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"Constitutional Liberty and Protest Policing: A Comparative Perspective on Structural Impunity, Gen Z Dissent and Accountability Reform in Nepal Doctrinal and comparative legal research"

Constitutional Liberty and Protest Policing: A Comparative Perspective on Structural Impunity, Gen Z Dissent and Accountability Reform in Nepal

Doctrinal and comparative legal research

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ABSTRACT

Nepal's Constitution of 2015 protects dignity, personal liberty, peaceful assembly and constitutional remedies. Yet investigations into the 2015 Terai protests and the September 2025 Gen Z uprising expose a persistent gap between rights and the use of state coercion. This paper argues that the gap is best understood through an accountability chain: broad public-order powers, qualified protection for official acts, evidentiary dependence and uncertain institutional implementation. The analysis focuses on sections 35, 37 and 38 of the Police Act, 2012 B.S. (1955 C.E.), sections 6, 6A and 6B of the Local Administration Act, 2028 B.S. (1971 C.E.) and Nepal's duties under the ICCPR and Convention against Torture.

Through doctrinal analysis, a source-critical reconstruction of protest events, peer-reviewed scholarship and carefully delimited comparative jurisprudence, the article separates contemporaneous death counts from later totals, inquiry recommendations from court judgments and state violence from crimes by other actors. It incorporates the 2026 inquiry and National Human Rights Commission findings, one-year anniversary reporting and the October 2026 review of protest-related criminal cases. Its central contribution is a rights-consistent and measurable program for controlling force, preserving evidence, independently investigating deaths and protecting remedies without undermining legitimate public safety.

Keywords: *Constitution of Nepal; peaceful assembly; policing; use of force; Police Act section 37; Local Administration Act; Gen Z protests; accountability; international human rights law; independent investigation*

I. INTRODUCTION

On September 8, 2025, Nepali security forces used lethal force against demonstrators protesting corruption and a government ban on major social-media platforms. Human Rights Watch initially documented 19 deaths attributed to police firing that day—17 in Kathmandu and two elsewhere—and subsequently detailed repeated, indiscriminate shooting in the capital. Violence on September 9 included arson, assaults and attacks on state and private property. By September 2026, reporting on the aftermath cited 76 deaths and 2,638 injuries across the two-day crisis; those cumulative figures do not all represent people shot by police on September 8. Prime Minister K. P. Sharma Oli resigned on September 9. Distinguishing the days, sources and

categories of harm is essential to any credible legal analysis (Human Rights Watch 2025a, 2025b; Kathmandu Post 2026e).

The Constitution of Nepal (2015) guarantees the right to live with dignity in Article 16, protects personal liberty in Article 17(1), recognizes citizens' freedom to assemble peaceably and without arms in Article 17(2)(b), prohibits torture and ill-treatment of arrested or detained persons in Article 22 and provides constitutional remedies under Articles 46 and 133. The legal issue is not whether public order can be protected but whether particular restrictions and uses of force have a lawful basis and satisfy constitutional and international requirements of necessity, proportionality and accountability (Constitution of Nepal 2015, arts. 16–17, 22, 46, 133; Human Rights Committee 2020).

The September 2025 events have antecedents. Human Rights Watch documented unlawful killings of civilians and criminal attacks on police during the 2015 Terai agitations. The Kathmandu Post reported injuries and detentions when police used water cannon and batons against Guthi Bill demonstrators in June 2019. Reuters reported clashes, injured demonstrators and injured police during Durga Prasai-associated pro-monarchy demonstrations in November 2023. These cases differ in scale, context and available evidence; they therefore show recurring questions about legal restraint and independent review rather than proving that every police response was unlawful (Human Rights Watch 2015; Ojha 2019; Reuters 2023).

The argument is fourfold. First, legal risk lies not only in statutory good-faith protection but also in force-authorizing powers, short procedural deadlines and the interaction of ordinary law with higher constitutional and treaty standards. Second, effective accountability requires an unbroken chain from prompt evidence preservation to independent investigation, reasoned charging decisions and victim remedies. Third, peaceful assembly and public protection are mutually reinforcing obligations: violence by particular participants does not remove the rights of peaceful participants. Fourth, comparative decisions illuminate design principles but cannot substitute for doctrinal interpretation of Nepal's own statutory text and institutions.

The paper proceeds from research questions and a conceptual framework to doctrinal analysis, documented case studies, comparative decisions, competing policy arguments and an implementation-oriented reform program. It is current to 13 October 2026. Because it relies on publicly available documents and reporting rather than original interviews, it does not purport to make independent findings of criminal responsibility.

II. RESEARCH PROBLEM AND RESEARCH QUESTIONS

The research problem is the possible failure of Nepal's law of public-order policing to translate formally protected freedoms into reliable constraints on coercive power. Section 35 of the Police Act preserves recourse under other laws; section 37 protects good-faith official conduct; section 38 imposes notice and time requirements for certain proceedings. Sections 6, 6A and 6B of the Local Administration Act confer far-reaching powers in situations of disorder and curfew. The principal question is how those provisions should be interpreted, applied or amended in light of

fundamental rights and Nepal's treaty obligations, rather than assuming in advance that they invalidate every claim for accountability (Police Act 2012 B.S., ss. 37–38; Local Administration Act 2028 B.S., ss. 6, 6A–6B).

Five questions guide the inquiry: (1) Which statutory provisions govern force and procedural protection for officers and what do they actually require? (2) How should domestic rights, international standards and evidentiary duties constrain these powers? (3) What do the documented 2015, 2019, 2023 and 2025 episodes establish—and what remains disputed? (4) Which lessons can responsibly be drawn from comparative case law? (5) Which feasible reforms would improve independent investigation, proportionality and remedies without disabling legitimate public protection?

III. THESIS STATEMENT

Nepal's central accountability challenge is the interaction of permissive public-order powers, potentially overbroad good-faith and procedural protections, uncertain institutional follow-through and a weak public record of completed remedies. Neither the existence of section 37 nor an adverse human-rights report proves that a particular officer is legally immune or criminally liable; those conclusions require individualized interpretation, evidence and adjudication. Nevertheless, the legal architecture creates risks that warrant preventive reform. A workable response must align statutory powers with rights, preserve independent evidence, secure prosecutorial decisions and provide victims with remedies while respecting due process for accused officers and civilian suspects.

