
Eyes in the Sky, Questions on the Ground: Drone Warfare, International Law, and India's Struggle with Sovereignty, Targeting, and Accountability

*Akshat Hegde & Balpreet Kaur Bhatti,
Kes Shri Jayantilal H Patel Law College, Mumbai.*

Abstract

The rise of drone warfare has shattered traditional paradigms of modern conflict, thrusting India into a precarious battlefield where sovereignty, precision, and accountability collide. International law stands as a fragile shield—anchored by the UN Charter's prohibition on force but strained by relentless threats from non-state actors exploiting legal gray zones. As drone strikes blur borders and challenge distinctions between warzones and civilian spaces, India grapples with unprecedented dilemmas. The 2021 Jammu drone attack was a stark wake-up call, exposing glaring legal gaps and the vulnerability of vital installations to unseen enemies. Despite regulatory strides like the Unmanned Aircraft System Rules, India's legal arsenal remains ill-equipped, relying on outdated penal codes while institutional coordination falters. Privacy battles rage under the shadow of surveillance, compounding the challenge. Echoing through courts and corridors of power are landmark rulings—*Nicaragua v. United States* and *Hassan v. UK*—reminding us that state responsibility and human rights extend beyond borders. In this high-stakes arena, India faces an urgent imperative: to fortify its legal frameworks and champion a new international order that holds non-state actors accountable without compromising human dignity. The future of drone warfare demands not just technological mastery, but an unyielding commitment to ethical sovereignty and justice.

I. INTRODUCTION¹

The rise of drone technology has significantly reshaped how modern states operate—both in warfare and civilian life. Unmanned Aerial Vehicles (UAVs), commonly known as drones, have moved beyond their original military use to become key tools in law enforcement, commercial delivery, agriculture, and public administration. While drones offer major advantages in terms of efficiency, accessibility, and innovation, their growing use—particularly in India—has raised serious legal, ethical, and constitutional concerns.

India's drone journey began over three decades ago, with the military's acquisition of surveillance drones from Israel. But recent years have seen a dramatic shift: drones are now being used to monitor public gatherings, deliver food, and even track individuals in real-time using facial recognition and artificial intelligence. The government's 2021 Drone Rules aimed to make drone use easier and more widespread, replacing the more complex Civil Aviation Requirements of 2018. However, these newer rules removed several key safeguards and regulatory checks, raising the possibility of misuse and unchecked surveillance.

For instance, drones are now permitted to operate without security clearance, pilot licenses (in the case of nano and micro drones for non-commercial use), or detailed flight permissions. While this has helped private companies and entrepreneurs adopt drone technology quickly, it has also weakened legal protections for citizens. The new regulations contain little mention of privacy or data protection, leaving the door open for unauthorized data collection, mass surveillance, and the erosion of individual autonomy.

From a constitutional perspective, this trend challenges the right to privacy under Article 21 of the Indian Constitution, which guarantees the protection of life and personal liberty. The Supreme Court's landmark judgment in *Justice K.S. Puttaswamy v. Union of India* (2017) clearly affirmed privacy as a fundamental right. Yet, the use of drones for facial recognition at public protests, or for continuous tracking of individuals without judicial authorization, contradicts the spirit and letter of that ruling. It also raises serious issues under international human rights law, particularly under Articles 6 and 17 of the International Covenant on Civil and Political Rights (ICCPR), which protect the right to life and the right to privacy.²

¹ Dinakar Peri, India, U.S. conclude \$3.5bn deal for 31 MQ-9B armed uavs *The Hindu* (2024), <https://www.thehindu.com/news/national/india-to-procure-31-predator-long-endurance-drones-from-us/article68755738.ece>. (last visited Jun 4, 2025).

² Depending on the threat, flying drones around vital installations will now attract waging or attempting to wage war against goi, <https://www.aninews.in/news/national/general-news/depending-on-the-threat-flying-drones->

The growing use of drones in India also raises broader international legal issues. Under Article 51 of the UN Charter, every nation has the right to defend itself, but this right must be balanced against the principles of necessity, proportionality, and non-intervention, especially when drone strikes cross borders. These principles are essential components of international humanitarian law, as seen in the Geneva Conventions. While India has not used drones extensively for cross-border attacks, their growing role in counter-terrorism along its western and northeastern borders suggests that such issues may soon become relevant.

Beyond questions of law, there is a deeper concern about the direction India is taking. Powerful corporate lobbies have influenced the liberalization of drone rules, arguing that earlier regulations were too slow, bureaucratic, and harmful to innovation. The government responded by significantly weakening regulatory requirements in 2021, promoting drones as the future of logistics, farming (through initiatives like Drone Kishan), and even emergency response. But this shift in policy—from strict control to open access—has occurred with little public discussion about how drones might be misused.

