

Habeas Corpus In Apex Court an Alternative Path To Obtain Child Custody, Sidestepping The Traditional Custody Petition In District Court

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INTRODUCTION

It is historically presumed and also often found to be embedded in the legal principles of family laws of many modern-day countries that during a child's "tender" years (generally regarded as the age of four and under), the mother should have custody of the child. The family laws prevalent in India upholds the doctrine no differently and, generally, in any custodial dispute between sparring couples having "tender aged" children, usually the custodianship is awarded to the mother.

However, in recent times, the 'tender-years' doctrine has been replaced by '*best interests of the child*' doctrine in advanced economies such as the USA and European Union as the tender-years doctrine was often not doing the justice in terms of child welfare needs and in USA the tender-years doctrine was found to be violating the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

In India too, the Courts, including the Hon'ble Supreme Court of India, recently have started upholding Child Welfare to be of paramount importance and a thing that is ideally given priority to, eroding away the historical notion that a mother is a better welfare provider for a child in its tender years. It is submitted that welfare of a child means psychological, social and also physical development of the child which are necessary for shaping an independent personality. In the first instance, it is upto the law to ensure that the child grows and develops in the best environment. The best interest of the child has been placed at the highest strata. In Elizabeth Dinshaw, this Court has observed that whenever a question arises before a court pertaining to the custody of the minor child, the matter is to be decided not on consideration of the legal rights of the parties but on the sole and predominant criterion of what would best serve the interest and welfare of the child.

Another justification behind the "welfare" principle is the public interest that stand served with the optimal growth of the children. It is well recognized that children are the supreme asset of the nation. Rightful place of the child in the sizeable fabric has been recognized in many international covenants, which are adopted in this country as well. Child centric human rights jurisprudence that has been evolved over a period of time is founded on the principle that public good demands proper growth of the child, who are the future of the nation. (Vivek Singh Vs. Romani Singh 2017(3) SCC 231)

Furthermore, the 'tender-years' rule has been grossly misused and abused by many sparring mothers all over the world, including in India, to isolate, alienate and eradicate the presence of fathers from the children's lives falsely using the Writ of *Habeas Corpus*, in which the mother claims the child has been illegally detained by the father, in the eyes of law. The children are not mere chattels; nor are they mere playthings for their parents. Absolute right of parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society. The Court of Appeals in England and Wales discussed that how the court would determine what is best in the interest of the child which was considered in *Re (McGrath (Infants))*, [1893] 1 Ch. 143 C.A) where the court observed that:

"...The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of a child is not to be measured by money only, nor by physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded."

The Hindu Minority and Guardianship Act, 1956 was enacted as a law complementary to the Guardians and Wards Act, 1890. This defines a 'minor' to be a person who has not completed the age of eighteen years. 'Guardian' has been defined as a person having the care of the person of a minor or of his property or of both his person and property and includes-

NATURAL GUARDIAN

According to this Act, means any of the guardians mentioned in Section 6. It states that the natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in the joint family property) are - (a) in the case of a boy or an unmarried girl, the father, and after him, the mother, provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the

mother. Section 8 lays down that the natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate but the guardian can, in no case, bind the minor by a personal covenant. Sub-section (5) of Section 8 lays down that the Guardians and Wards Act, 1890, shall apply in certain circumstances. Section 13 of the Act lays down that in the appointment or declaration of any person as guardian of Hindu minor by a Court, the welfare of the minor shall be the paramount consideration. Indeed sub-section (2) of Section 13 lays down that no person shall be entitled to the guardianship by virtue of the provisions of the Act or of any law relating to guardianship in marriage among Hindus, if the Court is of opinion that his or her guardianship will not be for the welfare of the minor. This section is complementary to Section 17 of the Guardians and Wards Act, 1890 which lays down that in appointing or declaring the guardian of a minor the Court shall be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

In *Elizabeth Dinshaw (Elizabeth Dinshaw Vs. Arvand M. Dinshaw, 1987(1) SCC 42)* the Hon'ble Supreme Court has observed that whenever a question arises before a court pertaining to the custody of the minor child, the matter is to be decided not on consideration of the legal rights of the parties but on the sole and predominant criterion of what would best serve the interest and welfare of the child..