IV. BACKGROUND AND CONTEXT

A. Nepal's Constitutional Transition and Its Policing Inheritance

Nepal abolished its monarchy in 2008 and promulgated the present Constitution in September 2015 following a prolonged transition from armed conflict and constitutional experimentation. That sequence changed the constitutional standards against which coercive state action must be assessed but institutional adaptation cannot be inferred solely from the enactment of a rights-protecting constitution. Scholarship on democratic police reform cautions that durable change requires institutional incentives, management, training and external review as well as legal declarations (Bayley 2006).

Nepal's policing system predates the republican Constitution. The Police Act is dated 2012 in the Bikram Sambat calendar (1955 C.E.), an important distinction easily obscured by an unqualified reference to "2012." Its longevity makes a text-specific review particularly necessary. This article treats historical continuity as a plausible source of institutional friction, not as proof that all present-day officers follow authoritarian policing norms (Police Act 2012 B.S.; Bayley 2006).

B. The Contemporary Protest Landscape

Nepal's protest history combines diverse demands. Madhesi and Tharu mobilization over representation and federal arrangements in 2015 generated grave violence against civilians and police. The 2019 Guthi Bill movement concerned traditional trusts and cultural institutions; on June 9 police used water cannon and batons, injuring at least six people according to contemporaneous reporting. The legal significance of each event depends on the conduct of identifiable actors and the available evidence, not the political popularity of a movement (Human Rights Watch 2015; Ojha 2019).

Prasai-associated pro-monarchy rallies illustrate the relevance of viewpoint neutrality. Reuters reported that police dispersed demonstrators with batons, tear gas and water cannon on November 23, 2023, after a barricade confrontation; local officials reported injuries to police, while organizers reported injuries among protesters. Those competing accounts should not be flattened into a conclusive finding of unlawful force. The governing standards of individual necessity and proportionality must apply regardless of whether a demonstration is republican, monarchist, regional or anti-corruption in character (Reuters 2023; Human Rights Committee 2020).

The September 2025 Gen Z mobilization formed rapidly after restrictions on 26 social-media platforms were announced on September 4. Anti-corruption demands, frustration with political elites and online coordination combined to generate the September 8 demonstration. Pariyar's interview-based study identifies the platform block as a trigger within a broader sequence involving generational grievances, coercive protest policing, contested official messaging and institutional fragility; this interpretation does not mean that every participant shared the same motivation. The police response and September 9 disorder created distinct duties to investigate potentially unlawful state force and serious crimes by other actors (Human Rights Watch 2025b; Pariyar 2026).

V. LITERATURE REVIEW

A. Structural Impunity and Post-Authoritarian Continuity

Bayley's (2006) work on democratic police reform distinguishes changes in law from institutional implementation: supervision, training, professional incentives and external scrutiny matter alongside constitutional commitments. In Nepal, the International Commission of Jurists (2020) identified obstacles to access to justice, implementation of decisions and independent institutions. These studies support examining whether force is recorded, reviewable and followed by reasoned decisions, rather than attributing individual shootings to an unmeasured national "police culture."

Jeffery's (2024) Nepal-specific analysis of the National Human Rights Commission (NHRC) shows how political contestation and unsuccessful implementation of recommendations can affect an oversight body's credibility and effectiveness. Her study is principally about transitional justice, not the criminal disposition of the September 2025 deaths; its contribution here is

institutional, not evidentiary proof concerning the officers involved. Earlier joint reporting by Human Rights Watch and the International Commission of Jurists (2020) also documented failures to implement rights recommendations. Together these sources provide a stronger empirical foundation for the concern that formal investigative mandates do not, by themselves, guarantee remedies.

B. Youth Mobilization and Democratic Accountability

Pariyar (2026) offers the most directly relevant recent peer-reviewed account of Nepal's September 2025 mobilization. Drawing on interviews and documentary material, the article identifies interacting failures of platform regulation, protest policing, communication and institutional credibility. It treats "Gen Z" partly as a mobilizing political frame rather than a homogeneous age-defined group and acknowledges the under-representation of rural perspectives. This paper builds on that account but asks a narrower legal question: which domestic rules permitted or constrained action and what would make accountability decisions legally reviewable? Human Rights Watch's verified video and witness accounts provide separate event evidence rather than a substitute for Pariyar's interpretation (Pariyar 2026; Human Rights Watch 2025b).

Youth mobilization also illustrates the difference between political accountability and legal accountability. Oli's resignation followed immediately, whereas liability for shootings requires investigation, prosecution and adjudication. The Gauri Bahadur Karki commission recommended criminal investigations in March 2026; Oli and former Home Minister Ramesh Lekhak were arrested on March 28, then released on April 9 following Supreme Court review. Neither their arrest nor their release decided criminal guilt. One-year anniversary reporting documented complaints by injured participants that medical assistance and accountability had not been delivered as promised (Reuters 2026; Kathmandu Post 2026a, 2026d, 2026e).

C. Comparative Police Accountability Scholarship

Comparative jurisprudence is most useful when differences in legal setting are explicit. Indian custodial cases concern arrest and detention; European judgments apply a regional convention that does not bind Nepal; the Inter-American Court assessed amnesty for grave abuses; and U.S. qualified immunity principally affects civil damages litigation. Their transferable contribution lies in evidentiary safeguards, operational planning, independent review and effective remedies—not the wholesale transplantation of legal tests. Jeffery's (2024) work and the ICJ's (2020) Nepal assessment help to test whether those lessons match local institutional capacities.

VI. THEORETICAL AND CONCEPTUAL FRAMEWORK

A. Compound Institutional Failure

"Compound institutional failure" is used here as an analytic model, not as an independently demonstrated statistical finding. It describes a reinforcing sequence: broad coercive power can heighten the risk of rights violations; poor incident records can weaken investigations; weak

investigations can impede legally sound prosecutions; and opaque decisions can reduce public confidence. The model predicts that correcting one link may be ineffective if the remaining links are left intact. It is testable through future review of incident files, charging decisions and compliance with oversight recommendations.