Consider the following example: a citizen receives food from a drone delivery service, takes a few pictures, and shares them online. Unknown to them, the drone has also captured metadata, location coordinates, and perhaps even private images from their rooftop. These images could be stored, shared, or misused without consent. In such situations, the absence of strong data protection laws, like the European Union's GDPR, becomes a serious gap in India's legal framework. The country's own Data Protection Bill remains stalled, leaving citizens exposed to data exploitation.

Drones have proven their value in difficult environments—such as the mountains of Afghanistan or the deserts of Iraq—where they assist in military operations or humanitarian efforts. In India, they can similarly be used to deliver essential supplies in remote or disaster-affected areas. However, the same technologies—equipped with night vision, thermal imaging, and zoom lenses—can also invade private spaces, monitor homes, or even be used for extrajudicial killings under the guise of law enforcement.

[around-vital-installations-will-now-attract-waging-or-attempting-to-wage-war-against-goi20200814124800/](https://www.bbc.com/news/india-62008141). (last visited Jun 4, 2025).

In the absence of strict legal controls and ethical guidelines, this unchecked rise of drone use may slowly turn into what some have called a “voyeur nation.” It’s a future where individuals no longer enjoy the basic right to be left alone, and where every movement is tracked, recorded, and analyzed by machines flying silently above. This vision is not far from the dystopia imagined in Orwell’s 1984, where privacy is an illusion and state surveillance is constant.

To prevent such an outcome, India must rethink its drone policies and legal framework. A balance must be struck between encouraging innovation and protecting fundamental rights. This means implementing robust privacy laws, ensuring judicial oversight over surveillance activities, and creating clear rules on how data collected by drones can be used, stored, or shared. It also requires reintroducing key regulatory mechanisms that were removed in 2021, such as mandatory pilot licenses, flight permissions, and regular inspections.

Ultimately, India’s path forward must be guided by constitutional values, democratic accountability, and international legal obligations. Drones can indeed play a transformative role in sectors like agriculture, healthcare, and disaster management—but only if their use is governed by rules that respect individual freedoms, safeguard human dignity, and protect against the misuse of power. Without these safeguards, the sky may no longer be a symbol of freedom, but a frontier of quiet oppression.

II. LAW IN THE CROSSHAIRS: SOVEREIGNTY, STRIKES, AND SHADOWS³

The rise of drone warfare has revolutionized modern military operations, allowing states to engage in targeted killings and surveillance with unprecedented precision, reach, and minimal risk to personnel. However, the legal framework governing drone use—particularly in cross-border operations—remains contentious.

³ Depending on the threat, flying drones around vital installations will now attract waging or attempting to wage war against goi, <https://www.aninews.in/news/national/general-news/depending-on-the-threat-flying-drones-around-vital-installations-will-now-attract-waging-or-attempting-to-wage-war-against-goi20200814124800/>. (last visited Jun 4, 2025).

The use of drones implicates key pillars of international law, particularly the principles of state sovereignty under the *jus ad bellum* framework and obligations under International Humanitarian Law (IHL). The challenges posed by drone warfare are amplified when operations target non-state actors (NSAs) across sovereign borders, often in the absence of declared war. This section examines the legal standards applicable to drone warfare, focusing on sovereignty, self-defense, and IHL compliance, and explores illustrative case studies to analyze real-world implications.

A. Sovereignty and *Jus ad Bellum*

The foundational principle of state sovereignty underpins the modern international legal order. Enshrined in Article 2(4) of the United Nations Charter, this principle prohibits the use of force against the territorial integrity or political independence of any state. It reflects the idea that each state has exclusive jurisdiction over its own territory and that any external interference, including military intervention, must meet strict legal thresholds.

1. The Prohibition on the Use of Force⁴

Article 2(4) establishes a general prohibition on the threat or use of force by one state against another. Drone strikes conducted across international borders—such as a U.S. drone targeting a terrorist operative in Pakistan or Yemen—*prima facie* constitute a violation of this provision unless a valid exception applies.

2. Exceptions: Self-Defense and Consent

There are two primary legal exceptions to the prohibition on the use of force:

- **Self-Defense (Article 51, UN Charter):** States retain the inherent right to individual or collective self-defense if an armed attack occurs against them. The scope of this right has been a subject of ongoing debate, especially in the context of drone strikes targeting NSAs in foreign territories. Post-9/11 interpretations have broadened the concept to include anticipatory or pre-emptive self-defense, although this remains controversial. A further doctrinal development is the “unwilling or unable” test, which allows a victim state to use force in self-defense against NSAs operating from another state’s territory if that state is unwilling or unable to address the threat. This theory has been invoked to justify drone strikes in states like Pakistan, Somalia, and Yemen, but it lacks clear

⁴ Faizah Rahim, Can international humanitarian law regulate recent drone strikes?: A case study *Journal of East Asia and international law* (2024), https://www.academia.edu/123522451/Can_International_Humanitarian_Law_Regulate_Recent_Drone_Strikes_A_Case_Study. (last visited Jun 4, 2025).

consensus in customary international law. Critics argue that it erodes the norm of territorial sovereignty and sets a dangerous precedent for unilateral use of force.