It is submitted that welfare of the minor child is the paramount consideration. The court while deciding the child custody cases is not bound by the mere legal right of the parent or guardian. Though the provisions of the special statutes govern the rights of the parents or guardians, but the welfare of the minor is the supreme consideration in cases concerning custody of the minor child. The paramount consideration for the court ought to be child interest and welfare of the child. (*Rajeswarin Chandrasekhar Ganesh Vs. State of Tamil Nadu & Ors*) 2022 SCC Online SC 885. Also the issue as to the welfare of the child again arose in *In re "O" (An Infant), [1965] 1 Ch. 23 C.A.* observed that in all cases the paramount consideration is the welfare of the child; but that, of course, it does not mean to add up shillings and pence, or situation or prospects, or even religion for the child. The entire background of the child's life, and the major consideration to be taken into account as who are his parents and who are ready to do their duty? The question as to what would be the dominating factors while examining the welfare of a child was considered in *New Zealand court in the case of (Walker v. Walker & Harrison, 1981 New Ze Recent Law 257)* wherein it was observed that what is more important is child stability and security, loving and understanding care and guidance, and warm and compassionate relationships which are essential for the development of the child's character, personality and talents. In the context of consideration of an application by a parent seeking custody of a child through the medium of a Habeas Corpus proceeding, it has been stated in *American Jurisprudence, (2nd Edn. Vol. 39 that"*

An application by a parent, through the medium of a Habeas Corpus proceeding, for custody of a child is addressed to the discretion of the court, and custody may be withheld from the parent where it is made clearly to appear that by reason of unfitness for the trust or of other sufficient causes the permanent interests of the child would be sacrificed by a change of custody. In determining whether it will be for the best interest of a child to award its custody to the father or mother, the court may properly consult the child, if it has sufficient judgment.

Thus, it is well established that in issuing the writ of Habeas Corpus in the case of minors, the jurisdiction which the Court exercises is an inherent jurisdiction as distinct from a statutory jurisdiction conferred by any particular provision in any special statute. In other words, the employment of the writ of Habeas Corpus in child custody cases is not pursuant to, but independent of any statute. The jurisdiction exercised by the court rests in such cases on its inherent equitable powers and exerts the force of the State, as *parens patriae*, for the protection of its minor ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a court of equity. The primary object of a Habeas Corpus petition, as applied to minor children, is to determine in whose custody the best interests of the child will probably be advanced. In a Habeas Corpus proceeding brought by one parent against the other for the custody of their child, the court has before it the question of the rights of the parties as between themselves, and also has before it, if presented by the pleadings and the evidence, the question of the interest which the State, as *parens patriae*, has in promoting the best interests of the child.

Recently, in an ongoing matter in the Hon'ble Supreme Court of India, it has been found out that a Russian woman filed a Writ Petition of Habeas Corpus to the Hon'ble Court as a Petitioner with a covert agenda to take her Indian-born child away from its father to her home-country Russia after she failed to convince her Indian husband to live with her in Russia to make the child a Russian citizen. The Russian woman, admittedly, hailing from a family of Russian spies, is using Russian Embassy's support to the fullest extent to achieve her objective. The Russian woman even strayed from the legal course and attempted to murder her Indian husband to fulfil her goal.

However, the Hon'ble Supreme Court of India, keeping the couple and the child in its close observation for a period of more than one year and through 3 months of mediation session with a Ld. Senior Mediator alongside AIMS Marital Counselling for 6 weeks, has decided that the welfare of the child is with the Indian father as the father has been effectively discharging the duties of both a father as well as a mother since the child's birth and the mother is found to be negligent and cruel for both the child and the father. In such a case, Hon'ble Supreme Court awarded the interim

arrangement w.r.t. joint custody of the child in favour of the father in which the father gets to have the child with him for 20 out of 24 hours in a day wherein the father is responsible for the child's all necessary welfare needs.