B. Rule of Law Versus Rule by Law

Rule of law requires that executive action have a legal basis and remain subject to review for compliance with higher norms. A statutory permission to impose a curfew or order firing is therefore not, by itself, proof that the particular use of force was constitutional or compatible with the ICCPR. Conversely, peaceful-assembly protection does not immunize assaults, arson or other crimes. This distinction avoids a false opposition between rights and public safety (Constitution of Nepal 2015; Human Rights Committee 2020).

C. Transformative Constitutionalism

Klare's (1998) account of transformative constitutionalism provides a useful—but comparative—interpretive lens: a democratic constitution may demand changes in institutional behavior as well as judicial recognition of rights. Applied cautiously to Nepal, the perspective supports remedial interpretations and institutional reforms that make the Constitution's guarantees operational. It does not establish that Nepal's courts have already adopted the South African theory or any particular foreign test.

VII. METHODOLOGY AND ANALYTICAL APPROACH

The method is qualitative, doctrinal and comparative. Domestic primary materials are the Constitution, Police Act, Local Administration Act and Treaty Act, read in their legal hierarchy and with attention to translated statutory wording. International sources include the ICCPR, CAT, Human Rights Committee General Comments Nos. 36 and 37, the UN Basic Principles on the Use of Force, the OHCHR guidance on less-lethal weapons and the Minnesota Protocol on potentially unlawful death. Foreign judgments are persuasive illustrations only. Event evidence comes principally from Human Rights Watch's documented investigations, publicly described Nepali inquiries, the NHRC's reported recommendations and attributed Reuters and Kathmandu Post reporting; peer-reviewed studies explain possible mechanisms. No primary interviews, independent autopsies or complete search of Nepali-language judgments were conducted.

Four safeguards govern attribution. First, an eyewitness allegation, journalistic account, rights-organization finding, inquiry recommendation, prosecutorial charge and judgment have different evidentiary weight. Second, numbers refer to particular dates and populations: Human Rights Watch's early 19-death count for the September 8 shootings is not the later nationwide total for both days, while subsequent Nepal-based accounts report 27 killed on September 8 and 76 killed overall. Different reporting periods and definitions preclude treating these as interchangeable and this paper does not independently reconcile every named casualty. Third, inquiries into unlawful firing and cases involving September 9 assaults and arson are separate legal tracks. Fourth,

uncertainty about limitation provisions and criminal liability is identified as uncertainty, not silently resolved (Human Rights Watch 2025b; Kathmandu Post 2026d, 2026e).

Table 1. Evidence used for the September 2025–October 2026 accountability analysis

Evidence / date	What the source supports	Limit on inference
HRW, 2025	September 8 police-fire deaths: an initial 19; later independent reporting described repeated shooting.	This count is not the final total for both days and is not a criminal verdict.
Nepal-based reporting, 2026	Inquiry-based account: 27 deaths on September 8; later reported total of 76 deaths and 2,638 injuries over the crisis.	The groups, date cutoffs and legal attributions differ; figures must not be merged.
Inquiry and NHRC, 2026	Recommendations regarding senior officials and further inquiry into both September 8 and September 9.	A recommendation or adverse finding is not a conviction.
Case-review committee, Oct. 2026	445 cases naming 1,778 individuals over unrest; limited recommendations for case withdrawal.	These are principally cases involving accused civilians, not charges proving police liability.

Sources: Human Rights Watch (2025b); The Kathmandu Post (2026c–e). The figures reflect each source's scope and reporting date.

VIII. MAIN ANALYSIS

A. Legal Dimension: Constitutional Framework and Statutory Immunity

1. Constitutional Architecture

Article 16(1) of the Constitution protects life with dignity and Article 16(2) prohibits the death penalty. Article 17(1), rather than Article 16, states that personal liberty may not be taken away except in accordance with law. Article 17(2)(b) protects peaceful, unarmed assembly for citizens; its attached proviso allows reasonable statutory restrictions on specified grounds, including public peace and order. Article 22 addresses torture and cruel, inhuman or degrading treatment of persons who are arrested or detained and provides a compensation right. Article 46 directs claimants to Articles 133 and 144 for constitutional remedies. These distinct provisions should not be collapsed into one generalized "right to protest" (Constitution of Nepal 2015, arts. 16–17, 22, 46, 133–144).

Restrictions on assembly must be assessed under the proviso attached to Article 17(2)(b), rather than under an unrelated constitutional restriction. The Constitution allows reasonable limits but an ordinary statutory authorization remains subject to constitutional review. For the assessment of lethal force, Article 16 should be read alongside the ICCPR's Article 6 protection of life and

Article 21 protection of assembly. The existence of a curfew is not a blanket justification for firing at people who do not pose an imminent threat to life (Constitution of Nepal 2015; Human Rights Committee 2020).

2. The Statutory Immunity Architecture

The Police Act, 2012 B.S. (1955 C.E.), section 35 expressly permits proceedings and punishment under other laws, subject to the prohibition of double punishment for the same offense. Section 37 protects a Chief District Officer or police officer against punishment or damages for good-faith conduct when performing legally authorized duties or executing judicial orders. Section 38 sets out a prior written-notice requirement and a one-month interval, together with an eight-month period for initiating proceedings within its stated scope. These provisions serve different functions: substantive protection for genuine good faith and procedural conditions on specified suits. The legal question is whether and to what extent they apply to constitutional writs or alleged grave crimes under later legislation; no blanket answer can responsibly be inferred from their text alone (Police Act 2012 B.S., ss. 35, 37–38).

