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# Critical Analysis and Relevancy of Res Gestae

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**Abstract:** *This paper has critically analyses res gestae as a relevant fact under the Indian Evidence Act, 1872. The parameters for a fact to fall under res gestae include spontaneity, continuity, etc. These parameters make the principle not devoid of defects. It is difficult to construe the time frame to be taken into account in order to conclude that a statement was spontaneous. Additionally, many psychologists believe that even in fraction of seconds, human mind consciously takes decisions. In such a scenario, spontaneous reaction as the reason for no fabrication of statement is hard to believe. Also, one of the pertinent problems that needs to be addressed here is that there is a uniform system for both men and women. However, scientific analysis points out that female usually take a longer duration to respond than male. In cases, where women have been raped or sexually exploited or have been victims of battered women syndrome, they are deeply traumatized to the extent that they cannot respond or react for few days. This leads us to question the uniform application of the principle of res gestae on both men and women. This paper highlights the need of the hour to have special provisions for women especially a woman who has been a victim of sexual exploitation, rape or battered women syndrome.*

**Keywords:** *Evidence, Res Gestae.*

## 1. Introduction

Evidence Law plays a significant role in the solving of a case. The aim of evidence law is to find the most probable circumstance and not the truth. Therefore, the court orders in favour of that party who is best able to prove his case. For this reason, it becomes crucial to understand which evidences are admissible in court. In India, law of evidence is governed by the Indian Evidence Act, 1872. This act provides that relevancy and admissibility are the two tests that needs to be fulfilled in order to decide whether a particular piece of evidence is valid evidence or not.

The theory of relevancy is stated in Section 5 of the Indian Evidence Act, 1872. It states that "Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others".

Explanation — This Section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.[1] Thus, the Section clearly states that for evidence to be admissible in a court of law, it must be relevant. Relevancy of a fact can be checked with the aid of Sections 5 to 55. In other words, Sections 5 to 55 talk about the situations, when a fact can be said to be relevant.

The theory of admissibility is stated in Section 136 of the Indian Evidence Act, 1872. It states that "when either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise. If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking. If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact."[2]

Admissibility of an evidence can be checked with the aid of Sections 56 to 100. The act makes it a discretionary power of the judges whether to consider evidence as admissible or not. Evidence needs to fulfil both the tests,

[1] Indian Evidence Act 1872, s 5
[2] Indian Evidence Act 1872, s 136

that is the test of relevancy and admissibility in order to be acceptable in a court of law. An important point here is that relevancy and admissibility are not synonymous. A fact may be relevant but not admissible and *vice versa*. This was also held by the Supreme Court that "more often the expressions relevancy and admissibility are used as synonyms but their legal implications are distinct and different for more often than not facts which are relevant may not be admissible, *for example*, communication made by spouses during marriage or between an advocate and his client though relevant are not admissible; so also facts which are admissible may not be relevant, for example, questions permitted to be put in cross-examination to test the veracity or impeach the credit of witnesses, though not relevant are admissible. The probative value of the evidence is the weight to be given to it which has to be judged having regard to the facts and circumstances of each case."[3] This paper will deal specifically with the principle of res gestae as a relevant fact.

## 2. The Origin of the Principle of Res Gestae

Res Gestae is a Latin term meaning things done. In common parlance, it's a declaration that is made upon witnessing an event and is used to prove the happening of an event. Res Gestae in legal framework is defined as "the events at issue, or other events contemporaneous with them."[4]

The acknowledgement of this concept by courts could be dated back to 17th century. It was for the first time in 1693 that when a wife uttered something immediately upon receiving hurt, the Court held that "declarations accompanying an act are receivable."[5] By 1800s, this doctrine started settling. The first case when this principle was firmly established was when Lord Ellenborough referred to *Thompson v. Trevanion*[6] and held certain statements made by an injured person immediately after an assault as part of the res gestae.[7] Things which formed part of the same transaction were held to be admissible under the principle of Res Gestae. But what was considered to be part of the same transaction was given a very strict meaning. For instance, in a case a boy had cut a girl's throat. The girl came out of the room and said "Oh dear Aunt, see what Harry Bedingfield has done to me"[8] and then she died. "C.J. Cockburn held the statement to be not admissible for it was not part of anything done, or something said while something was being done, but something said after something done. It was not as if, while being in the room, and while the act was being done, she had said something