In the above case, the child is accustomed and acclimatized to the conditions, culture and environments of the place of his birth i.e. India. It is also stated that the child can communicate very well in Bengali and English. The child is good in expressing his thoughts and his communication is well appreciated by his school teachers and he also has friends in school.

It is settled law that in child custody matters, the writ of Habeas Corpus is maintainable only where it is proven that the detention of a minor child by a parent or others was illegal and without any authority of law. (Kanu Sanyal Vs. District Magistrate, Darjeeling & Ors. (1973) 2 SCC 674)

In (Surya Vadanam v. State of Tamil Nadu), (2015) 5 SCC 450, the husband and wife both were of the Indian origin but the husband became a resident and citizen of the UK. The parties got married in India and had two daughters in the UK. The wife had acquired the British citizenship and the British passport as well. Both the parties were working for gain in the UK. The parties started having some matrimonial problems, as a result of which the wife came back to India with her two daughters. The wife filed a petition under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 seeking divorce in the Family Court, Coimbatore. Subsequently, the husband filed a petition in the High Court of Justice in the UK for making the children wards of the Court. The High Court made the children wards of the Court during their minority, or until further orders of the Court and the wife was directed to return the children to the jurisdiction of the foreign Court. As the wife failed to obey the orders of the foreign Court, the husband filed a writ petition of Habeas Corpus seeking production of his children and their return to the UK, in the Madras High Court. The High Court dismissed the petition. This Court discussed the law on the custody of the children and observed the following :

"46. The principle of the comity of Courts is essentially a principle of self-restraint, applicable when a foreign Court is seized of the issue of the custody of a child prior to the domestic Court. There may be a situation where the foreign Court though seized of the issue does not pass any effective or substantial order or direction. In that event, if the domestic Court were to pass an effective or substantial order or direction prior in point of time then the foreign Court ought to exercise self-restraint and respect the direction or order of the domestic Court (or vice versa), unless there are very good reasons not to do so."

It is quite clear that the unanimous stand of the various courts is complete unanimity that the best interests and welfare of the child are of paramount importance while deciding habeas corpus petition. This is the final goal or the final objective to be achieved --- it is not the beginning of the exercise but the end.

Thus, it is well established that in issuing the writ of Habeas Corpus in the case of minors, the jurisdiction which the Court exercises is an inherent jurisdiction as distinct from a statutory jurisdiction conferred by any particular provision in any special statute. In other words, the employment of the writ of Habeas Corpus in child custody cases is not pursuant to, but independent of any statute. The jurisdiction exercised by the court rests in such cases on its inherent equitable powers and exerts the force of the State, as *parens patriae*, for the protection of its minor ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a court of equity. The primary object of a Habeas Corpus petition, as applied to minor children, is to determine in whose custody the best interests of the child will probably be advanced. In a Habeas Corpus proceeding brought by one parent against the other for the custody of their child, the court has before it the question of the rights of the parties as between themselves, and also has before it, if presented by the pleadings and the evidence, the question of the interest which the State, as *parens patriae*, has in promoting the best interests of the child.

The general principle governing the award of custody of a minor is succinctly stated in the following words in "Halsbury's Laws of England, Fourth Edition, Vol. 24, Article 511 at page 217":

"... Where in any proceedings before any court the custody or upbringing of a minor is in question, then, in deciding that question, the court must regard the minor's welfare as the first and paramount consideration, and may not take into consideration whether from any other point of view the father's claim in respect of that custody or upbringing is superior to that of the mother, or the mother's claim is superior to that of the father."