The Local Administration Act, 2028 B.S. (1971 C.E.), is more directly relevant to orders authorizing force in disorder and curfew conditions. Section 6(1) provides for warnings and specifies firing below the knee where a crowd does not disperse; section 6A(4) prescribes warnings and graduated measures for curfew violations but also contains an exception allowing immediate shooting orders against people displaying violent conduct while breaching curfew. Section 6B(1), in a declared riot-affected area, authorizes force against people undertaking specified destructive acts. These provisions raise difficult constitutional questions because categorical statutory permission cannot replace case-specific proof that intentional lethal force was strictly necessary to protect life. Their precise Nepali wording and amendments are controlling (Local Administration Act 2028 B.S., ss. 6(1), 6A(4), 6B(1); Human Rights Committee 2018, 2020).

3. Public-Order Firing Powers

The legal standard must distinguish the power to declare a curfew or riot-affected area from the separate legal justification for firing at an individual. Even where officials satisfied statutory warning requirements, firearms cannot lawfully be used merely to disperse a gathering under the Human Rights Committee's reading of ICCPR Article 21. Nor does an offense involving property alone establish the imminent threat to life ordinarily required for intentional lethal force. A reviewing authority should examine the exact order and timing, notice, feasible alternatives, officer identity, immediate threat, medical response and preservation of evidence. This is a normative interpretation of constitutional and treaty standards, not a finding that any specified order has already been struck down (Local Administration Act 2028 B.S.; Human Rights Committee 2018, paras. 12–14; Human Rights Committee 2020, para. 88).

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4. International Human Rights Obligations and the Normative Gap

Nepal is party to the ICCPR and CAT. The ICCPR protects life (Article 6), prohibits torture (Article 7), safeguards liberty (Article 9), protects peaceful assembly (Article 21) and requires an effective remedy (Article 2(3)). CAT Articles 2, 12 and 14 concern prevention, prompt impartial investigation where there is reasonable ground to believe torture occurred and redress. The Treaty Act, 2047 B.S. (1990 C.E.), section 9 addresses application of qualifying ratified treaties when domestic legislation conflicts; the precise domestic effect still requires attention to the legal instrument and applicable case law. General Comment No. 36 further emphasizes planning of policing operations, mandatory reporting, investigation and safeguards against arbitrary deprivation of life (ICCPR 1966; CAT 1984; Treaty Act 2047 B.S., s. 9; Human Rights Committee 2018, paras. 12–14).

The UN Basic Principles (1990) are authoritative soft-law standards, not a separately ratified treaty. Principle 9 restricts firearms and intentional lethal force must be strictly unavoidable to protect life; Principles 22–23 concern reporting and review; and Principle 24 addresses superiors who knew or should have known of unlawful force and failed to take measures within their power. General Comment No. 37, paragraph 88, rejects firearms simply to disperse an assembly and requires individualized responses to imminent threats. The Minnesota Protocol provides operational guidance for investigating potentially unlawful deaths, including scene security, independent examination, chain of custody and interviews. None of these instruments by itself creates an unlegislated domestic criminal offense (UN 1990; Human Rights Committee 2020; OHCHR 2017, 2020).

B. Policy Dimension: Public Order Versus Rights Facilitation

Public-order policing has two simultaneous duties: to facilitate lawful, peaceful assembly and to protect people against credible violence. Human Rights Watch's account of September 8 describes initial police use of water cannon, tear gas and batons, followed by lethal firing; it also reports some stone-throwing. Those details require an individualized test of necessity rather than either treating the assembly as wholly violent or assuming all force was automatically unlawful. September 9 arson and assaults similarly required proportionate protection for persons and property, with criminal accountability for identifiable perpetrators (Human Rights Watch 2025b).

The reform question is therefore operational. Crowd-management plans should specify negotiation, targeted protection of threatened persons, de-escalation, command authorization, medical response and preserved communications and ammunition records. Training programs should teach officers to distinguish isolated violence from the largely peaceful participants around it. Without direct access to current official curricula or procurement data, this paper does not claim to have verified the content of Nepal's police training or equipment policy (Human Rights Committee 2020; OHCHR 2020).

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C. Institutional Dimension: Independence, Capacity and Culture

1. The Investigative Deficit

The National Human Rights Commission has a constitutional human-rights mandate under Article 249 but implementation of its recommendations depends on action by responsible institutions. Jeffery (2024) details credibility and independence challenges in its transitional-justice role; the ICJ (2020) points to wider obstacles to implementing judicial and NHRC decisions. In February 2026 Human Rights Watch, Amnesty International and the International Commission of Jurists requested publication of the Gen Z commission report. The NHRC later urged action against named political and security officials and additional inquiry into actors associated with both September 8 and September 9. These institutional findings deserve public follow-up but remain distinct from criminal judgments (Constitution of Nepal 2015, art. 249; Jeffery 2024; ICJ 2020; Human Rights Watch et al. 2026; Kathmandu Post 2026b).

The independence problem is acute when an implicated chain of command controls scene records, weapon logs and witness access. The Minnesota Protocol provides a stronger design benchmark than the vague direction to "investigate independently": evidence should be secured without delay, forensic examinations documented, witnesses protected from intimidation and the chain of custody auditable. An inquiry commission may establish important leads but cannot replace criminal investigation and fair prosecution under domestic procedural guarantees (OHCHR 2017; ICJ 2020).

2. Judicial Underdevelopment

The Constitution empowers the Supreme Court to provide remedies through Article 133 and the High Courts through Article 144. A credible doctrinal review would analyze existing Nepali-language decisions on force, public-order powers and police immunities. This study did not exhaustively search that case law; accordingly it does not assert that the Supreme Court has never developed relevant doctrine. Its narrower claim is that sections 37–38 of the Police Act and sections 6–6B of the Local Administration Act call for clear, accessible, rights-consistent judicial interpretation (Constitution of Nepal 2015, arts. 46, 133–144).

3. Post-Authoritarian Institutional Culture

Historical inheritance may shape professional norms but the paper cannot infer the attitudes of individual officers from the Panchayat era or insurgency alone. A stronger empirical investigation would study force directives, recruitment and promotion criteria, training material, internal discipline records and complaints handled by civilian institutions. Pending such evidence, "institutional culture" should be understood as a reform hypothesis rather than a proved explanation of any particular shooting (Bayley 2006).