[3] *Ram Bihari Yadav v State of Bihar* (1998) 4 SCC 517 [6]
[4] Bryan A. Garner, *Black's Law Dictionary* (10th edn, Thomson Reuters 2014)
[5] *Thompson v. Trevanion* 1693 Skinner 402
[6] *Ibid*
[7] *Aveson v Kinnaird* (1805) 6 East 188
[8] R *v Bedingfield* (1879) 14 Cox C.C. 341

which was heard."[9] In this case, the statement by the girl was held not admissible under res gestae. This led to lot of criticism of this judgment and the need was felt for a more liberal approach towards this principle of res gestae.

A more liberal approach was adopted later when "evidence had been admitted under the res gestae rule, that a woman making a telephone call was in a hysterical state. Where a statement is made either by the victim of an attack or by a bystander, which is itself hearsay, but indicates directly or indirectly the identity of the attacker, the admissibility of that statement is dependent on whether it was made as part of the res gestae (all facts so connected with a fact in issue as to introduce it, explain its nature, or form in connection with it one continuous transaction). The two difficulties with such evidence are that it may be concocted, and the exactness of the words may not be sure. The possibility of concoction is the real test of admissibility."[10] This case was followed in another case in which 5 tests were laid down in order to determine the applicability of res gestae rule. Lord Ackner in the case said –

1. The primary question which the judge must ask himself is – can the possibility of concoction or distortion be disregarded?

2. To answer that question the judge must first consider the circumstances in which the particular statement was made, in order to satisfy himself that the event was so unusual or startling or dramatic as to dominate the thoughts of the victim, so that his utterance was an instinctive reaction to that event, thus giving no real opportunity for reasoned reflection. In such a situation the judge would be entitled to conclude that the involvement or the pressure of the event would exclude the possibility of concoction or distortion, providing that the statement was made in conditions of approximate but not exact contemporaneity.

3. In order for the statement to be sufficiently spontaneous it must be so closely associated with the event which has excited the statement, that it can be fairly stated that the mind of the declarant was still dominated by the event. Thus, the judge must be satisfied that the event, which provided the trigger mechanism for the statement, was still operative. The fact that the statement was made in answer to a question is but one factor to consider under this heading.

4. Quite apart from the time factor, there may be special features in the case, which relate to the possibility of concoction or distortion. In the instant appeal the defence relied upon evidence to support the contention

[9] *Bedingfield* (n 8)
[10] *Ratten v The Queen* [1972] 2 AC 378

that the deceased had a motive of his own to fabricate or concoct, namely, a malice which resided in him against O'Neill and the appellant because, so he believed, O'Neill had attacked and damaged his house and was accompanied by the appellant, who ran away on a previous occasion. The judge must be satisfied that the circumstances were such that having regard to the special feature of malice, there was no possibility of any concoction or distortion to the advantage of the maker or the disadvantage of the accused.

5. As to the possibility of error in the facts narrated in the statement, if only the ordinary fallibility of human recollection is relied upon, this goes to the weight to be attached to and not to the admissibility of the statement and is therefore a matter for the jury. However, here again there may be special features that may give rise to the possibility of error. In the instant case there was evidence that the deceased had drunk to excess, well over double the permitted limit for driving a motor car. Another example would be where the identification was made in circumstances of particular difficulty or where the declarant suffered from defective eyesight. In such circumstances the trial judge must consider whether he can exclude the possibility of error."[11] These tests formed the basis for many other cases in relation to applicability of res gestae rule. Though these tests were laid down in a structured way in this case but, these tests could be dated back to 1940s itself in Australia. In a case, a man worked in a chemical factory and was injured at work and later died in the hospital. The man's wife filed a case against the chemical factory claiming compensation for her husband's death. In this case, with regards to the principle of res gestae it was held that "such statements or declarations must, in order to be admissible, be contemporaneous or substantially contemporaneous with the fact, i.e., made either during, or immediately before or after, its occurrence—but not at such an interval from it as to allow of fabrication, or to reduce them to the mere narrative of a past event.[12]

Hence, the principle of res gestae is evolving day by day and is still in need of some reforms which shall be discussed later in the Critical Analysis of this principle.

