

## **LIABILITY FOR DAMAGE CONSEQUENTIAL FROM DRONE SURVEILLANCE: INCURSION OF PRIVACY AND AVAILABLE REMEDIES**

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### **INTRODUCTION**

There is always a charm among People related to flying. Since the day Wilbur and Orville Wright made their first successful flight, this interest had gotten to some other level. Unmanned aerial vehicles, commonly known as drones, debuted in the United States during World War II. Their use has increased significantly over the years. But in addition to their many benefits, drones have raised concerns about privacy and disruption. This article will talk about its use, its laws & regulations in India and other countries, etc.

### **HYPOTHESIS**

Drone operators should be liable for tortious liability for negligence if they aren't taking any reasonable steps & for the invasion of privacy if they are taking the videos or photos without the consent of that person.

In case of negligence, A drone operator was flying his drone over a residential area when it crashed into a person's house and caused damage to his house. In this, The drone operator was not paying attention to the drone & failed to take reasonable steps. However, the drone operator can argue that he was not negligent as he did not know when the drone had fallen. However, it was the responsibility of the drone operator to be aware of the risks associated with flying in a residential area

In case of invasion of privacy, the drone operator flew the drone over a residential area and collected images and video of a person in his private space. The person did not know that he was being recorded. In this, A person's privacy right was violated. However, the intent of drone operators was important because they were not using the drone for any lawful purpose. However, the drone operator may have a legitimate reason to do this such as if they were investigating a crime,

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Therefore, the drone operator is liable for negligence & invasion of privacy.

## RESEARCH QUESTIONS

1. Whether drone operators are liable for negligence if they are unable to take reasonable steps & why.
2. Whether operators should be liable for invasion of privacy by taking photos without the person's consent & why.

## SCOPE & LIMITATION

In this project, I have focused on the problems that are created due to drones like invasion of privacy, nuisance, negligence, etc. Apart from that I have also done the analysis of laws & regulations of India & other countries like Singapore, the USA & Poland.

But due to paucity of time & lack of experience I have done the doctrine research instead of empirical research

## CHAPTERS

The utilization of drone technology saw development towards the beginning of the 21<sup>st</sup> century. Beyond their initial usage as recreational personal aircraft, drones have been put to extensive use in anti-terrorism operations, 3D mapping, aerial photography, package delivery, environmental conservation, etc. Several countries have recognized the benefits of drones. However, there are circumstances where drones are giving real threats.

### Threats

Threat to Privacy - Drones can be used to record video and audio of people without their knowledge or consent. It can be used to spy on people in their homes, businesses, etc. As drones are equipped with powerful cameras, they can capture people in their most private moments, This can be a serious violation of privacy. Drones can also be used to harass or stalk. E.g. In 2017, the drone was used to record one's company business ideas & later got shared with its competitor<sup>1</sup>

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<sup>1</sup> Benjamin D. Mathews, Potential Tort Liability for Personal Use of Drone Aircraft, 46 St. MARY's L.J. 573 (2015).

Creates Nuisance - Drones can be noisy, especially when flying near residential areas. This noise can be annoying and even harmful to human health. Drones can damage property, such as crashing into buildings or cars. This can cause serious financial loss and can also be dangerous.

Causes Negligence - In many cases the operator is negligent and unable to operate the drone correctly which leads to damage & loss. In many cases, there are instances where the drone operator is not able to correctly operate the drone due to inadequate training or some other reasons. E.g.- In 2017, a drone crashed into a power line in New York. The accident caused a power outage and the drone operator was charged with negligence.

## **RULES & REGULATIONS GOVERNING DRONES IN INDIA & OTHER COUNTRIES**

Different countries have varying rules & regulations. However, there are some common points that all the countries consider like weight, altitude restrictions, etc

Singapore<sup>2</sup> - UAV guidelines in Singapore has very heavy permit & there is a strict movement of drones in this area. Whereas hobbyists who fly drones weighing less than 7 kg don't require any permit. One requires additional permits if one is taking photographs of protected areas. Under the Unmanned Aircraft [Safety & Security] Act carrying dangerous material while flying is criminalised under Section 9 of this act

USA - The USA has introduced a new regulatory framework for civilians. The present FA<sup>3</sup>A rules said that all civilian drones must weigh less than 25kgs, must remain in the visual line of sight & cannot be flown above 400 feet from the ground.

