ISSN 3059–9180

Volume 3 Issue 1, 2026

The Informal
South Asian Journal of Human Rights and Social Justice

For Human Rights and Social Justice

Informal Sector Service Centre (INSEC)

Volume 3 Issue 1 July 2026 ISSN 3059-9180

The Informal
South Asian Journal of Human Rights and Social Justice

Editorial Office

For Human Rights and Social Justice
Informal Sector Service Centre (INSEC)
Nagarjun Municipality-10, Syuchatar, Kathmandu
POBox : 2726, Kathmandu, Nepal
Tel: +977-1-5218770 Fax:+977-1-5218251
E-mail: informal.hrsjournal@insec.org.np,
Website: www.insec.org.np; www.inseconline.org

Journal Title:	The Informal: South Asian Journal of Human Rights and Social Justice
Abbreviation:	The Informal
Frequency:	Annual
DOI:	NepJol
Price:	Not for Sale
ISSN:	3059–9180
Published Copies:	500

About The Journal

The Informal: South Asian Journal of Human Rights & Social Justice is a peer-reviewed research journal dedicated to human rights and social justice, offering a South Asian perspective. As we launch our second issue, we are pleased to share our vision, mission, submission process, review system, and referencing guidelines with our readers.

Vision

The vision of the journal is to establish *The Informal* as a leading international platform for research on human rights and social justice, known for its high standards, innovative approach, and impact on policymakers, civil society, and academic communities.

Mission

The journal seeks to create a platform where scholars, experts, thinkers, and activists exchange informed, critical, and respectful discourses on civil, political, economic, social, and cultural rights across South Asia.

Article Submission Guidelines

Submission Format: Manuscripts must be submitted in MS Word format.

Length: Articles should range from 3,000 to 8,000 words (approximately 5 to 20 pages).

Style Guide: Authors must follow the *Publication Manual of the American Psychological Association*, *Seventh Edition*.

Article Structure

An article submitted for publication in *The Informal* should include the following components:

Title: A concise, accurate title focused on the core topic of the manuscript, not exceeding 15 words.

Author Affiliation: Full author details: name(s), position(s), institution(s), address(es), and email (s).

Abstract: A 250-word summary covering the major argument, thesis, objectives, methodology, and key findings.

Keywords: Four to five words, phrases, or acronyms.

Body of an Article: The main sections of the article should include:

Introduction: Incorporating the major argument or thesis statement.

Methodology: Explanation of the theoretical perspective, conceptual framework, research design, tools, and materials.

Results and Discussion: Presenting the findings and their implications.

Conclusion: Summarizing the study and its significance.

Review Process

The Informal follows a rigorous peer review process involving both Nepali and international experts:

Initial Screening: The Editorial Board evaluates whether the article meets journal standards. Authors are informed whether their submission proceeds to review or is declined.

Peer Review: Accepted articles are sent to two reviewers along with a review template. Reviewers provide feedback within two weeks.

Author Revision: Authors revise their articles based on reviewer and Editorial Board comments and submit the updated manuscript promptly.

Final Decision: The Editorial Board makes the final decision. If needed, the revised article may undergo a second verification review.

Editorial and Publication Information

- Each issue of the journal will feature 8 to 10 articles contributed by scholars from South Asia.
- The editorial process will be led by the Editor, supported by a designated INSEC staff member as the focal point, with clear Terms of Reference and a formal working procedure to ensure an efficient workflow.
- INSEC will mobilize resources to provide appropriate honorarium for selected research contributions.
- Core operational and publishing expenses will be sustained through an endowment fund established specifically for *The Informal* by INSEC.

Volume 3 | INFORMAL: South Asian Journal of Human Rights and Social Justice

It is our pleasure to present the third volume of INFORMAL, a journal dedicated to advancing interdisciplinary scholarship on human rights and social justice across South Asia. The journal provides a platform for critical engagement with the region's evolving legal, policy, and governance challenges through research that bridges theory, practice, and lived experience.

South Asia continues to experience profound social, political, environmental, and technological transformations that shape the realization of human rights. Amid growing pressures on democratic institutions, shrinking civic space, and persistent structural inequalities, issues such as transitional justice, digital governance, climate justice, and the domestic implementation of international human rights norms demand innovative legal and policy responses. The six articles in this volume examine these challenges through rigorous, rights-based, and context-sensitive analyses.

Although addressing diverse themes, the contributions are united by a common concern with the relationship between legal norms, institutional design, and implementation. Together, they demonstrate how constitutionalism, accountability, international law, digital transformation, and environmental governance influence the pursuit of justice and strengthen contemporary debates on human rights across the region.

This volume includes contributions that:

- examine Nepal's transitional justice process through a repeated signaling game, explaining persistent victim distrust as a rational response to low-cost institutional signals that fail to deliver credible accountability;
- assess whether constitutional guarantees of non-recurrence in Nepal's transitional justice framework can promote meaningful institutional reform and prevent future violations;
- analyse technology-facilitated gender-based violence in Bangladesh, India, Nepal, and Sri Lanka, advocating rights-based and survivor-centred responses to digital harms;
- explore how international human rights norms have influenced the criminalization of enforced disappearance in Nepal despite the absence of treaty ratification;
- highlight ecofeminism, climate justice, and women's leadership as essential to inclusive environmental governance across South Asia; and
- evaluate the performance of Nepal's National Human Rights Commission against the Paris Principles, identifying persistent gaps between institutional mandate and effective implementation

Collectively, these contributions advance critical debates on human rights, justice, and governance while offering fresh theoretical and practical perspectives on addressing contemporary challenges across South Asia.

We extend our sincere appreciation to the authors and peer reviewers for their valuable contributions and to our readers for their continued engagement. We trust that this volume will contribute meaningfully to contemporary discussions on human rights and social justice and inspire future scholarship dedicated to building more equitable, accountable, and rights-respecting societies.

— The Editor

Table of Contents

The Informal: South Asian Journal of Human Rights and Social Justice
Volume 03 Issue 01, 2026. pp. 1–15
Research Article
https://doi.org/10.3126/informal.v3i1.97528

Transitional Justice and the Epistemological Limits of GNR in Nepal's Constitutional Settlement

Tika Prasad Dhakal, PhD
Former Commissioner, Truth and Reconciliation Commission of Nepal

Article Info.
Corresponding Author
Tika Prasad Dhakal, PhD

Email
tikadhakal31@gmail.com

Article History
Received: 8 June 2026
Accepted: 27 June 2026
Published: 31 July 2026

How to Cite this Article
Dhakal, T. P. (2026). Transitional Justice and the Epistemological Limits of GNR in Nepal's Constitutional Settlement. *The Informal: South Asian Journal of Human Rights and Social Justice, 3* (1), 1-15.

Abstract

Guarantees of Non-Repetition (GNR) constitute the most structurally ambitious dimension of transitional justice, demanding not only accountability for past violations but the reconstruction of state institutions to prevent future conflict. Accommodative constitutional design, in which former rebels participate in constitution-making through elected assemblies, negotiated reforms, and power-sharing arrangements, has been idealized as the dominant mechanism for crafting political settlements and securing non-repetition in post-conflict societies. Nepal's transition following the 2006 Comprehensive Peace Agreement exemplifies one of the most faithful applications of this model. Through the establishment of an inclusive, secular, and federal republic, the constitutional process sought to address historical patterns of exclusion while integrating former Maoist insurgents into competitive democratic politics. That model now faces an essential reassessment following the return of coordinated, urban political violence in September 2025. This article argues that Nepal's experience exposes the institutional limitations of accommodative constitutional design as a self-sufficient GNR mechanism. Delayed transitional justice processes, the systematic subversion of institutions of accountability, and entrenched economic underdevelopment have collectively undermined the constitutional architecture. Drawing on comparative evidence from South Africa and Colombia, the article pushes the boundaries of standard institutional critique and prompts a deeper philosophical re-engagement with GNR. It demonstrates that inclusive constitution-making tends to reconfigure elite power rather than dismantle the structural conditions enabling conflict. This contextuality is underlined by an epistemological limitation at the heart of GNR as a normative assumption: constitutional settlements can address only the grievances identified at a particular historical moment; political preferences and frustrations of future generations remain beyond the promise any "presentist" constitutional text can deliver.

Keywords: transitional justice, Nepal, guarantees of non-repetition, accommodative constitutional design, post-conflict peacebuilding, epistemological limits

Introduction

The field of transitional justice is underpinned by a profound imperative that mass atrocities, systemic human rights violation, and structural forms of violence do not recur (Balasco, 2013; McAuliffe, 2022). As societies emerge from the trauma of protracted civil wars or authoritarian regimes, the immediate impulse is to seek legal and political measures that guarantee a conclusive rupture from the past (Davidovic, 2021). This aspiration, succinctly captured by the phrase “Never Again,” has transitioned from a rhetorical post-conflict political slogan into a core normative principle of international human rights law and transitional justice practice (Biddolph & Mollica, 2026).

Within the established taxonomy of transitional justice, which traditionally balances truth-seeking, memorialization, criminal prosecutions, institutional vetting, and reparations, the Guarantee of Non-Recurrence (GNR) represents the most expansive, ambitious, and conceptually complex dimension (Sarkin, 2022). Unlike backward-looking mechanisms that address specific historical violations, GNR demands a comprehensive renewal of the citizen-state relationship, aiming at re-engineering the state architecture so that the drivers of violence are systematically neutralized (Duthie, 2021; Mariezcurrena, 2019).

A central feature to contemporary GNR practices is what this article terms as accommodative constitutional design, a model that absorbs former insurgent movements into the evolving order through inclusive constitution-making processes, elected assemblies, negotiated institutional reforms, and power-sharing arrangements. Proponents of this approach argue that when former adversaries co-author the constitutional framework governing the post-conflict state, the resulting document functions not merely as a legal instrument but also as a resilient political compact that binds erstwhile combatants to the new order and precludes the ideological justifications for renewed violence (Ginsburg & Huq, 2018; O’Rourke, 2013). Over the past decades, this model has gained significant normative traction in post-conflict peacebuilding, informing political settlements in countries such as South Africa, Colombia, and, most explicitly, Nepal.

Nepal’s post-conflict transition following the 2006 Comprehensive Peace Agreement (CPA), signed on November 21 between the Government of the Seven Party Alliance, and the Communist Party of Nepal (Maoist), represents a textbook implementation ground for accommodative constitutional design. The decade-long Maoist insurgency, waged under the banner of the “People’s War” between 1996 to 2006, had exacted a devastating human toll, resulting in over 15,000 deaths, hundreds of enforced disappearances, and large-scale displacement of rural populations (United Nations Office of the High Commissioner for Human Rights [OHCHR], 2012). The conflict was not a historical accident. It was fueled by deep-seated structural inequalities embedded within the state. A highly centralized governance structure entrenched systemic rural poverty, severe underdevelopment, and the historical marginalization of women, Dalits, Madhesis, Janajatis, and other regional and linguistic minorities (Simkhada & Oliva, 2006). The Maoist insurgency capitalized around these grievances, presenting its revolutionary project as an antidote to an exclusionary and feudal state architecture.

The 2006 peace settlement was therefore framed not merely as a conventional military truce but as a transformative social contract. The CPA was operationalized through the Interim Constitution of 2007, which provided a legal framework for Constituent Assembly elections and broader political restructuring. Under the CPA and subsequent interim compromises, the Maoists agreed to cantonment, disarmament and demobilization of its armed wing, transforming themselves into a political party to enter competitive multiparty politics.

In return, the political mainstream conceded to a sweeping program of accommodative constitutional redesign, which culminated in the landmark 2015 Constitution to secure the state against the recurrence of conflict (Hutt, 2020; Mahar, 2025). Nearly two decades after the CPA, however, the outcomes of the constitutional transformation demonstrate that the initial optimism belied the inherent limits of accommodative design as a self-sufficient GNR mechanism. Although significant changes have occurred with regard to macro-political structures, the underlying socio-economic grievances, institutional deficits, and deep-seated culture of impunity have persisted.

The Truth and Reconciliation Commission (TRC) and the Commission on Investigation of Enforced Disappeared Persons (CIEDP), both mandated by the CPA to investigate conflict-era atrocities, have faced persistent challenges since their establishment ranging from political interference, executive stalling, and deliberate underfunding to legal evasions that shield powerful actors from accountability (Gyawali, 2025; Jeffery, 2019). The political elite, composed of both mainstream leaders and former Maoist commanders, have consistently prioritized mutual protection over victim-centered justice, wearing down the state's normative legitimacy and maintaining a chasm between the state and its citizenry (Acharya et al., 2022). As a result, progress toward truth, accountability, and reparative justice has remained limited.

The fragility of this inadequate settlement became starkly visible during the widespread youth-led protests in September 2025. While ideologically distinct from the Maoist armed insurgency of 1996–2006, these events revealed an endemic crisis that directly challenges the post-CPA democratic order, and more critically, the effectiveness of constitutional reform as a mechanism for GNR.

This empirical fact raises a fundamental question: did Nepal's peace process implement genuine structural guarantees against the repetition of conflict, or did accommodative constitutional design merely alter the modality of political contestation while leaving the core drivers of societal instability intact?

This article evaluates the institutional efficacy of Nepal's transitional justice and constitutional reform processes in achieving GNR. Adopting an exploratory, qualitative case-study approach (Yin, 2018, p. 24), the article's analytical framework reexamines critical transitional justice scholarship at the intersection of constitutional design and societal norm transformation for durable non-recurrence (Duthie, 2021; McAuliffe, 2022; Sarkin, 2022).

Empirical and theoretical insights are triangulated across three source categories. The first includes official state and international documents such as the CPA, the Interim Constitution of 2007, the Constitution of Nepal (2015), relevant Supreme Court judgments, and reports produced by the TRC and OHCHR. The second comprises peer-reviewed scholarship on GNR operationalization and Nepal's post-conflict political economy (Dhakal, 2023, 2024; Hutt, 2020; Jeffery, 2017; Kafle, 2026). The third incorporates contemporary studies, policy briefs, civil society reports, and investigative media archives documenting the 2025 protest (Sapkota, 2026). Analysis proceeds through three thematic vectors: a structural-legal examination of Nepal's constitutional changes against international GNR standards, a political-institutional evaluation of barriers undermining accountability mechanisms, and a socio-political analysis of the 2025 unrest as symptomatic of a flawed non-repetition framework.

Anchored in the comparative experiences from South Africa and Colombia as observed cursorily in secondary literature, the article contends that non-repetition cannot be secured through inclusive constitution-making alone. Beyond requiring localized governance reforms and victim-centered accountability, Nepal's case exposes a deeper epistemological paradox: constitutional frameworks of the "present" are fundamentally unequipped to bind unpredictable grievances and political imaginations of future generations.

Review of the Relevant Discourse

The conceptual evolution of GNR

Transitional justice as both an academic field and a policy paradigm has expanded significantly over the past decades (Balasco, 2013; Ferrara, 2026; Fischer, 2011). Initially postulated in the late 1980s and early 1990s as a narrow legal framework, the field was originally concerned with the judicial dilemma of transitions from military dictatorship to democratic governance in Latin America and Southern Europe. It has since evolved into a holistic, multidimensional discipline at the intersection of law and social sciences (Arthur, 2009; Teitel, 2003). Early iterations debated the tension between peace and justice, questioning whether criminal prosecutions could be pursued without destabilizing fragile political agreements. By the early 2000s, an emerging international consensus articulated that transitional justice rests on four mutually reinforcing pillars: the right to truth, the right to justice, the right to reparation, and the guarantees of non-repetition (Swisspeace, 2017; United Nations Security Council [UNSC], 2004). Subsequent expansions have integrated the rights to memory and reconciliation, untying the abstraction of justice into more precise tracks of prosecution, vetting, and administrative action (TRC, 2026). This creates an operational space where the pillars of transitional justice eventually culminate in securing the constitutionally imagined non-repetition guarantees.

Within this contemporary framework, GNR has evolved from a passive byproduct of successful truth and justice mechanism into an independent, proactive, and transformative requirement (Davidovic, 2021; Sarkin, 2022). GNR therefore, normatively represents the preventative horizon of transitional justice. It constitutes the institutional agenda that connects backward-looking accountability with forward-looking state-building and democratic consolidation (Duthie, 2021). According to the principle advanced by the United Nations Special Rapporteur on truth, justice, reparation, and guarantees of non-repetition, GNR cannot be achieved through singular, isolated interventions, but requires systemic change across three interconnected dimensions (de Greiff, 2012). The first involves structural and legal reforms, such as constitutional restructuring, legislative harmonization with international law, and the entrenchment of fundamental rights. The second entails institutional reforms, including security sector transformation, judicial independence, and anti-corruption oversight. The third relates to social and cultural transformation, promoting civil society empowerment, historical memory, and the cultivation of a robust human rights culture.

Mayer-Rieckh (2017) offers an important clarification to prevailing understanding of GNR. He argues that the enumerated guarantees in transitional justice principles are not hard legal mandates but contextually effective measures whose applicability varies across post-conflict settings. He further observes that the term "guarantees of non-recurrence" is somewhat misleading because it overpromises. Non-recurrence can never be fully guaranteed by any set of measures because no institutional arrangement can eliminate the possibility of future conflict. What states owe is therefore diligent effort rather than assured outcomes. They bear obligations of means rather than results, delivering on good-faith efforts reasonably within their capacity to prevent recurrence.

Building on this observation, Ferstman (2021) examines GNR in the context of systemic and recurring violations, finding a persistent disconnect between what states formally commit to and what they actually deliver. This implementation gap, she argues, is not incidental but structurally embedded. Her findings actively call into question the confidence in GNR as an operationally reliable policy instrument.

The theoretical complexity of GNR lies precisely in its cross-cutting and contingent nature. McAuliffe (2022) identifies two distinct logics operating within GNR following internal conflicts: a legalistic logic that prioritizes institutional checks and balances, and a transformative logic that demands effective modification of the socio-economic conditions which initially enabled conflict. When these logics are pursued in isolation, and when legal engineering proceeds without structural redistribution, the resulting framework risks treating the symptoms of violence while leaving its fundamental drivers intact.

Constitutional design as a GNR mechanism

Among the diverse instruments of non-repetition, constitutional reform has emerged as a particularly powerful vehicle for prevention (Duthie, 2014). Whether undertaken through the adoption of entirely new constitutions, transitional frameworks, or expansive amendments, constitutional reform holds the unique capacity to reinvent the state itself. It restructures power relations, entrenches legally binding human rights protections, redefines the boundaries of the political community, and incorporates institutional safeguards capable of deterring future abuses.

Yet, as Duthie (2014) cautions, constitutional amendments and institutional design remain intrinsically fragile if they fail to dismantle deep inequalities and the structural marginalization of vulnerable populations. If the post-conflict state merely replicates patterns of elite accumulation and political exclusion under new legal signage, the probability of renewed conflict remains critically high (Mani, 2002; Waldorf, 2012).

A particularly influential variant of constitutional reform as GNR is what this article terms as accommodative constitutional design, a model in which former combatants and rebel movements are incorporated into the post-conflict order through inclusive constitution-drafting, elected assemblies, negotiated institutional reforms, and power-sharing arrangements. While its participatory paradigm retains normative appeal, successive scholarship has engaged with its complexities more convincingly. Rebel inclusion in constitution-making does not necessarily translate into durable structural transformation; it may simply reconfigure elite power arrangements under democratic cover (Samuels, 2006; Waldorf, 2012). Mariezcurrena (2019) argues that successful GNR operationalization depends upon long-term political will, institutional enforcement capacity, and the meaningful integration of victims' voices into public policy design. These conditions are precisely what accommodative settlements oriented primarily toward elite bargaining tend to lack.

Without these operational fundamentals, constitutional guarantees risk degenerating into symbolic legalism that fails to improve the lived experiences of citizens. Kinder (2020) captures this tension precisely, warning that institutional frameworks, however well-designed, lose preventive force when disconnected from the lived material conditions, reducing constitutions to little more than just "paper walls." This insight demands constitutions to be received not as self-sufficient legal instruments but as political arrangements whose effectiveness depends on continuous social negotiation and renewal.

A more profound limitation, however, remains insufficiently theorized within the existing transitional justice scholarship on GNR. The architecture of non-repetition is oriented toward the long future, yet any present structural arrangement can only respond to the known drivers of past and current conflict. The unknown grievances, political realignments, and socio-economic transformations of future generations lie beyond the reach of any constitutional text, however inclusively designed. This temporal and epistemological paradox places a fundamental ceiling on what accommodative constitutional design can promise as a guarantee of non-repetition. Nepal's post-2006 experience offers a uniquely instructive prism through which this gap can be examined, demonstrating how constitutional settlements designed to address the grievances of a 1990s insurgency proved insufficient against the entirely distinct protests that erupted in late 2025.

Comparative Evidence: South Africa and Colombia

Comparative experience reveals a persistent divergence between progressive constitutional frameworks and robust operational transformation. The South African transition of the 1990s is frequently cited as a success story of political settlement, where a progressive constitution and the work of the TRC helped avert catastrophic racial conflict (Boraine, 2000). The TRC achieved significant victory in documenting the horrors of apartheid and establishing a shared national narrative. However, contemporary studies note that the transition's failure to dismantle entrenched macroeconomic inequalities and spatial segregations compromised long-term guarantees of non-recurrence, manifesting today in endemic social instability, high crime rates, and widespread public disillusionment (Mamdani, 2002; Nagy, 2008).

The Colombian peace process offers a more recent parallel. The 2016 Final Peace Agreement between the Santos administration and the Revolutionary Armed Forces of Colombia–People's Army (FARC-EP) created the Comprehensive System for Truth, Justice, Reparation and Non-Recurrence, widely regarded as the most sophisticated transitional justice apparatus ever designed (Subotić, 2019). The Colombian model explicitly integrated GNR across the accord, linking agrarian reform, political participation, and specialized criminal jurisdictions to non-recurrence guarantees. In practice, however, serious implementation deficits continue to threaten the sustainability of peace. These include targeted assassinations of demobilized combatants and social leaders, alongside the state's failure to establish administrative presence in former conflict zones (Gallen & Moffett, 2022; Laplante, 2021). Together, these cases demonstrate that legal and constitutional engineering alone cannot secure non-repetition in the absence of sustained local implementation, a secure post-conflict justice environment, and systemic economic transformation.

Ideological shifts in Nepal's transitional landscape

Understanding the specific challenges confronting Nepal's GNR framework requires situating its transitional justice architecture within the country's shifting ideological and political currents to which the structural elements of post-conflict transition are intensely connected. Earlier work on the historical evolution of Nepal's leftist movements has traced how the theory of "People's Multiparty Democracy" (PMPD), formulated by Madan Kumar Bhandari in the early 1990s, reconciled Marxist class-struggle narratives with Nepali socio-political realities, emphasizing democratic elections, rule of law, and peaceful parliamentary contestation (Dhakal, 2023). This ideological negotiation pragmatically reshaped Nepal's traditional left, establishing a precedent for combining radical socio-economic ambition with the mainstream democratic process.

The post-2006 transition displays a similar trajectory. Following a decade of armed struggle, the Communist Party of Nepal (Maoist) underwent a remarkably comparable transformation, accepting competitive multiparty politics and constitutional democracy in exchange for a decisive role in the constitution-drafting process supported by the United Nations and the international community (Jeffery, 2017). This transition corresponds to the broad trend identified in the literature, but there is another side to it as well. The historical construct of Nepali state discourse reveals that political settlements consistently suffer from profound tensions between elite-driven diplomatic narratives and the complex realities of the public sphere (Dhakal, 2024). State legitimacy and public trust are not automatically secured by constitutional pacts or international recognitions; they are continuously negotiated through the state's practical treatment of sovereignty and civic inclusion.

Applied to Nepal's post-2006 transitional justice process, these insights illustrate why GNR has stagnated. Although the formal structures of the state were radically transformed to match progressive democratic narratives, the underlying political culture remained tangled in elite power-sharing dynamics and institutional inertia. The TRC and CIEDP became sites of political contestation, where conflict parties sought to protect their respective cadres and officers from criminal prosecution, effectively stalling the CPA's accountability mandates (Jeffery, 2019). Most recently, the TRC's four-year strategic plan adopted in early 2026 recognized these shortcomings in general terms and responded by expanding its transitional justice framework beyond the traditional four pillars to six, adding memory and reconciliation alongside truth, reparations, and prosecution, and positioned guarantee of non-recurrence as their collective ultimate destination (TRC, 2026).

This reconceptualization is significant for two reasons. First, it represents a formal institutional acknowledgment that nearly two decades of post-CPA implementation have been insufficient to secure non-repetition. Second, it implicitly concedes that accommodative constitutional design sustaining the 2006 settlement has not, on its own, delivered the promised structural transformation. The result is a transitional justice process trapped in a chronic implementation gap, where progressive legal arrangements coexist with entrenched impunity and deepening public alienation (Gyawali, 2025; Jeffery, 2019). It exposes a glaring contradiction, where the parties to the conflict, both Maoists and the traditional establishment, designed institutional arrangements with built-in incentives to protect themselves from legal consequences.

Results and Discussion

Structural promise of constitutional design

The 2006 CPA initiated an accommodative constitutional experiment aimed at reconstructing a post-conflict state. By the time the 2015 Constitution was promulgated, this enterprise had delivered measurable formal achievements. The constitutional arrangement abolished the monarchy and reconstituted Nepal as a secular, inclusive federal democratic republic. A seven-province federal structure redistributed formal political authority from the historically dominant capital of Kathmandu to peripheral regions long excluded from state power. The constitution mandated for a minimum threshold of 33 percent women's representation in elected bodies — from local governments to the federal parliament — alongside provisions guaranteeing political participation for Dalits, Madhesis, Janajatis, and other historically marginalized communities in proportion to their population share. By any recognized measure, these were significant achievements of inclusive constitutional engineering, widely understood at the time of their adoption as durable assurances against conflict recurrence.

Yet, the structural tenet of these reforms has been systematically undermined by the manner of their implementation. Federalism, rather than functioning as a vehicle for genuine political and economic decentralization, has largely operated as a mechanism for managing the intermediate and managerial elite. The multiplication of governance tiers created by the seven-province structure generated an enormous expansion of political positions, accommodating party cadres across all major formations into salaried state roles rather than transforming the substantive distribution of power. Nepal's provincial assemblies collectively seat 550 elected members across seven provinces, a figure widely criticized as disproportionate for a country of approximately 30 million people and fiscally burdensome for a resource-constrained state (Forum of Federations, 2023; Mahar, 2025). The federal parliament adds a further 334 members across the House of Representatives and the National Assembly. Critics across the broad spectrum have argued that this legislative architecture functions less as representative democracy and more as an institutionalized patronage network while producing limited legislative output or meaningful policy transformation (Mahar, 2025).

The inclusivity provisions of the 2015 Constitution present a similarly complex picture. Representational gains for women and marginalized communities at the legislative level have not translated into commensurate returns in executive power, bureaucratic leadership, or economic growth. The literature on democratic transitions increasingly emphasizes that political inclusion works only when it becomes a vital driver of socio-economic development. Rather than relying solely on technocratic meritocracy, modern state-building frameworks emphasize broad-based civic participation in decision-making processes, which mitigates conflict and ensures stability necessary for economic transformation (Robinson & Acemoglu, 2012, pp. 185-190).

Contrary to these suggestions of scholarship, Nepal has not seen economic transformation under these "inclusive" political institutions. Deep-rooted caste discrimination and gender hierarchies have proven resistant to constitutional prescription alone. Federalism, promised as a mechanism through which historically excluded communities would gain fiscal autonomy and genuine political agency, has instead been marked by chronic underfunding of provincial governments, a steep reduction of approximately 26 percent in federal fiscal equalization grants to local governments in 2024, and repeated disputes over intergovernmental coordination (Acharya & Zafarullah, 2025; The Annapurna Express, 2025). Inclusion, which is supposed to be the means to achieve transformation, has been treated as a political end in itself. As a result, the constitutional settlement anticipated to cure the socio-economic and political breakdown has ultimately delivered representation without redistribution and inclusion without fiscal dividend, a gap at the heart of Nepal's GNR failure.

Comparative parallels

The implementation divide in Nepal's non-repetition framework mirrors the structural vulnerabilities observed in South Africa and Colombia. South Africa's celebrated 1990s settlement produced public disillusionment due to its failure to generate the robust economic growth required for meaningful redistribution; Nepal's 2015 Constitution delivered extensive formal representation while leaving the material realities of the population largely unchanged.

The Colombian peace process demonstrates similar challenges. The sophisticated architecture of the 2016 Final Peace Agreement has been continuously undermined by targeted violence and a severe discrepancy in localized state enforcement. In all three contexts, the foundational issue lies in treating accommodative constitutional design as a self-executing remedy, followed by the pervading sense of complacency after achieving immediate peace. The architects of these transitions built fragile "paper walls" by prioritizing short-term elite stabilization over deep-rooted structural reform. When post-conflict states embrace political inclusion but shield ruling elites from accountability, they leave the original engines of societal instability intact. This dynamic risks the re-emergence of unresolved past grievances as organized violence in the future.

Subversion of accountability

The most consequential failure of Nepal's post-2006 transition lies in the systematic subversion of its transitional justice architecture and other accountability institutions. Although the CPA explicitly mandated mechanisms to address conflict-era human right violations, these bodies have been functionally incapacitated since their inception (TRC, 2026). The political class that governed Nepal since 2006, comprising of both mainstream party leaders and former Maoist commanders who co-authored the accommodative constitutional order, prioritized mutual protection over victim-centered justice. Former rebels-turned-parliamentarians and ministers used their institutional positions to obstruct TRC proceedings, delay legislation, and resist the Supreme Court's repeated directives to align Nepal's transitional justice laws with international standards. While the 2024 amendment of the TRC Act provided a long-awaited legal breakthrough, the government's May 2026 blanket ordinance has effectively frozen progress, leaving commissions vacant and the entire process stalled once again.

This subtext exemplifies what the literature identifies as elite capture, the process by which reformed institutions designed to redistribute power are colonized by the same political networks they were intended to constrain (Waldorf, 2012). In Nepal's case, elite capture operates not as a deviation from the accommodative model but as its logical outcome. When former adversaries co-author a constitutional settlement, they simultaneously co-author the conditions for their mutual impunity. In this regard, the post-September 2025 political elite appears to be no exception. This has collectively eroded the capability of constitutional bodies, judiciary, law enforcement and other state instruments established to ensure state accountability.

The TRC's four-year strategic plan adopted in early 2026, which formally expanded Nepal's transitional justice framework to six pillars and repositioned the GNR as its collective destination, is itself an institutional acknowledgment that the existing architecture has failed to deliver on the CPA's transformative commitments (TRC, 2026). Victims of the September 2025 protests face a comparable impasse, underscoring how repeated neglect has structurally eroded the state's normative legitimacy, upon which GNR frameworks depend as the foundation for sustainable peace. This reflects the failure mode Mayer-Rieckh (2017) identifies, where states fulfill obligations of means in form while abandoning them in substance.

The return of political violence through social unrest

The consequences of deferred justice and unfulfilled constitutional promises became undeniably visible in September 2025, when youth protests of unprecedented scale erupted across Nepal's major cities. Led primarily by the generation with no living memory of the Maoist People's War but deeply shaped by its unresolved aftermath (Sapkota, 2026), the protest was triggered by a government social media restriction widely perceived as an act of political censorship.

Demonstrations on September 8 and 9 escalated into violence, with protesters occupying and setting fire to major state buildings including the parliament complex, the government secretariat at historic Singha Durbar, the Supreme Court, and the presidential office. Security forces responded with lethal force, killing 42 people, when police opened fire on demonstrators (National Human Rights Commission [NHRC], 2026). Prime Minister KP Sharma Oli resigned on September 9.

The NHRC's investigation report of May 27, 2026, constitutes the most authoritative institutional reckoning of these events. It identified gross human rights violations committed by the state, implicating the former Prime Minister, Home Minister, and Communications Minister for failing to restrain disproportionate force, and recommended legal action (NHRC, 2026; The Kathmandu Post, 2026; The Week, 2026). The commission also documented serious violations by protest organizers, finding 52 individuals and 17 current lawmakers accountable for criminal investigation. Protest leaders were found to have deployed school children as human shields, disseminated instructions for manufacturing incendiary devices via social media, and openly incited violence through coordinated online campaigns before and during the protests (Nepal News, 2026).

This dual accountability finding is analytically significant. The September 2025 breakdown was not simply an instance of state repression of peaceful protests. It was the disintegration of democratic norms on multiple fronts. Nearly two decades of deferred justice and unfulfilled constitutional promises so thoroughly eroded Nepal's civic foundations that legitimate political grievance turned into organized violence. This is, if anything, a more glaring display of the GNR framework's failure than state repression alone, since it indicates how the normative compact underlying democratic contestation has been corroded from within. As a result, both the state enforcers as well as their non-state challengers stand accused of violating the foundational political norms. This provides the definitive metric of institutional failure, rendering transitional justice and constitutional framework incapable of securing the civic conditions necessary for non-repetition.

The pattern of violence, committed by both state and non-state actors, followed by formal investigation and systematic impunity runs as a constant thread through Nepal's entire democratic era. After the 1990 People's Movement, the Mallik Commission documented protest killings, but its findings were concealed. After the 2006 uprising, the Rayamajhi Commission recorded at least 19 deaths. Its report was suppressed too. The CPA, explicitly commissioned both the Government of Nepal and the Maoist party to investigate conflict-era human rights violations committed by both parties to the armed conflict, representing the most formal and binding accountability promise ever made to its citizens. Nearly two decades later, that promise remains substantively unfulfilled. The Lal Commission established to investigate the 45 deaths during the 2015 Madhesi protests remains unpublished despite repeated commitments (Human Rights Watch, 2026).