## Res Gestae as a Relevant Fact under Indian Evidence Act, 1872

The Indian Evidence Act, 1872 provides for which facts are relevant under Sections 5 to 55. It provides for Res Gestae as a relevant fact under Section 6 of the Act. Section 6 of the Indian Evidence Act, 1872 states that "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."[13]

[11] *Regina v Andrews* [1987] 1 AC 281
[12] *Adelaide Chemical & Fertilizers Co. Ltd v Carlyle* (1940) 64 CLR 514
[13] Indian Evidence Act 1872, s 6

However, it is important to note that the Act does not use the term 'res gestae'. The principle is enshrined in Section 6. "The rule that in a criminal trial hearsay evidence is admissible if it forms part of the res gestae is based on the propositions that the human utterance is both a fact and a means of communication and that human action may be so interwoven with words that the significance of the action cannot be understood without the correlative words and the dissociation of the words from the action would impede the discovery of the truth. It is essential that the words sought to be proved by hearsay should be, if not absolutely contemporaneous with the action or event, at least so clearly associated with it that they are part of the thing being done, and so an item or part of the real evidence and not merely a reported statement."[14] The tests of spontaneity, no narration of past and the statement must be in continuity of the event is also followed in India.

There has been plethora of instances when the Indian Judiciary has considered res gestae to be a relevant fact and has laid down various tests for the same. "The rationale in making certain statement or fact admissible under Section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be a part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of res gestae."[15] In yet another case it was held that "in our considered view, the test to determine admissibility under the rule of res gestae is embodied in words are so connected with a fact in issue as to form a part of the same transaction. It is therefore, that for describing the concept of res gestae, one would need to examine whether the fact is such as can be described by use of words/phrases such as, contemporaneously arising out of the occurrence, actions having a live link to the fact, acts perceived as a part of the occurrence, exclamations (of hurt, seeking help, of disbelief, of cautioning, and the like) arising out of the fact, spontaneous reactions to a fact, and the like."[16]

In a case where the accused shot at the victim and the victim before her death revealed about the accused, it was held by the Court that "the act of the assailant intruding into the courtyard during dead of the night, victim's identification of the assailant, her pronouncement that appellant was standing with a gun and his firing the gun at her, are all circumstances so intertwined with each other by proximity of time and space that the statement of the deceased became part of the same transaction. Hence it is admissible under Section 6 of

[14] *Teper v R* (1952) 2 AII ER 447
[15] *Gentela Vijayavardhan Rao v State of Andhra Pradesh* (1996) 6 SCC 241 [15]
[16] *State of Maharashtra v Kamal Ahmed Mohammed Vakil Ansari* (2013) 12 SCC 17 [41]

the Evidence Act."[17] It has also been observed by the Court that First Information Report (FIR) in some cases can be part of res gestae. The Court held that "the first information report is not substantive evidence. It can be used for one of the limited purposes of corroborating or contradicting the makers thereof. Another purpose for which the first information report can be used is to show the implication of the accused to be not an afterthought or that the information is a piece of evidence res gestae."[18] It is also pertinent to note that it is immaterial whether the statement is made by a child or an adult. However, with respect to a child witness, "the law on the issue can be summarised to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the Court and there is no embellishment or improvement therein, the Court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the Court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition."[19]

## 3. Res Gestae as an Exception to Non-Admissibility of Hearsay Evidence

Hearsay evidence as a general rule in not admissible in a court of law. "The term hearsay is used with reference to what is done or written as well as to what is spoken and in its legal sense, it denotes that kind of evidence which does not derive its value solely from the credit given to the witness himself, but which rests also, in part, on the veracity and competence of some other person. The word hearsay is used in various senses. Sometimes it means whatever a person is heard to say. Sometimes it means whatever a person declares on information given by someone else and sometimes it is treated as nearly synonymous with irrelevant. The sayings and doings of the third person are, as a rule, irrelevant, so that no proof of them can be admitted. Every act done or spoken which is relevant on any ground must be proved by someone who saw it with his own eyes and heard it with his own ears. Hearsay evidence is excluded on the ground that it is always desirable, in the interest of justice, to get the person, whose statement is relied upon, into court for his examination in the regular way, in order that many possible sources of inaccuracy and untrustworthiness can be brought to light and exposed, if they exist, by the test of cross-examination. The phrase hearsay evidence is not used in