Poland - This operator must have the registration for drones lighter than 25kgs & use of drones for commercial purposes requires a competence certificate.

### **INDIA RULES & REGULATIONS**

DGCA issued the UAV guidelines in 2016. It categorized the weight into 4 classes-micro, mini, small & large. All drones should have the Unique Identification Number issued by DGCA & this number is given only to the citizens of India. Through this drones can be tracked &

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<sup>2</sup> Padmanabhan Ananth, Civilian Drone & India's Regulatory Response (2017) Pg No-(23-26)

<sup>3</sup> Federal Aviation Administration [USA] [https://www.faa.gov/training\\_testing/testing/acts](https://www.faa.gov/training_testing/testing/acts)

identified. All civilian drones at or above 200 feet will require an unmanned aircraft operator permit [UAOP] from DGCA. UAOP is valid for only two years & it isn't transferable. However, it is not required for civil operations who are flying below 200 feet in uncontrolled airspace. All those who are flying above 200 feet must inform to local administrator & should also share all important details & DGCA also given some guidelines to remote pilots which talk about their eligibility, training, etc

## REMEDIES

**Injunction** - A victim of drone surveillance can file for an injunction to prevent the drone operator from continuing surveillance. It is usually given when the oversight causes serious harm to the victim or there is a risk of further harm.

**Damages** - The purpose of this is to make up for the harm to the victim. damages can be given for economic loss, loss of privacy, etc. Nominal Even though the victim has not really experienced any losses, this tiny financial compensation is meant to acknowledge that they have been harmed.

## CASE ANALYSIS

**U.S. v. Causby** <sup>4</sup>(1946) - It is a landmark case of the USA which is concerned with the obligations of the government and the extent to which property owners should be compensated for the disruption caused by low-flying aircraft over their land. In this, The noise and vibration of low-flying aircraft caused the death of many Causby's chickens, leading to hampering his chicken farming. Causby filed a lawsuit against the US government seeking compensation for damages He argued that frequent and low-flying flights of military aircraft constituted a seizure of his property, & he requires compensation under the Fifth Amendment to The US Constitution. Finally, The court found that the aircraft over Causby's property amounted to deprivation of his property rights & hampered his chicken farming. The court established the "**Federal Maritime Easement**" **Doctrine**, However, that right was not absolute and had limitations, especially if the flights caused direct and substantial interference in the property. The Causby decision had significant implications for aviation laws and property rights & also laid the groundwork for future cases.

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<sup>4</sup> U.S. v. Causby ,328 U.S. 256 (1946)

*Florida v. Riley* (1989) -<sup>5</sup> The case involved the issue of Fourth Amendment protections and whether a warrantless air search of a defendant's property can be done. In this case, in the land of Florida, the law enforcement body conducted aerial surveillance by helicopter. The defendant challenged the legality of aerial surveillance, arguing that it violated his Fourth Amendment rights. He argued that the use of a helicopter to monitor his property from the air without permission constituted an illegal invasion of his privacy. Finally, SC ruled in favor of Florida, The court explained that aerial surveillance over public navigable airspace is not a search under the Fourth Amendment because it does not violate a reasonable expectation of privacy & also doesn't need a warrant. The decision emphasized that the protection of the Fourth Amendment against unreasonable searches and seizures consists mainly of protecting the privacy of individuals in places where they have a reasonable expectation of privacy. However, the open field doctrine allows law enforcement agencies to conduct surveillance in open areas that are not protected by a reasonable expectation of privacy.

## CONCLUSION & SUGGESTIONS

### Conclusion

The development of drone technology led to significant advances in various industries and brought many benefits. Apart from this drones have also brought challenges like invasion of privacy, and negligence. It is important to address these issues and create regulations to ensure that drones are operated responsibly. By addressing issues related to privacy violations, harassment, etc we are able to strike a balance between technology and individual rights.

### Suggestions -

**Clear regulatory framework:** Create a comprehensive regulatory framework for drone operations, The regulations must cover the permitted use of drones, privacy protections, penalties, etc.

**Liability insurance:** Mandatory insurance for drone operators that covers potential damages caused by drone operations. This ensures that victims can claim compensation if drones have caused damage.

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<sup>5</sup> Florida v. Riley, 488 U.S. 445 (1989)

Education & Awareness: Launch public awareness campaigns to inform citizens about their rights and the proper use of drones.