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D. Practical Dimension: Documented Protest Cycles and Accountability Responses

1. The Madhesi Protests (2015 to 2016)

Human Rights Watch investigated 25 deaths in five Terai districts between August 24 and September 11, 2015, including 16 members of the public and nine police officers. It documented evidence of serious police abuses, including unlawful killings, alongside violent attacks on police and other serious crimes by protesters. The report called for impartial investigations and prosecution of perpetrators on all sides. Those findings support the need for neutral investigations; they do not establish the disposition of every subsequent domestic case (Human Rights Watch 2015).

2. The Guthi Bill Demonstrations (2019)

On June 9, 2019, police used water cannon and batons against people protesting the Guthi Bill at Maitighar in Kathmandu. The Kathmandu Post reported at least six injured people and four detentions, based on contemporaneous reporting and participant accounts. The episode is relevant to necessity, crowd dispersal and access to remedies but the source does not establish a comprehensive record of later prosecutions or judicial findings. Claims that prosecution was entirely absent would require a separate case-level search (Ojha 2019).

3. The Durga Prasai Mobilizations (2023 to 2026)

On November 23, 2023, police used batons, tear gas and water cannon to disperse Prasai-associated pro-monarchy protesters after a barricade confrontation. Reuters reported an official allegation of stone-throwing and injured police officers, while Prasai reported approximately ten injured protesters, two critically. The accounts require impartial inquiry if unlawful force is alleged. No conclusion about the legal validity of the operation follows solely from the political orientation of demonstrators or the presence of injuries (Reuters 2023).

4. The 2025 Gen Z Protests: Constitutional Crisis Made Visible

The September 2025 Gen Z events are the principal case study because multiple kinds of evidence exist: contemporaneous accounts, Human Rights Watch's verification of videos and interviews, medical reporting, later commission materials and anniversary assessments. This is a richer record than the brief Guthi or 2023 Prasai episodes but it is not equivalent to a judicial finding about every casualty (Human Rights Watch 2025a, 2025b; Kathmandu Post 2026d, 2026e).

After the September 4 restriction of 26 platforms, protesters mobilized rapidly against the restrictions and perceived corruption. On September 8, security forces opened fire near parliament and elsewhere. Human Rights Watch's early investigation attributed 19 protester deaths to the firing, with 17 in Kathmandu and later documented repeated indiscriminate gunfire and witness evidence inconsistent with an imminent threat to life. The September 9 unrest involved arson, assaults, attacks on officers and other people and the destruction of public and private buildings, some apparently by people beyond the original organizers. Later Nepali

inquiry-based reporting described 27 people killed on September 8, while September 2026 coverage reported 76 deaths and 2,638 injuries across both days. These evolving tallies should not be presented as competing counts of an identical group (Human Rights Watch 2025b; Kathmandu Post 2026d, 2026e).

The movement illustrates an unusually visible chain from digitally coordinated protest to government resignation but visibility is not the same thing as legal accountability. Human Rights Watch stated that it interviewed 52 people and verified 50 videos for its November investigation, providing a substantial documented record concentrated on Kathmandu. The limits matter: neither those interviews nor this article alone can reconstruct every death nationwide, establish who ordered every shot or determine criminal guilt (Human Rights Watch 2025b).

On March 8, 2026, the commission chaired by former judge Gauri Bahadur Karki submitted its report. Reporting on the commission's recommendations described proposed criminal investigation of former Prime Minister Oli, former Home Minister Ramesh Lekhak, former police chief Chandra Kuber Khapung and other officials. The commission specifically referenced sections 181 and 182 of the National Penal Code in recommending inquiry into alleged negligence or carelessness; it did not itself convict the named persons. Its relatively limited treatment of September 9 destruction was criticized. Subsequent government actions must therefore be judged both by fairness to suspects and by whether they meaningfully addressed deaths and serious criminal violence across the two days (Radio Nepal 2026; Kathmandu Post 2026a, 2026d).

5. Accountability Developments in 2026

Police arrested Oli and Lekhak on March 28, 2026, after the new government took office; they were released on April 9 following Supreme Court review. Arrest and release are procedural facts, not proof of guilt or innocence. In May the NHRC separately recommended action and additional investigations concerning political and security figures and others. On September 10, The Kathmandu Post reported that further investigation or prosecution had not followed the arrests and releases and described persistent selective emphasis on September 8 or September 9 by political actors. This is a documented criticism of implementation, not a claim that a final domestic judicial ruling established each alleged abuse (Associated Press 2026; Kathmandu Post 2026b, 2026d).

E. Interdisciplinary Synthesis: The Ecosystem of Impunity

The pattern supports a carefully defined structural hypothesis, not a presumption of universal police guilt. Different episodes present different actors, levels of violence, records and legal claims. What recurs is the difficulty of tracing each serious injury or death through complete documentation, independent investigation, reasoned prosecutorial action and enforceable remedy. Jeffery's institutional findings and the 2026 anniversary reporting make this an empirically grounded governance question; a definitive assessment of prosecution rates would still require access to official case-level data (Jeffery 2024; Kathmandu Post 2026d, 2026e).

The model predicts a reinforcing problem: weak records hinder investigation; poorly insulated investigations may undermine public trust; opaque prosecutorial decisions make it hard to learn whether law was enforced; and insufficient remedy leaves incentives unchanged. The proper policy response follows this sequence: revise legal standards, ensure independent recording and review, require reasoned charging decisions and provide accessible compensation. Each reform should have a measurable implementation benchmark.

IX. CASE LAW AND COMPARATIVE LEGAL ANALYSIS

A. Nepal: Doctrinal Underdevelopment and Its Constitutional Significance

Nepal's Articles 46, 133 and 144 offer constitutional-remedy pathways. Rather than claim the absence of all controlling Nepali precedents, a legally responsible paper should identify the need for systematic Nepali-language review and for transparent publication of future judgments on crowd dispersal, lethal force, immunity and procedural barriers. That is a limitation of this research and a concrete institutional recommendation, not a criticism of unidentified judicial decisions.