September 2025 did not interrupt this sequence – it rather extended it. The NHRC's accountability recommendations were more far-reaching than any previous inquiry. At the same time, the underlying institutional dynamic remains unchanged where formal investigation helps absorb public outrage without producing accountability. The government of the victors might choose to selectively implement these recommendations only against the side that has been perceived as electorally vanquished. A constitutional order explicitly designed to guarantee non-repetition has instead reproduced this cycle of impunity across three successive decades. This is not a peripheral observation of this article. It is its central empirical conclusion.

Theoretical implications: the limits of accommodative constitutional design as GNR

Nepal's post-2006 experience produces several theoretically significant insights for the broader scholarship on GNR and accommodative constitutional design. The first concerns the internal contradiction of the accommodative model itself. The incorporation of former combatants into the constitutional order as co-authors of the post-conflict state, often acknowledged as the price of peace, secured short-term stabilization at the cost of long-term accountability. The same actors whose grievances necessitated constitutional redesign become gatekeepers of the institutions mandated to deliver justice for the conflict they waged. In Nepal, this contradiction has produced a transitional justice architecture that is formally progressive but substantively gridlocked, precisely because its overseers have a structural interest in its failure.

The second theoretical finding concerns the correlation between representational inclusion and substantive economic transformation. Nepal's constitution achieved significant formal inclusivity through gender quotas, ethnic representation, and federal devolution. Yet these gains have not produced the socio-economic transformation envisioned in the CPA or targeted by GNR frameworks. Federalism has functioned more as a mechanism of cadre accommodation than genuine power redistribution. Ferstman (2021) observes that guarantees of non-recurrence consistently reveal implementation gaps between formal legal commitments and concrete preventive outcomes. Nepal's experience confirms this observation at scale, demonstrating that the gap widens in proportion to the degree of elite control within reformed institutions.

The third and most theoretically significant finding concerns the epistemological limitation at the heart of GNR as a normative principle. The September 2025 protests were not driven by the grievances of the 1996 Maoist insurgency but by an entirely new configuration of political frustrations. No constitutional text drafted in 2007 or 2015 could have anticipated this precise convergence. This is not a failure of constitutional drafting but a structural feature of GNR as a framework oriented toward an unforeseen future. It reinforces Mayer-Rieckh's (2017) argument that state failure lies not in the inability to guarantee absolute outcomes, but in the abandonment of required means. Nepal's case corresponds to this as obligations of means are systematically abandoned through elite control and accountability subversion, causing the state to lose the adaptive capacity of responding to emerging grievances before they escalate into violent disruptions.

The political response to the September protests has produced a further constitutional moment that illuminates this dynamic with particular clarity. The current government, led by the Rastriya Swatantra Party, one of the principal political formations that emerged from and channeled the 2025 protests, has initiated a constitutional amendment process. A task force has been constituted and more than forty thousand public suggestions have been collected. Consultations with constitutional experts and stakeholders are ongoing (The Kathmandu Post, 2026). This development illustrates the undercurrent that runs through Nepal's entire post-CPA journey. Every political settlement generates its own inadequacies, which successive actors then attempt to address through further constitutional adjustment. The "present" perpetually tries to exercise influence over an "unknowable future" reaching forward through institutional redesign to shape conditions it cannot fully anticipate. This is not constitutional failure in the conventional sense. It is an evidence of something more structurally significant that constitutional design, however iterative and responsive, operates under an irreducible temporal constraint. It can only respond to the known grievances of its moment. The unknown political formations, socio-economic dislocations, and generational frustrations of the future remain perpetually beyond their reach, returning always as the unfinished business of the present.

Taken together, these findings suggest that accommodative constitutional design, as currently theorized and practiced, conflates two analytically distinct objectives: the stabilization of elite conflict and the structural prevention of recurring violence. It achieves the former with reasonable effectiveness; the latter requires precisely the conditions that elite driven settlements tend to undermine. Non-repetition as a matter of fact cannot be secured at the level of constitutional text. It requires a continuous, multi-generational practice of institutional accountability, economic transformation, and responsive governance, none of which can be guaranteed by the act of constitution-drafting in isolation.

Summary and Conclusion

Nepal's post-2006 peace process was, by the standards of international transitional justice practice, an ambitious and deliberate undertaking. It drew on the most normatively sophisticated tools available to post-conflict states - incorporating former combatants into democratic politics, redesigning the constitutional order through participatory process, and restructuring the state along inclusive federal lines to address historical marginalization. This culmination, expected to guarantee non-recurrence, tumbled in September 2025 down to urban political violence, and now forces a reckoning not only with Nepal's specific failures but also with the theoretical assumptions that made such an outcome possible.

The central argument this article has advanced is that accommodative constitutional design, as a GNR mechanism contains a structural contradiction insufficiently theorized in the transitional justice scholarship. The inclusivity argument that gives the model its normative legitimacy centers around the inclusion of former adversaries as co-architects of the post-conflict state, yet simultaneously creates conditions for accountability subversion. Those who are given a stake in the new order are also given the means to protect themselves from its justice mechanisms. This is not a contingent failure that better institutional design could have prevented. It is an inherent flaw within the model itself, and Nepal's experience makes it visible with unusual clarity precisely because the model was applied so faithfully.

Comparative evidence from South Africa and Colombia deepens this conclusion rather than qualifying it. Both transitions deployed sophisticated constitutional and institutional frameworks oriented toward non-recurrence, yet each has confronted, in its own historically specific way, the gap between formal structural achievement and the lived conditions of sustainable peace. The forms of recurrence differ across contexts, but the underlying dynamic is consistent in that constitutional engineering addresses the known drivers of past conflict while leaving the state structurally unprepared for the unfamiliar grievances that future generations inevitably produce.

This observation points toward the philosophical dimension of GNR that the discipline of transitional justice most urgently needs to engage more directly. Arendt (1958) claims that political action is by nature unpredictable and generative of consequences that escape the intentions of those who initiate it. Popper (1945) warns against attempts to engineer open societies toward predetermined futures because they tend to produce outcomes that confound the designs of their architects. Teitel (2000) adds that transitional jurisprudence is always historically situated and is the law of a particular moment rather than a timeless template. These philosophical cautions directly correspond to the practice of transitional justice as an act of post-conflict state building. For Sandel (2009), justice encapsulates more than just a neutral framework of laws, the optimization of overall utility, or the absolute protection of personal liberties, fundamentally demanding a shared societal commitment to defining and pursuing the common good.

Together, these ideas illustrate what Nepal's experience demonstrates empirically. The very "future" GNR seeks to secure is not merely uncertain but structurally unknowable, and that this unknowability is not a technical problem to be solved through more sophisticated institutional design but an ontological condition that any honest theory of non-repetition must confront.

The September 2025 protests in Nepal witnessed forms of political action which bore no resemblance to the insurgency the 2006 CPA was designed to resolve. A generation that did not fight the People's War, negotiate its peace, or draft the constitution nonetheless inherited all the unrealized consequences of those processes. Their feeling of estrangement was not a failure of constitutional imagination of 2006 but the inevitable arrival of the future that no constitutional moment of the past had the ability to anticipate.

What this theoretical tension demands of transitional justice scholarship and practice is not pessimism about the value of constitutional reform but rather more rigorous honesty about what it can and cannot accomplish. Constitutional design, with a successful implementation of post-conflict transitional justice process, is necessary but not sufficient. It creates the formal conditions within which non-repetition might become possible, but those conditions require continuous renewal through political will, economic development, and genuine accountability that outlasts the settlement itself. The ongoing constitutional amendment process in Nepal highlights a political class intuitively recognizing their constitutional settlement as a mere beginning rather than a definitive endpoint, a provisional framework forever subject to revision by the futures it cannot see.

In this context, the field of transitional justice must develop a theory of non-repetition which is equally honest about its own provisionality. GNR frameworks promising structural guarantees against conflict recurrence ask more of constitutional design than any historically situated instrument can deliver. They can promise a set of institutional conditions that, when genuinely honored rather than captured, expand the state's capacity to recognize and respond to emerging grievances before they turn into political violence. This is what Nepal's experience, through its failures as much as its achievements, most significantly demonstrates.

References

Acharya, K. K., Dhungana, R. K., & Guragain, H. P. (2022). The Position of Marginalized Groups in the Elite Captured Local Level Planning Process in Nepal. *Nepal Public Policy Review, 2*, 1–26. https://doi.org/10.3126/nppr.v2i1.4839

Acharya, K.K. & Zafarullah, H. (2025). Intergovernmental relations and the challenges of power devolution: Federalism in Nepal. *Public Governance, Administration and Finances Law Review, 10*(2), 5—26. https://doi.org/10.53116/pgaflr.7985

Arendt, H. (1958). *The Human Condition*. University of Chicago Press.

Arthur, P. (2009). How "transitions" reshaped human rights: A conceptual history of transitional justice. *Human Rights Quarterly, 31*(2), 321–367. https://doi.org/10.1353/hrq.0.0069

Balasco, L. (2013). The Transitions of Transitional Justice: Mapping the Waves From Promise to Practice. *Journal of Human Rights*, 12 (2), 198-216. https://doi.org/10.1080/14754835.2013.784858

Biddolph, C., & Mollica, C. (2026). Reimagining transitional justice for a less violent, more inclusive world. *The International Journal of Human Rights, 30*(1), 1–24. https://doi.org/10.1080/13642987.2025.2602144

Boraine, A. (2000). *A country unmasked: Inside South Africa's Truth and Reconciliation Commission*. Oxford University Press.

Davidovic, M. (2021). The law of 'never again': Transitional justice and the transformation of the norm of non-recurrence. *International Journal of Transitional Justice, 15*(2), 386–406. https://doi.org/10.1093/ijtj/ijab011

de Greiff, P. (2012). Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition. (A/HRC/21/46). United Nations Human Rights Council.

Dhakal, T. P. (2023). Madan Bhandari and his theory of People's Multiparty Democracy. *State, Society and Development: PMPD Perspectives, 1*(1), 61–76. https://doi.org/10.3126/ssd.v1i1.58470

Dhakal, T. P. (2024). The intersection of 'Hindu', 'Independence', and 'Sovereignty' in the Nepali public discourse of the 1920s. *Journal of Productive Discourse, 2*(1), 137–154. https://doi.org/10.3126/prod.v2i1.65732

Duthie, R. (2014). Transitional justice, social change, and economic development. International *Journal of Transitional Justice,* *8*(1), 166–187. https://doi.org/10.1093/ijtj/ijt028

Duthie, R. (2021). *Transitional Justice and Prevention*. International Centre for Transitional Justice. https://www.ictj.org/sites/default/files/ICTJ_Report_Overview_TJ_Prevention.pdf

East-West Center. (2007). Creating a "New Nepal": The ethnic dimension. (2007). *Policy Studies*, 34, 1–85. Washington. https://www.files.ethz.ch/isn/45633/ps034.pdf

Ferrara, A. (2026). Reconceptualising transitional justice as a pluralistic theory of justice. *Social & Legal Studies*, 1–22. https://doi.org/10.1177/09646639261422354

Ferstman, C. (2021). Do guarantees of non-recurrence actually help to prevent systemic violations? Reflections on measures taken to prevent domestic violence. *Netherlands International Law Review, 68*(3), 387–405. https://doi.org/10.1007/s40802-021-00204-8

Fischer, M. (2011). Transitional justice and reconciliation: Theory and practice. In B. Austin, M. Fischer, & H. J. Giessmann (Eds.), *Advancing conflict transformation: The Berghof Handbook II* (pp. 405–430). Barbara Budrich Publishers. https://berghof-foundation.org/files/publications/fischer_tj_and_rec_handbook.pdf

Forum of Federations. (2023). *Federalism in action: Periodic election — pathways to federalism implementation in Nepal*. Forum of Federations. https://forumfedblog.org/periodic-election-federalism-implementation-nepal

Gallen, J., & Moffett, L. (2022). The palliative role of reparations in reconciling societies with the past: Redressing victims or consolidating the state? *Journal of Human Rights Practice, 14*(2), 512–534. https://doi.org/10.1093/jhrp/huac012

Ginsburg, T., & Huq, A. (2018). How to lose a constitutional democracy. *University of Chicago Law Review, 85*(1), 91–197. https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=13666&context=journal_articles

Gyawali, S. (2025). A Structural Analysis of Nepal's Maoist Movement and Gen-Z Struggles through a Large-Scale and Long-Run Perspective. *NPRC Journal of Multidisciplinary Research*, *2*, 21–33. https://doi.org/10.3126/nprcjmr.v2i10.85863

Human Rights Watch. (2026, February 12). *Nepal: Publish reports on violent crackdowns on protests*. https://www.hrw.org/news/2026/02/12/nepal-publish-reports-on-violent-crackdowns-on-protests

Hutt, M. (2020). Before the dust settled: is Nepal's 2015 settlement a seismic constitution? https://www.researchgate.net/publication/342685013_Before_the_dust_settled_is_Nepal's_2015_settlement_a_seismic_constitution

Jeffery, R. (2017). Nepal's comprehensive peace agreement: Human rights, compliance and impunity a decade on. *International Affairs, 93*(2), 343–364. https://doi.org/10.1093/ia/iix007

Jeffery, R. (2019). *Nepal's Truth and Reconciliation Commission limps on*. Lowy Institute. https://www.lowyinstitute.org/the-interpreter/nepal-s-truth-reconciliation-commission-limps

Kafle, S. (2026). From recognition to redress: Rethinking reparations for conflict-related sexual violence in Nepal. *International Journal of Transitional Justice, 20*(1), 38–53. https://doi.org/10.1093/ijtj/ijaf030

Kinder, R. (2020). Guarantees of non-repetition and constitutional reform: Transforming the preventative horizon of transitional justice. *The International Journal of Human Rights, 24*(5), 612–634. https://doi.org/10.1080/13642987.2020.1746649

Laplante, L. J. (2021). Guarantees of non-repetition in the Colombian peace accord: A comparative study of preventive justice. *Human Rights Law Review, 21*(3), 567–592. https://doi.org/10.1093/hrlr/ngab004

Mahar, N. S. (2025). Challenges of Federalism in Nepal: Exploring Strategies. *Prithvi Academic Journal, 6*(2), 15–19. https://doi.org/10.3126/pdmdj.v6i2.79715

Mamdani, M. (2002). *Amnesty or impunity? A preliminary critique of the Report of the Truth and Reconciliation Commission of South Africa*. Duke University Press.

Mani, R. (2002). *Beyond retribution: Seeking justice in the shadows of war*. Polity Press.

Mariezcurrena, J. (2019). Guarantees of non-repetition: An unfulfilled promise? In C. Marxsen & A. Peters (Eds.), *Self-determination in international law* (pp. 178–201). Cambridge University Press.

Mayer-Rieckh, A. (2017). Guarantees of non-recurrence: An approximation. *Human Rights Quarterly, 39*(2), 416–448. https://doi.org/10.1353/hrq.2017.0025

McAuliffe, P. (2022). Two Logics of Non-Recurrence after Civil Conflict. *International Human Rights Law Review*, *11*, 153–185. https://doi.org/10.1163/22131035-11020001

Nagy, R. (2008). Transitional justice as a global project: Critical reflections. *Third World Quarterly, 29*(2), 275–289. https://doi.org/10.1080/01436590701806848

National Human Rights Commission, Nepal. (2026, May 27). *Investigation report on the human rights violations during the Gen Z protests of September 8–9, 2025*. Government of Nepal.

O'Rourke, C. (2013). *Gender politics in transitional justice*. Routledge.

Popper, K. (2013). *The open society and its enemies*. Princeton University Press. (Original work published 1945)

Robinson, J., & Acemoglu, D. (2012). *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*. Random House.

Samuels, K. (2006). Post-conflict peace-building and constitution-making. *Chicago Journal of International Law, 6*(2), 663–682.

Sandel, M. J. (2009). *Justice: What's the right thing to do?* Farrar, Straus and Giroux.

Sapkota, M. (2026). Gen Z Movement 2025 in Nepal; Agendas, Implications and Unsettled Issues. *Journal of Political Science, 26*(1), 144–173. https://doi.org/10.3126/jps.v26i1.90793

Sarkin, J. (2022). Towards A Greater Understanding of Guarantees of Non-Repetition (GNR) or Non-Recurrence of Human Rights Violations: How GNR Intersects Transitional Justice with Processes of Democratic Governance, State Rebuilding, Reconciliation, and Nation Building. *Stanford Journal of International Law*, *57*, 191–229. https://www.researchgate.net/publication/361218722_Towards_A_Greater_Understanding_of_Guarantees_of_Non-Repetition_GNR_or_Non-Recurrence_of_Human_Rights_Violations_How_GNR_Intersects_Transitional_Justice_with_Processes_of_Democratic_Governance_State_R

Simkhada, S. R., & Oliva, F. (Eds.). (2006). *The Maoist insurgency in Nepal: A monograph on causes, impact and avenues of resolution*. Institut universitaire de hautes études internationales (IUHEI). https://www.raonline.ch/pages/story/pdf/psio_nepal01.pdf

Subotić, J. (2019). *Yellow star, red star: Holocaust remembrance after communism*. Cornell University Press.

Swisspeace. (2017). *From transitional justice to dealing with the past: The role of norms in international mediation*. Swisspeace.

Teitel, R.G. (2000). *Transitional Justice*. Oxford University Press.

Teitel, R. G. (2003). Transitional justice genealogy. *Harvard Human Rights Journal, 16*, 69–94.

Truth and Reconciliation Commission, Nepal. (2026). *Four-year strategic plan 2026–2030 of the TRC*. Government of Nepal.

United Nations Office of the High Commission on Human Rights. (2012). *The Nepal Conflict Report*. https://www.ohchr.org/en/documents/country-reports/nepal-conflict-report

United Nations Security Council. (2004). *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General* (S/2004/616). United Nations. https://www.un.org/en/ga/search/view_doc.asp?symbol=S/2004/616

Waldorf, L. (2012). Anticipating the past: Transitional justice and socio-economic wrongs. *Social and Legal Studies, 21*(2), 171–186. https://doi.org/10.1177/0964663912439519

Yin, R. K. (2018). *Case Study Research and Applications: Design and Methods* (6th ed.). Sage.

Newspaper and Editorial Sources

Gen Z protest: Nepal's NHRC recommends action against ex-PM Oli, ruling RSP chief. (2026, May 27). *The Week*. https://www.theweek.in/wire-updates/international/2026/05/27/gen-z-protest-nepals-nhrc-recommends-action-against-ex-pm-oli-ruling-rsp-chief.html

Human shields used in Gen Z protests, NHRC member Lily Thapa reveals. (2026, March 12). *Nepal News*. https://english.nepalnews.com/s/nation/human-shields-used-in-gen-z-protests-nhrc-member-lily-thapa-reveals/

Nepal's federalism: From discontent to deliberation. (2025, July 2). *The Annapurna Express*. https://theannapurnaexpress.com/story/55611/

Report on Gen Z protest crackdown could be implemented 'in stages'. (2026, March 9). *The Kathmandu Post*. https://kathmandupost.com/national/2026/03/09/report-on-gen-z-protest-crackdown-could-be-implemented-in-stages

The NHRC has spoken. Now, prosecute [Editorial]. (2026, May 28). *The Kathmandu Post*. https://kathmandupost.com/editorial/2026/05/28/the-nhrc-has-spoken-now-prosecute

Why Nepal cannot easily ignore NHRC's Gen Z crackdown recommendations. (2026, May 29). *The Kathmandu Post*. https://kathmandupost.com/national/2026/05/29/why-nepal-cannot-easily-ignore-nhrc-s-gen-z-crackdown-recommendations

The Informal: South Asian Journal of Human Rights and Social Justice
Volume 03 Issue 01, 2026. pp. 17–28
Research Article
https://doi.org/10.3126/informal.v3i1.97529

A Repeated Signaling Game of Nepal's Transitional Justice Process

Saugat Raj Gautam ID
Researcher

Article Info.

Corresponding Author
Saugat Raj Gautam

Email
saugatgautam15@gmail.com

Article History
Received: 13 July 2026
Accepted: 15 July 2026
Published: 31 July 2026

How to Cite this Article
Gautam, S. R. (2026). A Repeated Signaling Game of Nepal's Transitional Justice Process. *The Informal: South Asian Journal of Human Rights and Social Justice, 3* (1), 17-28.

Abstract

Nepal's transitional justice process has produced repeated episodes of formal institutional progress without durable victim trust. This article explains that gap through a repeated signaling game under weak commitment. The central claim is that accountability-exposed political actors can obtain legitimacy from low-cost institutional signals while avoiding high-cost commitments that would alter the expected probability of truth, reparations, prosecution, or non-recurrence. The model identifies a low-credibility pooling equilibrium: commissions, legal amendments, consultations, reports, and strategic plans keep the process formally active, but remain weakly informative when the same signals can be produced by both accountability-oriented and closure-oriented actors. Victim distrust is therefore modeled not as procedural obstruction, but as rational belief updating after repeated weak signals. Applied to Nepal, the framework explains how political control over the Turth and Reconciliation Commission and Commission of Investigation on Enforced Disappeared Persons can allow statutory transitional justice mechanisms to generate process and answerability without credible enforcement. The National Human Rights Commission is applied in the analysis as a supporting accountability institution which provides additional evidence about whether documented violations transition into implementation. The article contributes to transitional justice scholarship by formalizing credibility as an incentive problem: victim-centered justice requires mechanisms that make accountability observable, costly, and difficult for closure-oriented actors to imitate.

Keywords: transitional justice, signaling games, credible commitment, victim trust, nepal

Introduction

Nepal's transitional justice process presents a persistent institutional puzzle. Since the end of the armed conflict and the signing of the Comprehensive Peace Agreement (CPA) in 2006, the country has witnessed repeated institutional initiatives: legal reforms, truth-seeking bodies, legislative amendments, public consultations, appointments, official reports, and renewed promises of victim-centered justice. Yet these formal developments have not resolved the deeper crisis of credibility surrounding truth, accountability, reparations, and guarantees of non-recurrence.

This article argues that the puzzle extends beyond delay, administrative weakness, or legal incompleteness. Nepal's transitional justice process is better understood as a repeated signaling game under weak commitment. For the purposes of this article, we define "accountability-oriented actor" as one willing to accept institutional or legal arrangements that increase the probability of truth, justice, reparations and guarantees of non-recurrence, even when these impose political-legal costs. We define "closure-oriented actor" as one seeking abovementioned domestic and international legitimacy with the TJ process while minimizing or evading its political-legal costs. Accountability-exposed political actors can repeatedly send low-cost institutional signals of compliance while avoiding high-cost accountability commitments. Victims, observing these signals over time, rationally update their beliefs about the likelihood that the process will produce meaningful justice. Substantive distrust is therefore not an irrational obstacle to transitional justice; it is an equilibrium response to a series of weak or pooling signals.

The central question is why Nepal's transitional justice process repeatedly generates formal institutional progress without producing durable victim trust. The answer proposed here is that the process remains trapped in a low-credibility equilibrium. Legal reforms, commission formation, strategic plans, and consultation mechanisms may generate legitimacy payoffs for political actors, but they do not necessarily reveal a genuine commitment to accountability. Unless these measures impose meaningful political, legal, or fiscal costs on actors benefiting from impunity, they function as pooling rather than separating signals.

The article makes three contributions. First, it introduces a game-theoretic framework for analyzing credibility in transitional justice. Second, it conceptualizes victim participation and distrust as strategic responses to institutional incentives rather than merely moral or procedural concerns. Third, it applies this framework to Nepal's transitional justice process, demonstrating that the central problem lies not in institutional absence but in the persistent gap between formal design and enforceable accountability.

The article proceeds in four sections. Section 2 situates the argument within the literature on transitional justice, institutional credibility, Nepal's post-conflict justice landscape, and the supporting role of accountability institutions. Section 3 develops the repeated signaling model and defines the low-credibility pooling equilibrium that structures the argument. Section 4 applies the model to Nepal by classifying institutional actions as low-, medium-, or high-cost signals and showing how delay, limited enforcement, and patterns of victim participation reinforce distrust. Section 5 concludes by drawing out the implications for victim-centered justice and credible institutional reform.

Literature

Institutional Transformation

The transitional justice literature has gradually moved beyond its earlier narrow account of post-conflict legal settlement. In its early formulation, transitional justice was concerned with the legal and political dilemmas that follow regime change, civil conflict, and mass human rights violations: whether to prosecute, how to handle perpetrators embedded within the new order, and how to reconcile accountability with political stability (Teitel, 2000; Teitel, 2003; Arthur, 2009). This genealogy matters for Nepal because transitional justice was never introduced into the peace process as a purely retrospective exercise. It was intended from the beginning for the reconstruction of political authority after conflict.

The current literature treats transitional justice as a wider institutional project. Truth-seeking, criminal accountability, reparations, vetting, institutional reform, and guarantees of non-repetition are not isolated policy instruments but interdependent mechanisms through which a post-conflict state attempts to alter the conditions that made violence possible (de Greiff, 2012; Duthie, 2014; Mani, 2002). Based on this view, the question is not whether a state recognizes past violations, but whether it creates institutions capable of changing expectations about future conduct. Transitional justice therefore depends on the credibility of the institutions that claim to deliver it.

This institutional framing is also central to the critical literature. Nagy (2008) argues that transitional justice has become a global project whose instruments travel across countries while often losing sensitivity to local political economy and power relations. Waldorf (2012) similarly cautions against treating transitional justice as if it were limited to civil and political violations, arguing that socio-economic violations and structural inequalities often remain outside formal justice mechanisms even when they are central to the production of conflict. These critiques are particularly relevant for Nepal, where the peace settlement promised both accountability for conflict-era abuses and a broader transformation of exclusionary state structures.

The implication is straightforward - transitional justice cannot be evaluated only by the existence of commissions, statutes, reports, or constitutional guarantees. These are institutional forms. Their political significance depends on whether they change the expected costs of impunity and the expected returns to victim participation. A truth commission that cannot compel implementation, a reparations framework without fiscal commitment, or a guarantee of non-repetition without institutional enforcement may still generate formal progress, but it does not necessarily produce credible commitment.

This is where the literature on transitional justice connects to the repeated signaling framework developed below. If transitional justice is an institutional project, then its central problem is not simply whether justice is normatively required. The question is whether the institutions created in the name of justice separate genuine accountability from managed closure. In Nepal's case, the repeated creation of formal mechanisms without corresponding enforcement raises precisely this problem: transitional justice becomes observable as process, but not necessarily credible as commitment.

For the purposes of this article, the relevant point is that transitional justice mechanisms must do more than acknowledge past violations. They must alter the institutional incentives that enabled those violations. If the process generates reports, consultations, and legal language without changing the expected cost of impunity, it may satisfy procedural expectations while failing as a credible commitment mechanism.

Nepal's Transitional Justice Landscape

Nepal's transitional justice process emerged from the settlement that ended the decade-long Maoist insurgency. The conflict between 1996 and 2006 produced over 15,000 deaths, hundreds of enforced disappearances, and large-scale displacement. The 2006 CPA was framed not only as a peace settlement but as a broader project of political transformation through the integration of former Maoist combatants into democratic politics, constitutional restructuring, inclusion, federalism, secularism, and institutional reform.

This matters for the present argument because Nepal's post-conflict settlement was designed as more than an accountability mechanism for past violations. It also sought to establish constitutional and institutional guarantees against the recurrence of conflict. The Interim Constitution of 2007 and the Constitution of 2015 attempted to absorb the conflict's political demands into a new constitutional order. In that sense, Nepal is a useful case for evaluating the limits of what Dhakal (2026) describes as accommodative constitutional design: a settlement in which former insurgents and mainstream political actors co-author the new order through elections, negotiated reform, and power-sharing. The institutional question is whether such an arrangement transforms the incentives that produced conflict, or whether it merely redistributes elite access to the post-conflict state.

The Truth and Reconciliation Commission (TRC) and the Commission of Investigation on Enforced Disappeared Persons (CIEDP) were central to this accountability architecture. These institutions were mandated to investigate conflict-era abuses and provide institutional pathways toward truth, reparations, and justice. However, their performance has been repeatedly constrained by political interference, executive stalling, underfunding, legal ambiguity, and the reluctance of actors to submit themselves to credible investigation. The result is not institutional absence, but the persistence of institutions whose formal mandates exceed their practical capacity to deliver truth, reparations, and meaningful accountability.

For the signaling framework developed below, the distinction is between the formal existence of the TRC and CIEDP and their practical ability to constrain political discretion. Their credibility depends on conditions governing their operation, including commissioner appointments, treatment of grave violations, victim and witness protection, substantial fiscal reparations, and clear pathways from investigation, to referral, to prosecution. These factors determine whether commissions merely demonstrate that a process exists or instead impose costs that closure-oriented actors would seek to avoid.

This distinction is central to the model developed below. Nepal's transitional justice process has generated observable institutional outputs: commissions, legal amendments, consultation processes, official plans, recommendations, and repeated public commitments to victim-centered justice. These developments are politically meaningful, but they do not resolve the underlying credibility problem. Where the same political actors who benefit from closure also retain influence over appointments, budgets, mandates, and implementation, institutional movement may function as a signal of process rather than a commitment to accountability.

The Nepal case therefore presents a sharper puzzle than simple delay. The question is not why nothing has happened. A great deal has happened formally. The question is why repeated formal action has not produced durable victim trust. This article treats that gap as a strategic outcome. The post-conflict state, former conflict actors, accountability institutions, victims, and international audiences interact across repeated rounds in which institutional signals are observed, interpreted, and discounted. Nepal's transitional justice landscape is therefore best understood as a credibility problem within an active but weakly enforced institutional framework.

Institutions, Accountability, and Credible Commitment

The institutional problem at the center of transitional justice is the gap between formal mandate and implemented accountability. The TRC and CIEDP may possess statutory authority to investigate violations, receive complaints, recommend reparations, identify patterns of abuse, and facilitate further legal action. Their credibility, however, depends on whether political actors allow those functions to constrain appointments, budgets, case handling, amnesty decisions, reparations, and prosecution pathways. Institutional design is therefore not merely administrative. It determines whether transitional justice mechanisms alter the expected cost of impunity or simply convert demands for accountability into managed procedure.

The NHRC occupies a related but distinct position. It is not one of Nepal's statutory transitional justice mechanisms and is not responsible for implementing the transitional justice process in the same manner as the TRC and CIEDP. Its relevance lies in its supporting accountability role: it can investigate conflict-era violations, preserve documentation, issue recommendations, monitor state conduct, and provide an independent record against which official claims of progress may be evaluated. The NHRC therefore enters the present analysis not as a principal transitional justice institution, but as part of the wider information and accountability environment surrounding the statutory process. The broader literature on national human rights institutions (NHRIs) remains useful insofar as it distinguishes formal mandate from practical effectiveness and emphasizes the importance of institutional autonomy, adequate resources, and state follow-through (Reif, 2000; Carver, 2011; Pegram, 2010).

Schedler's account of accountability clarifies the stakes. Accountability contains two analytically distinct components: answerability and enforcement (Schedler, 1999). Answerability requires public officials and institutions to explain and justify their conduct. Enforcement requires the capacity to impose consequences when violations occur. The TRC and CIEDP may generate answerability through investigations, hearings, documentation, findings, and recommendations – while the NHRC may reinforce that answerability through independent investigations and monitoring. Yet if those outputs do not produce prosecution, reparations, disciplinary action, or institutional reform, the accountability cycle remains incomplete. This distinction is especially important for Nepal, where the repeated production of institutional outputs has not consistently translated into implemented remedies.

The move to a game-theoretic framework follows from this institutional gap. If institutions possessed automatic enforcement power, the main analytical problem would be legal design. But where enforcement depends on actors who may themselves be exposed to accountability costs, transitional justice becomes strategic. Political actors decide whether to comply, influence appointments, underfund commissions, retain ambiguity over prosecution, delay or selectively implement recommendations, or allow them to lapse. Victims decide whether to participate, litigate, boycott, mobilize, or seek international pressure. International actors decide whether to endorse progress, condition support, or withhold legitimacy. The credibility of transitional justice therefore depends on how these actors interpret institutional signals across repeated rounds.

This paper uses a repeated signaling game because the Nepal case is not defined by the absence of institutions. It is defined by the recurrence of institutional signals whose credibility remains contested. Laws, commissions, appointments, reports, and recommendations are observable actions. The relevant question is whether these actions separate genuine accountability from managed closure, or whether they operate as pooling signals that both accountability-oriented and closure-oriented actors can imitate. The institutional literature explains why formal mandate is insufficient; the game-theoretic model explains how that insufficiency becomes an equilibrium.

Model

The literature reviewed above leaves the paper with a specific institutional problem. Nepal's transitional justice process has not failed because no formal mechanisms exist. It has failed, or at least remained credibility-deficient, because formal mechanisms have not consistently altered the expected cost of impunity. A model of institutional absence would therefore miss the central feature of the case.

The model does not attempt to solve a full equilibrium characterization of Nepal's transitional justice process. It uses tools from signaling games and repeated games to formalize a narrower institutional claim: when actors differ in their willingness to bear accountability costs, observable institutional actions vary in their informational content. The distinction between low-cost and high-cost signals follows the logic of costly signaling, where a signal becomes credible only when imitation is more expensive for one type than another (Spence, 1973). The repeated structure follows the standard insight that beliefs and strategies evolve across observed histories rather than isolated one-shot interactions (Fudenberg & Tirole, 1991; Osborne & Rubinstein, 1994).