- **Consent of the Territorial State:** A drone strike conducted with the explicit or tacit consent of the territorial state is not considered a violation of its sovereignty. For instance, Pakistan's cooperation with the United States—albeit inconsistent and often publicly denied—has been interpreted as tacit consent for drone strikes against militant targets in tribal areas. Similarly, host-state consent has been key to legitimizing drone operations in Iraq and Afghanistan.

3. Challenges with Non-State Actors

The use of drones to target NSAs, such as terrorist groups, presents unique legal dilemmas. Traditional international law frameworks were designed with interstate conflict in mind. However, the rise of transnational terrorism and NSAs operating beyond the control of their host governments has led to legal ambiguity. States invoking self-defense against such actors must demonstrate that the threat posed by the group rises to the level of an “armed attack,” that the response is necessary and proportionate, and that peaceful alternatives have been exhausted.

III. JUSTICE BENEATH THE DRONE'S EYE ⁵

International Humanitarian Law governs the conduct of hostilities once an armed conflict is underway. It is concerned not with whether a war is legal (*jus ad bellum*), but with how it is fought (*jus in bello*). Drone strikes, especially those conducted in the context of non-international armed conflicts (NIACs), must comply with the core principles of IHL.

1. Principles of Distinction, Proportionality, and Precaution

- **Distinction:** Parties to a conflict must at all times distinguish between combatants and civilians. Drones, with their advanced surveillance capabilities, are often praised for their potential to improve targeting accuracy. However, mistakes in intelligence gathering, faulty identification, or reliance on pattern-of-life analysis can result in civilian casualties.
- **Proportionality:** Attacks must not cause incidental civilian harm that is excessive in relation to the anticipated military advantage. The proportionality principle is particularly significant in drone operations targeting individuals in urban or densely

⁵ Grigoris Kanellis, *Armed drones and the law of war: From compliance with international humanitarian law to targeted killings*. SSRN (2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5245551. (last visited Jun 4, 2025).

populated areas. Critics argue that even precision strikes often cause unacceptable levels of civilian harm.

- **Precaution:** All feasible precautions must be taken to avoid or minimize civilian harm. This includes confirming the identity of the target, assessing the presence of civilians in the vicinity, and selecting means and methods of attack that reduce collateral damage.

2. *Classification of Conflicts*⁶

A central challenge in regulating drone warfare is determining whether the legal framework of IHL applies. For IHL to govern, there must be an “armed conflict,” defined by criteria such as the intensity of hostilities and the organization of the parties involved.

- **International Armed Conflict (IAC):** Between two or more states.
- **Non-International Armed Conflict (NIAC):** Between a state and NSAs, or between such groups within a state.
- **Drone strikes targeting NSAs outside recognized war zones**—like Al-Qaeda operatives in Yemen or Somalia—often blur these distinctions. The United States, for instance, has asserted that it is engaged in a “global war on terror,” justifying drone strikes wherever terrorist threats emerge. This view is not widely accepted under international law, which generally limits the geographic scope of armed conflict.

3. *Extraterritorial Application of Human Rights Law*

In addition to IHL, international human rights law (IHRL) continues to apply during armed conflict, particularly in areas outside active hostilities. Key human rights instruments—such as the International Covenant on Civil and Political Rights (ICCPR)—impose obligations on states to respect the right to life and due process. The question arises whether targeted killings via drones, conducted outside active warzones, comply with these human rights standards.

Courts and UN bodies have increasingly affirmed that human rights obligations extend extraterritorially where a state exercises control over individuals, including through technological means like drones. Arbitrary deprivation of life without judicial process, even in the context of counter-terrorism, may amount to a human rights violation.

⁶ Grigoris Kanellis, *Armed drones and the law of war: From compliance with international humanitarian law to targeted killings*. SSRN (2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5245551. (last visited Jun 4, 2025).

IV. PRECEDENTS IN THE FOG OF WAR⁷

1. *CIA Drone Strikes in Pakistan (2004–2018)*

One of the most controversial examples of drone warfare is the United States' drone campaign in Pakistan's Federally Administered Tribal Areas (FATA), which peaked during the Obama administration. While intended to eliminate high-value terrorist targets, the strikes also resulted in significant civilian casualties and drew sharp criticism for violating Pakistan's sovereignty.

- *Sovereignty vs. Self-Defense:* Although the U.S. initially justified the strikes on the grounds of Pakistan's inability to deal with terrorist sanctuaries, leaked diplomatic cables and investigative reports suggest tacit approval from the Pakistani government. However, Pakistan repeatedly condemned the strikes in public forums, including the UN, portraying them as infringements of national sovereignty.
- *Civilian Harm:* Independent watchdogs, including the Bureau of Investigative Journalism, documented numerous civilian deaths, including children and first responders. These casualties called into question the application of proportionality and precaution.
- *Lack of Transparency and Accountability:* The CIA's drone program was shrouded in secrecy, operating outside traditional military oversight. Victims' families had little recourse, and no public mechanism existed for investigating alleged violations of IHL or IHRL.