The Supreme Court can consider challenges to legislation and executive conduct within its constitutional jurisdiction, subject to applicable procedural rules. A rights-consistent analysis should test whether the challenged restriction rests on law, whether force was genuinely necessary and proportionate, whether inquiries were independent and whether remedies are effective. Courts should also require that the state's public-safety evidence be examined fairly rather than assumed either true or false (Constitution of Nepal 2015, arts. 46, 133–144).

B. India: D.K. Basu v. State of West Bengal and Custodial Safeguards

In D. K. Basu v. State of West Bengal, (1997) 1 SCC 416, the Supreme Court of India prescribed safeguards against custodial abuse, including identifying officers, preparing an arrest memo, notifying relatives and recording detention. The original judgment is dated December 18, 1996 and reported in a 1997 volume. The decision concerns arrest and detention—not firing at an assembly—so it is persuasive here chiefly for the possibility of deriving practical duties of documentation from constitutional guarantees (D. K. Basu 1997).

Nilabati Behera v. State of Orissa, (1993) 2 SCC 746, provides a related Indian example concerning public-law compensation for custodial death. The lesson for Nepal is not to import India's remedial law unchanged. It is to consider whether effective constitutional remedies require transparent detention records, independent scrutiny and compensation in appropriate cases, alongside—rather than instead of—criminal process (Nilabati Behera 1993).

C. European Court of Human Rights: Gulec v. Turkey and McCann v. United Kingdom

In Güleç v. Turkey, application no. 21593/93 (1998), the European Court of Human Rights found a violation of the right to life following the death of a teenager during a demonstration. Its reasoning examined the serious risks posed by the security forces' use of a combat weapon and the inadequate investigation of the death. The case illustrates that crowd disorder does not

extinguish the state's obligation to use proportionate means and investigate lethal force (Güleç 1998).

In McCann and Others v. United Kingdom, application no. 18984/91 (1995), the European Court analyzed the planning and control of a security operation as well as decisions to shoot. Although McCann was not a protest case, its attention to operational design is relevant to police command decisions. Both cases interpret the European Convention and are persuasive comparisons only; Nepal is not a party to that regional convention (McCann 1995).

These cases support an evaluative checklist: What threat was reasonably perceived? Could less harmful tactics have met it? Who planned and authorized the operation? What warnings were feasible? Was there a prompt, independent investigation after a death? For Nepal, these questions should be applied through its Constitution, domestic statutes and treaty commitments—not by declaring European judgments binding.

D. Inter-American Court: Barrios Altos v. Peru

Barrios Altos v. Peru, Series C No. 75 (2001), concerned amnesty laws blocking accountability for grave violations, including extrajudicial killings. The Inter-American Court held those amnesties incompatible with the American Convention. Nepal's good-faith provision is not an amnesty law and the two cannot be treated as legally identical. The narrower comparative insight is that severe human-rights abuses require an effective route to investigation and remedy (Barrios Altos 2001).

Applied to Nepal, the appropriate question is whether section 37's genuine good-faith requirement and section 38's procedural conditions can be construed consistently with the Constitution and international obligations. If not, legislative clarification or constitutional review is warranted. Without decisions applying those sections to a particular case, claims that they automatically prevent prosecution for unlawful killing would exceed the available evidence.

E. United States: Qualified Immunity and the Limits of Doctrinal Expansion

U.S. qualified immunity, as articulated in Harlow v. Fitzgerald, 457 U.S. 800 (1982), differs sharply from Nepal's statutory good-faith protection. In U.S. civil damages litigation, qualified immunity generally turns on whether a right was clearly established, not simply on an officer's professed good intentions. Pearson v. Callahan, 555 U.S. 223 (2009), allowed courts to decide the clearly-established-law question without first deciding the constitutional merits. These doctrines should be compared as different accountability designs, not treated as equivalents (Harlow 1982; Pearson 2009).

Taylor v. Riojas, 592 U.S. 7 (2020), illustrates that U.S. courts can deny immunity even without a closely analogous prior case when unlawfulness is sufficiently obvious. The relevant warning is institutional: civil immunity rules can influence whether courts reach underlying rights questions. That warning does not resolve the meaning of Nepal's section 37 which must be assessed on its own text and constitutional context (Taylor 2020).

F. The Comparative Synthesis: What Accountability Requires

Comparison supplies four broad principles rather than a single imported solution: powers to use lethal force need strict substantive limits; preservation of evidence must begin immediately; investigation into death and serious injury should be independent and capable of leading to accountability; and victims require accessible remedies. Different systems allocate these functions differently. Nepal can choose its institutional design while meeting its own higher-law commitments.

G. Kenya and Bangladesh: Comparative Accountability Failures and Consequences

A Reuters investigation into Kenyan protest deaths provides a further caution concerning official records. Allegations of misleading death classifications show how accountability can be affected before any courtroom debate about immunity begins. Because this is a journalistic comparator rather than research on Nepali death certification practices, it is used to generate a reform question—not to claim that Nepali authorities engaged in identical conduct (Reuters 2025).

Independent autopsy and injury documentation where warranted, secure weapon and ammunition registers, preserved command radio traffic, auditable chain-of-custody procedures and retention of video are not optional administrative details after lethal force. The Minnesota Protocol gives investigators a practical basis for such measures. Civilian recordings can support corroboration but must be authenticated and cannot replace official duties to collect, preserve and disclose reliable evidence (OHCHR 2017; Human Rights Watch 2025b).

Bangladesh's 2024 student-led demonstrations may suggest a regional comparison between rapid political change and slower institutional reform. However, this paper does not evaluate Bangladesh's post-2024 legal outcomes in depth and no specific conclusion about their success or failure is drawn. The primary comparative discussion therefore rests on the identified cases and Nepal-specific evidence above.

X. CHALLENGES AND LIMITATIONS

A. The Political Economy Constraint

Political officials may face competing incentives to preserve security cooperation and to investigate excessive force. The 2026 inquiry recommendations, arrests, releases and NHRC findings show that official action was possible but neither conviction nor sustained reform follows automatically. Rather than infer the motives of particular parties, reform should reduce opportunities for political intervention through reasoned decisions, transparent referral procedures and lawful safeguards for investigators and suspects (Reuters 2026).