CONCLUSION

The shift from the historical presumption of giving custody to the mother during a child's tender years to the principle of "best interests of the child" reflects a more progressive and nuanced understanding of child welfare. This change has been embraced not only in advanced economies but also in India, where the courts have recognized the significance of providing a nurturing and balanced environment for a child's development. However, it is crucial to address the misuse of custody laws to alienate parents and prioritize false claims of illegal detention. The Supreme Court's focus on the child's acclimatization, communication, and the effective discharge of parental duties ensures that custody decisions are made in the child's best interests wherein the Apex court acts as *parens patriae*. By upholding the paramount importance of the child's welfare, the courts contribute to their psychological, emotional, and physical well-being, and promote a just and equitable society.

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**Navigating Liability: Drone Regulations, Construction Operations, and Vicarious Liability in
India and United Kingdom**

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Abstract

The complex and multifaceted aspects of liability in the legal frameworks of the United Kingdom and India, focusing on drone regulations, construction operations, and vicarious liability are discussed. It explores how businesses, individuals, and legal professionals can navigate liability and risk management in these jurisdictions. With the increasing use of drones across industries, including construction, agriculture, and logistics, the article discusses the legal challenges and regulations surrounding drone use in both countries. It also examines liability issues in construction operations, such as negligence and occupier's liability, emphasizing the importance of understanding legal obligations and liabilities for stakeholders. Additionally, the article explores vicarious liability, where employers can be held liable for their employees' actions, and discusses the complexities of asbestos removal regulations in both countries. By analyzing relevant laws, regulations, and case law, the article provides a comprehensive insight into liability management in the UK and India for businesses and individuals alike.

Keywords: Navigating Liability, individuals, United Kingdom, regulations, case law

Introduction

Liability is a complex and multifaceted aspect of the legal framework in both the United Kingdom and India. This article delves deeply into the rules governing drones, their use in construction activities, and indirect liability within these legal territories [1]. Understanding these areas of law is crucial for businesses, individuals, and legal professionals operating in these countries, as they navigate the intricacies of liability and risk management. Over the past few years, drones have gained popularity across multiple sectors like construction, farming, and transportation due to their cost-effectiveness and operational efficiency, yet they also present notable legal and regulatory hurdles [2]. Both the UK and India have enacted laws and regulations to govern the use of drones, aiming to balance the benefits of this technology with the need to protect public safety and privacy. Similarly, construction operations present unique liability issues, particularly concerning negligence and occupier's liability. Construction activities often involve risks to both workers and the public, making it essential for stakeholders to understand their legal obligations and potential liabilities. Additionally, the use of local contractors and agents can further complicate liability issues, highlighting the importance of clear contractual arrangements and risk management strategies. Vicarious liability is another critical area of law that impacts both individuals and businesses in the UK and India. Employers may face vicarious liability for their employees' actions, which encompasses instances of negligence and other wrongful conduct occurring during the course of employment. This principle has significant implications for liability in the context of construction operations and other commercial activities [3]. Furthermore, the legal position regarding the removal of asbestos, a hazardous material commonly found in older buildings, adds another layer of complexity to liability issues in both jurisdictions. Proper removal and disposal of asbestos are essential to protect public health and the environment, requiring compliance with strict regulations and guidelines. In this article, we will research into the intricacies of drone regulations, construction operations, and vicarious liability in the United Kingdom and India. By examining relevant laws, regulations, and case law, we aim to provide a thorough analysis of these areas of law and their implications for liability management in both countries [4].