2. *Israeli Drone Operations in Gaza*

Israel has extensively used drones for surveillance and targeted strikes in the Gaza Strip, particularly during operations against Hamas and other militant groups. The legal debate surrounding these strikes centers on the principles of proportionality and the protection of civilians.

- *High Population Density:* Gaza's dense civilian population makes drone strikes particularly risky. Human rights organizations have documented instances where drone-launched missiles struck residential areas, schools, or ambulances, leading to calls for investigations into possible war crimes.

⁷ The International Law Framework Regulating the use of armed drones* | international & comparative law quarterly | Cambridge core, <https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/international-law-framework-regulating-the-use-of-armed-drones/E92C0FCA200F667633B0C3686A9EDE3C>. (last visited Jun 4, 2025).

- *Proportionality and Necessity:* Israel defends its actions as necessary responses to indiscriminate rocket fire by Hamas. However, international bodies, including the UN Human Rights Council, have questioned whether some strikes violated proportionality norms by inflicting excessive civilian harm for limited military gain.
- *Legal and Ethical Accountability:* Despite mounting evidence and international pressure, efforts to hold perpetrators accountable have faced political resistance, including at the level of the International Criminal Court (ICC), where questions of jurisdiction and political will complicate prosecutions. The deployment of drones in modern warfare raises complex legal and ethical questions that challenge the traditional frameworks of international law. While drones offer strategic advantages in terms of precision, cost, and soldier safety, their use across sovereign borders—particularly for targeted killings—requires stringent legal justification. The principles of sovereignty, self-defense, and proportionality remain central to assessing the legality of such operations. However, the lack of transparency, accountability, and clear international consensus creates a legal vacuum that risks undermining the rule of law.

India, like many other states, must navigate this terrain cautiously. As a state affected by terrorism and increasingly investing in unmanned capabilities, India's approach to drone warfare must reflect a balance between national security imperatives and compliance with international legal obligations. It is crucial for India to contribute to the evolving norms governing drone use, advocate for clear legal standards, and ensure any operational decisions uphold the principles of sovereignty, humanitarian protection, and accountability.

V. DEFENDING INDIA WITHOUT OVERSTEPPING⁸

The evolution of modern warfare has seen a substantial rise in the use of unmanned aerial vehicles (UAVs), or drones, particularly by non-state actors (NSAs) seeking to challenge the sovereign integrity of nations. India, with its complex security dynamics, especially along its western border with Pakistan, has encountered unprecedented sovereignty violations, such as the 2021 Jammu drone attack. This incident marks a pivotal moment in India's security discourse, demanding a reevaluation of legal frameworks, doctrinal targeting principles, and the application of international humanitarian law (IHL) in both domestic and cross-border scenarios.

⁸ The International Law Framework Regulating the use of armed drones* | international & comparative law quarterly | Cambridge core, <https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/international-law-framework-regulating-the-use-of-armed-drones/E92C0FCA200F667633B0C3686A9EDE3C>. (last visited Jun 4, 2025).

A. Sovereignty vs. Non-State Actors⁹

1. *The Jammu Drone Attack (2021) and Cross-Border Legal Ambiguities*

The June 2021 drone strike on an Indian Air Force base in Jammu was the first recorded instance of an aerial attack on Indian soil executed via drones by non-state entities. While no casualties were reported, the breach was emblematic of a new frontier in asymmetric warfare. These attacks transcend conventional boundaries and exploit legal lacunae in addressing threats emanating from across the border.

International law, particularly the UN Charter, enshrines the principle of state sovereignty and non-intervention. However, the increasing use of drones by NSAs situated in foreign territories complicates the attribution of responsibility. The international legal doctrine of "effective control" under the *Nicaragua v. United States* case (ICJ, 1986) sets a high threshold for holding a state accountable for actions perpetrated by groups operating within its territory. This renders any punitive or defensive cross-border response by India legally precarious unless the host state's complicity can be unequivocally established.

Moreover, under Article 51 of the UN Charter, states retain the inherent right to self-defense against an armed attack. However, the threshold for what constitutes an "armed attack" by non-state actors—especially when executed through drone technology—remains contentious. The International Court of Justice has been reluctant to universally endorse anticipatory self-defense or the doctrine of preemptive strikes without demonstrable evidence of necessity and proportionality.