[17] *Rattan Singh v State of Himachal Pradesh* AIR 1997 SC 768 [16]
[18] *Damodarprasad Chandrikaprasad v State of Maharashtra* (1972) 1 SCC 107 [13]
[19] *State of M.P. v Ramesh* (2011) 4 SCC 786 [14]

the Evidence Act because it is inaccurate and vague. It is a fundamental rule of evidence under the Indian law that hearsay evidence is inadmissible.

A statement, oral or written, made otherwise than by a witness in giving evidence and a statement contained or recorded in any book, document or record whatsoever, proof of which is not admitted on other grounds, are deemed to be irrelevant for the purpose of proving the truth of the matter stated. An assertion other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of any fact asserted. That this species of evidence cannot be tested by cross-examination and that, in many cases, it supposes some better testimony which ought to be offered in a particular case, are not the sole grounds for its exclusion. Its tendency to protract legal investigations to an embarrassing and dangerous length, its intrinsic weakness, its incompetence to satisfy the mind of a judge about the existence of a fact, and the fraud which may be practised with impunity, under its cover, combine to support the rule that hearsay evidence is inadmissible."[20]

However, the principle of res gestae is an exception to this rule that hearsay evidence is inadmissible. "The principle of law embodied in Section 6 of the Evidence Act is usually known as the rule of res gestae recognised in English law. The essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in issue as to form part of the same transaction becomes relevant by itself. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible."[21] In another leading case, this was reiterated. It was held by the Supreme Court that "Section 6 of the Evidence Act is an exception to the general rule whereunder the hearsay evidence becomes admissible. But for bringing such hearsay evidence within the provisions of Section 6, what is required to be established is that it must be almost contemporaneous with the acts and there should not be an interval which would allow fabrication. The statements sought to be admitted, therefore, as forming part of res gestae, must have been made contemporaneously with the acts or immediately thereafter."[22]

## 4. Critical Analysis of the Principle of Res Gestae

An analysis of Res Gestae raises certain doubts on the principle. The application of the principle indicated that there is a lot of ambiguity in the principle. What forms part of the same transaction is difficult to determine and this gives a lot of discretion to the judges to decide the applicability of the principle of res gestae. This

[20] *Kalyan Kumar Gogoi v Ashutosh Agnihotri* (2011) 2 SCC 532 [35], [37]
[21] *Gentela Vijayavardhan Rao* (n 15)
[22] *Sukhar v State of U.P.* (1999) 9 SCC 507 [06]

discretion has given birth to many critiques of the principle as well as there have been instances when the rule should have been applied but it was not. For instance, in the case of "*R v. Bedingfield*"[23] the statement of the victim was not included in res gestae. The reason being that the accused had already cut her throat and the victim came out of the room and stated the statement. It was not realised that the victim came immediately out of the room and soon after making the statement died. So, practically, there had been no fabrication and the statements are admissible under res gestae. Hence, we observe that due to this ambiguity in the principle, there are instances where the principle of res gestae should have been applied but it has not been applied.

### A. Psychological Critique

Res Gestae principle states that the statement must be part of the same transaction in order to avoid fabrication of the same. However, it is believed that every time a human being is making choices. Therefore, it is very difficult to prove which part of the statement is deliberate and which is not. "Even as a declarant spontaneously yells, MY GOD, the car ran the red light! he is thinking, making choices, processing images, translating those images, and choosing words. It is, therefore, hard to divide what part of that complicated process is deliberate and what part is instinctive or impulsive."[24] Moreover, res gestae "is premised on the notion that stress leads to sincerity, many scholars instead propose that extreme stress leads to confusion. Declarants' startled utterances may be honest declarations of what they thought they saw, but the very stress that makes them so honest can also interfere with their ability to perceive, transcribe, and remember events."[25]

### B. Feminist Critique

"In applying feminist theory to evidence law, Professor Kit Kinports has noted that the reliance on logic and experience in evidence law presupposes a neutral vantage point and universal identity of experience. The doctrine favours spontaneous, visibly agitated speakers over other more quiescent, reflective, frozen, or passive ones. It is supposed that all people react to stress in the same way."[26] One of the feminist critiques of the principle of res gestae is its universal application. That means, a statement shall be considered as part of res gestae when it is part of the same transaction. The problem lies in the fact that both the genders men and women react differently to situations. However, the principle of res gestae has assumed the reaction to be same on part of both the genders. This is especially in case of survivors of rape and sexual violence.