Tortious Laws

The tort law governs liability for civil wrongs, including those related to drone regulations, construction operations, and vicarious liability [5]. In the United Kingdom, drone operators are overseen by the Civil Aviation Authority according to the Civil Aviation Act 1982, in conjunction with regulations set forth by the Civil Aviation Authority. Additionally, the Drone and Model Aircraft Code offers guidance on drone usage, emphasizing that drones weighing 250 grams or more and utilized for surveys must be registered under the Drone and Model Aircraft Registration and Education Scheme [6]. Adhering to the principles outlined in the Drone and Model Aircraft Code, which includes flying of drone within visual line of sight and maintaining a safe distance from people, buildings, and airports. If the surveys are for commercial purposes, make sure to obtain necessary permissions or approvals from Civil Aviation Authority (CAA) for commercial drone operations [7]. While the position in India is primarily governed by the Civil Aviation Requirements (CAR) issued by the Directorate General of Civil Aviation (DGCA). The Civil Aviation Regulations (CAR) establish the structure of regulations governing the operation of drones within Indian airspace, encompassing mandates for registration, operational limitations, and safety protocols. Violations of these regulations can lead to civil liability under tort law if they result in harm to persons or property [8]. Construction operations in India are subject to various laws and regulations, including those related to negligence and occupier's liability which also includes the Aircraft Rules, 1937. Under tort law, individuals and entities involved in construction activities can be held liable for negligence if they fail to exercise reasonable care, resulting in harm to others. Occupiers of land or buildings are also responsible for ensuring the safety of visitors and workers on their premises, under the principle of occupier's liability [9–15].

Further, to respect the privacy laws and data protection regulations while conducting surveys and avoid capturing unnecessary personal information and if required obtain consent [16]. The operator must comply with no-fly zones and restricted areas, especially around airports and sensitive locations in United Kingdom. However, in India, tort law has developed to encompass various aspects of privacy, including intrusion upon seclusion, appropriation of name or likeness, and public disclosure of private facts. While there is no specific statute dedicated to privacy torts, Indian courts have recognized a right to privacy as a fundamental right under the Indian Constitution, which can be enforced through tort law. This entails safeguarding individuals against unauthorized monitoring, exploitation of their identities or visuals for commercial endeavors without consent, and unjustified disclosure of personal data [17]. Additionally, data protection laws, such as the Information Technology Act, 2000, and the pending Personal Data Protection Bill, 2019, provide legal frameworks for the protection of personal

data and privacy rights in the digital age, further strengthening privacy protection under tort law principles in India [18].

Legal Principles

The primary legal principles albeit United Kingdom or India include negligence, duty of care, and the foreseeability of damages..

a) Claim Damages for creating Nuisance

While usage of drone trespass may occur if a drone intrudes upon someone's airspace without permission as stated in *Khorasandjian v. Bush* (1993). The victim has the right to claim damages. There can be nuisance claims arising from disturbances caused by drone operations as held in *Hunter v. Canary Wharf Ltd* (1997). If an accident occurred while using drone causing harm it shall govern under the Occupier's Liability Act 1957 under United Kingdom law, in *Addie v. Dumbreck* (1929) the general principles of occupier's liability has been comprehensively discussed. However, in India the nuisance covered under Criminal Liability pursuant to section Section 268 and 290 of India Penal Code.

b) Claim Damages for the act of Negligence

If there is an act of negligence in operation of drone which leads to psychological harm that might be considered which emphasizes the foreseeability of potential harm *Bourhill v. Young* (1943), there will be liability on operator to provide damages. It is the duty of operator of drone to ensure public safety and avoid harm to individuals and property as discussed in *Mercury Aviation v. Attridge Law* (2018).

With regard to scenario where the Party Wall Act 1996 under United Kingdom it offers protection for those wishing to undertake construction operations in and around the boundary of their properties. The foremost issue which may arise pertaining to nuisance where construction operations cause excessive noise, dust, or vibrations which may lead to claims of nuisance by adjoining property owners. In *Wheeler v. Saunders* (1995) where the court considered noise and vibration from construction as a potential nuisance, emphasizing the importance of minimizing disturbance and liable to pay damages by tortfeasor.