2. *IPC Sections 121 and 121A – Domestic Criminalization Framework*

Domestically, the Indian Penal Code (IPC) criminalizes acts of waging war against the Government of India under Sections 121 and 121A. These provisions are invoked in cases involving armed rebellion, insurrection, or conspiracies to undermine the authority of the Indian state. While not explicitly drafted for drone-related offenses, these sections have been applied to scenarios involving drone surveillance and attacks near strategic installations, such as the Red Fort or military cantonments.

Section 121 criminalizes acts of war against the state, encompassing both actual hostilities and preparatory activities, while Section 121A penalizes conspiracies to commit such acts.

⁹ Parliamentary Assembly, PACE website, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21746&lang=en>. (last visited Jun 4, 2025).

The deployment of drones for espionage, sabotage, or kinetic strikes near vital assets arguably falls within the ambit of these provisions, provided intent and capacity are demonstrably proven. However, their applicability is limited when the perpetrators are foreign NSAs shielded by state inaction or denial of jurisdiction, raising the need for specialized legislative instruments or amendments to cover emergent drone threats more explicitly.

B. Targeting Dilemmas in Domestic and Cross-Border Contexts¹⁰

1. The Unmanned Aircraft System Rules, 2021 – Regulatory Gaps

India's Unmanned Aircraft System (UAS) Rules, 2021, promulgated under the Aircraft Act, 1934, are primarily geared towards regulating civilian and commercial drone operations. These rules delineate various drone categories, impose geo-fencing requirements, mandate real-time tracking capabilities, and establish a Digital Sky platform for drone registration and operation permissions.

However, the regulatory architecture is deficient in addressing military-grade or hostile drone incursions, particularly those orchestrated by adversarial states or their proxies. The rules are inherently civil in nature and do not encompass counter-drone operations, interception protocols, or real-time threat mitigation strategies for security agencies. In effect, there is a legislative void concerning the militarized use of drones and counter-UAS operations, which necessitates either an overhaul of the existing framework or the introduction of a separate legislative regime specifically tailored to national security exigencies.

2. Precision Targeting vs. Collateral Damage – IHL and Operational Constraints

The use of drones in combat scenarios, particularly in urban or semi-urban theatres, presents acute challenges in complying with IHL principles, especially distinction, proportionality, and necessity. In conflicts involving non-state actors embedded within civilian populations, the task of distinguishing combatants from non-combatants becomes inherently fraught.

India, while not a party to Additional Protocol I of the Geneva Conventions, adheres to customary international humanitarian law, which mandates that parties to a conflict must at all times distinguish between civilians and combatants and must direct operations only against legitimate military objectives. In drone warfare, the precision of targeting is technologically enhanced but remains dependent on the quality of

¹⁰ Parliamentary Assembly, PACE website, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21746&lang=en>. (last visited Jun 4, 2025).

intelligence, the real-time assessment of threats, and the operational discretion of military actors.¹¹

The principle of proportionality under IHL prohibits attacks that may cause incidental civilian harm excessive in relation to the anticipated military advantage. This standard, although well-intentioned, lacks precise thresholds and is open to interpretational variance. The urban warfare context in Kashmir or potential cross-border retaliatory drone strikes in densely populated areas pose immense legal and ethical dilemmas for Indian military planners.

Furthermore, rules of engagement (ROEs) for drone deployment have not been publicly codified, leading to ambiguity in accountability and ex post facto legal scrutiny. A formalization of ROEs, inclusive of target verification protocols, chain of command authorizations, and post-strike assessments, is critical to ensure legal compliance and operational legitimacy.

C. Recommendations for Legal Reform and Strategic Realignment

- *Comprehensive Drone Security Legislation:* India needs a dedicated security-centric statute addressing both the offensive and defensive dimensions of drone warfare. Such a law should encompass definitional clarity, command responsibility, kinetic and non-kinetic countermeasures, and inter-agency coordination.
- *Amendment to IPC and Special Acts:* Existing provisions under the IPC should be amended to incorporate explicit references to drone-enabled threats. Alternatively, provisions under the Unlawful Activities (Prevention) Act (UAPA) could be revised to recognize drone-based terror activities as a distinct threat vector.
- *International Legal Diplomacy:* India should leverage diplomatic forums to push for international norms governing the use of drones by NSAs and advocate for a binding multilateral convention on UAV warfare. India's voice in forums such as the UN Group of Governmental Experts on Lethal Autonomous Weapons Systems (GGE-LAWS) is vital.
- *Targeting Doctrine Modernization:* The armed forces and paramilitary units must institutionalize targeting doctrines that reflect both legal compliance and operational exigencies. This includes the adoption of Artificial Intelligence (AI)-assisted surveillance and precision-targeting mechanisms, subject to human oversight.

¹¹ Grigoris Kanellis, *Armed drones and the law of war: From compliance with international humanitarian law to targeted killings*. SSRN (2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5245551. (last visited Jun 4, 2025).

- *Enhancing Legal-Military Interface:* A cross-functional liaison between legal advisors and operational commanders should be established to ensure real-time legal vetting of drone strikes. Embedding military legal experts within operational control centers can ensure immediate legal input on targeting decisions.