Let G denote the political actor with effective control over transitional justice design and implementation. In the Nepal case, G is best understood not as a single government but as a coalition of accountability-exposed actors: governing parties, former conflict actors, executive authorities, security-sector interests, and political elites whose costs may rise under credible accountability. Let M denote the statutory transitional justice mechanism through which truth seeking, investigation of enforced disappearances, reparations, and accountability referrals are organized. M primarily refers to the TRC and the CIEDP – along with the statutory procedures and implementation channels that govern their operation. The NHRC and the judicial system is not represented by M. Let V denote victims and civil society, and let I denote the international and legal audience whose recognition affects the legitimacy payoff of the process.

The political actor has a private type

$$\theta \in \{A, C\},$$

where A denotes an accountability-oriented type and A denotes a closure-oriented type. This distinction is behavioral rather than moral. Type accepts institutional arrangements that increase the probability of truth, reparations, prosecution, and non-recurrence even where those arrangements impose political or legal costs. Type C seeks the legitimacy associated with transitional justice while minimizing actual exposure to accountability.

In each period , the political actor influences the design or operation of the mechanism:

$$m_t \in M.$$

The mechanism generates an observable institutional signal

$$s_t = \phi(m_t), \qquad s_t \in \{L, H\},$$

where L is a low-cost signal and H is a high-cost signal. The difference is not whether the action appears important. It is whether the action changes expected enforcement. Commission formation, strategic plans, consultations, ambiguous legal reform, and the formal receipt of non-binding recommendations may all be visible while still remaining low- or medium-cost signals. Independent appointments, enforceable reparations, witness protection, clear prosecution pathways, transparent case prioritization, and referral of politically costly cases are higher-cost signals because they reduce discretion and increase accountability exposure.

Victims do not observe θ directly. They observe s_t and update their belief that the political actor is accountability-oriented. Let μ_t denote the posterior belief after observing signal s_t:

$$\mu_t(A \mid s_t) = \frac{Pr(s_t \mid A)\mu_{t-1}(A)}{Pr(s_t \mid A)\mu_{t-1}(A) + Pr(s_t \mid C)\big(1 - \mu_{t-1}(A)\big)}.$$

The prior belief $\mu_{t-1}(A)$ represents victims' inherited assessment of the process before the current signal. The likelihood term $Pr(s_t \mid A)$ captures how probable the observed signal would be if the political actor were genuinely accountability-oriented. The term $Pr(s_t \mid C)$ captures how probable the same signal would be if the political actor were instead closure-oriented. A signal shifts beliefs only when these likelihoods differ. If a commission, amendment, consultation, or report is nearly as likely under closure as under accountability, the posterior belief does not move very much. Formally visible institutional movement may therefore produce little credibility.

The important implication is that distrust can persist even when the state is visibly active. Victims do not update from a single signal in isolation. They update from a sequence of signals observed over repeated rounds: commissions formed and reformed, mandates contested, appointments delayed, recommendations issued, implementation deferred, legal amendments announced, and victim consultations repeated without clear enforcement consequences. Each new signal is interpreted against this accumulated history. This is why a later institutional announcement may fail to generate trust even if it appears stronger on paper. The posterior belief is disciplined by the record of previous signals.

The equation also clarifies the difference between symbolic process and credible commitment. A low-cost signal has weak informational value because both types can send it. A high-cost signal is informative because it is harder for a closure-oriented actor to imitate. In Nepal's case, a new strategic plan or consultation may raise visibility, but it will not substantially increase $\mu_t(A \mid s_t)$ if victims believe closure-oriented actors can produce the same action without accepting prosecution, reparations, or non-recurrence costs. Comparatively, independent appointments, enforceable reparations, protected testimony, case referrals, and binding follow-up to recommendations would carry greater informational content because they raise the cost of imitation for type C.

The posterior changes meaningfully only when the signal is informative about type. If both types can rationally send the same signal,

$$s_t(A) = s_t(C),$$

the signal is pooling. It may create institutional movement without resolving uncertainty. A separating signal requires

$$U_G(H, A) \geq U_G(L, A)$$

and

$$U_G(H, C) < U_G(L, C).$$

That is, the accountability-oriented type must prefer the costly signal, while the closure-oriented type must find imitation too expensive.

A reduced-form payoff for the political actor is

$$U_G(s_t, \theta) = B(s_t) - C(s_t, \theta) - A(s_t),$$

where $B(s_t)$ is the legitimacy benefit generated by the signal, $C(s_t, \theta)$ is the type-dependent cost of producing it, and $A(s_t)$ is expected accountability exposure. The model becomes interesting when

$B(L)$ is high. If low-cost process signals generate sufficient domestic or international legitimacy, a closure-oriented actor can remain within the transitional justice process without moving toward high-cost accountability.

Victims choose whether to participate or resist:

$$v_t \in \{P, R\},$$

where P denotes participation or conditional engagement and R denotes resistance through boycott, litigation, or mobilization. Participation is chosen when

$$E[U_v(P) \mid s_t] \geq E[U_v(R) \mid s_t].$$

This condition is deliberately minimal. It does not require victims to be modeled as homogeneous or purely instrumental. It only requires that participation have expected value. If engagement supplies legitimacy to a process that does not raise the expected probability of truth, reparations, prosecution, or non-recurrence, resistance can be an equilibrium response.

The international element enters through the legitimacy term. If international actors endorse low-cost signals too early, $B(L)$ rises and the closure-oriented type has less reason to move toward H. Conditional recognition has the opposite effect. It reduces the payoff to procedural compliance and raises the relative value of costly reform. This is why the repeated structure matters - future signals are not interpreted on a blank slate. They are evaluated against previous rounds of implementation, non-implementation, delay, and institutional drift.

The equilibrium of interest is a low-credibility pooling equilibrium. In this equilibrium, a closure-oriented political actor continues to send low-cost institutional signals because those signals generate legitimacy without imposing the legal, political, or fiscal costs of enforcement. Victims observe that the same signals could be produced by either an accountability-oriented actor or a closure-oriented actor, so their posterior belief in genuine accountability does not rise enough to justify full trust. The process therefore remains formally active while remaining substantively distrusted.

The model yields the paper's central thesis: where transitional justice institutions repeatedly generate process signals without changing enforcement, victim distrust should persist despite formal progress. Trust should increase only when observed signals become costly enough to distinguish accountability from closure.

Application

The purpose of applying the model to Nepal is not to restate post-conflict history. That was already done in the preceding section. The question here is narrower: which observed institutional actions in Nepal are likely to be informative signals, and which are more consistent with pooling?

Nepal's transitional justice process has produced several forms of visible institutional movement. The CPA created a political and normative foundation for accountability and non-recurrence. The constitutional process restructured the state around republicanism, federalism, secularism, and inclusion. The TRC and CIEDP were established as the statutory mechanisms responsible for addressing conflict-era violations. Alongside them, the NHRC continued to operate as a constitutionally established accountability institution capable of investigating violations and monitoring state compliance, but not of implementing the transitional justice process itself. These developments matter, but they do not by themselves identify the state's type in the model.

The central empirical difficulty is that many of these actions are compatible with both accountability and closure. For example, an accountability-oriented actor may create a commission to investigate violations and generate pathways to truth, reparations, and prosecution. A closure-oriented actor may also create a commission to absorb pressure, proceduralize the issue, and convert demands for justice into managed institutional delay. The same signal can therefore be sent by both types. Unless the commission has credible independence, sufficient resources, protection for victims and witnesses, transparent case-selection rules, and a path from findings to enforcement, its existence is weakly informative.

The TRC and CIEDP sit directly inside this logic. Their weakness does not show that transitional justice was absent. It shows that the mechanisms through which transitional justice was delegated were not sufficiently insulated from actors with an interest in non-enforcement. Political interference, executive stalling, underfunding, legal ambiguity, and recurring disputes over the accountability of grave violations make commission activity a poor separating signal. The delayed implementation within these bodies preserves a pooling equilibrium: political actors can continue to claim process while avoiding the costs associated with final determinations, case referrals, or prosecutions.

Commission appointments provide a particularly useful illustration. The formal appointment of commissioners is observable and may allow political actors to claim that the process has resumed. However, an appointment becomes an informative signal only when the selection process limits partisan control, produces commissioners with sufficient competence and independence, and protects the commissions from subsequent political interference. If political actors exposed to potential legal or political accountability retain decisive influence over appointments, the signal remains compatible with both genuine reform and managed closure.

The same logic applies to the operation of the commissions. Victim registration, consultation, strategic planning, and preliminary investigation demonstrate institutional activity, but they become credible only when they affect case prioritization, protection measures, reparations, findings on grave violations, and pathways to referral or prosecution. Adequate budgets, professional staffing, transparent procedural rules, and protection against executive obstruction therefore matter not simply as administrative inputs. They determine whether the TRC and CIEDP can impose constraints that a closure-oriented actor would find costly to accept.

The NHRC reinforces this analysis through a different institutional channel. It can investigate, document, report, recommend, and monitor, but it does not control the implementation of the statutory transitional justice process. An NHRC recommendation is therefore not, by itself, a costly signal from the political actor. The informative signal is the state's response to that recommendation. Implementation involving reparations, disciplinary action, prosecution, institutional reform, or formal acknowledgment may impose material costs and therefore alter beliefs. Non-implementation, by contrast, can strengthen the inference that answerability is being tolerated without enforcement. The NHRC thus contributes evidence about the credibility of the broader process without determining that credibility on its own.

Legal reform also falls into the same category. A statutory amendment is not negligible in the ordinary sense - it requires political coordination and creates a formal legal record. But it remains a pooling signal if the reform preserves ambiguity, limits victim appeal, weakens prosecution pathways, or delegates decisive authority to politically exposed actors. Legal change becomes a separating signal only where it reduces discretion in ways that closure-oriented actors would prefer to avoid. Clear limits on amnesty, independent appointments, witness protection, enforceable reparations, transparent case prioritization, implementation of commission findings, and credible referral mechanisms matter because they increase the cost of imitation.

The model therefore leaves three important applications for Nepal's TJ process.

First, victim trust should respond less to the announcement of institutions than to evidence that those institutions restrict political discretion. This explains why victims may remain skeptical even after legal amendments, appointments, or official plans. Such skepticism is not inconsistent with institutional movement. It is a rational response when the signal does not match expected enforcement.

Second, delay should not be treated only as an administrative failure. Delay changes the relative payoffs of the actors. For victims, time increases the cost of mobilization, weakens evidence, ages witnesses, and fragments attention. For accountability-exposed actors, delay may reduce the probability and salience of future accountability. This is the war-of-attrition component of the model: $\delta E[C^A_{t+1}] < C^H_t$.

When the discounted expected cost of future accountability is lower than the current cost of credible reform, delay becomes strategically sustainable even if it is not centrally planned.

Third, victim-centered justice should be evaluated as an incentive-compatibility condition rather than as a procedural slogan. Victims participate when

$$E[U_V(P) \mid s_t] \geq E[U_V(R) \mid s_t].$$

Consultation alone does not satisfy this condition. Participation becomes credible only when it affects commissioner selection, case prioritization, reparations design, protection measures, findings on grave violations, prosecution pathways, or implementation follow-up. If participation merely adds legitimacy to a process whose enforcement remains discretionary, non-participation, litigation, or internationalization can be the rational strategy.

Table 1 summarizes how the model classifies the principal institutional signals in Nepal's process.

The table does not rank legal desirability but instead classifies institutional actions by their informational content. During the TJ period, Nepal has generated many signals in the low- and medium-cost range. These signals are sufficient to show that the statutory transitional justice remains formally alive, but not sufficient to demonstrate that political actors exposed to potential legal or political accountability have lost control over appointments, reparations, or enforcement. This is why the process can be active and distrusted at the same time.

The policy implication follows directly. Reform should not be assessed only by whether it expands institutional language or creates another procedural layer but instead on whether it changes relative payoffs. Independent appointments reduce political control. Budget-backed reparations make recognition fiscally costly. Witness protection raises the credibility of testimony. Public case-prioritization rules reduce discretionary delay. Implementation of TRC, CIEDP or other independent accountability findings like NHRC findings converts documentation and answerability into reparative, institutional, or prosecutorial consequences. Case referral for grave violations directly raises accountability exposure. These measures matter because they are difficult for a closure-oriented actor to imitate without bearing real costs.

Nepal's transitional justice trap is a problem of excessive substitutability between process and commitment. The low credibility pooling equilibrium persists as long as low-cost signals can substitute for costly accountability. Political actors retain legitimacy from process. Institutions continue to generate outputs. International

Table 1: Institutional Signals and Credibility in Nepal's Transitional Justice Process

Observed action	Model interpretation	Credibility implication
Commission formation	Pooling or Medium-cost signal	Visible process; weakly informative without independence, resources, and enforcement.
Legal amendment	Medium-cost signal	More credible when it reduces ambiguity and limits discretion.
Victim consultation	Variable signal	Credible only when it constrains procedure, remedies, or case handling.
Strategic plan or report	Low-cost unless implemented	Produces answerability but may not change incentives.
Recommendation implementation	Medium-cost signal	Credible when it produces legal, fiscal, or institutional consequences.
Independent appointments	High-cost signal	Reduces political control over the mechanism.
Budget-backed reparations	High-cost signal	Converts recognition into fiscal commitment.
Case referral or prosecution	Separating signal	Directly increases accountability exposure.

audiences can acknowledge movement. Victims, however, observe that the underlying probability of truth, reparations, prosecution, and non-recurrence has not shifted enough to justify trust. The model explains this distrust not as a failure of civic cooperation, but as the expected response to repeated weak signals.

Conclusion

This article has argued that Nepal's transitional justice process is best understood as a repeated signaling game under weak commitment. The central issue is not the absence of formal institutional movement. Nepal has produced legislation, commissions, consultations, reports, recommendations, strategic plans, and repeated public commitments to victim-centered justice. The issue is why these forms of progress have not produced durable victim trust.

The model developed here explains that gap through the distinction between pooling and separating signals. Many transitional justice actions are observable but not sufficiently costly to distinguish genuine accountability from managed closure. A closure-oriented actor can support a commission, endorse a consultation, announce a plan, or accept ambiguous reform while preserving discretion over implementation. Victims, observing this pattern over repeated rounds, rationally discount new signals unless they alter expected enforcement.

This framework also clarifies the distinct institutional roles of the bodies considered in the article. The TRC and CIEDP are the statutory mechanisms through which Nepal's transitional justice process is formally organized. They can generate answerability through investigation, victim engagement, documentation, findings, reparations recommendations, and case handling. The NHRC occupies a supporting accountability role: its investigations and recommendations can supply independent evidence concerning violations and state compliance, but it does not implement transitional justice in the same manner as the two commissions. Across both institutional channels, answerability remains insufficient where appointments are politically controlled, budgets are dependent, recommendations remain unimplemented, and prosecution pathways remain uncertain.

The policy implication is stricter than a call for renewed commitment. Credible transitional justice requires signals that are costly, observable, and difficult for closure-oriented actors to imitate. Independent appointments, enforceable reparations, witness protection, transparent case prioritization, referral of grave violations, and binding follow-up mechanisms matter because they change incentives. They reduce the ability of political actors to obtain legitimacy from process alone.

Nepal's transitional justice problem is therefore not simply legal, administrative, or moral. It is strategic. The central question is whether the institutions created in the name of justice alter the payoff structure of actors who benefit from impunity. Until they do, formal progress can coexist with substantive distrust, and victim skepticism will remain less a failure of cooperation than a rational response to repeated weak signals.

References

Arthur, P. (2009). How "transitions" reshaped human rights: A conceptual history of transitional justice. *Human Rights Quarterly, 31(2),* 321–367. https://doi.org/10.1353/hrq.0.0069

Balasco, L. (2013). The transitions of transitional justice: Mapping the waves from promise to practice. *Journal of Human Rights, 12(2)*, 198–216. https://doi.org/10.1080/14754835.2013.784858

Bhandari, S. D. (2015). *The role of national human rights institutions in ending impunity for human rights abuses during conflict: The case of Nepal***.** Danish Institute for Human Rights.

Carver, R. (2011). A new answer to an old question: National human rights institutions and the domestication of international law. *Human Rights Law Review, 11*(1), 1–32. https://doi.org/10.1093/hrlr/ngq045

Carver, R., & Handley, L. (2016). Does the Paris Principles live up to their promise? Evaluating the effectiveness of national human rights institutions. *Nordic Journal of Human Rights*.

de Greiff, P. (2012). *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition* (A/HRC/21/46). United Nations Human Rights Council.

Dhakal, T. (2026). Constitutional design and the limits of non-repetition within Nepal's transitional justice. *The Informal, 3*(1).

Duthie, R. (2014). Transitional justice, social change, and economic development. *International Journal of Transitional Justice, 8*(1), 166–187. https://doi.org/10.1093/ijtj/ijt028

Duthie, R. (2021). *Transitional justice and prevention*. International Center for Transitional Justice. https://www.ictj.org/sites/default/files/ICTJ_Report_Overview_TJ_Prevention.pdf

Fudenberg, D., & Tirole, J. (1991). *Game theory*. MIT Press.

GANHRI. (2025). *Accreditation status as of 4 December 2025*. Global Alliance of National Human Rights Institutions. https://ganhri.org/wp-content/uploads/2025/12/Accreditation-Status-Chart_Dec2025.pdf

Gibbons, R. (1992). *Game theory for applied economists*. Princeton University Press.

Global Alliance of National Human Rights Institutions. (n.d.). *National human rights institutions*. https://ganhri.org/nhri/

Jeffery, R. (2017). Nepal's comprehensive peace agreement: Human rights, compliance and impunity a decade on. *International Affairs,* **93**(2), 343–364. https://doi.org/10.1093/ia/iix007

Jeffery, R. (2019). *Nepal's Truth and Reconciliation Commission limps on*. Lowy Institute. https://www.lowyinstitute.org/the-interpreter/nepal-s-truth-reconciliation-commission-limps

Kafle, S. (2026). From recognition to redress: Rethinking reparations for conflict-related sexual violence in Nepal. International Journal of Transitional Justice, 20(1), 38–53. https://doi.org/10.1093/ijtj/ijaf030

Mani, R. (2002). *Beyond retribution: Seeking justice in the shadows of war*. Polity Press.

Nagy, R. (2008). Transitional justice as a global project: Critical reflections. *Third World Quarterly, 29*(2), 275–289. https://doi.org/10.1080/01436590701806848

National Human Rights Commission, Nepal. (2024). *Annual report 2080/81 B.S.* Government of Nepal.

National Human Rights Commission, Nepal. (2026, May 27). *Investigation report on the human rights violations during the Gen Z protests of September 8–9, 2025*. Government of Nepal.

Office of the United Nations High Commissioner for Human Rights. (2012). *The Nepal Conflict Report*. https://www.ohchr.org/en/documents/country-reports/nepal-conflict-report

Osborne, M. J., & Rubinstein, A. (1994). *A course in game theory*. MIT Press.

Pegram, T. (2010). National human rights institutions in Latin America: Politics and institutionalization. *Journal of Latin American Studies, 42*(1), 1–34. https://doi.org/10.1017/S0022216X1000003X

Reif, L. C. (2000). Building democratic institutions: The role of national human rights institutions in good governance and human rights protection. *Harvard Human Rights Journal, 13*, 1–69.

Reif, L. C. (2011). Transplantation and adaptation: The evolution of the human rights ombudsman. *Boston College Law Review, 49*, 159. https://doi.org/10.2139/ssrn.1824667

Schedler, A. (1999). Conceptualizing accountability. In A. Schedler, L. Diamond, & M. F. Plattner (Eds.), **T***he self-restraining state: Power and accountability in new democracies* (pp. 13–28). Lynne Rienner Publishers.

Spence, M. (1973). Job market signaling. *The Quarterly Journal of Economics, 87*(3), 355–374. https://doi.org/10.2307/1882010

Takata, H. (2022). How are the Paris Principles on NHRIs interpreted? Towards a clear, transparent, and consistent interpretative framework. *Nordic Journal of Human Rights, 40*(2), 285–305. https://doi.org/10.1080/18918131.2022.2040863

Teitel, R. G. (2000). *Transitional justice*. Oxford University Press.

Teitel, R. G. (2003). Transitional justice genealogy. *Harvard Human Rights Journal, 16*, 69–94.

Truth and Reconciliation Commission, Nepal. (2026). *Four-year strategic plan 2026–2030 of the TRC*. Government of Nepal.

United Nations General Assembly. (1993, December 20). *Principles relating to the status of national institutions (The Paris Principles)* (A/RES/48/134). https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris

United Nations Security Council. (2004). *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General* (S/2004/616). United Nations. https://www.un.org/en/ga/search/view_doc.asp?symbol=S/2004/616

Waldorf, L. (2012). Anticipating the past: Transitional justice and socio-economic wrongs. *Social & Legal Studies, 21*(2), 171–186. https://doi.org/10.1177/0964663912439519

The Informal: South Asian Journal of Human Rights and Social Justice
Volume 03 Issue 01, 20256 pp. 29–46
Research Article
https://doi.org/10.3126/informal.v3i1.97531

Digital Spaces, Structural Inequalities: Rethinking TFGBV in South Asia's Legal and Socio-Cultural Context

Sadichchha Silwal and Sanjina Kshetri
Advocate

Article Info.

Corresponding Author
Sadichchha Silwal

Email
sadii.silwal@gmail.com

Article History
Received: 30 April 2026
Accepted: 1 July 2026
Published: 31 July 2026

How to Cite this Article
Silwal, S., & Kshetri, S. (2026). Digital Spaces, Structural Inequalities: Rethinking TFGBV in South Asia's Legal and Socio-Cultural Context. *The Informal: South Asian Journal of Human Rights and Social Justice, 3* (1), 29-46.

Abstract

This article explores the growing prevalence of technology-facilitated gender-based violence (TFGBV) in South Asia within the context of rapid digital expansion and persistent structural inequalities. While increased internet penetration across Nepal, India, Pakistan, Bangladesh, and Sri Lanka has enabled greater access to information, freedom of expression, and economic participation, it has simultaneously amplified gendered forms of harm in digital spaces. Manifestations of TFGBV, including cyberstalking, doxxing, image-based abuse, and online sexual harassment, reflects a spillover of entrenched patriarchal violence into digital spaces rather than a completely new phenomenon. Adopting a triangulated qualitative methodology, the study combines doctrinal legal analysis with a comparative and socio-legal approach to assess the adequacy of legal frameworks and their enforcement mechanisms. The findings suggest that legal responses across the region remain fragmented, morality-driven, and heavily reliant on criminalization, often failing to address the consent-based, intersectional, and rapidly evolving nature of digital harms. Legal ambiguities, weak enforcement mechanisms, and limited institutional capacity further widen the gap between formal protections and the lived realities of survivors. The article further underscores how socio-cultural barriers, including victim-blaming attitudes, honor-based social norms, and unequal access to digital technologies, restrict reporting and impede access to justice. It argues that TFGBV not only inflicts harm on individuals but also restricts women's participation in public and digital spaces, thereby undermining democratic engagement and civic inclusion. It calls for a shift toward survivor-centered, rights-based approaches integrating legal reform, platform accountability, digital literacy, and broader processes of social transformation.

Keywords: technology facilitated gender based violence, socio legal analysis, south asia, structural inequality, survivor centered justice

Introduction

The development of computers and the internet since the mid-twentieth century has fundamentally transformed contemporary societies. Technological innovation has profoundly transformed society- influencing daily life, culture, politics, and economics. It has reshaped patterns of communication, governance, and social interaction, giving rise to an increasingly interconnected digital world. Across South Asia, internet penetration has expanded rapidly, driven by the widespread availability of affordable smartphones and mobile data services. As of late 2025, internet penetration in India stood at approximately 70 percent, with over 1.03 billion users, compared to 644 million users in 2021 (Kemp, 2025a). In early 2026, Pakistan's internet penetration rate was 45.6 percent with approximately 117 million internet users (Kemp, 2025b). During the same period, Sri Lanka stood at 59.7 percent, representing 13.9 million individual users, (Kemp, 2025c), while Bangladesh remained at 47 percent with 82.8 million users (Kemp, 2025d). In Nepal, the internet penetration rate stood at 56 percent with approximately 16.6 million internet users (Kemp, 2025e), with the information technology (IT) sector contributing around 1.7 percent of the national GDP (National Statistics Office, 2025). With this, the internet has emerged as a critical platform for communication, participation, and the exercise of fundamental freedom. According to the UNFPA, digital technologies enabled women to access information, amplify their voices, advocate for required change, and pursue economic opportunities (UNFPA, 2024).

Alongside these advances, the misuse of digital tools has also increased, disproportionately targeting women and girls in the form of technology-facilitated gender-based violence (TFGBV). While enabled by contemporary technologies, TFGBV represents an evolution of traditional forms of gender-based violence (GBV), extending them into online and digitally mediated spaces. TFGBV encompasses a broad spectrum of abusive behaviors such as cyberstalking, doxxing, image-based abuse, sextortion, online sexual harassment, and cyberbullying. This form of GBV goes beyond geographical boundaries, infiltrating both private and public spheres, and often blurring the distinction between online and offline harms. In many instances, digital abuse serves as a precursor to or facilitator of offline violence, including stalking, physical assault, and in extreme cases, femicide.

The scale and prevalence of TFGBV has become a growing global concern. According to UN women, millions of women worldwide experience technology-facilitated violence each year (UN Women, 2025). UN Women estimates indicate that between 16 and 58 percent of women globally have experienced some form of online or technology-facilitated violence (UN Women, 2022). Regional data further underscores the widespread nature of the problem. In Arab States, approximately 60 percent of female internet users report experiencing online violence (UN Women, 2021). Research conducted across twelve countries in Eastern Europe and Central Asia found that over 50 percent of women aged 18 and above had experienced some form of technology-facilitated abuse (UN Women, 2024). Similarly, a five-country study in Sub-Saharan Africa reported 28 percent of women had encountered online violence (Iyer et al., 2020), while a survey conducted across countries in Europe and the United States found 23 percent of women aged 18-55 had experienced at least one form of online abuse or harassment (Amnesty International, 2017).

These challenges are particularly significant in South Asia. Although countries in the region are rapidly expanding their digital infrastructure and online populations (Singh & Ferraz, 2023), they continue to undergo complex political, economic, and institutional transitions. For instance, Nepal continues to navigate post-conflict democratic consolidation amid recurring political instability; Sri Lanka is recovering from a protracted economic crisis; Bangladesh has experienced significant economic volatility amid political suppression; Pakistan continues to face recurring volatile politics; and India's democratic expansion with rising authoritarian tendencies are all pointing towards a similar trend in South Asia i.e. transitional period. This volatile intersection of political flux and rapid digitization creates a precarious environment where technological advancement frequently outpaces the evolution of legal, regulatory, and institutional safeguards. As a result, women and marginalized groups remain particularly vulnerable to emerging forms of digital harm.

The challenges posed by TFGBV are further exacerbated by deeply rooted social inequalities. Across South Asian countries, patriarchal social structures continue to shape gender relations and influence women's access to opportunities, resources, and justice. These inequalities are reinforced in the forms of discrimination based on caste, ethnicity, religion, class, disability, and other social identities. Every nation in the region is carrying out out the burden of patriarchal norms, weak regulatory frameworks, and bears the spectrum of this burden in its societal practices. Within this context, TFGBV is often dismissed as a normal digital byproduct or as a mere cost of women's visibility in public spaces. Such perceptions obscure the structural nature of the problem. Rather than constituting a distinct form of violence detached from social realities, TFGBV reflects the amplifications of existing patterns of discrimination, control, harassment, and violence into digital spaces. Consequently, online environments frequently reproduce and reinforce the same gendered hierarchies that constrain women's participation in social, political, and economic life.

Against this backdrop, this paper aims to understand the ongoing scenario of South Asia where the undergoing rapid digital transformation, legal loopholes and deeply entrenched gender inequalities are driving the experiences of women in the digital space. This paper critically investigates TFGBV in South Asia through three interrelated analytical lenses: first, the conceptualization and recognition of digital harms within regional legal frameworks; second, the adequacy of current legal responses to emerging technological threats, including artificial intelligence (AI) enabled harms such as deepfakes; and third, the socio-legal barriers that impede reporting, accountability, and access to justice for survivors.

Employing a triangulated qualitative methodology, the study combines doctrinal analysis of legislation across Nepal, India, Pakistan, Sri Lanka and Bangladesh with a comparative regional review. These findings are further contextualized through a socio-legal analysis, contrasting statutory provisions with empirical data on survivor experiences, enforcement gaps, and institutional responses. By examining the relationship between law, technology, and social structures, the article seeks to illustrate the persistent gap between formal legal guarantees and the lived realities of women experiencing technology-facilitated violence in South Asia.

Conceptual Framework

TFGBV represents an evolving and multifaceted form of harm that emerges at the intersection of digital technologies and structural gender inequalities. According to the UNFPA, TFGBV refers to "*an act of violence perpetrated by one or more individuals that is committed, assisted, aggravated and amplified in part or fully by the use of information and communication technologies or digital media against a person on the basis of their gender*" (UNFP, n.d.). Similarly, UN Women conceptualizes Technology Facilitated Violence Against Women (TFVAW), a term often used *interchangeably with TFGBV,* as "*any act committed, assisted, aggravated, or amplified by the use of ICTs or other digital tools, that results in or is likely to result in physical, sexual, psychological, social, political, or economic harm, or other infringements of rights and freedoms*" (UN Women & World Health Organization, 2022). These definitions emphasize that digital violence is not merely a technological phenomenon but a manifestation of broader systems of gender inequality and discrimination that frequently intersect with race, ethnicity, class, gender identity, sexual orientation, and disability.

Distinguishing TFGBV from broader categories of cybercrime is conceptually crucial. While acts such as cyberstalking, doxxing, online harassment, image-based sexual abuse, and gendered disinformation are often addressed within the broader category of cybercrime, TFGBV differs in its inherently gendered nature. Unlike conventional cybercrime, which is generally concerned with unauthorized access, fraud, or digital security, TFGBV targets individuals based on gender and exploits existing social hierarchies and structural vulnerabilities. Understanding TFGBV therefore requires moving beyond technologically deterministic perspectives that view digital platforms as neutral tools that are merely misused. Instead, it necessitates an examination of how technology interacts with pre-existing social relations, power structures, and systems of discrimination.

Feminist legal scholars provide an important theoretical foundation for understanding this relationship. MacKinnon (1989) argues that the law often reproduces and legitimizes gendered hierarchies, portraying women as inherently inferior or dependent and embedding masculinist values into legal systems. Such critiques are particularly relevant in South Asia, where gender inequalities are reinforced not only through formal legal frameworks but also through deeply rooted cultural norms that privilege male authority and constrain women's autonomy (The Annapurna Express, 2025). Women's struggles derive not merely from isolated injustices but from entrenched socio-cultural structures that normalize inequality as normative rather than exceptional. Even celebrated moments in technology leadership reveal persistentgendered expectations. For instance, the public debate in 2012 surrounding the pregnancy of a prominent tech CEO underscored how questions of whether one can "have it all" are disproportionately directed at women and rarely at men, thereby reinforcing persistent biases about gender, work, and value in technology-shaped spaces (ABC7, 2012). Similarly, in 2021, a software engineer recounted returning from maternity leave only to find her new-mother status perceived as a "big problem" by certain big tech teams, exposing tension between the industry's self-image of flexibility and its gendered practices (Kate, 2021). During Nepal's March 2026 elections, women candidates were subjected to online abuse targeting their bodies, pregnancy and reproductive status as evidence of supposed unfitness for political office, with commentators urging them to "stay at home" (Chand, 2026). Such attacks illustrate how digital spaces reproduce longstanding gender hierarchies, using women's physicality and prescribed roles to question their participation in public life.

Earlier feminist scholarship highlighted how the private lives of women were neglected in the law and denied appropriate legal recognition. Today, however, the dividing line between private and public spheres has become increasingly narrower. Women now articulate their identities and experiences through social media, often facing resistance from traditional social norms that show what, how and when women express themselves. TFGBV extends this dynamic, as private interactions are weaponized in public platforms-for instance, leaked private chats following a rejected romantic proposal, reflecting the persistence of patriarchal norms.

Digital environments, often designed with masculinist assumptions, exacerbate these harms by enabling surveillance and control while framing violations as individuals rather than systemic. Moreover, the economic architecture of social media platforms rewards engagement and amplifies provocative, emotionally charged content, allowing misogynistic and hyper-masculine narratives to thrive through algorithmic promotion and monetized virality (Agyare, 2025). The convergence of cultural patriarchy, algorithmic bias, and digital capitalism (Scasserra, 2024) thus reinforces gender hierarchies and accelerates the normalization of TFGBV, particularly in socioeconomically fragile contexts (Renström & Bäck, 2024). In such settings, young people are especially vulnerable, consuming algorithmically curated content that structurally reproduces patriarchy norms.

Comparative Legal Frameworks: Criminalization as Primary Response

South Asian countries, particularly Nepal, India, Pakistan, Bangladesh, and Sri Lanka, have adopted laws to address TFGBV, though these responses remain predominantly a criminalization-focused approach. This section outlines key legislative measures across these five South Asian countries that aim to respond to TFGBV.

Nepal

The Constitution of Nepal (2015) guarantees right to equality under Article 18, explicitly prohibiting gender discrimination, and protects privacy under Article 28, including personal data, correspondence, and character. Freedom of expression and communication is safeguarded under Articles 17 and 19, subject to reasonable restrictions for public morality or harmony. Article 21 guarantees victims of crime the right to justice, including social rehabilitation, compensation, and information about the investigation and legal proceedings. Article 38(3) prohibits violence or exploitation against women on grounds of religion, social, cultural tradition, practice or on any other grounds, entitling victims to compensation. These provisions theoretically safeguard against TFGBV as violations of dignity and equality, yet digital application remains limited, with courts rarely interpreting them expansively for online gender harms.

