature developed PECA 2016, which attempts to resolve the inadequacy of prior laws by addressing electronic evidence in the scope of cyber-crime investigation and prosecution. PECA defines terms such as electronic evidence, digital signatures, and electronic messages along with outlining the systematic steps regarding the collecting, preservation, and presentation of such evidential materials in courts. The increasing incidence of cybercrime in India led to the formulation of the Information Technology Act of 2000 (IT Act) which contains provisions on e-governance, digital signatures, and the legal recognition of electronic records. Complementary to the IEA, the IT Act attempts to furnish a legal framework for cross-border electronic transactions and the collection of digital evidence. Nonetheless, the IT Act silence on some evidentiary principles like *Res Gestae* poses a challenge because the courts are free to apply customary rules no matter how modern the technology is.

There is consensus in the literature identifying the gap as a problem that requires swift and comprehensive action to bring Pakistan's traditional rules of evidence into line with the reality of cybercrime. Haider advocates for the incorporation of digital evidence into the QSO or the creation of new corporate legislative framework which would address the peculiarities of electronic evidence. Like Pakistan, India also faces challenges posed by the introduction of digital evidence into the legal system. Some scholars argue that while Section 65B is an advance, its rigidity stifles the adaptability necessary to respond to the multifaceted nature of communications in the digital environment where *Res Gestae*

exceptions might be applicable (Balhera, 2018).

To conclude, both India and Pakistan have legal systems which recognize the digital form of evidence as sui generis in nature, yet within both jurisdictions, there is a lack of legal evolution on a statutory level. The interplay of modern and antiquated laws is without distinct alignment creates tremendous difficulty concerning the treatment of electronic evidence, particularly regarding spontaneous utterances with Res Gestae. This illustrates the need for advancement in technology policy as modern law which oversees construct, legal certainty, and fairness is needed. As a result of the rapid development of digital technologies, existing systems of evidence are facing a serious challenge across the globe.

8. A COMPARISON OF JUDICIAL REASONING IN PAKISTAN AND INDIA

Analyzing the application of the Res Gestae evidence doctrine with digital evidence in Pakistan and India reveals both similarities and differences in judicial reasoning. These different patterns of reasoning result from a combination of the constitution, pertinent laws, and the growing judicial attitude towards technology. Judicial reasoning tends to lean on the conservative side in Pakistan. As an example, the courts exhibit narrow applications of Res Gestae, despite Article 164 of the Qanun-e-Shahadat Order 1984 allowing for digital evidence to be presented. This is evident as most judges will only accept an audio or video statement made by a human participant after the fact (embedded within a digitally captured medium). Empowered by the judiciary's insistence on confirming forensic evidence alongside witness accounts on the digitally sourced evidence, their reasoning is valid. Nonetheless, this rigidity fosters counter-productive strictness in evidentiary standards.

In the case of India, the courts have been more innovative. Sections 6 and 65B of The Indian Evidence Act of 1872, have provided space for judicial creativity. For example, Indian courts have accepted the incorporation of contemporaneous video, telephonic, text, and even voice statement interactions into digital transactions for the purposes of Res Gestae. The judiciary seems willing to accept supplemental expert evidence on digital authenticity concerning irretrievable gaps in evidential admissibility.

Both jurisdictions have the same problem of aligning Res Gestae with modern technology. Pakistan's over-dependence on external verification poses additional obstacles because of its reliance on conventional protection measures, while India has seen more progressive jurisprudential growth recognizing metadata, timestamps, and instant messages as spontaneous statements. A common trend, however divergent, is the gradual progress towards increasing the use of technology in both countries' rules of admissibility.

This comparison indicates that there is a slow attempt to develop the principles around Digital Res Gestae, even though it still lacks a systematic approach. The lack of defined benchmarks for spontaneity or contemporaneity in digital evidence captures the need for doctrinal development combined with uniform legislation.

9. THE NEED FOR DOCTRINAL AND LEGISLATIVE CHANGE

The incorporation of digital evidence within the doctrine of Res Gestae innovation goes beyond judicial creativity; it demands doctrinal and legislative change. The statutory schemes in Pakistan and India are based on physical evidence and oral testimony. Their adaptation to digital evidence is judicially constrained creativity, which poses risks of inconsistency. In Pakistan, there is need for change to expand Article 164 of Qanun-e-Shahadat Order 1984 and include explicit provisions concerning the treatment of digital statements under Res Gestae. Legislation could set out criterion assessing spontaneity of digitals, metadata contributions, and the admissibility concerning automated digital recordings. Criteria delineating the preservation of digital evidence could improve the reliability of evidence (Salam, 2022).

In India, Section 65B has created room for digital evidence; however, the stringent requirement of

certifying documents has at times obstructed justice. A relaxation of this provision regarding the certification of evidence, especially for telephonic conversations, will enable more use of Res Gestae evidence digitally. Also, explicit directions on the role of metadata and digital timelines within the “same transaction” requirement would be very helpful to the courts. Both countries would gain from defining digital spontaneity and contemporaneity more precisely. These definitions could capture timestamped digital submissions (e.g., social media posts, GPS logs), real-time audio messages, and event-driven data streams reflecting the unfolding of events (Salam, 2022).

Judicial reform also needs to remove the limitation on judicial overload. Specialized interdisciplinary courses in cyber forensics and digital cyber law for judges and practitioners can help the justice sector assess cyber evidence and make more accurate assessments of digital evidence. Moreover, the creation of branches dedicated to cyber evidence within forensic laboratories and judicial training academies would enhance the organization of digital evidence evaluation (Salam, 2022).

10. CONCLUSION

The principle of Res Gestae is based on spontaneity and truthfulness. It is particularly important in relation to digital evidence. This chapter has shown that there is an understanding in Pakistan and India about the evidentiary nature of utterances made during an event. However, there is still a struggle to apply this doctrine to modern technology in communication. In Pakistan, rigid adherence to procedural safeguards and statutory language, for example, the use of words and phrases from the statutes, leads to a conservative judicial approach. While there is some allowance for digital evidence in Article 164 of the Qanun-e-Shahadat Order 1984, there is scant case law applying the doctrine of Res Gestae to digital evidence. Courts prioritize corroborative pieces of evidence as well as physical evidence. This preference can pose obstacles to the acceptance of instant messages and real-time voice clips of what can be deemed spontaneous and candid utterances.

Both jurisdictions encounter the same primary issues of establishing a point of origin for digital statements, graphed data, sharp photography, or video records alongside preserving their integrity and unbroken custody during custody of the digital materials. The primary questions are whether digital evidence satisfies the conditions of Res Gestae—spontaneity, relevance, and assurance—without undermining the accused’s right to a fair trial or damaging the judicial process.

Addressing these tensions requires both nations to shift towards some form of legislative change. Legal definitions of spontaneity regarding the digital realm, sufficient thresholds for evidence in digital media under Res Gestae, and adaptive mechanisms for authentication would significantly improve legal certainty. The training of judges and lawyers concerning the management of digital evidence and the creation of digital forensic divisions within courts could further strengthen the system’s capacity to process such evidence.

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