B. Evidentiary and Institutional Capacity Constraints

Effective investigations require scene security, forensic independence, witness support, legal aid and disclosure rules. The September 2025 events provide a demanding test because the record includes videos, witness interviews, treatment and postmortem evidence and disputed command

responsibility. The Minnesota Protocol supplies benchmarks for independence and methodological reliability; institutional competence, funding and legal powers must be verified in practice, not inferred from a new body's title (OHCHR 2017; Human Rights Watch 2025b).

C. Cultural Change as the Long-Term Requirement

Changes in training, supervision, promotion and professional norms take longer than amending a statute. Bayley (2006) suggests that police reform must be assessed through organizational incentives and operational practice. For Nepal, measurable indicators could include rates of completed investigations into deaths, publication of command records, use-of-force reporting compliance and independent review of disciplinary outcomes.

XI. COUNTERARGUMENTS AND ALTERNATIVE PERSPECTIVES

A. The Public Order Imperative

The strongest objection is public safety: police must prevent assaults, serious property crimes and the intimidation of peaceful participants. The September 9 attacks show this duty vividly. The reform response is not to prohibit all force but to distinguish protected assembly from individualized criminal violence, use the least harmful effective means and require review after significant force. International standards permit necessary law-enforcement action while rejecting deliberate lethal force simply to disperse a crowd (Human Rights Committee 2020; Human Rights Watch 2025b).

B. Institutional Gradualism

A second objection is feasibility. A fully new constitutional body may be harder to establish than strengthening existing independent institutions. This objection has force. Immediate steps can include statutory clarification of sections 37–38 and 6–6B, mandatory preservation of incident records and public reasons for charging or non-charging decisions. Medium-term steps can improve independent forensic capacity and NHRC follow-up. Structural ambition is compatible with an achievable sequence.

C. The Judicial Overreach Objection

A third objection concerns judicial overreach. Courts should not draft every police manual or make day-to-day deployment decisions. They can, however, decide whether statutory powers and executive orders comply with fundamental rights and whether remedies are meaningful. Administrative expertise warrants respectful consideration, not blanket deference where life and liberty are at stake (Constitution of Nepal 2015, arts. 16–17, 46, 133).

XII. FUTURE IMPLICATIONS AND OUTLOOK

By October 2026, several accountability processes had been initiated but had produced uneven public outcomes. The Gauri Bahadur Karki inquiry reported in March, Oli and Lekhak were arrested and subsequently released and the NHRC issued further findings in May. September

coverage reported no later prosecution of the former officials. A distinct review reported on October 5 examined 445 criminal cases naming 1,778 people in relation to unrest, including many alleged serious offenses; the reviewing committee recommended withdrawal for approximately 300 persons, not across the board, while 53 cases had already reached final verdicts. Those proceedings primarily concern accusations against civilians and must not be misrepresented as prosecutions of police shootings. The proper benchmark is fair treatment of both sets of alleged crimes, not indiscriminate immunity or punishment (Kathmandu Post 2026b, 2026c, 2026d).

The October committee's recommendation illustrates an important rule-of-law distinction: peaceful participation must not be criminalized, yet alleged murder, arson and serious assault require individualized investigation and lawful charging decisions. Fair-trial and victims' rights limit blanket withdrawal just as constitutional safeguards constrain police firing. The possible trajectories are non-implementation of inquiry recommendations, cosmetic rule changes or coordinated legal and evidentiary reform. They are scenarios, not quantified forecasts and should be evaluated through published case outcomes, court review and effective remedies (Kathmandu Post 2026c; Human Rights Committee 2020).

The Human Rights Committee adopted General Comment No. 37 in 2020, clarifying standards for peaceful assemblies, the treatment of violent acts and force used by law enforcement. Nepal underwent its fourth Universal Periodic Review on January 21, 2026. Both frameworks provide opportunities for scrutiny but domestic enforcement must remain the core measure of success (Human Rights Committee 2020; Permanent Mission of Nepal 2026).

XIII. RECOMMENDATIONS AND REFORM PROPOSALS

A. Legislative Reforms

1. Narrowing Statutory Immunity

Parliament should clarify section 37 of the Police Act so good-faith protection requires a lawful purpose and objectively defensible action, with no reliance on that provision to obstruct accountability for unlawful killing or torture. Section 38's notice and filing conditions should be examined against constitutional writ remedies ordinary criminal procedure and the practical needs of victims who may not receive essential records quickly. Reform must also preserve section 35's recognition of proceedings under other laws and the accused's rights to notice, counsel and a fair hearing. The present paper does not assume that the courts have definitively resolved these interactions (Police Act 2012 B.S., ss. 35, 37–38).

2. Codifying Use-of-Force Standards

Parliament should also review Local Administration Act sections 6, 6A and 6B against the requirements of the Constitution and ICCPR Article 6. A revised framework should prohibit firearms solely to disperse an assembly; require demonstrable imminent threat to life before intentional lethal force; require feasible warnings and medical assistance; regulate ammunition

and command authorization; and protect individuals who remain peaceful when others commit violence. Less-lethal equipment must not be presented as a mandatory escalation ladder: water cannon, chemical irritants and kinetic projectiles can cause serious injury and require their own necessity and proportionality assessments (UN 1990; OHCHR 2020; Human Rights Committee 2020).

3. Mandatory Documentation and Incident Reporting

After death or serious injury involving state force, an independent investigator should promptly secure scenes, preserve radio and firearms records, identify officers and commanders, interview witnesses in protected settings and coordinate independent clinical or forensic assessment. The steps should follow the Minnesota Protocol and be recorded in a secure audit log. Public reports should identify the legal basis for force and the stage and outcome of review, redacting protected personal information and material whose disclosure would endanger witnesses or fair-trial rights (OHCHR 2017).