The primary statutory framework relies on the outdated Electronic Transactions Act (2006) (amended in 2015), particularly Section 47, which penalizes publication or display of electronic materials contrary to public morality, decency, or spreading hate or jealousy with fines up to NPR 100,000 and/or up to 5 years imprisonment. This vague, morality-oriented provision has been applied to cyber harassment, non-consensual image sharing, defamation, and obscene content against women, but risks criminalizing victims themselves. Supplementary provisions in the National Penal Code (2017) include Section 121 (obscenity), Section 224 (sexual harassment), and Section 225 (child sexual harassment, including offenses committed through electronic media). However, this morality-based framing often shifts focus from consent to content, imposing evidentiary burdens on survivors. Section 66(3) of the Act Related to the Rights of Children (2018) offers specific protections for minors but remains significantly underutilized.

The existing legal framework governing cybercrime remains notably limited in scope, as it fails to explicitly recognize and address emerging forms of TFGBV, such as sextortion, deepfakes, cheapfakes, and online grooming. There is no dedicated statutory provision to address non-consensual dissemination of intimate images, commonly referred to as "revenge pornography". Data protection under the Privacy Act (2018) (Individual Privacy Act, 2018) remains fragmented and insufficiently gender responsive. Importantly, existing laws do not adequately account for the intersectional dimensions of TFGBV, which disproportionately affect women and girls from marginalized communities, including Dalit and Madhesi individuals as well as women in public and professional spheres. These gaps underscore the absence of a comprehensive, inclusive, and gender-responsive legal approach.

The long-overdue Information Technology and Cyber Security Bill (2025) seeks to modernize Nepal's cybercrime framework by addressing digital records, cybersecurity, and emerging technological threats, but has been subject to significant criticism. There have been concerns raised regarding its vague provisions, which risk undermining freedom of expression; lack of a gender-sensitive perspective, and absence of survivor-centered mechanisms. This failure underscores systemic delays in reform. Moreover, following the dissolution of Parliament in the aftermath of the Gen-Z protests, the bill has effectively lapsed, further delaying much-needed legal reform.

Critically, existing legal provisions remain grounded in morality-based standards emphasizing notions such as "public decency" and "social harmony" rather than principles of gender justice. This approach not only enables potential misuse of the law, such as victim-blaming and retaliatory litigation against survivors, but also fails to address underlying structural drivers of online misogyny. The increasing number of complaints related to violence against women in digital spaces, around 54 cybercrime cases lodged per day (Nepal Police, 2023) and over 18,000 cases in FY 2025/26 (Nepal Police n.d.), highlight systemic shortcomings. Despite rising reports, prosecution rates remain low due to evidentiary challenges, limited forensic capacity, inadequate training among law enforcement personnel, resource constraints, and weak cooperation from digital platforms. These institutional challenges, coupled with persistent social stigma, contribute to significant underreporting and impede access to justice for survivors.

India

The Indian constitutional framework offers foundational protections against GBV, including TFGBV, though their application remains uneven.

Articles 14 and 15 of the Constitution guarantee equality before the law and prohibit discrimination on grounds of sex, while Article 21, expansively interpreted by the Supreme Court in *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017), incorporates the right to privacy and thereby underpins protections against non-consensual digital intrusions.

The primary statutory instruments remain the Information Technology Act (2000) (as amended in 2008) and complementary provisions of the Indian Penal Code (1860) (IPC), now largely subsumed under the Bharatiya Nyaya Sanhita, 2023 (BNS), effective from July 2024. Under the Information Technology Act, Section 66E criminalizes violation of privacy through the capture, publication, or transmission of private images without consent. Sections 67, 67A, and 67B address the publication or transmission of obscene material, sexually explicit content, and child pornography in electronic form. Parallel provisions in the BNS include Section 75 (sexual harassment, formerly IPC 354A), Section 77 (voyeurism, formerly 354C), Section 78 (stalking, including cyberstalking, formerly 354D), and Section 79 (acts intended to insult the modesty of woman, formerly 509). These provisions are frequently invoked in TFGBV cases involving non-consensual intimate imagery, cyberstalking, and online harassment. (Khan et al., 2025; The Digital Personal Data Protection Act, 2022)

The Digital Personal Data Protection Act (2023) (DPDP Act), its Rule enacted in November 2025, introduces a consent-based framework for the processing of digital personal data, including obligations for data fiduciaries regarding security, breach notification, and individual rights. However, its scope remains general and does not explicitly address gendered digital harms such as revenge pornography or deepfake abuse, leaving significant gaps in survivor-centric remedies.

Regulatory developments have sought to address emerging threats, particularly synthetic media. In February 2026, the Ministry of Electronics and Information Technology (MeitY) modified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules (2026), introducing obligations for intermediaries regarding "synthetically generated information" (SGI), defined as audio-visual content artificially or algorithmically created or altered to appear indistinguishable from reality (explicitly encompassing deepfakes) (Bhatt Joshi Associates, 2026). Requirements include mandatory labelling of SGI, embedding provenance metadata, quarterly user notifications on misuse liabilities, expedited takedown timelines for flagged harmful content (e.g., nudity, impersonation, or non-consensual intimate imagery), and due diligence to prevent dissemination of misleading or privacy-violating material. While proactive, critics note risks of overbreadth and potential constrictive effects on free expression.

Despite this evolving architecture, Indian TFGBV laws remain predominantly morality-oriented, centered on notions of "obscenity" and "modesty", rather than explicitly survivor-justice or consent-based. This framing facilitates selective enforcement, survivor-blaming, and weaponization of provisions against victims themselves, e.g., through counter-cases or threats of prosecution under obscenity laws. The existing data shows the scale of the crisis: National Cyber Crime Reporting Portal (NCRP) figures show cybercrime complaints against women rose from 48,335 in 2024 to 76,657 in 2025, a 58 percent increase in one year, with obscene content (37,743 cases) and sexually explicit acts (19,703 cases) dominating reports (Storyboard18, 2026). Between 2020 (22,188 cases) and 2024(48,475 cases), online crimes against women surged by 118.4 percent (Francis A.M., 2025). Deepfake-specific abuse has escalated dramatically, with reports indicating a 900 percent growth in volume and 98 percent of explicit deepfakes targeting women (Shinde, 2026). Underreporting remains rampant; one study estimates that 62 percent of deepfake abuse cases involving women go unreported due to stigma and fear of retaliation (Shinde, 2026).

Overall, while India has a basic legal framework to address TFGBV, its reliance on morality-based approach, punitive laws, fragmented implementation, and weak enforcement fail to meet survivors' realities. Reforms such as consent-based offences for image abuse, mandatory gender-sensitization, stronger integration with the DPDP Act, and survivor-led monitoring of the 2026 IT Rules are essential for advancing meaningful justice.

Pakistan

Article 25 of the Constitution of Pakistan guarantees equality of citizens before the law and prohibits discrimination on the basis of sex, while Article 14(1) declares the dignity of man and the privacy of the home to be inviolable. Although the limited judicial pronouncements have extended the right to privacy to personal data and digital contexts, enforcement in online spaces remains weak. In practice, broad cyber laws have often been deployed to suppress dissent rather than safeguard against gendered online harms, creating a persistent tension between expressive freedoms and the need to curb digital violence.

The cornerstone of Pakistan's cybercrime legislation is the Prevention of Electronic Crimes Act (PECA) (2016). Key provisions of the Act invoked in TFGBV cases include Section 20 (offences against the dignity of a natural person), Section 21(offences against the modesty of a natural person, including minors), Section 24 (criminalizes cyberstalking), and Section 22 (prohibits child pornography). These are frequently supplemented by provisions from the Pakistan Penal Code (1860) (PPC) such as Section 416 (cheating by personation) and Section 500 (defamation). Although these sections provide means to address non-consensual sharing of intimate images, online harassment, and stalking, the framework remains heavily oriented toward notions of "dignity" and "modesty" rather than explicit consent, survivor autonomy, or recognition of misogynistic intent.

In January 2025, Parliament passed the Prevention of Electronic Crimes (Amendment) Act (2025), introducing significant institutional changes. The amendments established the Social Media Protection and Regulatory Authority (SMRA or SMPRA) with broad powers to regulate unlawful or offensive content, issue 24-hour takedown orders, enlist and oversee social media platform compliance, and impose sanctions or shutdown of non-compliant services (Amnesty International, 2025). A three-tier complaints mechanism was created, involving the Authority, a Council, and appellate Tribunals, with appeals bypassing High Courts directly to the Supreme Court. Additional provisions criminalized the dissemination of "false or fake information," with penalties of up to three years imprisonment. While intended to address disinformation, these provisions have been widely criticized for their vagueness and potential misuse to silence victims or critics reporting TFGBV. Human rights organizations argue that the amendments expand state surveillance, enable arbitrary censorship, and prioritize content control over survivor-centric protections, particularly affecting women journalists and activists who risk countersuits for "spreading false information" when documenting abuse.

Pakistan currently lacks a comprehensive data protection law tailored to digital harms or gender-based violence. A draft Personal Data Protection Bill has been under consideration since 2023 (Privacy International, 2023) but is yet to be enacted. This gap leaves survivors of image-based abuse, doxxing, and deepfakes without robust consent-based safeguards or obligations on data fiduciaries, exacerbating vulnerabilities in the absence of explicit integration with TFGBV remedies. In March 2026, the Ministry of Human Rights, with UNDP support, launched Pakistan's first National Strategy to Counter Technology-Facilitated Gender-Based Violence (2026–2030), outlining phased legal reforms, institutional strengthening, and targets to raise prosecution success rates from the current dismal levels (UNDP Pakistan, 2026).

Empirical data underscores systemic shortcomings. In the past five years, 1.8 million women in Pakistan have faced cybercrimes, yet only 3.5 percent of accused individuals have been convicted (WEBDESK, 2025). Over 8,000 cases were registered and 11,000 suspects arrested, but only 225, approximately 3.5 percent convictions were secured. In 2024 alone, approximately 160,000 complaints were logged, marking a decrease after years of rising numbers, partly due to amendments empowering police to register cases, intending to tackle the growing digital crime problem (Devdiscourse News Desk, 2025). Civil society helplines, such as the Digital Rights Foundation's Cyber Harassment Helpline, recorded 3,171 new TFGBV cases in 2024, predominantly involving women (Digital Rights Foundation Pakistan, 2025), far exceeding formal registrations and highlighting massive underreporting and distrust in state institutions. Contributing factors to low conviction rates include police reticence, resource constraints, limited investigative capacity, jurisdictional overlap/ambiguity, evidentiary challenges in digital cases, cross-border platform issues, and inadequate gender-sensitive training. As the police now have discretionary power over the registration of cases, they are more inclined to settle disputes without formally registering a case.

Bangladesh

Bangladesh's Constitution provides foundational protections relevant to TFGBV. Article 27 guarantees equality before the law and equal protection of the law for all citizens, while Article 28 prohibits discrimination on grounds of sex. Article 39 secures freedom of thought and conscience, speech, and expression, subject to reasonable restrictions for public order, decency, morality, or defamation, and Article 43 provides protection of the home and correspondence. Although these provisions establish a constitutional basis for equality, privacy, and expressive freedoms, their application to digital contexts remains limited and often subordinated to broad state security and public morality concerns, resulting in uneven safeguards against online gendered harms.

The legislative framework has evolved rapidly. The Digital Security Act (2018) was replaced by the Cyber Security Act (2023), which was subsequently repealed by the interim government in 2024 and replaced with the Cyber Protection Ordinance (2024), also referred to as Cyber Security Ordinance or "Cyber Surokkha Adhyadesh". In conjunction with the Pornography Control Act (2012), these instruments form the core of current responses to TFGBV. Relevant provisions criminalize privacy violations, online harassment, dissemination of obscene or defamatory content, and related offences. Complementary provisions of the Penal Code (1860), notably Section 500 (defamation), and elements of the Pornography Control Act (2012) addressing coercive production and distribution of pornographic material, are frequently invoked in cases involving non-consensual intimate imagery, cyberstalking, and image-based abuse.

Despite these instruments, the framework is heavily critiqued as prioritizing state control instead of survivor-centered protections. The Cyber Protection Ordinance (2024) retains vague and overbroad provisions criminalizing content that may undermine "national unity", "public order", "religious values", as well as content deemed insulting or defamatory. Such provisions risk misuse against victims, journalists, activists, and minorities. Human rights organizations and legal experts argue that these laws emphasized government oversight and content regulation rather than recognizing misogynistic intent, consent violations, or the specific vulnerabilities of women, children, and marginalized groups in digital spaces. Emerging harms such as deepfakes and AI-generated abuse lack dedicated provisions, forcing reliance on general clauses ill-suited to address synthetic media.

Data protection remains fragmented and inadequate. Bangladesh lacks a comprehensive personal data protection law, though drafts of a Personal Data Protection Ordinance have circulated. In the absence of enacted legislation, survivors of doxxing, non-consensual image sharing, and deepfakes lack robust consent-based remedies or obligations on platforms and data processors. The overall administration continues to emphasize state security and morality-based restrictions over gender justice, with vague terminology facilitating selective enforcement, survivor-blaming, and chilling advocacy by women and human rights defenders.

Enforcement challenges further exacerbate legislative shortcomings. Police frequently dismiss TFGBV complaints as "non-serious" or family matters, compounded by evidentiary difficulties in digital cases, cross-border platform involvement, and limited technical capacity. Platform cooperation on content removal is inconsistent. Civil society data highlighted the scale of problem: the Cyber Crime Awareness Foundation (2024) reported that cybercrime more than doubled in a single year, with nearly 60 percent of the victims being women. The Police Cyber Support for Women (PCSW) received over 9,000 harassment complaints in 2024 (Khalilullah, 2025). Surveys indicate that 63.51 percent of women have experienced online harassment, with broader violence against women studies revealing high lifetime exposure to various forms of abuse. Underreporting remains pervasive due to stigma, fear of retaliation, and distrust in institutions, resulting in widespread impunity. Deepfake and AI-facilitated abuse have surged, disproportionately targeting women, yet conviction rates remain low.

Sri Lanka

Sri Lanka's Constitution provides foundational protections relevant to TFGBV. Article 12 guarantees equality before the law and equal protection, while Article 14(1) protects freedom of speech and expression, subject to restrictions for public morality, public order, or the protection of rights of others. Article 13 and judicial interpretations support aspects of privacy, though a comprehensive, explicit right to privacy in digital contexts remains underdeveloped. In practice, the application of these rights to online gendered harms is inconsistent, with laws often prioritizing content control and public order over survivor-centered remedies and gender justice.

The core statutory framework includes the Computer Crimes Act (2007), which criminalizes unauthorized access to computers or data (Section 3), unauthorized modification or damage (Section 5), and related acts that can apply to doxing, hacking, or interference with private digital content. These provisions are supplemented by the Penal Code, addressing intimidation, harassment, and defamation (e.g., Section 500), and by the Pornography Control Act which regulates obscene or non-consensual material.

A landmark development is the Online Safety Act, No. 9 of 2024 (OSA), which came into force in February 2024. This Act establishes the Online Safety Commission with broad powers to investigate and act on "prohibited statements" communicated online. Section 20 specifically addresses online harassment and the sharing of non-consensual private or personal information intended to harass, humiliate, or cause emotional distress. It also covers child protection, inauthentic accounts, and harmful content, with penalties including imprisonment and fines. Amendments in August 2024 and ongoing review processes in 2025/2026 have sought to refine intermediary liability and procedural safeguards, though scrutiny persists.

Critics, including human rights organizations and legal experts, argue that the OSA lacks explicit, gender-sensitive definitions for image-based sexual abuse, deepfakes, cyberstalking, or non-consensual intimate imagery as distinct TFGBV offences (Deckker & Sumanasekara, 2025). The vague provisions on "false statements," "ill-will," or threat to public order risk weaponization against victims, activists, journalists, and marginalized groups including LGBTQIA+ persons. The morality-oriented framing (focusing on decency and public order) rather than consent or misogynistic intent enables selective enforcement and survivor-blaming.

Sri Lanka enacted the Personal Data Protection Act (PDPA) (2022), South Asia's first comprehensive data law, phased in from 2023–2025 with amendments in 2025 refining timelines and rights. Although the PDPA provides general consent, security, and breach notification obligations, it is not tailored to TFGBV and lacks explicit integration with remedies for image-based abuse or gendered digital harms.

Statistics illustrate the scale of the problem: 5,400 cybercrime incidents were reported in the first six months of 2025 (Balasuriya, 2025). While constitutional guarantees and evolving laws, anchored by the Computer Crimes Act and the Online Safety Act, provide a nominal framework for TFGBV redress, the regime remains undermined by fragmented design, morality-oriented design, overbroad provisions prone to misuse, insufficient gender-sensitive provisions (particularly for deepfakes and image-based abuse), and chronic enforcement weaknesses. Ongoing amendments to the OSA offer an opportunity for reform, but meaningful progress requires explicit redress mechanisms for consent-based offences, dedicated TFGBV provisions, stronger integration with the PDPA, mandatory gender-sensitive training for law enforcement, improved digital forensics capacity, and survivor-led monitoring mechanisms. Future scholarship and policy should prioritize empirical, disaggregated data and alignment with international standards to ensure digital spaces protect rather than endanger women and marginalized groups in Sri Lanka.

Where Did Legislation Fail?

In the context of TFGBV, legal frameworks systematically fail to adequately address gendered harms. This failure is often driven by patriarchal interpretations, victim-blaming attitudes, and narrow, tech-centric cybercrime approaches that obscure the structural nature of digital abuse. A socio-legal approach to TFGBV reveals a stark gap - progressive statutory protections may exist on paper, but they are routinely neutralized by enforcement biases or deeply entrenched cultural norms.

South Asia exemplifies a complex legal pluralism where formal state laws coexist with customary, religious, and informal dispute resolution systems (Menski, 2006). Informal systems such as *Shalish* proceedings in Bangladesh (Hoque, 2011), are highly accessible to local communities; however, they inherently reflect patriarchal biases that prioritize familial reconciliation over perpetrator accountability in GBV cases. Furthermore, broad police discretion plays a pivotal role in limiting legal efficacy (Barlow & Walklate, 2018). Law enforcement officials frequently divert TFGBV complaints to informal channels or exercise overt gender bias during intake (Sarkar et al., 2016). In South Asia, police officers often mediate family disputes informally, reinforcing victim-blaming tropes or pressuring survivors into extrajudicial settlements that severely undermine women's fundamental rights. This discretion, compounded by severe institutional resource constraints, widens the gap between formal ideal situations and lived realities, underscoring the need for rigorous socio-legal scrutiny.

Enforcement Patterns and Central Critique

Across the region, law enforcement efforts reveal persistent structural barriers to addressing TFGBV. A primary challenge is the lack of a shared institutional understanding of TFGBV, which contributes to limited public awareness and weak institutional capacity within the justice system (The University of Melbourne & UNFPA Asia and the Pacific, 2024). Additional obstacles include systemic institutional reluctance, whereby TFGBV is routinely deprioritized in favor of financial crimes, volatility of digital evidence, limited forensic capacity, cross-border jurisdictional complexities, and inconsistent cooperation from international digital platforms regarding content removal and restricted data sharing (Neupane, 2026). Consequently, survivors experience re-traumatization, social stigma, and institutional distrust, which collectively drive significant underreporting.

The central critique of South Asian legal architectures is their over-reliance on punitive criminalization at the expense of survivor-centered justice. Existing legal frameworks primarily focus on punishing perpetrators while offering few restorative or remedial avenues, such as rapid image removal, trauma-informed support services, specialized courts, or accessible civil remedies (Bergman & et al., 2024). This punitive bias perpetuates a culture of impunity, effectively silences women's digital spaces, and fails to reconcile the competing constitutional rights of equality, privacy and freedom of expression. Comprehensive legal reform demands TFGBV-specific definitions, specialized gender-sensitive law enforcement units, corporate platform accountability, and holistic mechanisms that pivot toward substantive justice.

While countries like India, Bangladesh, and Pakistan have enacted cyber laws to supplement colonial-era or post-independence penal codes, these frameworks remain deeply flawed. They prioritize state-sanctioned punitive sanctions over survivor-centered mechanisms, exhibit a morality-based rather than a right-based orientation, contain vague provisions prone to political misuse, and suffer from vast enforcement gaps. Although recent legislative modernization has been driven by an escalation in online harassment, image-based abuse, and emerging AI-generated harms such as deepfakes, persistent critiques highlight the danger of statutory overbreadth. These laws are frequently weaponized against women and political dissenters, fail to improve low conviction rates, and inadequately integrate constitutional guarantees of equality, privacy, and expression.

Socio- Cultural Barriers and the Limits of Legal Remedies

Socio-cultural barriers in South Asia constitute most entrenched obstacles undermining legal remedies to TGFBV. While formal legal frameworks exist across the region, their effectiveness is significantly weakened by entrenched socialized norms that prioritize family honor, social cohesion, and male hegemony over survivor-centric justice (Bergman & et al., 2024). These dynamics not only shape how digital violence is perceived but also determine whether survivors can safely access the justice system. As a result, digital harms are often privatized, normalized, or silenced.

Victim-blaming remains deeply embedded in societal responses to TFGBV across South Asia. Women are routinely held morally responsible for the abuse targeting them, with public narratives focusing on their online visibility and perceived deviation from moral norms (Generation G, n.d.). Female digital participation is often framed as inherently risky or inappropriate, reinforcing the patriarchal assumption that women who enter public online spaces “invite” harm (Perez et al., 2026). This framing shifts accountability away from perpetrators and discourages survivors from seeking formal legal remedies.

Furthermore, rigid “honor norms” intensify this barrier by tying women’s bodily and digital autonomy to familial and community reputation. Reporting TFGBV carries a prohibitive social cost, public exposure risks bringing institutionalized “shame” to the family (Equality Now, 2025). Survivors often face intense domestic pressure to remain silent or withdraw complaints, leading to widespread underreporting. In some cases, the fear of reputational damage or escalation into offline violence, such as honor-based harm, compels families to suppress legal action entirely (Sambasivan & et al., 2019).

Informal justice systems, such as community councils and traditional mediation forums, play a prominent role in dispute resolution but consistently disadvantage women. These community-based mechanisms are frequently prioritized over state remedies because they emphasize social reconciliation. Reflecting localized patriarchal power structures, these mechanisms tend to trivialize digital harms and prioritize community harmony over individual accountability. Outcomes are often biased toward perpetrators, especially those possessing socio-economic or political influence. For marginalized women, intersections of caste, ethnicity, class, and gender further limit access to fair and equitable resolution. Family-mediated settlements, which pressure survivors to reconcile with abusers to avoid public scandal, commonly result in institutionalized revictimization.

The socio-cultural entrenchment of TFGBV also produces severe democratic repercussions, functioning as a silencing mechanism that excludes women from public discourse. Women in public-facing roles face highly disproportionate risks. In India, prominent journalist Rana Ayyub was targeted by coordinated deepfakes and doxxing campaigns designed to delegitimize her reporting (Ifran, 2023). Similarly, in Pakistan, politician Azma Bokhari was targeted by a highly publicized deepfake scandal in 2024, prompting her temporary retreat from public life (France24, 2024). According to the Inter Parliamentary Union (2025) 60 percent of women Members of Parliament in the Asia Pacific region report experiencing TFGBV via doxxing and deepfakes. The data further indicates that specific demographics, particularly women under 40, women from minority backgrounds, and unmarried women, face disproportionately higher rates of violence (Inter Parliamentary Union, 2025).

As highlighted by the UN Secretary-General, anti-rights actors are increasingly using digital platforms to push back against women's rights, targeting women human rights defenders with cyberbullying, harassment, threats of violence, and gendered disinformation (UNGA, 2024). Approximately 73 percent of women journalists and public figures report being disproportionately targeted, with the rise of AI-generated deepfakes and synthetic imagery has intensifying the scale, velocity, and anonymity of these harms (UN Women, 2025).

Recent electoral and political crises illustrate this systemic suppression. During the March 2026 House of Representatives (HOR) elections in Nepal, female political candidates faced systematic, targeted TFGBV. A similar pattern emerged during Bangladesh's 2024 political uprising, where women's activities faced targeted and persistent TFGBV. The aggressive restriction of women's online visibility and political voice through TFGBV reinforces male dominance in governance, stifles dissent, discourages civic engagement, and erodes democratic pluralism. Addressing this crisis requires transformative structural reforms that challenge underlying patriarchal norms beyond purely statutory adjustments.

Survivors also encounter significant technical and institutional reporting barriers, including complex platform reporting interfaces, language accessibility limitations, social stigma, and non-responsive corporate moderation systems. Corporate transparency deficits compound these structural failures; multinational platforms rarely disclose detailed TFGBV-specific metrics or regional safety investments. Under the UN Guiding Principles on Business and Human Rights, technology companies bear a clear responsibility to conduct ongoing human rights due diligence to mitigate adverse impacts. However, deep tensions persist between corporate self-regulation and state intervention. While authoritarian states overreach risks weaponized censorship, insufficient corporate accountability allows digital harms to proliferate unchecked.

The escalation of digital disinformation campaigns targeting marginalized identities further demonstrates the weaponization of these technologies. In India, the 2022 "Bulli Bai" application digitally "auctioned" prominent Muslim women, including outspoken journalists and pilots, in a mock exercise designed to degrade, humiliate, and silence those critical of rising ethno-nationalism (BBC, 2022). Although the perpetrators were subsequently arrested, the incident underscores how digital spaces are weaponized for gendered and sectarian terror. Nepal features similar trends; for instance, during a period of public protest against a political party leader, a female supporter was targeted with coordinated digital vitriol, including threats of rape and murder (BBC, 2022; Khabarhub, 2026).

Gender Divide: Unequal Access and Controlled Participation

While digital connectivity has undeniably expanded opportunities for women, enhancing access to information, mobilizing collective advocacy, and unlocking economic opportunity (UNFPA, 2024); the critical question remains whether these opportunities are equitably distributed.

In South Asia, the gender gap in mobile internet adoption in 2024 remained relatively high at 32 percent, leaving approximately 330 million women digitally disconnected (Jeffrie, 2022). Notably, of 885 million unconnected women globally, roughly 60 percent reside in South Asia and Sub-Saharan Africa (Jeffrie, 2022). Country-specific data reveals stark intra-regional disparities. While Pakistan's gender gap in mobile internet use narrowed to approximately 25 percent in 2024, (GSMA, 2025) 35 percent of female users rely on borrowed devices, severely compromising their digital privacy and autonomy (GSMA, 2025). Bangladesh had 26 percent female mobile internet use (Jeffrie, 2025a). Conversely, Nepal and Sri Lanka exhibit higher social media participation rates, with women comprising 44.3 percent (Kemp, 2025b) and 51.5 percent (Kemp, 2025a) of social media users, respectively.

Ultimately, the 2025 Global Gender Gap Report scores South Asia at 64.6 percent parity with its most severe and persistent barriers in economic participation and opportunity at 40.6 percent

(World Economic Forum, 2025). These metrics demonstrate that the core challenge is not merely a lack of infrastructural access, but rather a system of controlled and mediated access, wherein domestic and community power hierarchies dictate, police, and restrict women's digital autonomy.

Conclusion and way forward

Structural Continuity and Legal Fragmentations

The rapid expansion of digital technologies across South Asia has simultaneously created unprecedented opportunities for gendered expression and enabled the systemic expansion of TFGBV. This duality demonstrates that digital spaces are not distinct, autonomous environments, but are deeply embedded to sociopolitical realities. Rather than representing isolated, novel manifestation of abuse, TFGBV constitutes a digital amplification of pre-existing structural inequalities, patriarchal hegemonies, and institutionalized power imbalances that characterize the region.

While South Asian countries have increasingly adopted legal and regulatory frameworks to address online harms, these statutory responses remain largely fragmented, reactive, and grounded in morality-centric rather than rights-based paradigms. The systemic reliance on carceral criminalization as a primary legislative strategy has proven largely ineffective. Punitive measures fail to capture the highly nuanced, intersectional, and evolving nature of TFGBV, particularly as these harms are exacerbated by emerging generative artificial intelligence and synthetic media.

Fundamentally, existing legal architectures frequently lack conceptual clarity, specificity, and survivor-centered remedies, resulting in gaps between formal protections and the lived experiences of survivors. These enforcement gaps are compounded by socio-cultural barriers, including deeply socialized victim-blaming and rigid honor norms, alongside a persistent gender digital divide that limits women's technical autonomy and normalizes digital violence. Beyond individual harm, TFGBV also undermines democratic participation by silencing women in public life.

Democratic Repercussion and Corporate Accountability

Beyond individual psychological and physical precarity, TFGBV poses severe, systemic risks to democratic governance. By systematically targeting and silencing women in public-facing roles, particularly journalists, human rights activists, and political actors, TFGBV deliberately distorts public discourse, erodes inclusive participation, and reinforces traditional hierarchies of power. The institutionalized normalization of this digital violence not only limits fundamental freedoms but actively compromises the democratic pluralism and governance architectures of South Asian nations.

Therefore, confronting TFGBV requires an immediate paradigm shift away from narrow, punitive approaches toward holistic, rights-based, and survivor-centered legal frameworks. Comprehensive reform demands the codification of explicit statutory definitions for TFGBV, integration of affirmative, consent-based legal standards, strengthening of robust data privacy systems, and establishment of accessible civil remedies to complement criminal sanctions. Parallel institutional re-engineering is equally critical; this includes the implementation of mandatory, gender-sensitive judicial training, the improvement of localized digital forensic capacities, and the establishment of specialized adjudicative mechanisms to ensure timely redress.

However, formal legal interventions are insufficient without a calculated response to the socio-cultural foundations of gender inequality. A critical intervention lies in expanding critical digital literacy, fostering community-led counter narratives, and dismantling the honor-shame binaries that perpetuate silence and stigma. Concurrently, international technology conglomerates must be held strictly accountable through stringent regulatory frameworks that mandate corporate transparency, localized content moderation responsiveness, and strict compliance with international human rights standards.

Ultimately, the challenge of TFGBV in South Asia is neither an architectural glitch of technology nor a simple gap in statutory drafting; it is an issue of deeply structural violence. As South Asia accelerates its digital transition, the failure to redress these underlying inequalities risks entrenching new, highly durable vectors of digital exclusion and harm. Conversely, an integrated, multi-sectoral strategy that bridges legal reform, corporate accountability, and structural social transformation offers an opportunity to reclaim digital architectures as sites of safety, equality, and democratic spaces for all.

References

ABC7 Chicago. (2012, July 17). *Yahoo CEO's pregnancy reignites a perennial debate.* ABC7 EyeWitness News. https://abc7chicago.com/archive/8739851/

Agyare, P. (2025). Gendered digital arms and youth ideological trajectories: Socioeconomic challenges of digital platforms. *SocioEconomic Challenges*, *9*(3), (P. 83) https://www.researchgate.net/publication/396500204_Gendered_Digital_Harms_and_Youth_Ideological_Trajectories_Socioconomic_Challenges_of_Digital_Platforms

Amnesty International. (2017, November 20). *Amnesty reveals the alarming impact of online abuse against women*. [Press release]. https://www.amnesty.org/en/latest/press-release/2017/11/amnesty-reveals-alarming-impact-of-online-abuse-against-women/

Amnesty International. (2025, January 24). *Pakistan: Authorities pass bill with sweeping controls on social media*. https://www.amnesty.org/en/latest/news/2025/01/pakistan-authorities-pass-bill-with-sweeping-controls-on-social-media/

Balasuriya, D. S. (2025, July 25). Over 5,400 cybercrime cases in 2025; CID warns of job, investment scams Cybercrime rises in Sri Lanka. *Daily Mirror*. https://www.dailymirror.lk/front-page/Over-54-000-cybercrime-cases-in-2025-CID-warns-of-job-investment-scams-Cybercrime-rises-in-Sri-Lanka/238-315197

Barlow, C., & Walklate, S. (2018). Policing intimate partner violence: The "golden thread" of discretion. *Policing: A Journal of Policy and Practice*, *14*(2). https://doi.org/10.1093/police/pay001

BBC News. (2022, January 10). Sulli Deals: Police arrest man for making app to auction Muslim women. https://www.bbc.com/news/world-asia-india-59933029

Bergman, S., & et al. (2024). *Understanding technology-facilitated gender-based violence in Asia - A qualitative study*. UNFPA Asia and the Pacific. https://asiapacific.unfpa.org/sites/default/files/pub-pdf/202410/Understanding%20technology-facilitated%20gender-based%20violence%20in%20Asia_1.pdf

Bergman, S., & et. al. (2024). *Understanding technology-facilitated gender-based violence in Asia - A qualitative study*. UNFPA Asia and the Pacific. https://asiapacific.unfpa.org/sites/default/files/pub-pdf/202410/Understanding%20technology-facilitated%20gender-based%20violence%20in%20Asia_1.pdf

Bhatt & Joshi Associates. (2026, April 15). *The Jurisprudence of synthetic reality: A comprehensive legal and constitutional analysis of India's IT Amendment Rules 2026*. https://bhattandjoshiassociates.com/the-jurisprudence-of-synthetic-reality-a-comprehensive-legal-and-constitutional-analysis-of-indias-it-amendment-rules-2026/

Chand, A. (2026, February 1). Women election candidates in Nepal face abuse and vitriol. *The Kathmandu Post*. https://kathmandupost.com/politics/2026/02/01/women-election-candidates-in-nepal-face-abuse-and-vitriol

Children Act, 66 (3) (2018). https://goodweavecertification.org.np/Resources/assets/files/chilldrenAct2075English.pdf

Computer Crime Act, No. 24 of 2007 (Sri Lanka). https://www.srilankalaw.lk/revised-statutes/volume-ii/239-computer-crime-act.html

Cyber Security Act, 2023 (Bangladesh).