India stands at a critical juncture in its strategic and legal response to drone warfare. The growing menace of non-state actors exploiting UAV technology to erode sovereignty and the inadequacy of existing laws to counter this threat highlight the urgency for comprehensive legal and doctrinal reforms. As technology continues to outpace legal development, India must recalibrate its defense strategies, align them with international legal standards, and fortify its sovereignty against the evolving spectrum of aerial asymmetry.

VI. INDIA'S ACCOUNTABILITY BLINDSPOTS¹²

As drone technology becomes increasingly integral to military and civilian operations, India finds itself at a critical juncture—caught between strategic necessity and legal uncertainty. Despite advancements in drone capabilities and recurring threats from hostile non-state actors (NSAs), India lacks a coherent legal framework for the accountable use of drones, especially in the context of cross-border military strikes. Unlike the comprehensive regimes evolving in Western democracies, India's legal and institutional mechanisms remain underdeveloped, fragmented, and often reactive.

A. Domestic Legal Shortcomings

1. *Absence of Specialized Legislation on Military Drone Use*

India currently does not have a dedicated law governing the use of drones in combat scenarios, targeted killings, or cross-border operations. Most drone-related legal provisions are framed under civilian safety or airspace regulation contexts and are not tailored to address the complexities of drone warfare, such as issues of sovereignty, precision targeting, civilian casualties, or collateral damage.

¹² Grigoris Kanellis, *Armed drones and the law of war: From compliance with international humanitarian law to targeted killings*, SSRN (2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5245551. (last visited Jun 4, 2025).

In situations of non-combat misuse—such as unauthorized surveillance or accidents—India relies on general penal provisions under the Indian Penal Code (IPC), now succeeded by the Bharatiya Nyaya Sanhita, 2023 (BNS). Sections such as:¹³

IPC Section 287 (negligent conduct with respect to machinery),

Sections 336–338 (endangering human life or causing hurt by rash or negligent acts), have been invoked in incidents involving drone crashes, privacy breaches, or illegal operations. However, these provisions are grossly inadequate when addressing drone use in targeted killings or transnational operations involving NSAs.

Importantly, the Bharatiya Nyaya Sanhita, 2023—despite its overhaul of colonial-era criminal law—does not contain any specific provisions dealing with drone strikes, autonomous weapon systems, or even remotely piloted aerial vehicles (RPAs) in a military context. This legislative silence raises concerns about oversight and accountability when drones are deployed in counterterrorism or cross-border missions.

2. Privacy and Surveillance Concerns

India's increasing reliance on drones for surveillance and intelligence raises serious concerns under the constitutional right to privacy. In *K.S. Puttaswamy v. Union of India* (2018), the Supreme Court unanimously affirmed that the right to privacy is a fundamental right under Article 21 of the Constitution. The judgment emphasized the need for proportionality, necessity, and legality in any form of state surveillance.

The absence of a comprehensive data protection law and the lack of judicial or parliamentary oversight over drone surveillance systems expose citizens to unwarranted intrusions. Drones equipped with facial recognition, night vision, or wide-area motion imagery could be used to conduct mass surveillance, violating privacy norms without due process or accountability.

While the *Unmanned Aircraft System (UAS) Rules, 2021* provide some procedural clarity for civilian drone usage, including registration, flight permissions, and operator obligations, they do not adequately address military drone deployments, nor do they incorporate safeguards against state overreach.

¹³ Faizah Rahim, Can international humanitarian law regulate recent drone strikes?: A case study *Journal of East Asia and international law* (2024), https://www.academia.edu/123522451/Can_International_Humanitarian_Law_Regulate_Recent_Drone_Strikes_A_Case_Study. (last visited Jun 4, 2025).

B. Institutional and Operational Challenges¹⁴

1. Role of the Indian Air Force (IAF) and Border Security Forces

Though the Indian Air Force (IAF) is the nodal agency for managing airspace violations and counter-drone measures, its operational response to drone incursions—especially those along the India-Pakistan border—has been criticized as slow and reactive. Numerous reports of Pakistani drones airdropping arms or narcotics into Punjab or Jammu & Kashmir indicate recurring failures in drone detection, tracking, and interception.

Furthermore, while the IAF possesses drone and anti-drone technologies, the deployment protocols for rapid response, authorization to engage, and interagency communication remain vague and bureaucratic, leading to delays and confusion during real-time threats.

2. Lack of Interagency Coordination

Drone operations involve multiple government agencies—such as the Ministry of Defence, Ministry of Home Affairs, Directorate General of Civil Aviation (DGCA), and Indian Space Research Organisation (ISRO)—often with overlapping jurisdictions. This results in a fragmented command structure, particularly in areas involving drone surveillance, border security, and airspace control.