4. Statutory Review and Implementation Timetable

Within six months, government should publish a verified register of existing force rules, commission recommendations and unimplemented court or NHRC directions; impose a document-preservation protocol; and identify responsibility for each outstanding inquiry. Within twelve months, Parliament should review the Local Administration Act's firing provisions and Police Act sections 37–38 and establish independent investigative referral procedures. Within twenty-four months, independent evaluators should publish aggregate outcomes on deaths, serious injuries, completed inquiries, charging decisions, witness protection, compensation and training. These are proposed milestones, not announced government commitments.

B. Institutional Reforms

1. An Independent Police Oversight Authority

Rather than assume a new constitutional authority is the only solution, Nepal should assess a statutory independent investigative mechanism working with—but institutionally separate from—police command and linked to the NHRC and criminal-prosecution system. Appointment safeguards, independent investigative staff, secure funding, authority to obtain documents and public reporting requirements are more important than a label. Any body must have a clearly specified referral route to legally competent prosecutors, without exercising incompatible judicial functions.

2. A Specialized Prosecutorial Unit

A specialized prosecutorial team could build expertise in unlawful-force cases while respecting the constitutional and statutory powers of Nepal's existing prosecutorial institutions. Written reasons for decisions not to prosecute should be available for appropriate oversight, with procedures to protect sensitive evidence and the rights of accused persons. The objective is accountable discretion, not a predetermined duty to charge in every incident.

C. Judicial Doctrine Development

When appropriate cases reach Nepal's courts, judges should clarify the relationship among constitutional remedies, the Police Act's section 35 preservation of proceedings under other laws, sections 37–38 protections, the Local Administration Act's coercive powers and Nepal's treaty obligations. Case law should distinguish operational negligence, objectively justified force and intentional wrongdoing, as well as constitutional compensation and criminal punishment. Decisions should be publicly accessible, with accurate translations where practicable.

D. Command Responsibility Legislation

Legislation and operational directives should specify superior officers' duties to prevent, stop, report and preserve evidence of unlawful force. Principle 24 of the UN Basic Principles addresses superiors who knew or should have known of such conduct but failed to take measures within their power. Criminal command responsibility must be defined through domestic law with precise elements and due process; an international soft-law principle alone does not create a Nepali criminal offense (UN 1990, princ. 24).

E. Victim-Centered Remedies and Civil Society Access

Victims and families need prompt disclosure of investigation status, medical and psychosocial care where appropriate, legal assistance, safe complaint procedures and timely compensation for eligible harm. One-year anniversary reporting found continued dissatisfaction among some injured protesters and bereaved families about promised support and accountability; those accounts warrant systematic follow-up, not an inference that every application for relief was rejected. Remedies should extend to victims of serious assaults and arson by non-state actors. Compensation pathways need not be legally contingent on a criminal conviction where constitutional or civil law provides independent relief (Kathmandu Post 2026e; OHCHR 2017).

F. International Engagement and Treaty Body Advocacy

The January 2026 UPR and Nepal's treaty-reporting processes should be used to track concrete indicators rather than general assurances: statutory amendments adopted, incidents investigated, findings disclosed, prosecutions decided, remedies delivered and victim protection implemented. Civil society can scrutinize both security-force conduct and violence by others. Publication of follow-up reports should be regular and should state the limits of the available evidence (Permanent Mission of Nepal 2026; Human Rights Watch et al. 2026).

XIV. CONCLUSION

Nepal's law presents a demanding constitutional test. The Constitution protects dignity, personal liberty, peaceful assembly and remedies; the Police Act provides a good-faith defense and procedural conditions; and the Local Administration Act grants substantial powers to manage curfews and riots. Those powers cannot be evaluated independently of constitutional supremacy and international obligations. The paper's strongest proposition is therefore not that every official

act is immune but that the combination of these rules justifies close judicial review and legislative reform.

The Terai investigation documented violence against civilians and officers; the Guthi and Prasai episodes illustrate disputes across political movements, with different levels of available evidence. The Gen Z crisis is more extensively documented: Human Rights Watch verified lethal shooting on September 8 and criminal attacks on people and property on September 9. The 2026 commission and NHRC findings, arrests, releases, anniversary reporting and October review of protest-related cases show both institutional response and continuing gaps. None should be confused with a comprehensive judicial resolution or a single uniform narrative of the uprising (Human Rights Watch 2015, 2025b; Kathmandu Post 2026b, 2026c, 2026d, 2026e).

Comparative cases illuminate complementary duties: D. K. Basu stresses documentation in custody, Güleç and McCann emphasize lethal-force scrutiny and operational planning, Barrios Altos warns against barriers to investigation of grave abuses and the U.S. qualified-immunity decisions show how civil remedies can be affected by doctrinal design. None directly decides how Nepal's Police Act must be applied. Nepal's Constitution and statutes must supply the legal basis for domestic conclusions.

A credible reform program should narrow broad firing powers, clarify protections for official acts, preserve independent forensic evidence, make charging and non-charging decisions reviewable and provide victim remedies. Specific dates, responsible institutions and public indicators can prevent reform from remaining aspirational. Respect for peaceful assembly and fair protection of police, journalists, civilians and property are complementary obligations when force is necessary, proportionate, individualized and auditable.

Constitutional liberty is meaningful only when public power is both capable of protecting people and answerable for harm. The central reform imperative is to make that answerability routine—through law, institutions, reasoned decisions and enforceable remedies—rather than contingent on the exceptional political visibility of a protest crisis.

SOURCE AND VERIFICATION NOTE

The inquiry uses publicly available legal texts and translations, international standards, published comparative decisions, peer-reviewed scholarship, attributed investigation reports and journalism through 13 October 2026. It does not incorporate original field interviews, a complete Nepali-language case-law search, individual case files, authenticated firearm logs or firsthand forensic review. Later reporting sometimes employs broader casualty definitions or later cutoffs than early reports; this paper preserves those distinctions instead of forcing a single false precision. Authoritative Nepali legislative text and later amendments should be checked for formal legal proceedings and any pending allegations remain subject to due process. This is a research argument, not an adjudication of individual criminal guilt.

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