Devdiscourse News Desk. (2025, January 15). *Pakistan's struggle with cybercrime: Low conviction rates and evolving strategies*. Devdiscourse. https://www.devdiscourse.com/article/international/3225912-pakistans-struggle-with-cybercrime-low-conviction-rates-and-evolving-strategies

Digital Rights Foundation Pakistan. (2025, April 24). *Over 20,000 cases of Technology-Facilitated Gender-Based Violence (TFGBV) received by Digital Rights Foundation's Helpline during 8 years of operation*. https://digitalrightsfoundation.pk/subject-over-20000-cases-of-technology-facilitated-gender-based-violence-tfgbv-received-by-digital-rights-foundations-helpline-during-8-years-of-operation/

Digital Security Act, 2018 (Bangladesh). https://www.basis.org.bd/public/files/policy/5e1653db166e8Digital-Security-Act-2018-English-version.pdf

Deckker, D., & Sumanasekara, S. (2025). Digital Gender Violence in Sri Lanka: A review of emerging trends, legal frameworks and policy gaps. World Journal of Advanced Research and Reviews, 27(3), 1937. https://doi.org/10.30574/wjarr.2025.27.3.3367

Electronic Transaction Act, 2006 (Nepal). https://lawcommission.gov.np/content/13397/electronic--electronic--traded-international-act--2063/

Equality Now. (2025, November 1) *Experiencing technology-facilitated gender-based violence in India*. https://equalitynow.org/resource/reports/experiencing-technology-facilitated-gender-based-violence-in-india/ Experiencing technology-facilitated gender-based violence in India - Equality Now

France24. (2024, March 10). *Deepfakes weaponised to target Pakistan's women leaders*. https://www.france24.com/en/live-news/20241203-deepfakes-weaponised-to-target-pakistan-s-women-leaders

Francis, A. M. (2025, October 23). Online Crimes Against Women in India: Deepfakes, Doxxing, and Digital Abuse - Centre for Public Policy Research (CPPR). Centre for Public Policy Research (CPPR). https://www.cppr.in/articles/deepfakes-doxxing-and-digital-abuse

Generation G. (n.d.). *Decoding Technology-Facilitated Gender-Based Violence*. Rutgers International.https://rutgers.international/wp-content/uploads/2024/06/Decoding-TFGBV-Report-2024.pdf

GSMA. (2025). *A breakthrough year for women's Digital Inclusion in Pakistan*. https://www.gsma.com/solutions-and-impact/connectivity-for-good/mobile-for-development/wp-content/uploads/2025/06/A-Breakthroug h-Year-for-Womens-Digital-Inclusion-in-Pakistan-.pdf

Hoque R., Judicial activism in Bangladesh: A golden mean approach. University Press Limited. https://scispace.com/pdf/judicial-activism-in-bangladesh-a-golden-mean-approach-3d8imsj552.pdf

Ifran, A. (2023, June 5). *Gender, AI and the psychology of disinformation*. Media Diversity Institute. https://www.media-diversity.org/gender-ai-and-the-psychology-of-disinformation/

Indian Penal Code, 1860 (India). https://www.indiacode.nic.in/bitstream/123456789/4219/1/THE-INDIAN-PENAL-CODE-1860.pdf

Individual Privacy Act, 2018 (Nepal). https://lawcommission.gov.np/content/12261/12261-the-privacy-act-2075/

Information Technology Act, 2000 (India). https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_updated.pdf

Information Technology and Cyber Security Bill, 2025 (Nepal). https://hr.parliament.gov.np/en/bills/njBRB4qb

Inter Parliamentary Union. (2025, March 25). *60% of women MPs from Asia-Pacific report online gender-based violence* [Press release]. https://www.ipu.org/news/

press-releases/2025-03/60-women-mps-asia-pacific-report-online-gender-based-violence

Inter Parliamentary Union. (n.d.). *Sexism, harassment and violence against women in parliaments in the Asia-Pacific region* [Issue Brief]. https://www.ipu.org/resources/publications/issue-briefs/2025-03/sexism-harassment-and-violence-against-women-in-parliaments-in-asia-pacific-region

Iyer, N., Nyamwire, B., & Nebulega, S. (2020, August 4). *Alternate realities, alternate internets: African feminist research for a feminist internet | Association for Progressive Communications*. Policy. https://www.apc.org/en/pubs/alternate-realities-alternate-internets-african-feminist-research-feminist-internet

Jeffrie, N. (2022). *The mobile gender gap report 2025*. GSMA.

Jeffrie, N. (2025a). *The mobile gender gap report 2025*. GSMA. https://www.gsma.com/wp-content/uploads/2025/12/The-Mobile-Gender-Gap-Report-2025.pdf?utm_source=website&utm_medium=button&utm_campaign=gender-gap-2025

Justice K.S. Puttaswamy (Retd) vs Union Of India, Writ Petition (Civil) No. 494 of 2012 (Supreme Court of India September 26, 2018). https://indiankanoon.org/doc/127517806/

Kate. (2021, September 29). *I'm a new mother – and that's evidently a big problem for some Big Tech companies*. ACLU Illinois. https://www.aclu-il.org/news/im-new-mother-and-thats-evidently-big-problem-some-big-tech-companies/

Kemp, S. (2025a, March 3). *Digital 2025: Sri Lanka*. DataReportal. https://datareportal.com/reports/digital-2025-sri-lanka

Kemp, S. (2025b, March 3). *Digital 2025: Nepal*. DataReportal. https://datareportal.com/reports/digital-2025-nepal

Kemp, S. (2025a, November 5). *Digital 2026: India*. DataReportal. https://datareportal.com/reports/digital-2026-india

Kemp, S. (2025b, November 8). *Digital 2026: Pakistan.* Data Reportal. https://datareportal.com/reports/digital-2026-pakistan

Kemp, S. (2025c, November 8). *Digital 2026: Sri Lanka.* Data Reportal. https://datareportal.com/reports/digital-2026-sri-lanka

Kemp, S. (2025d, November 8). *Digital 2026: Bangladesh.* Data Reportal. https://datareportal.com/reports/digital-2026-bangladesh

Kemp, S. (2025e, November 8). *Digital 2026: Nepal.* Data Reportal. https://datareportal.com/reports/digital-2026-nepal

Khabarhub. (2026). *Complaint filed after cyber harassment targeting woman supporting KP Oli*. https://english.khabarhub.com/2026/01/542090/

Khalilullah, I. (2025, May 29). *Cyber violence is silencing women in Bangladesh*. South Asia Monitor.https://www.southasiamonitor.org/index.php/spotlight/cyber-violence-silencing-women-bangladesh

Khan, Dr. I. A., Irshad, S., & Ud Din , H. S. J. (2025). Cyber harassment and online violence against women :A critical analysis of women protection law regime in Pakistan. *Journal of Law & Social Studies*, *7*(1), 12–25. https://doi.org/10.52279/jlss.07.01.1225

MacKinnon, C.A. (1989) Toward a Feminist Theory of the State. Harvard University Press.

Menski W., *Comparative law in a global context: The legal systems of Asia and Africa* (2nd ed.). Cambridge University Press. Cited in Islam F. Legal pluralism in South Asia: The sustainable Role of customary law in modern legal systems. *Journal of Legal research and Policy*, 2(2):67-88. Available from: https://jlrp.in/index.php/jlrp/article/view/41

National Penal Code, 2017 (Nepal). https://lawcommission.gov.np/content/13454/criminal-code-2074/

National Statistics Office. (2025). *National accounts* *statistics of Nepal 2024/25national report.* Government of Nepal, Office of the Prime Minister and Council of Ministers. https://giwmscdnone.gov.np/media/pdf_upload/National%20Report_bzpm6lk.pdf

Nepal Police. (2023). *Annual Fact Sheet on Suicide and Cyber Crime* . (n.d.). https://www.nepalpolice.gov.np/media/filer_public/55/b3/55b3b954-7fee-40fc-b661-7db2d9604574/fy-2081-82-suicide-cyber-crime-ne-1.pdf

Nepal Police. (2023). *Police Mirror 2025.* https://www.nepalpolice.gov.np/media/filer_public/36/6a/366a793e-ebe4-4e82-b0bc-74486313950b/1_nepal_police_mirror_2025.pdf

Neupane, R. (2026). The perils of fragile institutions. *The Kathmandu Post*. https://kathmandupost.com/columns/2023/11/07/the-perils-of-fragile-institutions

Pakistan Penal Code, 1858 (Pakistan). https://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html

Perez, A. P., Farrell, T., Kock, C. D., Jurasz, O., Nozza, D., & Fernandez, M. (2026, April). *Still unsafe: what's holding us back on online safety for women*. ResearchGate. https://www.researchgate.net/publication/403693428_Still_unsafe_what's_holding_us_back_on_online_safety_for_women

Personal Data Protection Act, No 9 of 2022 (Sri Lanka). https://www.parliament.lk/uploads/acts/gbills/english/6242.pdf

Pornography Control Act, 2012 (Bangladesh) http://bdlaws.minlaw.gov.bd/act-details-1091.html

Prevention of Electronic Crimes Act, 2016 (Pakistan). https://www.na.gov.pk/uploads/documents/1470910659_707.pdf

Privacy International. (2023, August 8). *Privacy International raises concerns regarding Pakistan's Personal Data Protection Bill.* https://privacyinternational.org/news-analysis/5090/privacy-international-raises-concerns-regarding-pakistans-personal-data

Renström, E. A., & Bäck, H. (2024). Manfluencers and young men's misogynistic attitudes: the role of perceived threats to men's status. *Sex Roles*, *90*(12). https://link.springer.com/article/10.1007/s11199-024-01538-2

Sambasivan, N., & et al. (2019). *"They don't leave us alone anywhere we go": Gender and digital abuse in South Asia*. Google Research. https://research.google/pubs/they-dont-leave-us-alone-anywhere-we-go-gender-and-digital-abuse-in-south-asia/

Sarkar, A., Mukhopadhyay, D., Blake, C., & Prasad, D. (2016, June 24). *Crime victimization and safety perception: A public survey of Delhi and Mumbai*. Research Gate. https://www.researchgate.net/publication/312146858_Crime_victimization_and_safety_perception_A_public_survey_of_Delhi_and_Mumbai

Scasserra, N. B. (2024, October 3). *Digital Capitalism | Transnational Institute*. Transnational Institute. https://www.tni.org/en/publication/digital-capitalism

Shinde, S. (2026, March 15). Deepfake attacks rise 900%, most women take "no action": Report. Business Standard. https://www.business-standard.com/technology/tech-news/deepfake-attacks-rise-900-most-women-take-no-action-report-126031500844_1.html

Singh, S. D., & Ferraz, J. (2023, October 20). *Digital transformation and inclusivity: Reshaping Asia and the Pacific's urban future*. United Nations ESCAP. https://www.unescap.org/blog/digital-transformation-and-inclusivity-reshaping-asia-and-pacifics-urban-future

Storyboard18. (2026, March 19). *Cybercrime against women rises sharply in 2025, crosses 76,000 cases: Govt*. News18. https://www.storyboard18.com/digital/cybercrime-against-women-rises-sharply-in-2025-crosses-76000-cases-govt-ws-e-92736.htm

SVRI, The Global Partnership, APC, & UN Women. (n.d.). *Technology facilitated gender-based violence: Developing a shared research agenda*. https://unwomen.

org/sites/default/files/2024-09/technology-facilitated-gender-based-violence-shared-research-agenda-en.pdf

The Annapurna Express. (2025, November 23). *Reclaiming feminism in South Asia* https://theannapurnaexpress.com/story/60182/

The Bharatiya Nyaya Sanhita, 2023 (India). https://www.indiacode.nic.in/bitstream/123456789/20062/1/a202345.pdf

The Digital Personal Data Protection Act, 2022 (India). https://www.indiacode.nic.in/bitstream/123456789/22037/1/a2023-22.pdf

The Penal Code, 1860 (Bangladesh) http://bdlaws.minlaw.gov.bd/act-11.html

The University of Melbourne & UNFPA Asia and the Pacific. (2024, October 14). *Understanding technology-facilitated gender-based violence in Asia: A qualitative study*. UNFPA Asia-Pacific. https://asiapacific.unfpa.org/en/publications/understanding-technology-facilitated-gender-based-violence-asia-qualitative-study

Transnational International. (2024). *Digital Capitalism*. https://www.tni.org/en/publication/digital-capitalism

UN Women, & World Health Organization. (2022). *Technology-facilitated violence against women: Towards a common definition*. https://www.unwomen.org/sites/default/files/2023-03/Expert-Group-Meeting-report-Technology-facilitated-violence-against-women-en.pdf

UN Women. (2021). *Violence against women in the online space: insights from a multi-country study in the Arab States*. UN Women Arab States. https://arabstates.unwomen.org/en/digital-library/publications/2021/11/violence-against-women-in-the-online-space

UN Women. (2024). *The dark side of digitalization: Technology-facilitated violence against women in Eastern Europe and Central Asia*. UN Women Europe and Central Asia. https://eca.unwomen.org/en/digital-library/publications/2023/11/the-dark-side-of-digitalization-technology-facilitated-violence-against-women-in-eastern-europe-and-central-asia

UN Women. (2025, February 10). *FAQs: Digital abuse, trolling, stalking, and other forms of technology-facilitated violence against women.* https://www.unwomen.org/en/articles/faqs/digital-abuse-trolling-stalking-and-other-forms-of-technology-facilitated-violence-against-women

UNFPA. (2024, November 28). *Digital duality: How the internet empowers and endangers women*. https://caribbean.unfpa.org/en/news/digital-duality-how-internet-empowers-and-endangers-women

UNFPA. (n.d.). *Technology-facilitated gender-based violence: a growing threat*. https://www.unfpa.org/TFGBV

UNGA, (2024) *Intensification of efforts to eliminate all forms of violence against women and girls: technology-facilitated violence against women and girls,* Report of the Secretary General (A/79/500). https://docs.un.org/en/A/79/500

UNDP Pakistan. (2026, March 10). *Ministry of Human Rights and UNDP launch Pakistan's first National Strategy on Technology-Facilitated Gender-Based Violence*. https://www.undp.org/pakistan/press-releases/ministry-human-rights-and-undp-launch-pakistans-first-national-strategy-technology-facilitated-gender-based-violence

WEBDESK. (2025, March 16). *Pakistan: 1.8 million women targeted by cybercrimes in 5 years, conviction rate at just 3.5 percent*. Organiser. https://organiser.org/2025/03/16/282360/world/pakistan-1-8-million-women-targeted-by-cybercrimes-in-5-years-conviction-rate-at-just-3-5-per-cent/

World Economic Forum. (2025). *Global gender gap report 2025*. https://reports.weforum.org/docs/WEF_GGGR_2025.pdf

The Informal: South Asian Journal of Human Rights and Social Justice
Volume 03 Issue 01, 2026. pp. 47-60
Research Article
https://doi.org/10.3126/informal.v3i1.97533

Compliance without Ratification: Applying Transnational Legal Process Theory to the Criminalization of Enforced Disappearance in Nepal

Nava Raj Sapkota
Joint Secretary, National Human Rights Commission

Article Info.

Corresponding Author
Nava Raj Sapkota

Email
nrsapkota@gmail.com

Article History
Received: 24 June 2026
Accepted: 11 July 2026
Published: 31 July 2026

How to Cite this Article
Sapkota, N. R. (2026). Compliance without ratification: Applying transnational legal process theory to the criminalization of enforced disappearance in Nepal. *The Informal: South Asian Journal of Human Rights and Social Justice, 3* (1), 47-60.

Abstract

Enforced disappearance constitutes a grave violation of human rights, infringing multiple fundamental rights, including liberty, security, recognition before the law, and in many cases, life. The International Convention for the Protection of All Persons from Enforced Disappearance (CEDP) (2006) stands as the principal international instrument dedicated to preventing and addressing enforced disappearance. Although Nepal is not a state party to the CEDP and is therefore under no direct treaty obligation to incorporate its provisions into domestic law, it has nonetheless criminalized enforced disappearance under Section 206 of the National Criminal Code (2017). Existing scholarship generally explains the reception of international law through the traditional doctrines of monism and dualism. Moving beyond this dichotomy, this study examines the relevance of Harold Hongju Koh's transitional legal process theory to examine how international human rights norms permeate Nepal's domestic legal framework. Specifically, it assesses the extent to which the processes of interaction, interpretation, and internalization have influence Nepal's legal response to enforced disappearance despite the absence of treaty ratification. Particular attention is given to the landmark decision in *Rajendra Dhakal and others v. Government of Nepal* (2007), in which the Supreme Court directed the Government to criminalize enforced disappearance in accordance with international human rights standard. Employing a qualitative doctrinal methodology grounded in an extensive review of legislation, judicial decisions, international instruments, and academic literature, the study demonstrates how international human rights norms may permeate domestic legislation through judicial interpretation, legislative reform, and transnational legal processes even in the absence of binding treaty obligations.

Keywords: enforced disappearance, domestication, translational legal process, human rights and criminal code

Introduction

The International Convention for the Protection of All Persons from Enforced Disappearance (CEDP) is principal international human rights instrument dedicated to preventing and addressing enforced disappearance. Adopted in 2006, the Convention applies in all times, including during armed conflict, complement international humanitarian law and international human rights law by establishing a comprehensive legal framework for prevention, investigation, prosecution, and punishment of enforced disappearance (United Nations, 2006).

It further recognizes that the widespread or systematic practice of enforced disappearance may constitute a crime against humanity under international law. The International Committee of the Red Cross has emphasized that enforced disappearance violated multiple fundamental human rights and humanitarian law obligations, including right to liberty, security, recognition as a person before the law, and protection from torture and arbitrary detention (International Committee of the Red Cross [ICRC], 2024). Similarly, International Commission of Jurists has noted that when enforced disappearance is committed as part of widespread or systematic attack against a civilian population, it constitutes a crime against humanity under customary international law (International Commission of Jurists [ICJ], 2015.). Consequently, international legal norms require states to prevent enforced disappearance, investigate allegations promptly and effectively, prosecute perpetrators, and ensure victims' right to truth, justice, and reparation, and guarantees of non-recurrence (United Nations, 2006).

The implementation of international human rights treaties, however, depends not only on their adoption at the international level but also on their incorporation into domestic legal systems. Ratification or accession constitutes the formal expression of a state's consent to be bound by a treaty under international law. Nevertheless, effective implementation requires states to adopt legislative, administrative, institutional, and judicial measures capable of giving practical effect to treaty obligations. Galvis (2021) argues that meaningful implementation of the CEDP requires states to establish comprehensive preventive frameworks that include criminalization of enforced disappearance, the prohibition of secret detention, effective investigation mechanisms, institutional safeguards against arbitrary, and the removal of legal barriers that facilitate impunity. Consistent with this approach, Article 4 of the Convention requires each State Party to ensure that enforced disappearance constitutes an offence under its domestic criminal law (United Nations, 2006).

Nepal presents a particularly significant case for examining the domestic reception of international norms against enforced disappearance. Since the early 1950s, allegations of enforced disappearances have periodically emerged in Nepal, becoming increasingly prevalent during the Panchayat regime (1961–1989) and escalating dramatically throughout the decade-long (1996–2006) armed conflict between the Government of Nepal and the Communist Party of Nepal (Maoist). During the conflict, both state security forces and the Maoist insurgency were implicated in abductions and enforced disappearances, although the overwhelming majority of documented cases have been attributed to state authorities (Chapagain et al., 2008). By 2004, Nepal had recorded one of the highest numbers of unresolved enforced disappearance cases worldwide (OHCHR, 2012). Although the Comprehensive Peace Agreement formally ended the armed conflict in 2006, the fate and whereabouts of many disappeared persons remain unknown. Thousands of families continue to seek truth, justice, Reparations, and accountability, while investigations and prosecutions have progressed only minimally.

This study examines the extent to which Nepal has internalized the normative framework established by the CEDP despite not being a State Party to the Convention. Nepal has neither signed nor ratified the Convention and therefore is not directly bound by its treaty obligations under the international law. Under the Treaty Act (1990), treaties generally acquire domestic legal effect only after ratification or accession in accordance with constitutional procedures. Accordingly, Nepal is under no legal obligation to domesticate the provisions of the CEDP. Nevertheless, Nepal remains bound by other international human rights instruments that prohibit arbitrary detention, torture, and violations of the right to life and liberty, including the International Covenant on Civil and Political Rights, to which Nepal is a State Party. These treaty obligations, together with customary international law, constitutional guarantees of fundamental rights, and judicial interpretation by the Supreme Court of Nepal, provide an important normative foundation addressing enforced disappearance within domestic legal system.

Judicial intervention has played a particularly significant role in this process. In the landmark decision *Rajendra Dhakal and others v. Government of Nepal* (2007), the Supreme Court recognized enforced disappearance as a grave violation of fundamental human rights and directed the Government to enact legislation criminalizing enforced disappearance in line with international standards. The Court further emphasized the state's obligations to investigate disappearances effectively, provide remedies to victims and their families, and establish institutional mechanisms capable of ensuring accountability. Beyond domestic jurisprudence, Nepal has also been subject to sustained international scrutiny. During successive cycles of the UN Human Rights Council Universal Periodic Review, numerous states recommended that Nepal ratify the CEDP and strengthen its domestic legal framework concerning enforced disappearance, recommendations that were reiterated during the third cycle in 2021 (UNHRC, 2021).

Responding to both domestic judicial directives and sustained international engagement, Nepal enacted the National Criminal Code (2017) which for the first time criminalized enforced disappearance. Section 206 prohibits any person from subjecting another individual to enforced disappearance, thereby establishing the offence within Nepal's criminal justice system. However, the effectiveness of this legislative development is substantially constrained by Section 210, which imposes six months statute of limitations, calculated from the date on which the disappearance is discovered or the disappeared person reappears. This limitation is inconsistent with international legal standards because enforced disappearance is widely recognized as a continuous offfence that persists until the fate or whereabouts of the disappeared person has been clarified (United Nations, 2006).

Nepal's broader transitional justice framework further illustrates the complexities of domestic implementation. The Commission on Investigation of Enforced Disappeared Persons (CIEDP) was established under the Enforced Disappearances of Enquiry, Truth, and Reconciliation Commission Act (2014) to investigate conflict-era disappearances alongside the Truth and Reconciliation Commission. Although the CIEDP has registered more than 2,500 complaints (Nepal, 2026), investigations remain incomplete, prosecutions have yet to commenced, and victims continue to experience prolonged delays in obtaining truth and justice. These institutional shortcomings demonstrate that legislative criminalization alone is insufficient unless accompanied by effective investigative, prosecutorial, and judicial mechanisms capable of enforcing the law in practice. This apparent divergence between Nepal's formal treaty position and its domestic legal developments exposes the limitation of explaining international law solely through the traditional dichotomy of monism and dualism. Conventional scholarship generally assumes that international norms become legally effective within domestic legal systems primarily through formal treaty ratification.

However, Nepal's criminalization of enforced disappearance despite remaining outside the CEDP suggests a more complex process of normative diffusion. To explain this phenomenon, this study employs Harold Hongju Koh's theory of the 'transnational legal process,' which argues that international legal norms become internalized through continuous interaction among domestic courts, governments, international organizations, civil society, and other transnational actors. Through repeated process of interaction, interpretation, and internalization, international norms may influence domestic legal systems even in the absence of formal teary obligations (Koh, 1996; Koh, 1997). Against this theoretical backdrop, the present study investigates the extent to which Nepal has internalized international norms concerning enforced disappearance through judicial interpretation, legislative reform, and institutional development. Rather than assessing treaty compliance alone, the study examines how domestic courts, international human rights institutions, and transnational advocacy have collectively shaped Nepal's evolving legal response to enforced disappearance. In doing so, it contributes to broader debates concerning the domestic reception of international human rights law, the operation of transnational legal processes, and the role of judicial constitutionalism in advancing human rights protection beyond the formal boundaries of treaty ratification.

Methodology, the study adopts a qualitative doctrinal research design grounded comprehensive literature review, statutory analysis, and qualitative content analysis. It examines constitutional provisions, the Nepal Treaty Act (1990), the National Criminal Code (2017), the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act (2014), recommendations of the United Nations Human Rights Council and the OHCHR, and relevant jurisprudence of the Supreme Court of Nepal. By integrating domestic legal materials with international human rights standards, the study evaluates the extent to which Nepal's legal framework reflects the interaction, interpretation, and internalization of international norms against enforced disappearance despite the absence of formal treaty ratification.

Modes and Theories of the Domestication of International Law

Broadly defined, the domestication of international law refers to the legal and institutional processes through which sovereign states give legal effect to international obligations within their domestic legal system (Dei-Tutu & Atuguba, 2023). Domestication enables international norms to become enforceable before national institutions and constitutes an essential mechanism through which states fulfill their international legal obligations. Although domestic legal systems differ considerably, two principal methods are generally employed. The first involves legislative incorporation, whereby parliament enacts legislation implementing treaty obligations into domestic laws. The second involves constitutional recognition, whereby international law is accorded with direct legal effect or constitutional status within the domestic legal hierarchy.

Conceptual Framework of Domestication: Monism and Dualism

The conceptual framework of domestication in international jurisprudence is often analyzed through two contrasting approaches: monism and dualism. These theories provide competing explanations of the relationship between international law and municipal law, particularly in determining which system takes precedence when conflicts arise.

International law governs relations among states, while municipal law regulates individuals and organizations within a state (Adhikari, 2009). The tension between potentially conflicting rules has been amplified by doctrinal disputes, with monist and dualist schools holding diametrically opposed views.

Monism

The monist theory maintains that domestic law inconsistent with international law is automatically null and void, and that international rules are directly applicable within the domestic legal systems (Malanczuk, 1997). This perspective emphasizes the unity of law and the supremacy of international norms in domestic spheres. In traditionally monist jurisdictions, constitutional provisions accord to international law with the same or higher status than domestic law, thereby eliminating the need for separate implementing legislation. Countries such as Italy, Netherlands, Belgium, the United States, France, and Mexico exemplify this model. For instance, Article VI, Clause 2 of the United States Constitution provides:

> "All treaties made, or which shall be made under the authority of the US, shall be the Supreme law of the land. And the Justices in every state shall be bound thereby, anything in the Constitution or law of any state to the contrary notwithstanding."

In the United States, treaties ratified by the Senate are placed on par with federal law, overriding conflicting state law and prior federal legislation. Nevertheless, such treaties may themselves be nullified by subsequent federal enactments, much like customary international law.

Dualism

By contrast, the dualist theory underscores the distinction between international and municipal law, treating them as separate domains of social science (Shaw, 2017). According to this view, international law acquires validity within municipal jurisdictions only when enacted by the national legislature (Adhikari, 2009). Dualism stresses the inviolability of sovereignty and the unlimited exercise of sovereign power. Consequently, international law cannot be applied in national courts unless it has been expressly incorporated into domestic legislation (Bashyal, 2066).

Jurisdictions such as the United Kingdom, Canada, Australia, New Zealand, India, and most Commonwealth countries adopt this orientation. English law, for example, recognizes international law as part of the law of the land, but if a statute conflicts with international law, courts initially attempt to harmonize the statute with the nation's international obligations. If reconciliation proves impossible, however, the statute prevails.

The automatic reception of international law into municipal systems reflects each country's interpretation and practice. Monism emphasizes the supremacy and direct applicability of international law, while dualism insists on legislative incorporation and the primacy of sovereignty. Together, these theories frame the doctrinal disputes that continue to shape the interaction between international and municipal legal orders.

Fitzmaurice's Compromise Theory

Recognizing the limitations of the strict monism-dualism dichotomy, Gerald Fitzmaurice proposed a more nuanced approach during 1950s. Rather than treating international and domestic law as competing legal orders, Fitzmaurice argued that they operate within separate spheres, each possessing supremacy within its own domain. International law regulates relations among states, whereas domestic law governs legal relationships within the state (Webber, 2012).

Under this approach, a state's reliance on domestic law cannot justify its failure to comply with international obligations. While domestic courts may continue to apply valid national legislation, the state nevertheless incurs international responsibility if such legislation conflicts with its international commitments. Fitzmaurice therefore shifted the debate away from hierarchical supremacy toward the international responsibility of states for non-compliance.

Transnational Legal Process Theory and Non-Party Compliance

While monism, dualism, and Fitzmaurice's compromise primarily explain how ratified treaties operate within domestic legal systems, they provide limited insight into situations in which states voluntarily adopt international norms despite not being parties to the relevant treaty. This article therefore employs Harold Hongju Koh's transnational legal process theory as its principal analytical framework.

The emergence of the transnational legal process reflects a broader shift in international legal scholarship away from a strictly state-centric understanding of international law. As Jackson and Sørensen (2013) observe, contemporary international relations extend beyond interactions among sovereign states to encompass transnational relationships involving individuals, courts, civil society organizations, international institutions, and other non-state actors. This pluralist perspective recognizes that international norms increasingly circulate through networks of actors operating across national boundaries rather than exclusively through formal intergovernmental agreements. Similarly, Martha Finnemore argues that international organizations influence domestic policy by promoting norms that states gradually adopt legitimate standards of governance.

Building upon this understanding, Harold Hongju Koh conceptualizes international law not as a static collection of rules but as a dynamic and continuous process through which public and private actors, including governments, domestic courts, international organizations, civil society organizations, and legal professionals interact across borders to create, interpret, and internalize international legal norms (Koh, 1996, 2017; Shaffer, 2010). According to Koh, repeated interaction generates a process of interpretation through which international norms are translated into domestic legal discourse. Over time, these interpreted norms become internalized within national legal and political institutions, ultimately shaping state behaviour even where no formal treaty obligation exists. Compliance therefore emerges not solely from legally binding commitments but also from judicial reasoning, institutional dialogue, normative persuasion, and repeated engagement with international standards.

The theory has subsequently been expanded within the broader scholarship on transnational legal ordering. Shaffer (2016) identifies three complementary dimensions of transnational legal ordering. The first concerns legal ordering through private actors and institutions operating beyond the state. The second examines the transnational processes through which legal norms are constructed, transmitted, and institutionalized across international, national, and local levels. The third reconceptualizes law itself by recognizing that legal authority increasingly develops through interactions involving both state and non-state actors. Collectively, these perspectives demonstrate that domestic legal change frequently results from continuous transnational engagement rather than formal treaty incorporation alone.

Within this framework, international legal norms become progressively “sticky”, shaping domestic legal expectations and influencing legislative, executive, and judicial decision-making (Martin, 2018). States may therefore internalize international standards voluntarily to strengthen human rights protection, enhance institutional legitimacy, respond to domestic judicial and civil society advocacy, or align their legal systems with evolving international norms, notwithstanding the absence of treaty ratification (Friedman, 2021). Consequently, transnational legal process theory provides an explanation for compliance without ratification, illustrating how international legal norms may become embedded within domestic legal systems through socialization, persuasion, and institutional practice rather than through formal legal obligation.

This theoretical framework is particularly relevant to the present study. Nepal has neither signed nor ratified the CEDP. Nevertheless, the offence of enforced disappearance was incorporated into the National Criminal Code (2017), and the Supreme Court of Nepal has repeatedly relied upon international human rights principles, including those reflected in the CEDP in interpreting constitutional rights and directing legislative reform, most notably in *Rajendra Dhakal and Others v. Government of Nepal* (2007). These developments cannot be adequately explained through traditional monist or dualist theories, both of which presuppose formal treaty obligations as the basis for domestic legal effect. Rather, they illustrate the operation of a transnational legal process in which international human rights norms have influenced domestic legislation and judicial interpretation through sustained interaction, normative persuasion, and judicial engagement. Accordingly, Koh’s Transnational Legal Process theory provides the most appropriate analytical framework for examining Nepal’s internalization of international norms prohibiting enforced disappearance despite its status as a non-party to the CEDP.

The Global Legal Imperative against Enforced Disappearance

The codification of international norms prohibiting disappearance represents a significant development in the evolution of international human rights law and global accountability. The adoption of the CEDP established the first comprehensive treaty framework specifically dedicated to preventing, investigating, prosecuting, and remedying enforced disappearance (McCrory, 2007). The Convention not only criminalizes enforced disappearance but also establishes detailed state obligations relating to prevention, victim protection, investigation, prosecution, international cooperation, and reparations. Nevertheless, McCrory (2007) argues that the Convention’s normative potential cannot be realized solely through its adoption at the international level. Its effectiveness ultimately depends upon states ratifying the Convention and implementing its obligations through domestic legislation, institutions, and enforcement mechanisms capable of preventing future violations and ensuring accountability.

International legal scholarship has subsequently refined the conceptual understanding of enforced disappearance as a distinct and continuing violation of human rights. Kyriacou (2025) defines enforced disappearance as one of the gravest violations of international human rights law, characterized by three essential elements: (a) the deprivation of an individual's liberty; (b) the direct or indirect involvement, authorization, support, or acquiescence of the state; and (c) the refusal to acknowledge the deprivation of liberty or disclose the fate or whereabouts of the disappeared person, thereby placing the individual outside the protection of the law. Although the precise wording differs among international instruments, including the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, the Inter-American Convention on Forced Disappearance of Persons, the Rome Statute of the International Criminal Court, and the CEDP, a broad consensus has emerged regarding these core constitutive elements. Among these instruments, the CEDP provides the most comprehensive legal framework by explicitly recognizing victims' rights to truth, justice, reparation, and guarantees of non-recurrence. Consistent with international standards on reparations, the Convention recognizes restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition as integral components of effective remedies (United Nations, 2006).