Where the construction practices leading to damage to neighboring properties or a lack of proper safety measures may result in negligence claims wherein in *Burnside v. Emmott* (1864) the court establishes the principle that individuals can be liable for damage caused by negligence during construction. The plaintiff, Burnside, brought a claim against Emmott, a builder, for negligence in the construction of a wall that collapsed and harmed the property of plaintiff. It was held by court that an individual who

undertakes construction work it has a duty of care to neighbors and must exercise reasonable care and skill to prevent foreseeable harm. The court found Emmott liable for the collapse of the wall, emphasizing the importance of taking precautions to avoid damage to neighboring properties during construction activities. It is significant in establishing the duty of care owed by builders to neighboring properties and setting a precedent for liability in cases of construction-related negligence [19]. It is important to establish a major principle of tort which duty of care (Conaghan & Mansell, 1999), which is highlighted in *Donoghue v Stevenson* (1932) in which court elaborated on the requirement for care to be taken in order to avoid foreseeable circumstances which may injure a neighbour, or more advanced as those who would be directly affected by the act.

c) Claim damages for the act of Negligence by the State

If there is Negligent conduct with respect to machinery likely to cause danger or injury to public it shall directly covered under as criminal liability in India under section 287 of the Indian Penal Code. The legal and judicial system in India influenced by the common law principles was follower of *Rex non potest peccare*, where King or State was exempted from the tort liability in the case of *Kasturi Lal v. State of Uttar Pradesh* (AIR 1965 SC 1039). The Supreme Court held that while there was indeed negligence on the part of the police officers in handling the seized property, their actions were carried out in the exercise of sovereign powers conferred by statute [20]. The power to arrest, search and seize property is considered a sovereign power and therefore, any negligence in the exercise of these powers could not render the State liable. The Supreme Court emphasized that the doctrine of sovereign immunity shields the State from civil liability for tortious acts committed by its servants while performing sovereign functions. Consequently, the claim against the State was not sustainable. The court reaffirms the principle of sovereign immunity and its implications for state liability in cases involving the negligent acts of its servants. It serves as a guiding precedent for balancing the interests of individuals and the State in the context of sovereign functions [21]. However, the legal position was changed noticeably in subsequent cases in case of *Common Cause v. Union of India*, (1999) 6 SCC 667 : 1999 SCC (Cri) 1196 : 1999 SCC OnLine SC 687. The earlier decision of this Court in *Vidhyawati case* (AIR 1962 SC 933) (1962 Supp (2) SCR 989) was distinguished on the ground that it was based on a tortious liability not arising from the exercise of sovereign power. The decision in *Kasturi Lal case* (AIR 1965 SC 1039 : (1965) 1 SCR 375) has, apart from being criticised not been followed by this Court. Reference in this connection may be made to the decisions of this Court in *State of Gujarat v. Memon Mahomed Haji Hasam* (AIR 1967 SC 1885 : (1967) 3 SCR 838) and *Basavva Kom Dyamangouda Patil v. State of Mysore* (1977) 4 SCC 358 : 1977 SCC (Cri) 598 : AIR 1977 SC 1749)

Under Article 32 of the Constitution of India the Hon'ble Supreme Court of India wherein all compensation and damages were awarded to the petitioner for tortious liability of the servants of the State which was held in *Rudul Sah v. State of Bihar* ((1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508 : AIR 1983 SC 1086) ; *Bhim Singh v. State of J&K* ((1985) 4 SCC 677 : 1986 SCC (Cri) 47 : AIR 1986 SC 494) ; *Saheli, a Women's Resources Centre v. Commr. of Police* ((1990) 1 SCC 422 : 1990 SCC (Cri) 145 : 1989 Supp (2) SCR 488 : AIR 1990 SC 513) ; *Peoples' Union for Democratic Rights v. Police Commr., Delhi* ((1989) 4 SCC 730 : 1990 SCC (Cri) 75 : (1989) 1 Scale 599) and *Sebastian M. Hongray v. Union of India* ((1984) 3 SCC 82 : 1984 SCC (Cri) 407 : AIR 1984 SC 1026) and do not refer to the decision of this Court in *Kasturi Lal case* (AIR 1965 SC 1039 : (1965) 1 SCR 375) . It is mentioned that in *Kasturi Lal case* (AIR 1965 SC 1039 : (1965) 1 SCR 375) the Court did not consider the State's liability for violation of fundamental rights of a citizen relating to life and personal liberty. It will be seen that where on account of tortious act of the servant of a State, a person's fundamental right to life and liberty was violated, the Court granted damages and compensation to that person [22]. The liability is based on the provisions of the Constitution and is a new liability which is not hedged in by any limitations including the doctrine of "sovereign immunity". Reference was also made to the decision of the Privy Council in *Maharaj v. Attorney General of Trinidad & Tobago* ((1978) 2 All ER 670 (PC)) in which the appellant, who was a barrister, was sentenced to 7 days' imprisonment by a Judge of the High Court, which was set aside by the Privy Council in appeal. The appellant, in the meantime, applied for redress under Section 6 of the Constitution of Trinidad & Tobago on the ground that he was deprived of his liberty without due process of law as guaranteed to him under Section 1 of Constitution of Trinidad & Tobago. The claim was dismissed by the High Court, but was upheld by the Privy Council in appeal. The Privy Council held that Section 6 of the Constitution impliedly allowed the High Court to award compensation as compensation may be the only practicable form of redress in some cases [23].