The absence of a unified regulatory authority or national command framework for drone operations leads to inconsistent policies and weak enforcement. For instance, while the DGCA regulates civilian drone use, it has no say in military operations, and the military, in turn, has no clear statutory accountability to Parliament or civil authorities for extraterritorial strikes.

Additionally, law enforcement agencies lack technical capacity and legal tools to investigate incidents involving armed drones or foreign UAV incursions. The situation is worsened by the absence of a dedicated cyber-weapon or drone law enforcement task force.

¹⁴ Faizah Rahim, Can international humanitarian law regulate recent drone strikes?: A case study *Journal of East Asia and international law* (2024), https://www.academia.edu/123522451/Can_International_Humanitarian_Law_Regulate_Recent_Drone_Strikes_A_Case_Study. (last visited Jun 4, 2025).

C. India's Compliance with International Law¹⁵

1. *Legal Position on Extraterritorial Drone Strikes*

India has not openly acknowledged the use of drones for extraterritorial targeted killings. However, its response to terrorist attacks—particularly the 2016 surgical strikes post-Uri attack and the Balakot airstrikes in 2019—suggests a willingness to employ preemptive or retaliatory cross-border military actions, raising concerns about adherence to jus ad bellum and sovereignty principles.

India's approach rests on the assertion of self-defense against NSAs, especially when the host state is seen as unwilling or unable to prevent attacks emanating from its soil. While this aligns with emerging doctrines like the “unwilling or unable” test advocated by the U.S., it remains controversial and lacks consistent endorsement in international law.

The deployment of drones in such contexts would raise critical legal questions:

- Was the strike necessary and proportionate?
- Was the territorial state (e.g., Pakistan) consulted or warned?
- Were civilians harmed, and were any remedial measures taken?

At present, India does not have a public doctrine or official legal position explaining how its drone policy aligns with Article 2(4) and Article 51 of the UN Charter. Moreover, India has not ratified the Optional Protocol to the ICCPR, which limits the jurisdiction of international bodies to hold India accountable for extraterritorial killings or surveillance.

2. *Absence of Transparency and Oversight*

Unlike the U.S., which has declassified aspects of its drone strike protocols and faced litigation on its targeted killing program, India has no formal accountability mechanism for drone operations. There is no obligation to publish strike data, investigate civilian deaths, or offer reparations. The lack of transparency fuels both domestic skepticism and international criticism, particularly when drone operations are suspected but unacknowledged.

¹⁵ Dinakar Peri, India, U.S. conclude \$3.5bn deal for 31 MQ-9B armed uavs The Hindu (2024), <https://www.thehindu.com/news/national/india-to-procure-31-predator-long-endurance-drones-from-us/article68755738.ece>. (last visited Jun 4, 2025).

3. *Weaknesses in Drone Rules, 2021*¹⁶

The UAS Rules, 2021, notified by the Ministry of Civil Aviation, are primarily designed to regulate civilian drone usage in Indian airspace. These rules cover:

Classification and registration of drones

- No-fly zones
- Permissions for flying near strategic assets

However, they explicitly exclude military and intelligence operations from their ambit. Consequently, military drones operate outside the scope of any statutory regulation or judicial scrutiny. Moreover, the rules do not prescribe any framework for cross-border strikes, targeting protocol, or civilian impact assessments—areas central to international legal compliance.

India's current legal and institutional framework is ill-equipped to ensure accountability in the context of modern drone warfare. With no specific provisions in the Bharatiya Nyaya Sanhita to regulate combat drone use, and military operations being insulated from civilian oversight, there exists a dangerous accountability gap. The Drone Rules, 2021, while progressive for civilian use, offer no protection against state overreach or military excesses.

As India continues to face threats from NSAs and expands its own drone arsenal, there is an urgent need for:

- Dedicated legislation on military drone use and targeting norms.
- Judicial and parliamentary oversight of cross-border drone strikes.
- Transparent doctrine on the use of drones in self-defense, in line with international law.
- Safeguards for privacy and civilian protection, especially in surveillance operations.

India must balance national security needs with constitutional rights and international legal obligations to prevent the normalization of unaccountable and extralegal drone warfare.

¹⁶ View PDF, <https://www.dgca.gov.in/digigov-portal/jsp/dgca/homePage/viewPDF.jsp?page=InventoryList%2Fheaderblock%2Fdrones%2FDrone+Rules+2021.pdf>. (last visited Jun 4, 2025).

VII. JUDGMENTS THAT DEFINE THE SKIES

The legal discourse surrounding drone warfare draws heavily from landmark international judicial pronouncements that shape state responsibilities, sovereignty norms, and extraterritorial obligations in armed conflict. Among these, two cases stand out for their continued relevance to India's evolving strategic and legal posture in drone use.