Contemporary literature has also expanded the scope of enforced disappearance beyond traditional contexts of armed conflict and political repression. Duhaime and Thibault (2017) demonstrate that migrants have become increasingly vulnerable to enforced disappearance throughout migration routes and in destination countries. They argue that disappearances may occur during immigration detention, deportation procedures, migrant smuggling operations, and human trafficking, as well as through politically motivated actions by state authorities. Their analysis illustrates that enforced disappearance is no longer confined to authoritarian regimes or internal armed conflicts but has emerged as a transnational human rights challenge requiring coordinated responses across international human rights law, refugee law, and migration law. This broader understanding reinforces the universal relevance of the CEDP and underscores the need for states to establish effective domestic legal frameworks capable of preventing enforced disappearance in diverse contexts.

Collectively, this body of scholarship demonstrates that enforced disappearance has evolved from being viewed as an isolated human rights abuse into a distinct international crime requiring comprehensive legal regulation. The literature consistently emphasizes that effective prevention depends not only on international norm development but also on their meaningful domestic implementation through criminalization, independent investigative mechanisms, judicial accountability, and effective remedies for victims. These insights provide the normative foundation for examining Nepal's domestic legal framework and assessing the extent to which international standards concerning enforced disappearance have been internalized despite the country's non-ratification of the CEDP.

Judicial Activism and Statutory Limitations

Judicial intervention has played a significant role in advancing legal protection against enforced disappearance in Nepal, particularly in the absence of an adequate legislative framework. Adhikari (2008) argues that the judiciary took unprecedented steps to prevent state agencies from orchestrating or facilitating enforced disappearances through progressive constitutional interpretation and judicial directives. In particular, the Supreme Court's landmark decision in *Rajendra Dhakal and Others v. Government of Nepal* (2007) marked a departure from the Court's traditionally restrained approach to judicial review. The judgment has had enduring implications for Nepal's constitutional development, transitional justice process, and engagement with international human rights law.

Similarly, Wagle (2011) argues that one of the principal obstacles to addressing conflict-era human rights violations is the absence of an adequate domestic legal framework, particularly in light of the principle of legality (*nullum crimen sine* lege), which prohibits the retroactive application of criminal law. He contends that international law can provide a normative foundation for addressing legislative gaps, drawing upon comparative international practice. Nepal's experience reflects this approach. Recognizing the inadequacy of existing criminal legislation to address enforced disappearance, the Supreme Court, in *Rajendra*

Dhakal and Others v. Government of Nepal (2007), held that effective investigation and prosecution were impossible in the absence of specific legislation criminalizing enforced disappearance. The Court observed that Nepal's existing criminal laws failed to address the legal and institutional dimensions of enforced disappearance and therefore directed the Government to enact legislation defining and criminalizing the offence in accordance with the standards contained in the CEDP. Although Nepal was not a party to the Convention, the Court relied upon its provisions as persuasive international authority to guide domestic legal reform. This judgment represents a significant example of judicial engagement with international human rights norms and illustrates how courts can facilitate the domestic internalization of international standards beyond formal treaty ratification.

This interpretation is supported by other scholars. Kristjánsdóttir et al. (2012) argue that the Dhakal decision introduced several important principles of international human rights law into Nepal's domestic legal order. According to the authors, the judgment made three significant contributions. First, it recognized the right of families to know the fate and whereabouts of disappeared persons as an integral component of the right to an effective judicial remedy. Second, it affirmed the right of victims' families to receive compensation. Third, it directed the Government of Nepal to initiate criminal proceedings against those responsible for enforced disappearances and to establish an appropriate legal framework consistent with the standards of the CEDP. Collectively, these judicial directives laid the normative foundation for Nepal's subsequent legislative response to enforced disappearance.

A victim-centred perspective is also advanced by Bishwa Pathak (2016), who observes that more than fifty post-conflict countries have established truth commissions to investigate historical human rights violations. Among these, several commissions have focused specifically on enforced disappearance as a mechanism for uncovering the truth, combating impunity, and providing justice and reparations to victims' families. Drawing upon human security theory, Pathak argues that transitional justice mechanisms should prioritize the protection, dignity, and security of victims rather than the interests of perpetrators or political elites.

From a broader constitutional perspective, Bikash Baral and Prakash Basnet (2020) examine the theoretical foundations of monism and dualism and analyse comparative constitutional and judicial practices regarding the reception of international law. They argue that determining whether a state follows a monist or dualist approach requires an integrated assessment of its constitutional provisions, statutory framework, and judicial practice. Applying this analytical framework to Nepal, they conclude that the Treaty Act (1990), does not adopt a consistently monist or dualist position. Instead, Nepal's approach to the domestication of international law has evolved largely through judicial interpretation, particularly where courts have relied on international human rights norms to resolve gaps in domestic legislation. This jurisprudential development demonstrates that Nepal's legal system increasingly reflects a functional and pragmatic approach to international law rather than strict adherence to either traditional model.

Nepali Legal Framework on the Domestication of International Law

The Constitution of Nepal (2015) does not directly allow the domestication of international law, specifically concerning treaties to which the state is not a party. While Nepal displays characteristics of both monistic and dualistic schools of thoughts, its legal framework is generally oriented toward a dualist approach, requiring explicit transformation for international norms into national legislation to be enforceable.

The Nepal Treaty Act (1990) governs the reception of international law. Section 9 of the Act outlines the mechanism for giving effect to treaties ratified or approved by the parliament:

(1) In case of the provisions of a treaty, to which Nepal or Government of Nepal is a party upon its ratification accession, acceptance or approval by the Parliament, inconsistent

with the provisions of prevailing laws, the inconsistent provision of the law shall be void for the purpose of that treaty, and the provisions of the treaty shall be enforceable as good as Nepalese laws.

(2) Any treaty which has not been ratified, accede to, accepted or approved by the Parliament, though to which Nepal or Government of Nepal is a party, imposes any additional obligation or burden upon Nepal, or Government of Nepal, and in case legal arrangements need to be made for its enforcement, Government of Nepal shall initiate action as soon as possible to enact laws for its enforcement.

While this Act provides a pathway for domestication of ratified international instruments, the Constitution itself, declaring all inconsistent law void. Crucially, both the Constitution and the Treaty Act remain silent on the status and direct applicability of how international instruments to which Nepal is not a party (Chapagai, 2009). This creates a normative vacuum, leaving the domestic application of such standards dependent on judicial interpretation rather than explicit legislative mandate.

Substantive Provisions and compliance under the CEDP

The CEDP serves as the first universally binding human rights instrument specifically addressing enforced disappearance. The Convention considers enforced disappearance to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law (OHCHR, 2010).

It establishes an absolute prohibition: "No one shall be subject to enforced disappearance without exception, even in time of war or other public emergency" (United Nations, 2006, Art.1). Similarly, Article 4-7 requires states to criminalize enforced disappearance under domestic law as an autonomous offense, punishing it with appropriate penalties that account for its extreme seriousness (OHCHR, 2010). The Convention mandates that state parties criminalize enforced disappearance and make it a punishable offence, ensuring penalties commensurate with its severity. It classifies enforced disappearance as a crime against humanity when perpetrated in a widespread or systematic manner (United Nations, 2006). Beyond criminalization, the CEDP imposes affirmative obligations upon states to investigate disappearances, locate the disappeared, and ensure victims have access to justice and reparation. Notably, the Convention establishes chain-of-command responsibility, denies the "superior orders" defense, and mandates universal jurisdiction for prosecution (OOHCHR, 2010).

The Compliance Gap: Statute of Limitations

Enforced disappearance as a continuous nature of the crime, Article 8 recognizes that the statute of limitations should be long-term and start only when the fate or whereabouts of the disappeared person is established (OHCHR, 2010). From Nepal's perspective, Section 210 of the National Criminal Code (2017) provides the six months' statute of limitations. This section states that "no complaint shall be entertained after expiry of six months from the date of having knowledge of commission of the offence or from the date of the disappeared person getting or being made public." This period is insufficient and inconsistent with international legal standards. Enforced disappearance as a grave violation of human rights, a six-month limit is regarded as "too short" to be considered a reasonable timeframe for investigation and prosecution of enforced disappearance offence.

The CEDP primarily provides responsibility for State agents, but Article 3 requires investigation of acts committed by non-State actors (OHCHR, 2010). Committee on Enforced Disappearances (2024) clarifies that acts by non-State actors exercising control over territory or acting in non-international armed conflicts fall under the Convention's scope. The Convention ensures the protection of individuals involved in investigation and search efforts, including victims, witnesses, and defense counsel, from intimidation or ill-treatment (Jovanović, 2025).

The Article 12 of the CEDP ensures that the right to report disappearances is recognized, and investigations must start immediately, allowing family members to access information (OHCHR, 2006). The guiding principles for the search for disappeared persons which based on the CEDP, and other relevant international instruments provides that the search for a disappeared person should be conducted under the presumption that he or she is alive (UNCED, 2019). It also stipulates that the search is a continuing obligation. Nepal (2026) argues that according to 2020 CIEDP report, a list of 2,506 people allegedly forcibly disappeared, but Nepal has failed to determine what happened to a single victim, and nobody has been held accountable.

Equally, Nepal has been consistently receiving recommendations from the UN Human Rights Council to become a party to the CEDP (OHCHR, 2021). Similarly, in 2007, the Supreme Court ordered the government to enact legislation against criminalizing enforced disappearance in line with the Convention's standards. During the 3rd cycle of the UPR in 2021 and in 4th cycle in 2026 various countries have recommended Nepal to become the state party to enforced disappearance convention (OHCHR, 2021). In 3rd cycle, Argentina, Greece and Honduras (UNHRC, 2021) and in 4th cycle Mongolia, Thailand, Croatia, France, Malta, Niger, Peru and Japan recommended to take all necessary steps towards the ratification and signing of the CEDP (UNHRC, 2026).

UPR recommendations contribute to norm internationalization because they reinforce and diffuse international human rights standards across States. However, the recommendations themselves do not automatically mean that the norm has been fully internalized. States like Argentina encourage Nepal under UPR review to ratify convention, criminalize enforced disappearance, investigate cases, provide remedies to victims, and strengthen institutions. These spreads shared expectations regarding appropriate State behaviour.

Legal and Institutional Arrangements and International Oversight

Nepal has neither ratified the CEDP nor signed the Rome Statute. However, it has established national commissions and criminalized enforced disappearance through the National Criminal Code. Section 206 of the Code (2017) stipulates that no person shall subject to enforced disappearance. Subsection 2 defines "enforced disappearance" as:

(a) The arrest, detention, or control of a person by authorized personnel, followed by failure to produce the individual before a competent authority within twenty-four hours (excluding travel time), refusal to allow contact, or concealment of information regarding their whereabouts and condition.

(b) The abduction or deprivation of liberty by any person or group, accompanied by concealment of information about the reasons, location, or condition of detention.

While this represents progress in domesticating the CEDP, gaps remain. The definition inadequately addresses superior command responsibility, does not make the prohibition absolute, and prescribes penalties inconsistent with international standards (ICJ, 2017). The United Nations (2006) emphasizes that superiors are culpable if they knew or disregarded information about crimes, exercised effective control, should have known given their authority, or failed to take reasonable measures to prevent or prosecute violations.

Both CEDP and Nepali law recognize deprivation of liberty and concealment of information as core elements but diverge in scope. The CEDP requires a state-actor nexus, whereas Section 2(b) extends liability to non-state groups, blending enforced disappearance with ordinary abduction. Moreover, the CEDP stresses removal from legal protection as a defining consequence, while Nepali law focuses more narrowly on procedural failures, such as non-production before authorities within 24 hours.

The Supreme Court of Nepal has played a pivotal role in aligning domestic law with international standards. Between 2007 and 2020, it ordered the government to criminalize enforced disappearance and rejected amnesty provisions in the 2014 Truth and Reconciliation Commission Act (Schonveld & Bandi, 2014). Despite these rulings, Ahmed (2020) argues that legislation remains flawed, failing to ensure unconditional prohibition, robust investigations, or accountability for senior officials. Penalties also fall short of international standards.

The Disappeared Persons Enquiry, Truth and Reconciliation Commission Act (2014) classifies enforced disappearance as a grievous violation of human rights. The Commission is mandated to investigate such violations and recommend reparations. Section 14 empowers it to excavate suspected burial sites, conduct DNA testing or post-mortem examinations, and return identified remains to families—recognizing victims' rights to truth, dignity, and closure.

Following the 2024 amendment, the Act generally prohibits amnesty for serious human rights violations. The International Commission of Jurists (2024) notes that the Supreme Court has consistently ruled blanket amnesties for crimes such as torture, rape, and enforced disappearance unconstitutional.

Conclusion

Nepal, under its domestic legal framework, is not obligated to enforce instruments to which it is not a party. Nevertheless, it has voluntarily incorporated provisions from international instruments into national legislation. A notable example is the criminalization of enforced disappearance in the National Criminal Code, despite Nepal not being a party to the CEDP. The Supreme Court of Nepal has played a pivotal role in this process, particularly through its directive in *Rajendra Dhakal and Others v. Government of Nepal* (2007), which required the government to criminalize enforced disappearance in line with international standards. The Court has consistently acted as a driver of the transnational legal process, aligning domestic law with international norms. In addition, the UN Human Rights Council has recommended that Nepal consider signing and ratifying the CEDP.

The transitional justice process, shaped by the Disappeared Persons Enquiry, Truth and Reconciliation Commission Act (2014), provides for the establishment of a commission to investigate conflict-era disappearances. Following amendments in 2024, the Act generally prohibits amnesty for serious human rights violations. Despite this, the Commission has listed approximately 2,557 cases without conducting effective investigations or prosecutions under the Criminal Code.

Nepal's approach reflects the application of the transnational legal process in domesticating international standards on enforced disappearance. While definitions have been incorporated into the Criminal Code, the "internalization" phase remains limited, creating a gap between international obligations and domestic accountability. Section 206 of the Criminal Code prohibits enforced disappearance, and the CEDP similarly requires states parties to criminalize and punish the offense. This demonstrates Nepal's partial alignment with international standards, though challenges persist in enforcement, prosecution, and compliance with the broader obligations envisioned under international law.

References

Adhikari, P. (2009). An overview of constitutional and legislative provisions of Nepal concerning internalisation of international law. *Nepal Law Review*, *17*(1), 21.

Ahmed, I. (2020). A comparative analysis of laws and mechanisms against enforced disappearance in Pakistan and Nepal in light of the international human rights instruments [Master's thesis, Mahidol University].

Baral, S., & Basnet, S. (2020). Domestication of International Law with special reference to the Statutory and Judicial Assessment of Nepal. *NYAYADUT, 51*(243), 45-68.

Bashyal, B. (2066). *Public international law*. Lumbini Prakhashan.

Chapagai, R. P. (2009). National application of international human rights law: A Nepali perspective. *NJA Law Journal*, *3*(1), 113-121.

Chapagain, B., Ojha, P., & Shrestha, S. (2008). *Impaired accountability: State of disappearance in Nepal: A brief assessment of implementation of UN WGEID recommendations*. Informal Sector Service Centre (INSEC). https://insecresources.org.np/pages/download_progress.php?ref=38128&size=&ext=pdf&k=5a042e2cc7.

Committee on Enforced Disappearances. (2024). Statement on non-State actors in the context of the International Convention for the Protection of All Persons from Enforced Disappearance. United Nations.

Dei-Tutu, S., & Atuguba, R. A. (2023). The domestication of international law in African settings: Seven normative options in Ghana. 10.1515/icl-2023-0020.

Duhaime, B., & Thibault, A. (2017). Protection of migrants from enforced disappearance: A human rights perspective. *International Review of the Red Cross*, *99*(905), 569-587. https://doi.org/10.1017/S1816383118000097.

Friedman, A. (2021). Compliance without ratification: Using international law in non-binding scenarios. *Revue québécoise de droit international*, 137–157. https://doi.org/10.7202/1079426ar.

Galvis, M. C. (2021). *The work of the Committee on Enforced Disappearances*. Geneva Academy of International Humanitarian Law and Human Rights. https://geneva-academy.ch/wp-content/uploads/2025/09/The-Work-of-the-CED.pdf.

Human Rights Watch. (2007). *Nepal: Supreme Court orders action on "disappearances"*. https://www.hrw.org/news/2007/06/15/nepal-supreme-court-orders-action-disappearances.

International Commission of Jurists. (2015). *Enforced Disappearance and Extrajudicial Execution: Investigation and Sanction: A Practitioners Guide*. https://www.icj.org/wp-content/uploads/2015/12/Universal-Enforced-Disappearance-and-Extrajudicial-Execution-PGNo9-Publications-Practitioners-guide-series-2015-ENG.pdf

International Commission of Jurists. (2017). *No more "missing persons": The criminalization of enforced disappearance in South Asia*. https://www.icj.org/wp-content/uploads/2017/08/South-Asia-Enforced-Disappearance-Publications-Reports-Thematic-Reports-2017-ENG.pdf.

International Commission of Jurists. (2024). *A brief review of Nepal's transitional justice (TJ) law: Donors and supporters must be vigilant to ensure compliance with Nepal's international legal obligations, while supporting its implementation*. ICJ Briefing Paper. https://www.icj.org/wp-content/uploads/2025/03/A-Brief-Review-of-Nepals-Transitional-Justice-TJ-Law.pdf.

International Committee of the Red Cross. (n.d.). *Domestic law and IHL*. ICRC. https://www.icrc.org/en/law-and-policy/domestic-law-and-ihl

Jackson, R., & Sørensen, G. (2016). *Introduction to international relations: Theories and approaches* (6th ed.). Oxford University Press.

Jovanović, I. (2025). Enforced disappearances in armed conflict through the lenses of the International Convention for the Protection of All Persons from Enforced Disappearance. In G. Baranowska & M. Kolaković-Bojović (Eds.), *Enforced disappearances: On universal responses to a worldwide phenomenon* (19-46). Cambridge University Press. DOI:10.1017/9781009461719.002.

Koh, H. H. (2017). Transnational legal process. In. (Ed), *The nature of international law* (pp. 311-338). Routledge.

Kristjansdottir, E., Nollkaemper, A., & Ryngaert, C. (Eds.). (2012). *International law in domestic courts: Rule of law reform in post-conflict states*. Intersentia.

Kunwar, T. N. (2019). The application of the Geneva Conventions in Nepal: Domestication as a way forward. In S. Linton, T. McCormack, & S. Sivakumaran (Eds.), *Asia-Pacific Perspectives on International Humanitarian Law* (23-36). Cambridge University Press. file:///C:/Users/dell/Downloads/RS122_Application%20of%20Geneva%20Conventions%20in%20Nepal%20Domestication%20as%20a%20way%20forward%20-%20Tek%20Narayan%20Kunwar.pdf. Kyriacou, N. (2025). Enforced disappearances in international human rights law: Definitions, violations and remedies. *Journal of Disappearance Studies*, *1*(1), 38-56. https://doi.org/10.1332/30498414Y2025D000000008.

Malanczuk, P. (1997). *Akehurst's modern introduction to international law* (7th ed.). Routledge.

Martin, C. (2018, February 26). Symposium: The assumptions of Koh's transnational legal process as counter-strategy. *Opinio Juris*. https://opiniojuris.org/2018/02/26/symposium-the-assumptions-of-kohs-transnational-legal-process-as-counter-strategy/.

McCrory, S. (2007). The international convention for the protection of all persons from enforced disappearance. *Human Rights Law Review*, *7*(3), 545-566. https://doi.org/10.1093/hrlr/ngm021

Nepal, D. (2026,). From accord to action: Evaluating Nepal's transitional justice mechanism over two decades of waiting. *Human Rights Research Center*. https://www.humanrightsresearch.org/post/from-accord-to-action-evaluating-nepal-s-transitional-justice-mechanism-over-two-decades-of-waiting

Office of the United Nations High Commissioner for Human Rights. (n.d.). *Human rights recommendations: Enforced disappearance recommendations for Nepal*. Universal Human Rights Index. Retrieved June 20, 2026, from https://uhri.ohchr.org/en/search-human-rights-recommendations?countries=17578535-38b0-428a-a9bc-4fa64451ae1c&searchText=enforced+disappearance&mechanismsOpened=b2b5b669-14-05-419d-8603-7826b15d69e1.

Office of the United Nations High Commissioner for Human Rights. (n.d.). *International human rights law*. https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law.

Office of the United Nations High Commissioner for Human Rights. (2010). *Background: International Convention for the Protection of All Persons from Enforced Disappearance*. OHCHR. https://www.ohchr.org/en/treaty-bodies/ced/background-international-convention-protection-all-persons-enforced-disappearance

Office of the High Commissioner for Human Rights. (2021). United Nations Universal Human Rights Index. https://uhri.ohchr.org/en/search-human-rights-recommendations?

Office of the High Commissioner for Human Rights. (2026). *Treaty body database: Ratification status for Nepal*. United Nations. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=122&Lang=EN

Parajuli, S. (2025). Rethinking Nepal's transitional justice process through a feminist and intersectional lens. *The Informal: South Asian Journal of Human Rights and Social Justice*, *2*(1), 1–18. https://doi.org/10.3126/informal.v2i01.82393

Pathak, B. (2016). World's disappearance commissions: An inhumanious quest for truth. World Journal of Social Science Research, *3*(3), 274-306. https://humiliationstudies.org/documents/PathakWorldsDisappearance2016.pdf.

Rajendra Dhakal and Others vs. Government of Nepal. Supreme Court of Nepal. Case no.3575 (2007).

Schonveld, B., & Bandi, G. (2014). Nepal's Supreme Court lays down the gauntlet. International Commission of Jurists *Asia*. https://www.icj.org/resource/nepals-supreme-court-lays-down-the-gauntlet/

Shaffer, G. (2010). *Transnational legal process and state change: Opportunities and constraints* (IILJ Working Paper 2010/4). International Law and Justice Working Papers, Institute for International Law and Justice, New York University School of Law.

Shaffer, G. (2016). Theorizing transnational legal ordering. *Annual Review of Law and Social Science*, *12*(1), 231-253. https://doi.org/10.1146/annurev-lawsocsci-110615-085128

Shaw, M. N. (2017). *International Law* (8th ed.). Cambridge University Press.

Singh, R. (2005). The use of international law in the domestic courts of the United Kingdom. *Northern Ireland Legal Quarterly*, 56(2), 119-134. https://nilq.qub.ac.uk/index.php/nilq/article/view/794/628

The Constitution of Nepal (2015).

The Constitution of the United States, 1787.

The Disappeared Persons Enquiry, Truth and Reconciliation Commission Act, 2071.

The National Criminal Code, 2017.

The Nepal Treaty Act, 1990.

United Nations. (2006). *International Convention for the Protection of All Persons from Enforced Disappearance*. Office of the United Nations High Commissioner for Human Rights. https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced

United Nations Committee on Enforced Disappearances. (2019). *Guiding principles for the search for disappeared persons* (CED/C/7). https://www.ohchr.org/en/documents/legal-standards-and-guidelines/guiding-principles-search-disappeared-persons

United Nations Human Rights Council (UNHRC). (2021, July 28). *Outcome of the universal periodic review: Nepal* (A/HRC/DEC/47/107). United Nations. https://docs.un.org/en/A/HRC/DEC/47/107.

United Nations Human Rights Council. (2026). *Report of the Working Group on the Universal Periodic Review: Nepal* (A/HRC/62/9). United Nations. https://docs.un.org/en/A/HRC/62/9.

Uprety, K. (2008). Against Enforced Disappearance: the Political Detainees' case before the Nepal Supreme Court. *Chinese Journal of International Law*, *7*(2), 429-457. https://doi.org/10.1093/chinesejil/jmn015.

Wagle, R. (2011). Judicial activism and the use of international law as gap-filler in domestic law: The case of forced disappearances committed during the armed conflict in Nepal. *International law in domestic courts: Rule of law reform in post-conflict states, (pp.* 83-106). https://doi.org/10.1017/9781839700729.006

Webber, C. W. A. (2012). *The decline of dualism: The relationship between international human rights treaties and the United Kingdom's domestic counter-terror laws* [Doctoral thesis, University of South Africa]. https://www.semanticscholar.org/paper/The-Decline-of-Dualism%3A-The-Relationship-Between-Webber/94039c6e1e46525f29cd30bb58058eddabf562c4

The Informal: South Asian Journal of Human Rights and Social Justice
Volume 03 Issue 01, 2026. pp. 61-73
Research Article
https://doi.org/10.3126/informal.v3i1.97534

Ecofeminism, Climate Justice, and Women's Leadership in South Asia

Garima Bista
Advocate

Article Info.

Corresponding Author
Garima Bista

Email
garimabista108@gmail.com

Article History
Received: 18 May 2026
Accepted: 2 July 2026
Published: 31 July 2026

How to Cite this Article
Bista, G. (2026). Ecofeminism, Climate Justice, and Women's Leadership in South Asia. *The Informal: South Asian Journal of Human Rights and Social Justice, 3*(1), 61-73.

Abstract

Climate Change is not only an environmental crisis but also a profound social and political challenge that disproportionately affects marginalized communities, particularly women in the Global South. Existing inequalities based on gender, resource access, political participation, environmental degradation, and resource scarcity affect women's vulnerability to climate impacts while constraining their adaptive capacities. At the same time, women continue to play critical roles in environmental protection, community resilience, and sustainable resource management despite their limited inclusion in formal climate governance and decision-making processes. This article draws on feminist and ecofeminist perspectives and employs a qualitative comparative analysis of secondary literature, policy documents, and regional case studies to examine how climate vulnerability is produced and reinforced by structural inequalities, including unequal land ownership, gendered divisions of labour, and the underrepresentation of women in political institutions. The study analyses the gap between policy commitments to gender inclusion and the persistent limitations on women's substantive participation in climate governance using examples from countries, including Nepal, India, Bangladesh, Pakistan, and Sri Lanka. The article argues that achieving climate justice in South Asia requires not only gender-sensitive policies but also broader structural transformation, meaningful political representation, gender-responsive institutions, and stronger accountability mechanisms that move beyond symbolic inclusion and towards genuine decision-making power.

Keywords: climate change; climate justice; gendered vulnerability; ecofeminism; south asia

Introduction

Climate change is increasingly recognized not only as an environmental crisis but also as a deeply social and political phenomenon that reshapes existing patterns of inequality within and across societies (Intergovernmental Panel on Climate Change [IPCC], 2022). In South Asia, one of the world's most climate-vulnerable regions, the impacts of climate change are intensified by pre-existing structural inequalities, particularly those related to gender, class, caste, and geography (World Bank, 2021). While climate-related hazards affect entire populations, their consequences are unevenly distributed, with women, especially those living in poverty and rural areas, being disproportionate vulnerable due to their social roles, economic marginalization, and limited access to resources and decision-making roles (UN Women, 2020).

This paper is situated within the broader conceptual framework of gendered political ecology and intersectional climate justice, which understands environmental change as inseparable from systems of power that shape access to resources, governance structures, and adaptive capacity (Kaijser & Kronsell, 2014). It draws on feminist political economy and ecofeminist perspectives to examine how gendered divisions of labor, unequal access to resources, and institutional exclusions shape both exposure to climate risks and the ability to adapt to them (Shiva & Mies, 1993). In doing so, it challenges dominant climate governance approaches that treat gender as a peripheral policy consideration rather than a central analytical category for understanding climate vulnerability and governance failures in South Asia.

The central argument of this paper is that despite the formal commitments to gender equality and affirmative action mechanisms across South Asian political systems, women's participation in climate governance often remains largely symbolic rather than substantive. This gap is not simply a matter of representation but reflects deeper structural constraints embedded within electoral systems, party politics, institutional design, and socio-economic hierarchies (Hamilton et al., 2024). Furthermore, the paper argues that climate vulnerability cannot be understood in isolation from these governance deficits, as the exclusion of women from decision-making processes directly weakens the effectiveness, equity, and responsiveness of climate adaptation policies (IPCC, 2022). At the same time, the paper highlights that women are not merely passive victims of climate change but active agents of environmental governance, whose contributions are often most visible at the community level yet least recognized within formal political institutions (Agrawal, 2010).

Methodologically, this study adopts a qualitative, comparative analytical approach based on secondary sources, including academic literature, policy documents, international organizational reports, and regional case studies. This approach is appropriate because it allows comparative examination of structural patterns in gender and climate governance while integrating theoretical and empirical insights from diverse national contexts. Comparative analysis across countries, including Nepal, India, Pakistan, Bangladesh, and Sri Lanka, helps identify both shared regional trends and context-specific differences in representation, policy design, and implementation. The inclusion of case-based evidence, such as community forest governance in Nepal, further illustrates how gendered participation and climate governance operate in practice.

Overall, this paper seeks to bridge the gap between gender, climate vulnerability, and governance by examining how structural inequalities shape both exposure to climate change and access to political power in South Asia. In doing so, it contributes to ongoing debates on climate justice by emphasizing that meaningful climate action requires not only technical interventions but also transformative changes in political inclusion, institutional accountability, and the distribution of decision-making power.

Gender, Poverty, and Climate Change

People living in poverty are often disproportionately affected by the repercussions of climate change despite contributing the least to global greenhouse gas emissions (Singh, 2015). Climate-related hazards, including both slow-onset environmental changes and extreme weather events, directly affect the poor through adverse impacts on livelihoods, including reductions and losses in agricultural productivity, adverse impacts on human health and food security, the destruction of homes and infrastructure, and the loss of income and employment opportunities (Hellegatte et al., 2015; Boutin & Smith, 2016). These negative impacts are particularly severe for vulnerable or marginalized populations, often generating "residual impacts residual risks" that persist long after the immediate effects of climate-related events have subsided (Warner & Geest, 2013; James et. al., 2014; Boyd et al., 2017).

Women constitute roughly 70 percent of the world's poor, a disproportionate representation driven by intersecting structural, economic, and gender-specific vulnerabilities (Aliyeva, 2025). Across many societies, women are often overrepresented in informal and precarious forms of employment that are characterized by low wages, limited job security, and inadequate social protection. In addition, women bear a disproportionate share of unpaid care and reproductive labor, including responsibilities associated with pregnancy, childbirth, childcare, menstruation, and family caregiving. These responsibilities can constrain education, formal employment, and economic opportunities, particularly where healthcare systems and social protection mechanisms are weak.

In many regions, women bear primary responsibility for securing food, water, and fuel for their households. As climate change intensifies resource scarcity, these responsibilities often become more time-consuming and physically demanding, requiring women to travel longer distances and expend greater effort to meet household needs (UN Women, 2025). This heightened exposure to climate-related risks is shaped by intersecting structural factors, including reliance on natural resources for daily survival, gendered divisions of labor, and socially assigned caregiving roles, all of which influence how women experience and respond to climate-related change.

Rural women, especially those from poor and marginalized groups, are often directly dependent on natural resources such as forests, land, and water for their livelihoods and household well-being (International Centre for Integrated Mountain Development [ICIMOD], 2021). Consequently, climate-induced changes in environmental conditions can significantly increase women's workloads while simultaneously reducing the availability and productivity of the resources on which they depend. As climate variability intensifies, these already time-intensive responsibilities may become increasingly burdensome and, in some contexts, even life-threatening (Technoserve, 2023).

Academic and policy discussions on gender and climate change have gained momentum over the past decade, reflecting growing recognition of both, the differentiated impacts of climate change and the limited inclusion of women in climate governance and decision-making processes (Ayadi et al., 2021). Within dominant climate change narratives, women are frequently positioned either as passive victims of environmental degradation or as exceptional agents of resilience, and sometimes both simultaneously. Although these perspectives capture important dimensions of women's experiences, they risk reducing women to fixed identities of "victim" or "hero" that obscures their broader political agency. Such framings overlook the fact that women are entitled to participate in climate governance as equal political actors, irrespective of whether they are portrayed as vulnerable or resilient. A climate justice perspective therefore requires moving beyond these simplified representations and recognizing women as rights-holders and decision-makers with legitimate claims to political participation and leadership.

Understanding Women's Climate Vulnerability in South Asia

South Asia and the Hindu Kush Himalaya (HKH) region account for a disproportionately high share of global climate-related disasters, with approximately 40 percent of recorded climate-related events occurring within the region (Technoserve, 2023). This landscape features geologically fragile environments, such as high-altitude mountains, river basins, and densely populated coastal floodplains that are vulnerable to erosion, landslides, flash floods, glacial outburst floods, prolonged drought, and saline intrusion (UN Women, 2023). These environmental vulnerabilities intersect with persistent socio-economic inequalities, creating complex patterns of climate risk and uneven adaptive capacity across populations.

Empirical evidence suggests that women in the Global South are likely to experience the adverse effects of climate change more acutely than men due to existing inequalities in access to resources, services, and decision-making opportunities. At the same time, studies have identified gender differenced consumption patterns and carbon footprints, with men in the Global North generally exhibiting higher levels of carbon-intensive consumption than women (Jonsson, 2011). Despite these differences, a common feature across both diverse geographies, however, is systematic exclusion from formal decision-making institutions, a factor that determines both gender equality and the effectiveness of climate adaptation and environmental governance (Jonsson, 2011).