Furthermore if there would be an unlawful encroachment onto neighboring properties during construction this may lead to trespass claims held in *Gillingham Borough Council v. Medway (Chatham) Dock Co.* (1993).

Additionally if the disputes arises due to inadequate performance by surveyors appointed under the Party Wall Act 1996 in United Kingdom it can lead to severe complications. In *Harris v. Flower* (1904) the court discussed the importance of impartiality and competence in surveyors appointed under similar circumstances as stated in the present scenario.

d) **Non Adherence to rules and regulations**

When there is lack of communication or cooperation between parties involved in the construction process may escalate tensions. In United Kingdom, *Crane v. Secretary of State for the Environment* (1985), the court emphasizes the importance of cooperation and fair dealing in construction matters wherein planning decisions often involve interactions between developers, local authorities, and the Secretary of State. The court upheld the decision of the Secretary of State, emphasizing the proper exercise of discretion and consideration of relevant factors. If there is failure to serve the required notices under the Party Wall Act 1996 it can result into legal consequences as it is one of the mandatory compliance as held in *Thorp v. Abbotts* (2011).

e) **Inadequate awards or agreements**

If there are an inadequate awards or agreements it may lead to misunderstandings or disputes. In *Leech v. South Eastern Railway Co.* (1873) the Court of Exchequer Chamber considered the liability of a railway company for the actions of an independent contractor. The plaintiff, Leech, was injured by a cart while passing over a bridge constructed by an independent contractor hired by the railway company. The court held that the railway company was not liable for the contractor's negligence, emphasizing the distinction between the work the company had contracted for (the bridge) and the independent contractor's methods of performing the work. The decision reaffirmed the principle that when a company hires an independent contractor to perform work, the company is not automatically liable for the contractor's negligence in executing that work, unless there is a specific contractual obligation or a non-delegable duty imposed on the company.

f) **Breach of Duty**

If The Contractor Started Work Without Obtaining The Necessary Permissions Constitutes A Breach of duty of care towards the property and its surroundings. In pursuance of *Wheeler v. Saunders* (1995) the court has emphasized and held that proper authorization is required by contractor before commencing construction activities. Where the contractor's action in severing an electric cable demonstrates a lack of reasonable care, potentially causing damage and disruptions which has been discussed in *Hedley Byrne & Co Ltd v. Heller & Partners Ltd* (1964) the court addressed the issue of negligent misrepresentation in a professional context [24]. Heller & Partners, a bank, provided a reference for a company to Hedley Byrne, an advertising agency, regarding the financial standing of a third party. Relying on the reference, Hedley Byrne entered into a contract with the

third party, suffering financial loss when the third party defaulted. The court discussed that duty of care is arisen in the cases of negligent misrepresentation, extending to situations where there was a "special relationship" between the parties. However, the court held that Heller & Partners were not liable as the reference was given without any responsibility assumed and there was no special relationship imposing a duty of care. It is a significant in developing the law around negligent misrepresentation and establishing criteria for duty of care in such circumstances.