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[23] *Aveson* (n 7)
[24] Aviva Orenstein, 'A Feminist Critique of the Excited Utterance Exception to the Hearsay Rule' [1997] 85(1) California Law Review 159
[25] *Ibid*
[26] *Kalyan Kumar Gogoi* (n 20)

### C. Rape and Sexual Violence Victims

It is expected under res gestae that a person will react promptly and this reaction will be free from any fabrication and hence will be admissible as a relevant fact. However, "a victim of rape or other sexual violence is often numb and uncommunicative. Rape Trauma Syndrome (RTS) describes this experience of many survivors of rape or other sexual violence who experience systematic withdrawal after the trauma. Often the survivor initially suffers disorganization; she may be hysterical or she may be withdrawn and subdued. The recovery from rape and other sexual violence is a slow process. Only over time do most survivors process memories, begin to overcome the psychic numbing, and start talking to friends and counsellors."[27] Thus, we observe that victims of rape and other sexual violence do not react promptly because of the trauma that they have been subjected to. Still, their statements will not form part of res gestae and this universal application of the principle creates many problems for women. For instance, in a case a woman was gang raped brutally by 5 men. 5 days later somebody found her and then she narrated the incident to her. But the statement of the person to whom the victim narrated the incident was not held admissible under res gestae. It was held that "the application of res gestae depends upon proximity of time of conveyance of the information. It should be so proximate that the information conveyed is, in fact, form part of a same transaction. The real test is the proximity of time. It is the principle behind res gestae evidence is that the information is conveyed before there is any lapse of time so as to develop or cook up a story. The logic behind the principle is that the act constituting res gestae is so close and proximate i.e., treated to form part of same transaction. If that be the test, surely, the case on hand should fail to meet the test."[28] With regards to the statement of the victim, it was held that "her evidence should be beyond reasonable doubt and should establish the acts committed by the accused persons."[29]

Nowhere has the Court discussed the admissibility of the statement of the victim under res gestae. The reason being it was not spontaneous and so it was not part of the same transaction. This is what the feminist critique have pointed out, that, usually a rape victim takes time to respond because of the trauma that the woman has faced. But, the principle of res gestae does not apply and the principle places everyone on the same threshold. In another case of custodial rape, when the policeman caught hold of the girl to rape her, she did not respond immediately and it was held that "the High Court was perhaps alive when it talked of passive submission"[30]

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[27] *Kalyan Kumar Gogoi* (n 20)
[28] *Sasi @ Kuruttu Sasi v State of Kerala* Crl. A. No. 461 of 2009
[29] *Ibid*
[30] *Tukaram v State of Maharashtra* (1979) 2 SCC 143 [17]

In yet another case, a man of 31 years of age raped a girl of 4 years of age. The statements of the child to her grandmother of the incident were not held admissible under res gestae. The Court denied it on the ground that it was not spontaneous. The Court held that "it appears to me that none of these statements is relevant under Section 6 in view of the explanation above given, and that only the statement to the grandmother can possibly be proved under Section 8 as a complaint."[31] This has again raised questions on the universal application of the principle. These instances have made it the need of the hour to provide for a different threshold for women, especially rape and sexual violence victims. Men and women do not react to situations in the same way and hence, it would be unjust for keeping the same parameter for both the genders.