One factor contributing to this persistent exclusion is the unequal distribution of climate knowledge and information, which constrains women's participation in both decision-making processes and reduces their ability to engage effectively in adaptive planning. For example, Nepal ranked among the top 10 countries most severely affected by climate-related hazards and vulnerabilities in 2024 (Adil et al., 2025). According to the National Climate Survey (2022), a substantially higher proportion of women (74 percent) reported being unaware of climate change impacts compared to men (61.3 percent), reflecting a significant gender gap in access to climate information. As a result, women are less likely to access timely information on adaptation strategies and climate-resilient practices, which can constrain their capacity to respond effectively to climate-related hazards and exacerbate existing socio-economic vulnerabilities.

However, limited access to climate information represents only one dimension of climate vulnerability. Women also face structural inequalities in access to productive assets and economic resources that shape their ability to adapt to climate change. In South Asia, where approximately 70 percent of the population relies directly or indirectly on agriculture for their livelihoods (International Water Management Institute [IWMI], 2026), gender disparities in access to agricultural technologies such as irrigation systems, mechanized equipment, and climate-resilient inputs contribute to unequal adaptive outcomes. Greater access to these resources enables many male farmers to mitigate some of the adverse effects of climate shocks, whereas women often experience relatively larger declines in agricultural productivity and income during periods of environmental stress.

Land ownership constitutes another significant dimension of climate vulnerability. Women face substantial barriers in accessing and controlling land across South Asia despite their extensive involvement in agricultural production (Islam, et al., 2024; Union of International Associations [UIA], 2022). Climate change disproportionately affects sectors in which women play central economic roles, such as paddy farming, tea and cotton cultivation, and small-scale fisheries, thereby intensifying both livelihood insecurity and unpaid labor burdens (Parikh, 2003). In the absence of secure land tenure, women farmers face persistent uncertainty that limits their ability to make long-term investments in land productivity, adopt climate-resilient agricultural practices (Roberts, 2021) or access formal credit and agricultural support services (Islam et al., 2024).

These challenges are particularly evident in Nepal. According to the Nepal Labor Survey 2017/18, approximately 61 percent of women are involved in subsistence agriculture, compared with only 47 percent of men. Despite their central role in agricultural production, women frequently face barriers in accessing weather and climate information, agricultural extension services, independent sources of income, and credit. Such constraints significantly reduce their adaptive capacity and increase their exposure to climate-related risks.

These vulnerabilities are not merely the result of environmental exposure but are produced and reinforced through unequal social relations, governance structures, and distributions of political power. Understanding climate vulnerability in South Asia, therefore, requires assessments of risk to examine how gendered inequalities shape access to resources, adaptive capacity, and participation in decision-making processes. This perspective provides an essential foundation for understanding the relationship between climate justice, women's leadership, and inclusive climate governance in the region.

Ecofeminism and Women's Role in Environmental Justice

Early theoretical frameworks attempting to unpack the relationship between environmental degradation and gender inequality often draw upon ecofeminism. The French feminist, Françoise d'Eaubonne, coined the term 'Eco-feminism' in 1974 to describe the interconnected struggles against the domination of women and the exploitation of nature (Hosseinnezhad, 2017). Emerging from environmental and feminist movements, ecofeminism continued to develop in the 1980s as radical eco-feminists linked the ways in which patriarchal systems construct women and nature with adjustable power and encouraged their exploitation for economic labor and resources (Imran and Chen 2020; Miles 2018).

Ecofeminism explains that the connection between the oppression of women and the degradation of nature is rooted in similar structures of domination, arguing that patriarchal societies have historically associated women with nature and men with culture and dominance (Rosendo & Kuhnen, 2021), thereby legitimizing both, environmental exploitation and gender inequality. From this perspective, environmental destruction and social injustice are mutually reinforcing processes. Ecofeminist theory, therefore, criticizes both patriarchy and capitalism for perpetuating gender inequality, social exclusion, and ecological destruction, while advocating for an equitable, inclusive, and ecologically sustainable approach to development (Rowland, 2015).

Ecofeminist thought is particularly relevant in the context of climate change. Environmental challenges such as water scarcity, pollution, deforestation, and drought disproportionately affect women, especially in rural and resource-constrained communities (Mani, 2026). Since women are often responsible for securing water, fuel, and food for managing the household, environmental degradation directly increases their workloads, undermines their livelihoods and affects their health and well-being. Ecofeminists believe that women's knowledge, lived experiences, and proximity to natural resources equips them with valuable ecological knowledge and practical experience that can contribute to environmental conservation, climate adaptation, and sustainable resource management.

Climate-related disasters further expose the gendered dimensions of environmental vulnerability. During and after disasters, girls and women often face heightened risks of sexual and gender-based violence, particularly in emergency shelters, which are frequently overcrowded, unfamiliar, unsafe, and lack privacy. These risks are exacerbated when humanitarian aid fails to incorporate gender-sensitive approaches or provide adequate support. Marginalized groups, including LGBTQ+ individuals, may face additional barriers to accessing emergency services and protection during climate-related crises.

Research from South Asia demonstrates how climate-related disasters can intensify existing gender inequalities. In countries like Nepal and Bangladesh, climate-related weather disasters have been linked to increased school dropout rates among girls and higher incidents of child and forced marriage (Johnson, 2022). Similarly, women in rural communities in Nepal are more vulnerable to changes brought by climate change due to their dependence on natural resources and restricted participation in decision-making processes (Bhattarai, 2020). These patterns illustrate that climate change does not affect populations equally, but instead amplifies pre-existing structural inequalities, particularly gendered vulnerabilities rooted in limited access to resources, education, and decision-making power.

Due to this, many ecofeminist perspectives advocate for leadership by those communities most directly affected by environmental degradation, especially indigenous and marginalized women. Their close relationship with the local ecosystem has not only increased their exposure to their vulnerability to environmental degradation but has also provided them with valuable ecological knowledge and experience that can contribute to conservation, climate adaptation, and sustainable environmental practices.

This structural connection between women's leadership and environmental justice is reflected in several environmental movements across South Asia. In India, the Bishnoi Movement in Rajasthan is frequently cited as an early historic resistance against deforestation through the sacrifice of community members who protected trees from destruction (Suresh & Kattimani, 2015). The movement helped protect forests from indiscriminate exploitation, thereby protecting ecosystem services that support biodiversity, water regulation, and long-term ecological resilience. Similarly, the Chipko-inspired Appiko Movement in Karnataka involved rural communities, including large numbers of women, to prevent deforestation through non-violent means (Suresh & Kattimani, 2015). Besides conserving forests, the movement demonstrated the importance of sustainable use of resources through the protection of ecosystems that provide livelihoods for the local population and increase communities' capacity to deal with environmental change. Indigenous women in Odisha have long practiced in *Thengapalli*, a community-based forest protection system involving collective monitoring and conservation of local forests (Suresh & Kattimani, 2015). It is a model of sustainable natural resource governance through participatory management of forest resources, ensuring the availability of forest products in the long term and increasing community resilience. Women also played significant roles in the Silent Valley Movement in Kerala, which successfully opposed the construction of a hydroelectric project that threatened ecologically sensitive forest areas (Suresh & Kattimani, 2015). Conservation of this ecosystem protected biodiversity and functions of watershed critical for long-term ecological stability and climate resilience. Likewise, the Navdanya Movement, founded by Vandana Shiva, has empowered thousands of women farmers to engage in biodiversity conservation and the preservation of indigenous seed systems (Suresh & Kattimani, 2015). The movement has increased farmers' adaptive capacity to climate variability and strengthened sustainable management of agricultural resources by promoting seed sovereignty, agro-biodiversity, and ecological farming practices. The Jungle Bachao Andolan further highlighted the role of tribal communities, including women activists, in resisting commercial exploitation of forests and defending traditional environmental rights (Suresh & Kattimani, 2015).

Likewise, in Pakistan, environmental activist Aisha Khan has been a prominent advocate against deforestation and environmental degradation in Chilas, working closely with civil society organizations and environmental institutions (Ahmad, 2020). Similarly, the country's climate activism efforts have coincided with policy responses on environmental issues, including restrictions on plastic bags. The provincial government of Khyber Pakhtunkhwa (KPK) introduced a ban on plastic bags, and similar measures have been considered in Punjab and Sindh (DAWN, 2014). Pakistani female university students have also actively contributed to climate awareness initiatives through the Global Youth Climate Strike movement, using their platforms to advocate for environmental protection and healthier urban living conditions (Ahmed et al., 2020).

These examples suggest that while women's participation in environmental movements is visible and often central to grassroots action, it does not automatically translate into sustained influence within formal decision-making structures. Instead, women's contributions are frequently acknowledged during moments of crisis or activism but remain unevenly integrated into long-term environmental governance. This highlights a persistent gap between participation and genuine policy-level power.

The Gender Gap in South Asian Climate Governance

South Asia remains one of the most food-insecure and water-stressed regions in the world, characterized by historically rooted social hierarchies and persistent gender inequalities. Across the region and the HKH, gender relations, women's socio-economic status, and experiences have been shaped by historical and political events, including nationalist movements, democratization, ethnic conflict, religious fundamentalism, communism, identity politics, and women's movements, along with urbanization, globalization, commercialization, technological revolution, and infrastructure development (ICIMOD, 2022).

Despite these transformations, women's access to leadership and decision-making roles within climate governance remains limited. Governments across South Asia have adopted a wide range of policies, strategies, and action plans focused on promoting gender inclusion, and research consistently shows that women's involvement in decision-making leads to more effective, inclusive, and sustainable climate policies. Women's lived experiences, local ecological knowledge, and community engagement often generate adaptation strategies that are responsive to local needs and environmental realities (Nagel, 2015; Patel et al., 2019). UNDP (2024) similarly identifies a strong correlation between women's participation in policymaking and the effectiveness of climate adaptation plans and resilience initiatives.

Recent parliamentary elections data show significant disparities in women's political representation across South Asia. Although all countries in the region have adopted democratic institutions and various mechanisms to promote inclusion, women remain significantly underrepresented in the national legislature. Nepal records the highest proportion of women parliamentarians among the abovementioned countries, with 34.9 percent (96 of 275) of seats in the House of Representatives. However, representation remains considerably lower in Pakistan with 21.7 percent (72 of 332) of seats, India with 13.6 percent (74 of 543) of seats, Sri Lanka with 9.8 percent (22 of 225) of seats, and Bangladesh with 2.4 percent (7 of 296) of seats (Table 1). No country has achieved parity in legislative representation.

These disparities are partly shaped by differences in electoral systems. India follows primarily on a First-Past-The-Post (FPTP) system, while Sri Lanka operates a proportional representation model through multi-member districts. Nepal adopts a mixed electoral system that combines FPTP and proportional representation alongside constitutional provisions designed to promote the inclusion of marginalized groups. Pakistan and Bangladesh adopt hybrid arrangements in which general seats are elected through FPTP systems while reserved seats for women and minorities are allocated proportionally to political parties. These institutional variations in electoral design have important implications for representation, particularly for women and other marginalized groups, as they influence the extent to which formal commitments to inclusion are translated into substantive political representation.

Nevertheless, even where women achieve representation within national legislatures, their influence within climate governance structures remain limited. Research consistently shows that women's participation in climate-related decision-making is often symbolic rather than substantive, with women frequently excluded from key leadership positions within environmental ministries, climate negotiations, technical committees, and policy implementation bodies (Jayaram, 2017; Paudel, 2025). Studies across South

Table 1: Women Members of Parliament in National Legislatures in South Asia (Most Recent Elections)

Country	Legislative Body (Year)	Total Seats	Women MPs	Percentage (%)
Nepal	House of Representatives (HoR), 2026	275	96	34.9%
India	Lok Sabha, 2024	543	74	13.6%
Pakistan	National Assembly, 2024	332	72	21.7%
Sri Lanka	Parliament, 2024	225	22	9.8%
Bangladesh	Jatiya Sangsad, 2024	296	7	2.4%

Source: Election Commission Nepal; compiled by the author using official data from the respective national election commissions, parliamentary websites, and the Inter-Parliamentary Union (IPU). The percentage of women MPs and other comparative statistics were calculated by the author based on the reported figures.

Asia further emphasize that women's perspectives remain underrepresented in the design, negotiation, implementation, and evaluation of climate policies despite the disproportionate impacts of climate change on their lives and livelihoods (Paudel, 2025).

This disconnect underscores a broader challenge within climate governance. Those most affected by climate change often possess the least influence over policies intended to address it. As a result, climate governance across South Asian countries is shaped predominantly within male-dominated institutional spaces, while the experiences, knowledge, and leadership of women, especially rural, indigenous, and marginalized women, remain insufficiently incorporated in formal governance systems. Therefore, addressing this gap is not only a matter of gender equality but also a prerequisite for achieving more effective, inclusive, and just climate governance across the region.

At the regional level, South Asian countries have recognized the importance of cooperative approaches to climate governance through initiatives under the South Asian Association for Regional Cooperation (SAARC). The SAARC Action Plan on Climate Change (2008–2011) emphasized collaboration on adaptation, mitigation, technology transfer, capacity-building, and knowledge sharing to address common climate challenges (SAARC, 2008). In addition, regional mechanisms such as the SAARC Disaster Management Centre have promoted cooperation in disaster risk reduction and climate resilience—issues particularly significant for vulnerable populations across the region (SAARC, 2016).

Although these initiatives increasingly acknowledge the importance of inclusive and sustainable development, the integration of gender perspectives within climate governance frameworks has remained limited and uneven across member states (UN Women, 2023). Consequently, while regional commitments provide an important foundation for cooperation, the meaningful inclusion of women in climate governance continues to depend largely on national political and institutional arrangements.

Gender Quotas and Representation Gaps in South Asia

A clearer and more concrete illustration of the gap between participation and influence can be drawn from Nepal's forest governance system. Women constitute a significant proportion of members within Community Forest User Groups (CFUGs), where they actively contribute to forest conservation, fuelwood management, biodiversity protection, and local climate adaptation practices. However, empirical studies on CFUG governance consistently show that, despite this strong participation, women remain underrepresented in key executive positions within the body such as chairpersons or committee leaders, and their influence over strategic decision-making remains limited (Pandey & Pokhrel, 2021). Moreover, women's participation tends to further diminish as governance shifts from community-level institutions to district, provincial, and national decision-making structures.

Similar patterns are evident across South Asia. In Pakistan, community-based natural resource management initiatives such as social forestry programs and water user associations show women actively engaged in agricultural and environmental management activities, particularly in tree plantation, fuelwood collection, and climate adaptation practices. However, executive and decision-making positions within local committees and decision-making bodies remain predominantly male-dominated (Muhammad, 2021). Likewise, in Bangladesh, women play important roles in social forestry initiatives and community-based climate resilience programs, contributing significantly to plantation management, resource conservation, and disaster preparedness activities. Yet, leadership positions within these governance structures remain concentrated among men and local elites, limiting women's ability to influence policy priorities and resource allocation (Ahmed & Laarman, 2000).

These patterns reflect a broader regional challenge. Although most South Asian countries have formally committed to promoting women's participation in political decision-making through constitutional guarantees, legal provisions and electoral reforms - these commitments have not consistently translated into substantive representation, which has been illustrated below. Countries including Nepal, India, Bangladesh, Pakistan, and Sri Lanka have introduced a range of affirmative action measures to enhance women's political participation, including reserved seats, proportional representation mechanisms, and constitutional provisions promoting inclusion.

For instance, Article 85(8) and Article 176(9) of the Constitution of Nepal, 2015 mandates at least one-third representation of women in federal and provincial legislatures through a mixed electoral system designed to promote inclusiveness and proportional representation. Pakistan reserves seats for women in the National Assembly through proportional allocation among political parties (Free and Fair Election Network, 2023), while Bangladesh maintains constitutionally reserved parliamentary seats for women distributed among parties based on their electoral performance (IFES, 2020). India has recently enacted legislation reserving one-third of seats for women in Lok Sabha and state assemblies (Mehrotra, 2026), although implementation remains contingent upon future delimitation processes. Sri Lanka, by contrast, has primarily introduced gender quotas mainly at the local government level rather than in the national parliament, reflecting a more limited scope of enforceable representation (Siddique, 2025).

Despite these formal commitments, women's representation in political leadership remains comparatively low across all five countries. Quotas are often implemented in ways that are indirect, delayed, or mediated by party structures, limiting women's ability to enter decision-making roles independently. As a result, while gender inclusion has been embedded in constitutional and electoral frameworks, women continue to face significant barriers to meaningful engagement in decision-making processes. This gap between descriptive representation and substantive political influence is particularly significant in the context of climate governance, where policies addressing environmental sustainability, adaptation, and resilience continue to be formulated predominantly within male-dominated institutional structures.

Way Forward

Gender-responsive climate governance is not merely about increasing women's participation within existing systems, but is rather about restructuring institutional arrangements, power relations, and knowledge hierarchies that continue to shape climate decision-making across South Asia. The following policy directions therefore outline mechanisms through which this structural transformation can be advanced across political, institutional, and community spheres.

A meaningful way forward begins with acknowledging a structural reality: legal and policy commitments to gender equality in South Asia's political systems already exist in multiple forms, but they are often designed to tokenize compliance without transformation. The priority, therefore, is not simply to "add women" into existing systems, but to reconfigure the conditions under which political participation, representation, and leadership are produced and sustained.

First, affirmative action mechanisms must move beyond numerical presence toward substantive political power. While quotas and reserved seats have expanded women's entry into legislatures, they often channel women into constrained roles or depend heavily on party gatekeeping. A stronger approach requires reforms that ensure women are systematically placed in decision-making positions such as committee leaderships, budgetary bodies, and climate-relevant ministries. This also demands internal party reforms, particularly transparent and enforceable rules on candidate nomination, making sure that women are not treated as symbolic or secondary candidates in electoral competition.

Second, representation must be anchored in institutional systems that value and integrate gender-responsive knowledge. This includes embedding GEDSI-responsive data collection, gender-budgeting, and intersectional analysis into climate governance processes at every level of decision-making. Without such systems, women's participation risks remaining descriptive rather than transformative, as their experiences are neither consistently documented nor translated into policy design. Strengthening parliamentary research units, climate advisory bodies, and planning institutions with dedicated gender expertise is therefore essential for close the gap between participation and influence.

Beyond improving institutional knowledge systems, climate governance must also address the intersectional nature of vulnerability. Women are not a homogeneous category, and experiences of climate impacts and political exclusion vary significantly according to class, caste, ethnicity, indigeneity, disability, age, and geographic location. Policies that treat women as a single group risk reproducing intersectional inequalities by privileging those already relatively advantaged. A more inclusive approach requires intersectional policy design, disaggregated data collection, and targeted measures that recognize the specific barriers faced by marginalized groups of women. Sustained investments in capacity-building through leadership training, technical support, climate literacy initiatives, and mentorship opportunities can transform formal opportunities for participation into meaningful influence over policy outcomes.

Third, institutional architecture must be intentionally empowered rather than merely established. Many South Asian countries already have gender focal points, commissions, or coordination mechanisms, but these often lack autonomy, resources, or decision-making authority. A credible way forward requires guaranteeing stable financing, professional staffing, and clear mandates that allow these bodies to influence core policy processes rather than operate on the margins. It is also important to integrate gender accountability into climate governance frameworks, ensuring ministries and agencies are evaluated not only on climate outcomes but also on equity outcomes.

Equally important is the strengthening of community-level leadership pathways that enable women to move from local participation to formal political influence. Evidence from Nepal's CFUGs demonstrates that local resource governance institutions can serve as important spaces for developing women's leadership skills, decision-making experience, and collective agency. For example, in Dadeldhura District, 49 Community Forest User Groups (CFUGs) are led by women, while approximately 511 women serve as executive committee members, reflecting women's substantial participation in local forest governance (RECOFTC, 2018). While participation in community-based institutions does not automatically translate into political representation, these platforms can function as critical entry points for leadership development. This means that policies should be in place to support women's leadership within local climate adaptation committees, forest user groups, water management bodies, and other community institutions, creating clearer pathways between grassroots engagement and higher levels of governance.

Given the transboundary nature of climate change and the shared challenges facing South Asian countries, regional cooperation must also form part of the way forward. Regional alliances such as the SAARC, as well as emerging regional climate justice and adaptation networks, provide opportunities for exchanging good practices, developing common standards, and strengthening women's leadership in climate governance. Regional cooperation can facilitate knowledge-sharing on gender-responsive climate policies, support cross-border learning among women leaders, and encourage greater policy harmonization on issues of climate adaptation and social inclusion. Such collaboration is particularly valuable in a region where many climate risks and governance challenges transcend national boundaries.

Finally, the persistence of weak implementation highlights the need for stronger accountability ecosystems that connect policy commitments to political consequences. This means creating enforceable monitoring systems, parliamentary scrutiny mechanisms, and civil society oversight structures that can track whether gender commitments in climate governance are being met in practice. In the absence of such accountability, gender equality risks remaining a rhetorical commitment rather than an operational principle. Closing the gap between .

References

Agrawal, B. (1992). The Gender and Environment Debate: Lessons from India. *Feminist Studies*, *18*(1), 119-158, https://doi.org/10.2307/3178217

Agrawal, B. (2010). *Gender and Green Governance: The Political Economy of Women's Presence Within and Beyond Community Forestry*. Oxford University Press. https://doi.org/10.1093/acprof:oso/9780199569687.001.0001

Ahmed, M. R., & Laarman, J. G. (2000). Gender equity in social forestry programs in Bangladesh. *Human Ecology, 28*(3), 433–450. http://www.jstor.org/stable/4603361

Aliyeva, S. (2025). Gender and Climate Change, *Proceedings of the Contribution of Culture to Ecological Sustainability,* 49-58. Atlantis Press. https://doi.org/10.2991/978-2-38476-468-6_4

Bhattarai, S. (2020, February 28). Nepali women doubly burdened by climate change. *Nepali Times*. https://nepalitimes.com/nepali-women-doubly-burdened-by-climate-change-e352519u

Chinsya, B. (2024). Women and Nature: An Ecofeminist Study on Environmental Conservation Sustainability. *An-Nisa Journal of Gender Studies*, *17*(2). https://doi.org/10.35719/annisa.v17i2.309

Connolly-Boutin, L. and Smit, B. (2016). Climate Change, Food Security, and Livelihoods in Sub-Saharan Africa. *Regional Environmental Change*, *16*(2), 385-399. https://doi.org/10.1007/s10113-015-0761-x

Encyclopedia of World Problems and Human Potential. (2023). Subsistence agriculture income level in rural communities. https://encyclopedia.uia.org/problem/subsistence-agricultural-income-level-rural-communities

Food and Agriculture Organization of the United Nations (FAO). (2017). *The State of Food and Agriculture*. https://openknowledge.fao.org/server/api/core/bitstreams/7468fe06-7dd7-4e7a-8f10-bb0084594977/content

Geest, K. (2018). Landslide Loss and Damage in Sindhupalchok District, Nepal: Comparing Income Groups with Implications for Compensation and Relief. *International Journal of Disaster Risk Science*, *9*(3-4), 157-166. https://doi.org/10.1007/s13753-018-0178-5

Haq, Z. A., Imran, M., Ahmad, S., & Farooq, U. (2020). Environment, Islam, and women: a study of eco-feminist environmental activism in Pakistan. *Journal of Outdoor and*

Environmental Education, *23*(3), 275–291. https://doi.org/10.1007/s42322-020-00065-4

Intergovernmental Panel on Climate Change. (2022). *Climate Change 2022: Impacts, Adaptation and Vulnerability*. https://www.ipcc.ch/report/ar6/wg2/

International Centre for Integrated Mountain Development. (2022). *State of Gender Equality and Climate Change in South Asia and the Hindu Kush Himalaya*. https://asiapacific.unwomen.org/sites/default/files/2023-05/state-of-ge-and-cc-in-sa-and-hkh-2d933.pdf

Islam, M.M., Jannat, A. & Al Rafi, D.A. (2024). Women participation in South Asian agriculture: a comprehensive systematic review. *Discover Sustainability, 5*, 490 (2024). https://doi.org/10.1007/s43621-024-00649-w

Jayaram, D. (2017). Women's role in climate diplomacy in South Asia. *Climate Diplomacy*. https://climate-diplomacy.org/magazine/cooperation/womens-role-climate-diplomacy-south-asia

Johnson, O. (2022). A Woman's Place is in Resistance: An Ecofeminist Response to Climate Change. *Fordham Research Commons*. https://research.library.fordham.edu/environ_2015/128

Jonsson, S. (2011). Virtue and vulnerability: Discourses on women, gender and climate change. *Global Environmental Change*, *21*(2), 744-751. https://doi.org/10.1016/j.gloenvcha.2011.01.005

Kaijser, A., Kronsell, A. (2013). Climate change through the lens of intersectionality. *Environmental Politics, 23*(3), 417-433. https://doi.org/10.1080/09644016.2013.835203

Mani, S. (2026). Intersectional Ecofeminism: Understanding the Double Burden of Gender and Environmental Injustice. *International Journal of Economic Practices and Theories*, 1012-1020. https://doi.org/10.52783/ijept.243

Mehrotra, S. (2026). *Why 651 and not 816 is the right number.* https://frontline.thehindu.com/politics/implementing-womens-reservation-hybrid-lok-sabha-expansion-651-seats/article70858438.ece

Mies, Maria., Shiva, V. (1997). Ecofeminism. *Halifax, Nova Scotia: Frenwood Publications.* http://www.jstor.org/stable/3175296

Muhammad, B., et al. (2021). Analysis of Women's Participation in Forest Management in Malakand Division. *Pakistan Journal of Society, Education and Language (PJSEL),* 117-126. https://pjsel.jehanf.com/index.php/journal/article/view/585/434

Narula, S. (2008). The Story of Narmada Bachao Andolan: Human Rights in the Global Economy and the Struggle Against the World Bank. *Public Law & Legal Theory Research Paper Series*, *08*(62). https://ssrn.com/abstract=1315459

Pandey, H., & Pokhrel, N. (2021). Formation trend analysis and gender inclusion in community forests of Nepal. *Trees Forests and People*, 5. https://doi.org/10.1016/j.tfp.2021.100106.

Rai, A., Ayadi, D. P., Shrestha, B., & Mishra, A. (2021). On the realities of gender inclusion in climate change policies in Nepal. *Policy Design and Practice*, *4*(4), 501–516. https://doi.org/10.1080/25741292.2021.1935643

Roberts, B. (2021). Securing Women's Land Rights: Challenges and Solutions. https://tenuresecurity.org/securing-womens-land-rights-challenges-and-solutions/

Rocheleau, D. (1966). Feminist Political Ecology: Global Issues and Local Experiences. *Journal of Political Ecology*, *4*(1), 21-24. https://doi.org/10.2458/v4i1.21378

Rosendo, D., & Kuhen, T. (2021). Ecofeminism. *Gender Equality*, 191-202. https://doi.org/10.1007/978-3-319-95687-9_41

Shrivastava, P., & Tharkal, M. (2025). Case Comment on Narmada Bachado Andolan vs Union of India and Ors AIR 2000 SC 3275. *International Journal of Law Management & Humanities*, *8*(2), 938-946. https://ijlmh.com/wp-content/uploads/Case-Comment-on-Narmada-Bachao-Andolan-vs-Union-of-India-and-Ors-AIR-2000-SC-3751.pdf

Siddique, N. (2025). Women's Electoral Participation in Local Government in Bangladesh: A Case Study. *Social Science Review*, 3(3). https://ssr.gstu.edu.bd/page12.html

South Asian Association for Regional Co-operation (SAARC) (2008). *SAARC Action Plan on Climate Change.* https://thimaaveshi.wordpress.com/wp-content/uploads/2009/10/saarc_action_plan.pdf

Suresh, B., & Kattimani, B. (2015). *Environmental Movements by Women*. Anu Books. https://anubooks.com/uploads/session_pdf/16623758598.pdf

TechnoServe (2026). 5 Ways Climate Change Disproportionately Impacts Women. https://www.technoserve.org/blog/5-climate-change-impacts-women/

Thomas Reuters Foundation News (2015, May 25). Solving the climate crisis means tackling global inequality. https://news.trust.org/item/20150525141853-ld051/

True, J., & Mintrom, M. (2001). Transnational Networks and Policy Diffusion: The Case of Gender Mainstreaming. *International Studies Quarterly*, *45*(1), 27–57. http://www.jstor.org/stable/3096100

UN Women. (2020). *The World for Women and Girls-Annual Report 2019-2020.* https://www.unwomen.org/en/digital-library/publications/2020/06/annual-report-2019-2020

UN Women. (2025). *How gender inequality and climate change are interconnected*. https://www.unwomen.org/en/articles/explainer/how-gender-inequality-and-climate-change-are-interconnected

United Nations Development Programme. (2024). *United Nations Development Programme Annual Report 2024*. https://www.undp.org/publications/undp-annual-report-2024

World Bank (2021). *World Development Report 2021*. https://wdr2021.worldbank.org/

Yusen, L., et al. (2025). Impact of Climate Change on Women in South Asia: A Need for Immediate Legislation. *International Journal of Environmental Science*, 11, 631-638. https://doi.org/10.64252/sphx5c18

The Informal: South Asian Journal of Human Rights and Social Justice
Volume 03 Issue 01, 2026. pp. 75-86
Research Article
https://doi.org/10.3126/informal.v3i1.97536

Between Mandate and Practice: Evaluating Performance of Nepal's National Human Rights Commission (2015-2025)

Alina Dulal
Researcher

Article Info.

Corresponding Author
Alina Dulal

Email
alinadulal99@gmail.com

Article History
Received: 2 February 2026
Accepted: 2 June 2026
Published: 31 July 2026

How to Cite this Article
Dulal, A. (2026). Between Mandate and Practice: Evaluating Performance of Nepal's National Human Rights Commission (2015-2025). *The Informal: South Asian Journal of Human Rights and Social Justice,3*(1), 75-86.

Abstract

Human rights are universal and inherent entitlements of all human beings. National Human Rights Institutions (NHRIs) play a critical role in promoting and protecting these rights at the domestic level. Their legitimacy is derived from constitutional or statutory mandates and is assessed against internationally recognized standards, particularly the Paris Principles adopted by the United Nations General Assembly in 1993. This article examines the gap between the constitutional mandate and the practical performance of Nepal's National Human Rights Commission (NHRC), in safeguarding human rights between 2015 to 2025. Employing a qualitative doctrinal design based on secondary data, including constitutional provisions, institutional reports, legal frameworks, accreditation assessments, and scholarly literature, the study evaluates the NHRC's effectiveness against the international benchmarks set by the Paris Principles. The findings indicate that although the NHRC holds a strong constitutional mandate and formal institutional independence, its effectiveness remains constrained by political interference, limited resources, and weak enforcement of its recommendations. The persistently low rate of recommendation enforcement reflects a broader accountability deficit within Nepal's governance system. The article argues that the disconnect between normative commitments and practical outcomes undermines institutional legitimacy and public trust. It concludes that strengthening institutional autonomy, enforcement mechanisms, and accountability frameworks is essential for enhancing human rights protection in Nepal.

Keywords: National Human Rights Institutions (NHRIs), National Human Rights Commission, Paris Principles, institutional effectiveness

Introduction

Human rights constitute the normative foundation of democratic governance, safeguarding human dignity, equality, justice, and accountability. The modern human rights framework is rooted in the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, which recognized that all human beings are entitled to fundamental rights and freedoms without discrimination based on race, gender, nationality, ethnicity, language, religion, or any other status. Since then, international human rights law has evolved into a comprehensive system of treaties, conventions, and monitoring mechanisms designed to protect individuals from abuse of power and ensure respect for human dignity (Ramcharan, 2005).

Despite the existence of extensive international human rights norms, the realization of rights ultimately depends upon domestic implementation. International obligations alone cannot guarantee protection unless states establish effective national institutions capable of monitoring compliance, investigating violations, and ensuring accountability. In this context, NHRIs have emerged as a critical mechanism for translating human rights commitments into domestic practice. Positioned between the state and broader society, NHRIs serve as independent institutions tasked with monitoring human rights situations, investigating violations, advising governments on legal and policy reforms, and promoting human rights awareness.

The international legitimacy of NHRIs is primarily measured against the Paris Principles, adopted by the United Nations General Assembly through Resolution 48/134 in 1993. These principles establish minimum standards concerning institutional independence, pluralism, autonomy, broad mandates, adequate resources, and effective functioning. NHRIs' compliance with these principles has become the global benchmark for assessing their credibility and effectiveness. Consequently, the establishment and strengthening of NHRIs have become central components of democratic governance, the rule of law, and human rights protection worldwide.

In Nepal, the development of NHRIs reflects broader political and constitutional transitions. The restoration of multiparty democracy in 1990, the subsequent expansion of constitutional rights, the internal armed conflict (1996-2006), and the transition to a federal democratic republic created increasing demands for institutional mechanisms capable of protecting human rights and ensuring state accountability. Responding to these developments, Nepal established the National Human Rights Commission (NHRC) as a statutory body through the National Human Rights Commission Act (1997). The Commission was subsequently elevated to constitutional status under the Interim Constitution of 2007 and retained as an independent constitutional body under Article 248-250 of the Constitution of Nepal (2015) (hereby referred to as "the Constitution").

The Constitution further institutionalized a range of constitutional commissions aimed at protecting the rights of historically marginalized groups, including women, Dalits, indigenous peoples, Madhesi, Tharu, Muslims, and other excluded communities. While these commissions function within their respective mandates, the NHRC remains Nepal's principal national human rights institution under international accreditation frameworks and serves as the apex constitutional body responsible for the promotion and protection of human rights.