g) Occupier's Liability

When the contractor's actions in hiring a sub-contractor for involves several legal issues, including negligence, Occupier's Liability, and potentially vicarious liability. The foremost action where contractor negligence involved pertains to unsecured hoardings which may lead to unauthorized access, resulting in injuries and other potential liabilities. In *Tomlinson v. Congleton Borough Council* (2003) this case emphasizes the importance of personal responsibility for those entering potentially hazardous areas where the claimant, suffered a serious injury while swimming in a lake located in a country park managed by the Congleton Borough Council and was aware about swimming area was prohibited but chose to swim in the lake despite warning signs [25]. The court determined that the council was not in breach of its duty of care as the danger was obvious, and they had taken reasonable steps to warn visitors. This decision reinforced the principle that an occupier's liability is not unlimited, particularly when visitors act in a foolhardy or irresponsible manner.

h) Strict Liability

If there is unmarked, unsecured container poses risks, especially if its contents cause damage to adjacent landholdings the court discussed in *Rylands v. Fletcher* (1868) the House of Lords established the legal principle of strict liability for damages caused by the escape of dangerous substances from one's land. The case involved the defendant, Rylands, who employed independent contractors to build a reservoir on his land. Unbeknownst to Rylands, the contractors discovered disused mine shafts beneath the land [26]. During the construction, water from the reservoir broke into these shafts, flooding the plaintiff's neighboring mine. The court determined that Rylands bore responsibility for the damages resulting from the water leakage, regardless of any negligence on his behalf. This decision laid the foundation for the "rule in *Rylands v. Fletcher*," stating that individuals who bring and keep hazardous substances on their land are strictly liable for any resulting damages, even in the absence of negligence, if the escape is a foreseeable consequence of their actions.

i) Vicarious liability

If the sub-contractor's negligence leads to harm, the contractor may be vicariously liable for the actions of the sub-contractor as discussed in *Lister v. Hesley Hall Ltd* (2001) the court addressed the issue of vicarious liability for the actions of employees. The case involved a warden at a residential school operated by Hesley Hall sexually abusing boys under his care. The court scrutinized whether Hesley Hall, the employer, could be deemed vicariously responsible for the actions of the warden. The House of Lords concluded that vicarious liability could encompass deliberate wrongful acts if a sufficiently strong connection existed between the employment and the misconduct. In this instance, the court found that the warden's position of authority and the opportunity for abuse created a strong connection to his employment, leading to the imposition of vicarious liability on Hesley Hall. This decision had significant implications for the scope of vicarious liability in cases of intentional torts wherein employees are liable while they are in employment [27]. With regard to extent of ramifications the contractor may be held liable for the injuries sustained due to the failure to secure the site adequately. The principles in *Rylands v. Fletcher* (1868) might be applied to hold the contractor liable for damages caused by the hazardous substance leaching into adjacent landholdings [28–30].

Conclusion

Indian and UK laws have evolved to address the complexities of liability in the context of drone regulations, construction operations, and vicarious liability. In India, the legal framework governing these areas is shaped by principles of tort law, constitutional rights, and specific regulations. The acknowledgment of privacy as a fundamental right within the Indian Constitution has bolstered the safeguarding of privacy through the principles of tort law.

In the UK, laws and regulations governing these areas are well-established, with a strong emphasis on ensuring public safety, protecting individual rights, and providing avenues for legal recourse in case of harm or injury. The UK's legal framework also includes robust regulations for drone operations, construction activities, and employer liability, aimed at ensuring accountability and compliance with legal standards.

Overall, both jurisdictions recognize the importance of balancing innovation and economic development with the need to protect public safety, individual rights, and the environment. By

understanding and adhering to the relevant laws and regulations, businesses, individuals, and legal professionals can navigate the complexities of liability and contribute to a safer and more responsible society.

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