**D. Victims of Battered Woman Syndrome**

Res gestae is detrimental to the interests of Battered Woman Syndrome as well. Battered woman Syndrome occurs after constant abuse that the woman faces. Now, each and every abuse will not be considered under the principle of res gestae as a relevant fact since there has been a lapse of time, there is lack of spontaneity, in other words, the abuse does not form part of the same transaction. For instance, in the case of "*R* v. *Kiranjit Ahluwalia*"[32], Kiranjit Ahluwalia was a victim of Battered Woman Syndrome. The Court also accepted that women subject to Battered Woman Syndrome take time to respond, they do not respond immediately to the abuse. However, a suitable change is also needed in the threshold for accepting the statement as res gestae. The universal application of the principle takes away the opportunity from a victim of Battered Woman Syndrome to place the evidence of her abuse as a relevant fact. In another case, a woman was abused by her husband multiple times and was suffering from Battered Woman Syndrome. One day she committed suicide. Th Court held in the case that "unfortunately the law would not have come to her aid if she had killed her husband because the defence of sudden and grave provocation as a mitigating circumstance is based on anger and not fear and thus though a victim in her life, the legal system would have treated her as an offender."[33] Hence, it has become a necessity to change the parameters of res gestae so that the rights of a victim are protected.

## 5. Comparison Between India and UK with respect to the Application of Res Gestae

The principle of res gestae in the Indian Evidence Act, 1872 has been derived from United Kingdom. However, the application of the principle in the two countries has some differences. Res Gestae in England

[31] *Nga Hlwa v Emperor* (1906) 4 Cri LJ 288 [5]
[32] R v. *Kiranjit Ahluwalia* (1993) 96 Cr App R 133
[33] *State v Hari Prashad* 2016 SCC OnLine Del 751 [14]

is incorporated as "Any rule of law under which in criminal proceedings a statement is admissible as evidence of any matter stated if —

(a) the statement was made by a person so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded,

(b) the statement accompanied an act which can be properly evaluated as evidence only if considered in conjunction with the statement, or

(c) the statement relates to a physical sensation or a mental state (such as intention or emotion)."[34]

In England, it is considered that "though you cannot give in evidence a declaration, per se, yet when there is an act accompanied by a statement which is so mixed up with it as to become part of the res gestae, evidence of such a statement may be given. The traditional approach of the English courts, on the whole, has been lacking in flexibility."[35] An example of strict interpretation of res gestae is "*R* v. *Bedingfield*."[36] The statement of the girl(victim) made after coming out of the room was not held admissible. However, India has adopted a comparatively liberal and wider approach. This is evident as in Section 6, both events, which are occurring at same time and place and at different time and place are held as admissible under res gestae as part of the same transaction.

Inspite of the difference, largely the Indian principle of res gestae is based on the English Law. Both the jurisdictions believe in the event being part of the same transaction in order to avoid fabrication. Spontaneity is considered to be linked with honesty as well. A spontaneous and continuous reaction will not reduce the statement to mere narration of the past. However, both the countries suffer from the problem of categorisation of which circumstances come under res gestae. This ambiguity as well as the problem of universal application of the principle as discussed above demands a reform in the principle on the part of both the nations.

## 6. Conclusion

Res Gestae is a relevant fact under the Indian Evidence Act, 1872. It has also been observed that the principle of res gestae is an exception to the rule of non-admissibility of hearsay evidence. Under res gestae, only those

[34] Criminal Justice Act 2003, s 118
[35] GL Peiris, 'The rule against hearsay and the doctrine of res gestae: A comparative analysis of South African, English and Sri Lankan Law' [1981] 14(1) The Comparative and International Law Journal of Southern Africa 1
[36] *Aveson* (n 7)

facts are admitted as relevant fact which form part of the same transaction. However, there is ambiguity in determination of which facts form part of the same transaction. This depends on the discretion of the judge which has led to many varying judgments on the principle. It has also been pointed out that psychologically it is difficult to determine which part of the thought process is by instinct and which is deliberate because it actually takes a few seconds to frame a statement. Also, the principle of res gestae suffers from the problem of universal application. It applies uniformly on both the genders. However, it has been noticed that women, especially rape and sexual violence victims do not react immediately because of the trauma that they have been subjected to. They respond after a while. Similar is the case with women who are victims of Battered Women Syndrome. However, due to the universal application of this principle, statements of rape and sexual violence victims as well as victims of Battered Women Syndrome have often been rejected under res gestae. These are the reasons which places the need for a reform in the principle. A reform which can be equally suitable for both the genders. A reform which can more objectively decide which facts form part of the same transaction.