The period between 2015 and 2025 represents a particularly significant phase in Nepal's human rights governance. The promulgation of the Constitution initiated the transition to a federal system of governance, creating both opportunities and challenges for institutional accountability and human rights protection. During this period, Nepal experienced major political transitions-implementation of federalism, debates surrounding transitional justice, the Generation Z movement, and growing concerns regarding civic space and accountability. These developments placed significant demands upon the NHRC and tested its capacity to function as an independent and effective guardian of human rights.

Despite the NHRC's extensive constitutional jurisdiction aligning with the Paris Principles (OHCHR, 1993), uncertainties persist over the Commission's practical efficacy in exercising its mandate. The restricted execution of NHRC recommendations has been recorded in the Commission's yearly reports (National Human Rights Commission Nepal, 2015–2024). GANHRI has emphasized concerns related to political interference in appointments, institutional independence, and resource limitations during the NHRC accreditation process (GANHRI, 2023).

These concerns became particularly visible during international accreditation reviews conducted by the Global Alliance of National Human Rights Institutions (GANHRI), which highlighted challenges relating to the Commission's compliance with international standards.

Against this backdrop, this article critically examines the performance of Nepal's National Human Rights Commission between 2015 and 2025. The central research question guiding this study is: To what extent has Nepal's NHRC demonstrated institutional independence and effectiveness in safeguarding human rights when assessed against the Paris Principles? Subsidiary inquiries consider (i) the alignment of Nepal's constitutional and legal framework with the Paris Principles, (ii) the NHRC's effectiveness in fulfilling its constitutional responsibilities, and (iii) the institutional, political, and structural factors shaping its performance.

Methodologically, this study adopts a qualitative doctrinal research design grounded in the analysis of secondary sources. The primary materials comprise constitutional provisions, statutory frameworks, reports of the National Human Rights Commission (NHRC), accreditation assessments, and relevant international human rights instruments. These are complemented by scholarly literature on national human rights institutions, institutional independence, accountability, and governance. The Paris Principles constitute the principal analytical framework against which the NHRC's legal and institutional mandate is assessed, while institutional and accountability theories provide the conceptual lens for examining the relationship between formal legal mandates and their practical implementation. By focusing exclusively on the NHRC over the period 2015–2025, the study offers an in-depth assessment of Nepal's compliance with international standards governing national human rights institutions and critically examines the Commission's effectiveness in promoting and protecting human rights during a transformative decade of constitutional implementation.

Conceptualizing NHRI Performance: Literature Review and Theoretical Framework

Literature Review

The emergence of NHRIs represents a significant development in the domestic implementation of human rights norms. Established to bridge the gap between international human rights obligations and national governance systems, NHRIs promote, protect, and monitor human rights at the domestic level (Smith, 2006). The adoption of the Paris Principles by the United Nations General Assembly in 1993 established internationally accepted standards for the status, independence, composition, and functions of NHRIs (UNGA, 1993). The Paris Principles require NHRIs to possess a broad mandate, institutional independence, pluralistic representation, adequate resources, and effective investigative powers. Consequently, compliance with the Paris Principles has become the primary benchmark for assessing NHRI legitimacy and effectiveness (OHCHR, 2018).

A substantial body of literature identifies institutional independence as the most critical determinant of NHRI effectiveness. Reif (2000) argues that legal guarantees alone are insufficient unless institutions are protected from political interference in practice. Similarly, Cardenas (2014) emphasizes that operational autonomy, adequate resources, and a supportive political environment are essential for enabling NHRIs to hold state actors accountable. Where governments influence appointments, budgets, or priorities, NHRI effectiveness is often compromised.

Scholars also highlight the importance of implementation and enforcement. Although many NHRIs possess extensive investigative mandates, they frequently lack authority to enforce their recommendations. This creates a persistent implementation gap between institutional findings and accountability outcomes (Carver, 2011). Consequently, NHRI effectiveness depends not only on their ability to document violations but also on the willingness of governments to implement their recommendations and provide remedies.

The literature further recognizes NHRIs as important actors in democratic governance and accountability. By facilitating citizen engagement, monitoring state compliance with human rights obligations, and promoting legal and policy reforms, NHRIs contribute to the institutionalization of human rights norms (Hafner-Burton et al., 2015). Their role is particularly significant in transitional and post-conflict societies where accountability mechanisms remain weak.

In South Asia, NHRIs commonly face challenges regarding political interference, resource constraints, weak institutional autonomy, and lackluster implementation of recommendations (Ramcharan, 2005). Nepal reflects many of these challenges. The existing literature recognizes the NHRC as a key accountability institution while highlighting persistent concerns regarding institutional independence, resource adequacy, and the implementation of recommendations (Giri, 2022). Despite the enhanced constitutional status granted by the Constitution, the NHRC continues to face difficulties in translating its constitutional mandate into effective human rights protection.

The literature therefore suggests that NHRI effectiveness depends upon the interaction of legal authority, institutional independence, political support, resource adequacy, and enforcement capacity. However, there has been limited research to systematically assess Nepal's NHRC against international standards and institutional effectiveness indicators during the post-constitutional period (2015–2025). This study seeks to address that gap.

Theoretical Framework

This study draws upon Natural Rights Theory and Social Contract Theory to examine the normative foundations and democratic legitimacy of Nepal's NHRC. Natural Rights Theory, associated with John Locke and Immanuel Kant, posits that all individuals possess inherent and inalienable rights by virtue of their humanity, including rights to life, liberty, equality, and dignity (Locke, 1689/1988). From this perspective, the protection of human rights constitutes a fundamental obligation of the state, and NHRIs serve as institutional mechanisms through which this obligation is fulfilled. Social Contract Theory further explains that political authority derives its legitimacy from an implicit agreement between citizens and the state, whereby governments are entrusted with protecting rights and promoting public welfare (Rousseau, 1762/1968). Within this framework, the NHRC functions as an intermediary institution that monitors state compliance with its human rights obligations and strengthens democratic accountability and public trust.

The study also employs Institutional Theory and Accountability Theory to assess the effectiveness of the NHRC in practice. Institutional Theory emphasizes that organizational performance depends not only on formal legal mandates but also on institutional autonomy, political context, organizational culture, and operational capacity (March & Olsen, 2010). This perspective is particularly useful for examining the gap between the NHRC's extensive constitutional powers and its factual performance. Complementing this, Accountability Theory conceptualizes accountability as comprising answerability and enforcement, requiring both the provision of information and the ability to ensure compliance (Schedler, 1999). NHRIs occupy a central position within accountability systems by investigating violations, monitoring state conduct, and recommending corrective action. However, where implementation mechanisms are weak, accountability outcomes remain limited. Together, these theoretical perspectives provide a comprehensive framework for evaluating the NHRC's legitimacy, independence, effectiveness, and capacity to promote accountability in Nepal between 2015 and 2025.

Analytical Framework

Drawing on these theoretical perspectives, the study evaluates the NHRC through four interrelated dimensions: (i) normative legitimacy, derived from Natural Rights Theory; (ii) democratic accountability, informed by Social Contract Theory; (iii) institutional independence and effectiveness, examined through Institutional Theory; and (iv) implementation and enforcement capacity, assessed through Accountability Theory. Together, these dimensions provide an integrated framework for evaluating the extent to which the NHRC has effectively fulfilled its constitutional and international mandate between 2015 and 2025.

Constitutional and International Framework Governing Nepal's NHRC

Constitutional Basis of the NHRC

The NHRC derives its authority from the Constitution of Nepal (2015), which establishes it as an independent constitutional body under Articles 248–250. The Constitution mandates the NHRC to promote, protect, and ensure the effective enforcement of human rights, thereby positioning it as the apex national human rights institution in Nepal's governance architecture. Article 249 of the Constitution assigns the NHRC a broad range of functions, including independent investigation of human rights violations, recommendation of prosecution or departmental action against perpetrators, monitoring of treaty implementation, review of domestic legislation for human rights compliance, and promotion of human rights education and awareness. It also empowers the Commission to recommend compensation for victims and to publish the names of individuals who fail to implement its recommendations (Art. 249).

In institutional terms, these provisions establish a constitutionally entrenched mandate that is consistent with the global expectations for national human rights institutions. However, the NHRC's authority is primarily recommendatory in nature, as it lacks binding enforcement power over executive or judicial bodies. This structural limitation has significant implications for its effectiveness in ensuring compliance with its findings and recommendations.

Statutory Evolution and Institutional Design

The NHRC was originally established under the National Human Rights Commission Act, 1997, and subsequently strengthened through constitutional inclusion in the Interim Constitution of 2007, the National Human Rights Commission Act 2009, and the Constitution of 2015. This evolution reflects Nepal's gradual transition from a conflict-affected state to a constitutional democracy committed to human rights protection and rule of law principles (National Human Rights Commission Nepal, n.d.).

The institutional design of the NHRC reflects core principles of independence and autonomy, including security of tenure for commissioners, financial allocation through the state budget, and a constitutionally defined appointment process. Commissioners are appointed by the President on the recommendation of the Constitutional Council, followed by parliamentary hearings, which is intended to ensure transparency and pluralism in line with international standards (Art. 248). Despite these safeguards, concerns have been raised regarding the practical independence of the appointment process, particularly regarding the political influence exerted through the Constitutional Council. Such concerns have also been reflected in periodic reviews by the GANHRI, which evaluates NHRI compliance with the Paris Principles.

The Paris Principles as an International Benchmark

The Paris Principles, adopted by the United Nations General Assembly in 1993, constitute the foundational international framework governing the establishment and functioning of National Human Rights Institutions (UNGA, 1993). They require NHRIs to demonstrate independence in law and practice, pluralism in composition, a broad human rights mandate, adequate powers of investigation, and sufficient financial and administrative autonomy (OHCHR, 2018). Scholars such as Reif (2000) have underscored that compliance with these principles significantly correlates with institutional effectiveness, while Cardenas (2014) identifies political independence and resource adequacy as determinants of NHRI's operational autonomy. The reference to these global benchmarks and scholarly literature shows that the performance of NHRIs depends not only on legal mandates but also on political will, civil society engagement, and operational capacity. The findings of the above-mentioned previous work reveal that although NHRIs have made significant strides in aligning with international standards, their capacity to safeguard human rights effectively is hampered by systemic governance challenges in Nepal.

According to the GANHRI, compliance with the Paris Principles is assessed through a peer-reviewed accreditation process conducted by the Sub-Committee on Accreditation (SCA). Institutions that fully comply are awarded "A status," granting them enhanced participation rights within the United Nations human rights system, while partially compliant institutions receive "B status" accreditation (GANHRI, 2025). The Paris Principles also emphasize that effectiveness depends not only on legal design but also on practical independence, adequate resources, and the ability to follow up on recommendations. In this regard, accreditation assessments increasingly focus on both de jure compliance and de facto institutional performance (GANHRI, 2025).

NHRC's International Position and Compliance Status

Nepal's NHRC has generally been regarded as a constitutionally robust institution with formal compliance with the Paris Principles and has historically maintained "A status" accreditation under GANHRI. This status reflects recognition of its broad mandate, constitutional independence, and engagement with international human rights mechanisms (National Human Rights Commission Nepal, n.d.). However, accreditation reviews have also highlighted persistent concerns regarding implementation gaps, particularly in relation to the follow-up of recommendations, transparency of appointment processes, and perceived political influence over institutional functioning. These concerns illustrate a broader tension between formal compliance and substantive effectiveness, a common challenge among NHRIs in transitional democracies.

The NHRC's engagement with international mechanisms, including reporting to UN treaty bodies and cooperation with regional human rights networks, reflects its role as an interface between domestic accountability structures and the global human rights system. Nevertheless, the effectiveness of this engagement is ultimately dependent on domestic political will and institutional responsiveness.

Relationship Between Constitutional Mandate and International Standards

A comparative reading of Nepal's constitutional framework and the Paris Principles reveals substantial formal alignment. Both frameworks emphasize independence, broad human rights mandates, investigative authority, and engagement with civil society and international institutions. However, a critical divergence emerges in relation to enforcement capacity. While the Paris Principles encourage effective follow-up mechanisms and practical impact, Nepal's constitutional design limits the NHRC to recommendatory powers. This structural limitation creates a persistent "implementation gap," whereby findings and recommendations issued by the Commission are not legally binding on state authorities.

This gap between normative design and practical authority forms a central analytical concern of this study. It highlights the distinction between institutional legitimacy (derived from constitutional recognition and international accreditation) and institutional effectiveness (measured through implementation outcomes and accountability impact).

The constitutional and international framework governing the NHRC reveals a dual structure of strong normative legitimacy but constrained operational authority. On one hand, Nepal's constitutional provisions and adherence to the Paris Principles provide a solid foundation for institutional independence and human rights protection, but the absence of binding enforcement powers limits the Commission's capacity to ensure compliance with its recommendations. This structural tension underscores the importance of examining not only the formal design of human rights institutions but also their practical ability to influence state behavior. It further highlights the need for empirical assessment of implementation patterns, political dynamics, and institutional constraints in evaluating NHRC performance between 2015 and 2025.

Empirical Findings Framework: NHRC Performance Data Structure (2015–2025)

The period between 2015 and 2025 represents a structurally transformative decade for NHRC, coinciding with the promulgation of the Constitution and the consolidation of a federal governance system. During this period, the NHRC operated under an expanded constitutional mandate and within a significantly altered political and administrative environment characterized by decentralization, post-conflict transition, and evolving governance structures.

Evidence indicates that the NHRC maintained active engagement in monitoring, documentation, and reporting of human rights violations across civil, political, economic, social, and cultural domains (National Human Rights Commission Nepal, n.d.). However, its overall effectiveness in ensuring accountability and securing remedial action remained uneven, particularly in relation to the enforcement of recommendations and the prosecution of violators.

A key limitation in existing assessments of Nepal's NHRC is the absence of systematically structured longitudinal data on institutional outputs and implementation performance. Although annual reports provide aggregate figures, they are rarely synthesized into an analytical dataset that allows for trend-based evaluation. This section reconstructs NHRC performance between 2015 and 2025 into an empirical framework that enables assessment of institutional effectiveness, particularly in relation to complaint handling, investigation outcomes, and implementation of recommendations. The dataset is derived from NHRC annual reports, GANHRI assessments, and secondary institutional documentation (NHRC, 2024; GANHRI, 2025).

a. **Complaint Handling, Investigations, and Institutional Output**: During the study's review period, the NHRC received a substantial volume of complaints, reflecting its growing institutional visibility and accessibility across Nepal's federal structure. The establishment of provincial offices contributed to improved geographic presence, particularly for marginalized and remote populations, thereby strengthening access to human rights grievance mechanisms. This enabled the Commission to conduct investigations into a broad range of human rights violations, including excessive use of force, custodial violence, gender-based violence, discrimination, and rights violations during emergencies such as the COVID-19 pandemic. The NHRC also issued urgent recommendations and preventive directives in high-risk cases. However, despite this expanding investigative output, the Commission's ability to ensure systematic follow-up and compliance remained limited, revealing a persistent gap between institutional activity and remedial effectiveness.

b. **Recommendation Implementation and Enforcement Deficit**: A central finding of the study is the persistent implementation gap in NHRC recommendations. According to the NHRC Annual Report (2080/81 B.S.), only 13.66 percent of recommendations were fully implemented by relevant state authorities (NHRC, 2024). Implementation is largely concentrated in compensation or relief measures, while recommendations involving prosecution or disciplinary action against perpetrators remain largely unenforced. This reflects a structural limitation in the NHRC's design as a recommendatory body lacking binding enforcement authority. Compliance, therefore, depends on executive discretion rather than legal obligation, weakening the accountability cycle envisaged under international standards (Schedler, 1999; Carver, 2011). The result is a weakened deterrent effect, reduced victim trust, and a predominantly "diagnostic" rather than corrective institutional role.

c. **Institutional Independence and Political Constraints**: Although the Constitution guarantees the NHRC's formal independence, its operational autonomy has been periodically affected by political dynamics. Concerns regarding appointment procedures through the Constitutional Council and perceived executive influence over commissioner nomination have been raised in institutional assessments, including GANHRI accreditation reviews (GANHRI, 2025). This illustrates a broader gap between de jure independence and de facto autonomy. Institutional Theory explains this divergence by highlighting how informal political structures, resource dependence, and bureaucratic relations can constrain formally independent institutions (March & Olsen, 2010). As a result, institutional independence remains procedurally strong but practically contested.

d. **Transitional Justice and Conflict-Related Accountability**: The NHRC has played a significant role in documenting conflict-era violations and supporting transitional justice processes. However, its effectiveness has been constrained by weak coordination with transitional justice bodies, particularly the Truth and Reconciliation Commission (TRC) and the Commission of Investigation on Enforced Disappeared Persons (CIEDP). The lack of political consensus and legal ambiguity has contributed to prolonged delays in case resolution, resulting in unresolved grievances for many victims. Consequently, transitional justice outcomes remain largely symbolic, with the NHRC's role restricted to documentation, reporting, and recommendations rather than enforcement or adjudication.

e. **Crisis Response and Federal Transition**: During the COVID-19 pandemic, the NHRC actively monitored human rights conditions, including quarantine management, healthcare access, detention conditions, and discrimination against vulnerable groups. It issued urgent recommendations to address immediate rights violations in emergency governance contexts. Similarly, federal restructuring expanded the NHRC's operational reach through provincial offices, improving accessibility and localized monitoring. However, coordination challenges across federal, provincial, and local levels limited the effectiveness of follow-up mechanisms. This indicates that while institutional reach expanded, enforcement and inter-governmental coordination did not evolve at the same pace.

f. **International Accreditation and GANHRI Review**: The NHRC has retained "A status" accreditation under GANHRI, indicating formal compliance with the Paris Principles. This enabled active participation in international human rights mechanisms and strengthened global institutional recognition. However, accreditation reviews between 2022 and 2024 raised concerns regarding appointment transparency, institutional independence, and follow-up effectiveness. These concerns highlighted the gap between formal compliance and substantive performance, positioning accreditation as both a recognition mechanism and a diagnostic accountability tool for institutional weaknesses.

Across 2015–2025, the NHRC demonstrates a mixed performance profile characterized by a strong constitutional mandate and high investigative activity, expanded accessibility through federalization, persistent implementation deficits (13.66 percent), limited enforcement authority, periodic concerns regarding independence, and an active but constrained role in transitional justice and crisis response.

Overall, the NHRC functions effectively as a monitoring and investigative institution but remains structurally constrained in ensuring enforcement and compliance. This reflects a systemic implementation gap within Nepal's human rights accountability framework. From an accountability perspective, the NHRC performs relatively strong answerability functions (documentation, monitoring, reporting) but weak enforcement functions, resulting in an incomplete accountability cycle (Schedler, 1999; Gustafsson et al., 2023).

Analytical Interpretation of Core Indicators

- **Complaint Volume and Accessibility:** Complaint inflow increased steadily, reflecting enhanced public trust and expanded access after federalization. However, rising caseloads were not matched by enforcement improvements, indicating structural capacity constraints.
- **Investigation Capacity:** While investigative activity expanded, particularly through provincial offices, efficiency was constrained by resource limitations, logistical challenges in remote areas, and reliance on executive cooperation for enforcement follow-up.
- **Recommendation vs Implementation Gap:** The NHRC consistently generated high volumes of recommendations, but implementation remained structurally low (approximately 11–16 percent). Implementation was largely limited to compensation measures rather than prosecution or disciplinary action, confirming reliance on a soft compliance framework (Carver, 2011).
- **Structural Enforcement Deficit:** The average implementation rate of 13.66 percent reflects systemic governance constraints, including a lack of legally binding authority, weak inter-agency coordination, political sensitivity in prosecutions, and the absence of sanctions for non-compliance. This represents a breakdown in the enforcement dimension of accountability.
- **Crisis Period Performance (COVID-19):** The pandemic revealed both responsiveness and limitations. While monitoring and emergency recommendations increased significantly, enforcement outcomes remained weak, demonstrating that crisis responsiveness does not translate into structural compliance capacity.
- **Transitional Justice Performance:** Despite extensive documentation, implementation

remained limited due to institutional fragmentation, political delays, and weak prosecutorial follow-up, reinforcing the pattern of “documentation without enforcement.”

The empirical evidence reveals four consistent patterns: expanding institutional reach, stable investigative output, high recommendation generation, and persistent enforcement deficits. Together, these trends indicate a high-output but low-enforcement institutional model.

In theoretical terms, the NHRC demonstrates strong answerability (Schedler, 1999), weak enforcement capacity, partial compliance with Paris Principles in practice, and a persistent gap between formal independence and substantive effectiveness (March & Olsen, 2010). The implementation deficit is therefore structural rather than incidental, suggesting that meaningful reform must focus on enforcement mechanisms rather than procedural adjustments.

Structural Constraints and Enabling Conditions Framework of Nepal’s NHRC (2015–2025)

The performance of Nepal’s NHRC between 2015 and 2025 reflects a dual institutional reality characterized by strong constitutional legitimacy and expanding operational activity alongside persistent enforcement constraints. While the Commission demonstrates increased visibility, improved geographic presence under federalization, and consistent investigative output, its effectiveness remains constrained by a structural implementation gap and governance-related limitations. This section synthesizes these dynamics through an integrated framework of institutional capacities, structural constraints, enabling conditions, and risk environment.

Institutional Capacities and Strengths

The NHRC’s core institutional strength lies in its constitutional validity and alignment with international human rights standards, particularly the Paris Principles (UNGA, 1993). The Constitution of Nepal (2015) provides a broad mandate covering civil, political, economic, social, and cultural rights, ensuring formal independence and institutional legitimacy.

The Commission retains a wide investigative mandate enabling inquiry into human rights violations, issuance of recommendations, and advisory functions on legal reforms. Federal restructuring has further enhanced institutional accessibility through provincial offices, improving outreach for marginalized and geographically remote populations. Additionally, sustained engagement with international mechanisms such as GANHRI and UN treaty bodies has strengthened its normative credibility and global institutional standing.

Structural Constraints and Operational Limitations

Despite its strong legal foundation, the NHRC is primarily constrained by limited enforcement capacity. Its recommendations remain non-binding, resulting in a persistent implementation deficit. Empirical evidence indicates that only around 13.66 percent of recommendations have been fully implemented, with compliance largely restricted to compensation-related measures rather than prosecution or disciplinary action (NHRC, 2024).

Operational limitations are further compounded by resource constraints, administrative delays, and weak follow-up mechanisms, particularly amongst provincial units under federal restructuring. Concerns regarding political influence in appointment processes and perceived limitations in institutional independence—highlighted in international accreditation assessments—further affect institutional credibility (GANHRI, 2025). These constraints collectively weaken the Commission’s ability to convert findings into enforceable corrective action.

Enabling Conditions and Institutional Opportunities

Federalism presents a significant enabling condition for strengthening human rights monitoring through decentralized governance structures and provincial institutional expansion. This has improved access to justice mechanisms and increased institutional responsiveness at the local level.

Technological developments also provide opportunities for enhancing complaint management systems, digital monitoring, and real-time documentation of human rights violations. Furthermore, engagement with civil society organizations, media institutions, and human rights defenders strengthens demand-side accountability mechanisms, allowing for greater public scrutiny of state performance (Gustafsson et al., 2023).

International cooperation through GANHRI, the Asia Pacific Forum, and UN human rights mechanisms further provides technical assistance, capacity-building opportunities, and normative guidance for institutional strengthening.

Risk Environment and Governance Challenges

The NHRC operates within a broader political and governance environment characterized by executive dominance, institutional instability, and contested accountability practices. These conditions pose significant risks to institutional autonomy, particularly in relation to appointment processes and budgetary dependence.

A further risk arises from shrinking civic space and increasing pressures on human rights defenders, which weakens external accountability mechanisms. A weak enforcement culture within state institutions continues to undermine compliance with NHRC recommendations, reinforcing systemic implementation failure. Socio-economic inequality, discrimination, and recurring political transitions further intensify institutional uncertainty and reduce the predictability of human rights gover

Integrated Analytical Interpretation

The combined empirical and structural analysis reveals a consistent institutional pattern: expanding operational reach, stable investigative output, high rates of recommendation, and persistent enforcement deficits. This indicates that the NHRC functions primarily as a monitoring and advisory institution rather than an enforcement-oriented accountability body.

From a theoretical perspective, the findings confirm strong answerability but weak enforcement capacity (Schedler, 1999), partial realization of Paris Principles in practice despite formal compliance (UNGA, 1993), and a persistent gap between constitutional design and operational effectiveness (March & Olsen, 2010). The implementation deficit is therefore structural rather than incidental, rooted in institutional design limitations and political governance dynamics.

Summary of Institutional Dynamics

Overall, the NHRC exhibits a mixed institutional profile characterized by strong normative legitimacy, expanded accessibility, and sustained investigative capacity, alongside weak enforcement authority, resource constraints, and political pressures.

Enabling conditions include constitutional protection, federal decentralization, international engagement, and technological opportunities. However, these are offset by structural constraints such as non-binding recommendations, limited inter-agency coordination, executive influence in appointments, and a weak compliance culture.

The analysis confirms that the effectiveness of Nepal's NHRC between 2015 and 2025 is shaped less by mandate insufficiency and more by enforcement architecture deficits. Strengthening compliance mechanisms, ensuring appointment transparency, enhancing resource autonomy, and improving inter-agency coordination are therefore essential for translating institutional visibility into substantive human rights protection.

Conclusion

This study examined the performance of Nepal's NHRC between 2015 and 2025, considering its constitutional mandate and the international standards established by the Paris Principles. The findings demonstrate a persistent gap between normative strength and practical effectiveness, reflecting broader challenges in Nepal's human rights governance architecture.

On a normative level, the NHRC is a strongly institutionalized body with constitutional recognition, a broad human rights mandate, and formal alignment with international standards. Its establishment reflects Nepal's commitment to embedding human rights protection within its constitutional framework and aligning with global norms of accountability and democratic governance. However, despite this strong legal foundation, the Commission's functional effectiveness remains constrained. The most significant limitation is the persistent implementation gap, evidenced by low compliance with NHRC recommendations and the absence of binding enforcement authority. This structural weakness reduces the Commission's ability to ensure accountability and limits its impact on state behavior.

The study also finds that institutional independence, while constitutionally guaranteed, is periodically undermined by political dynamics, particularly in relation to appointment processes and resource allocation. These constraints reflect a broader tension between formal constitutional design and practical governance realities in transitional democracies. Although the NHRC has played an important role in documentation, monitoring, and crisis response—particularly during the COVID-19 pandemic and in transitional justice processes—its ability to translate findings into enforceable outcomes remains limited. This reinforces its role as a monitoring and advisory body rather than a fully effective enforcement mechanism.

From a theoretical perspective, the findings support Institutional Theory's distinction between de jure authority and de facto effectiveness (March & Olsen, 2010), as well as Accountability Theory's emphasis on enforcement as a critical component of meaningful accountability (Schedler, 1999). The NHRC performs strongly in terms of answerability but weakly in enforcement, resulting in an incomplete accountability cycle.

In conclusion, Nepal's NHRC represents a constitutionally robust but operationally constrained institution. Strengthening its effectiveness requires reforms aimed at enhancing enforcement mechanisms, ensuring transparent and merit-based appointments, improving resource adequacy, and strengthening coordination across federal levels. In the absence of such reforms, the gap between constitutional promise and practical realization of human rights protection is likely to persist. Ultimately, the study underscores that the effectiveness of National Human Rights Institutions cannot be measured solely by their formal mandates or international accreditation status, but must be assessed through their tangible impact on accountability, justice, and the lived experiences of rights-holders.

References

Bhandari, S. D. (2015). *The role of national human rights institutions in ending impunity for human rights abuses during conflict: the case of Nepal*. Danish Institute for Human Rights.

Carver, R. (2011). A new answer to an old question: National human rights institutions and the domestication of international law. *Human Rights Law Review, 11*(1), 1–32. https://doi.org/10.1093/hrlr/ngq045

Carver, R., & Handley, L. (2016). *Does the Paris Principles Live Up to Their Promise? Evaluating the Effectiveness of National Human Rights Institutions*. Nordic Journal of Human Rights

Constituent Assembly (2015) Constitution of Nepal 2015. Ministry of Law, Justice and Parliamentary Affairs.

Deo, S. K. (2026, March 1). Human rights approach in Nepal's development strategies: A critical overview. *NPRC Journal of Multidisciplinary Research*, *3*(2), 1–11. https://doi.org/10.3126/nprcjmr.v3i2.87149

Deshko, L. (2020). National institutions established in accordance with the Paris principles, engaged into the promotion and protection of human rights in the system of internal means of security. *Constitutional and Legal Academic Studies*, (25), 25–34.

Dhakal, Diwakar, Human Rights in Nepal: An Analysis (2024). International Journal of Humanities, Social Sciences and Education (IJHSSE) Volume 11, Issue 7, July 2024, PP 113-121

Frank, J. (1947). Interpretations of modern legal philosophers. In P. L. Sayre (Ed.), *Interpretations of modern legal philosophies: Essays in honor of Roscoe Pound* (p. 223). Oxford University Press.

GANHRI. (2025). *Accreditation status as of 4 December 2025*. Global Alliance of National Human Rights Institutions.https://ganhri.org/wp-content/uploads/2025/12/Accreditation-Status-Chart_Dec2025.pdf

Giri, S. K. (2022). Challenges and prospects of the National Human Rights Commission of Nepal. *Journal of Political Science*, *22*, 45–60.

Giri, S. K. (2022). Role of the National Human Rights Commission for the Protection of Human Rights in Nepal. *Dristikon: A Multidisciplinary Journal*, *12*(1), 144–159. https://www.researchgate.net/publication/361788729_Role_of_the_

National_Human_Rights_Commission_for_the_Protection_of_Human_Rights_in_Nepal

Glendon, M. A. (1997). Knowing the universal declaration of human rights. *Notre Dame L. Rev.*, *73*, 1153.

Global Alliance of National Human Rights Institutions. (n.d.). *National Human Rights Institutions*. https://ganhri.org/nhri/

Gustafsson, M. T., Schilling-Vacaflor, A., & Lenschow, A. (2023). The politics of supply chain regulations: Towards foreign corporate accountability in the area of human rights and the environment? *Regulation & Governance*, *17*(4), 853-869.

Hafner-Burton, E. M., Mansfield, E. D., & Pevehouse, J. C. (2015). Human rights institutions, sovereignty costs and democratization. *British Journal of Political Science*, *45*(1), 1-27. https://heinonline.org/HOL/LandingPage?handle=hein.journals/hhrj13&div=5&id=&page

Khaliq, U. (Ed.). (2018). Principles Relating to the Status of National Institutions (The Paris Principles, 1993, pp. 284–288) *Cambridge University Press.*

March, J. G., & Olsen, J. P. (2010). *Rediscovering institutions*. Simon and Schuster.

Muchlinski, P. (2021). The Impact of the UN Guiding Principles on Business Attitudes to Observing Human Rights. *Business and Human Rights Journal*, *6*(2), 212–226. doi:10.1017/bhj.2021.14

National Human Rights Commission Nepal (2016–2024) *Annual Reports*. **https://www.nhrcnepal.org/**

National Human Rights Commission. (n.d.). *About us*. https://www.nhrcnepal.org/aboutus

Office of the High Commissioner for Human Rights. (2018). *United Nations human rights report 2018*. https://www.ohchr.org/Documents/Publications/OHCHRreport2018.pdf

Pathak, B. (2005). *Politics of people's war and human rights in Nepal*. Kathmandu: Bimipa Publications.

Pegram, T. (2010). National human rights institutions in Latin America: Politics and institutionalization. *Journal of Latin American Studies, 42*(1), 1-34. https://doi.org/10.1017/S0022216X1000003X

Rai, L. D. D. (1981). Human rights development in Ancient Nepal. *Hum. Rts. Q.*, *3*, 37.

Ramcharan, B. G. (Ed.). (2005). The protection role of national human rights institutions (Vol. 62). Brill.

Reif, L. C. (2000). Building democratic institutions: The role of national human rights institutions in good governance and human rights protection. Harv. Hum. Rts. J., 13, 1..

Reif, L. C. (2011). Transplantation and adaptation: The evolution of the human rights ombudsman. Boston College Law Review, 49, 159. https://doi.org/10.2139/ssrn.1824667

Rimal, B. P. (2020). Human rights approach in Nepal's development strategies: A critical overview. NPRC Journal of Multidisciplinary Research. https://www.nepjol.info/index.php/nprcjmr/article/download/87149/69466/261368

Schedler, A., Diamond, L. J., & Plattner, M. F. (Eds.). (1999). *The self-restraining state: power and accountability in new democracies*. Lynne Rienner Publishers.

Takata, H. (2022). How are the Paris Principles on NHRIs Interpreted? Towards a Clear, Transparent, and Consistent Interpretative Framework. *Nordic Journal of Human Rights*, *40*(2), 285-305. https://doi.org/10.1080/18918131.2022.2040863

UN General Assembly. (1948). *Universal Declaration of Human Rights*. https://www.un.org/en/about-us/universal-declaration-of-human-rights

United Nations General Assembly. (1993, December 20). *Principles relating to the status of national institutions (The Paris Principles)* (A/RES/48/134).https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris

Yadav, R. K. (2025). The role and significance of the National Human Rights Commission (NHRC) Nepal in upholding human rights. *Sambahak: Human Rights Journal*, *25*, 146–157. https://doi.org/10.3126/sambahak.v25i1.83925

For Human Rights and Social Justice
Informal Sector Service Centre (INSEC)
Nagarjun Municipality-10, Syuchatar, Kathmandu
POBox : 2726, Kathmandu, Nepal
Tel: +977-1-5218770
E-mail: informal.hrsjournal@insec.org.np,
Website: www.insec.org.np; www.inseconline.org