1. *ICJ's Nicaragua v. United States (1986)*¹⁷

In this seminal case, the International Court of Justice (ICJ) held the United States responsible for unlawfully using force against Nicaragua by supporting and funding the Contras, a non-state actor engaged in destabilizing the Nicaraguan government. The judgment emphasized that indirect use of force—such as arming, training, or financially supporting NSAs operating within another state's territory—amounts to a violation of international law if it infringes upon the territorial integrity or political independence of that state.

The ICJ also rejected the U.S. claim of collective self-defense in the absence of a prior armed attack by Nicaragua. This case is particularly instructive for India, especially in light of its own assertions that Pakistan has allowed or enabled cross-border terrorism by NSAs. Under this precedent, India's argument that Pakistan is responsible for the actions of NSAs operating from its territory aligns with the legal theory of state attribution. However, it also underscores the importance of evidence and the need for proportionality in any retaliatory or pre-emptive action, including drone strikes.

2. *ECtHR's Hassan v. United Kingdom (2014)*

The European Court of Human Rights (ECtHR) in *Hassan v. UK* clarified that even during armed conflict, states have human rights obligations that extend extraterritorially when they exercise effective control over individuals or territory. The Court recognized the interplay between International Humanitarian Law (IHL) and International Human Rights Law (IHRL), holding that detention operations during an armed conflict do not render human rights law inapplicable.

¹⁷ The International Law Framework Regulating the use of armed drones* | international & comparative law quarterly | Cambridge core, <https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/international-law-framework-regulating-the-use-of-armed-drones/E92C0FCA200F667633B0C3686A9EDE3C>. (last visited Jun 4, 2025).

This case is pivotal when considering drone strikes conducted by one state in the territory of another. If India were to conduct extraterritorial drone operations in Pakistan or elsewhere, Hassan would suggest that India remains bound by fundamental human rights norms—particularly the right to life, due process, and protection against arbitrary deprivation of liberty.

Taken together, these cases highlight the international expectation that states must remain within the bounds of both IHL and IHRL, even when acting against non-state threats. They reinforce the legal necessity for India to strike a careful balance between sovereign self-defense and respect for international legal standards.

VIII. CONCLUSION¹⁸

The march of drone technology in modern warfare has been nothing short of revolutionary—offering military strategists’ tools that once belonged only to science fiction. Yet, as with many technological marvels, the law seems to be trailing behind like a curious but overwhelmed chaperone at a fast-moving party. India finds itself squarely in this predicament, where cutting-edge drone capabilities are racing ahead, while its legal frameworks scramble to keep pace.

This tension isn’t merely academic; it has real-world consequences for India’s sovereignty, human rights, and international reputation. While drones have become indispensable weapons in the fight against elusive non-state actors, their use dances on a legal tightrope—balancing necessity with proportionality, and security with respect for borders. Unfortunately, India’s current legal toolkit is more of a Swiss Army knife, handy but lacking the specialized blades needed to carve out clear rules for drone warfare. The Drone Rules, 2021 and the Bharatiya Nyaya Sanhita, 2023 provide a decent starting point for civilian drone management and criminal conduct, but fall noticeably short when it comes to the complexities of military operations and cross-border strikes.

The takeaway here is crystal clear: India must urgently upgrade its domestic drone regulations. This means crafting laws that don’t just put drones on a leash but provide clear guidance on targeting, accountability, and transparency.

¹⁸ The International Law Framework Regulating the use of armed drones* | international & comparative law quarterly | Cambridge core, <https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/international-law-framework-regulating-the-use-of-armed-drones/E92C0FCA200F667633B0C3686A9EDE3C>. (last visited Jun 4, 2025).

Without these safeguards, drone strikes risk becoming legal Wild West episodes—effective, perhaps, but unpredictable and fraught with unintended casualties and international criticism.

On the international stage, India should step up as a champion for clearer norms governing the use of force against non-state actors. The current patchwork of international laws and doctrines, including the much-debated “unwilling or unable” standard, needs refinement. India’s unique security challenges give it both the experience and the credibility to push for frameworks that balance sovereignty concerns with the harsh realities of counterterrorism.¹⁹

At the end of the day, the ethical use of drones is a delicate dance between the hard pragmatism of security and the softer imperatives of human rights and dignity. India’s policymakers face the challenge of ensuring that drone technology is wielded responsibly—guided by transparency and accountability, not just tactical advantage. Otherwise, drones risk becoming symbols not of security, but of unchecked power.

In sum, as India embraces the drone age, it must also commit to building a legal and institutional framework worthy of the technology’s promise. One that protects sovereignty, enforces accountability, and ensures that drone warfare is not just smart, but also just. After all, technological prowess without ethical grounding is like a drone without a pilot—powerful but directionless.

¹⁹ The International Law Framework Regulating the use of armed drones* | international & comparative law quarterly | Cambridge core, <https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/international-law-framework-regulating-the-use-of-armed-drones/E92C0FCA200F667633B0C3686A9EDE3C>. (last visited Jun 4, 2025).

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