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The Legality of Recording Police Officers and Conversations in Police Stations: A Jurisdictional Analysis and Human Rights Perspective

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Abstract

The article focuses particularly on police stations and the critical role of such recordings in protecting human rights. It analyzes the balance between public accountability and law enforcement's operational, safety, and privacy needs through a comparative study of the United States and Nepal. The First Amendment to the U.S. Constitution generally protects the recording of police in public spaces as a form of free speech, subject to reasonable restrictions and the non-obstruction of duties. Audio recordings are governed by varying state consent laws, although officers typically lack a reasonable expectation of privacy while on public duty. Inside a police station, recording is usually acceptable in public-access areas, but it is more difficult to justify in restricted areas. Nepal's National Penal Code, 2074, largely prohibits recording without consent, with vague exceptions for public statements or incidental captures in public places, creating uncertainty and scope for arbitrary enforcement. The constitutional Right to Information and a "public interest" exception in the National Civil Code, 2074, potentially support such recordings, but these provisions remain judicially undefined. The article concludes that both countries grapple with balancing citizen oversight and police requirements, with Nepal's framework hindered by definitional ambiguities and conflicts between constitutional and statutory provisions.

Keywords: Recording Police, Human Rights, Nepal Law, US Law, Right to Information, Accountability.

Introduction

The advent of readily available recording devices has fundamentally reshaped the dynamic between citizens and law enforcement. This technological shift has empowered individuals to document interactions with police, fostering a new era of citizen oversight and contributing to ongoing discussions about police accountability and transparency. However, this phenomenon is not without

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complexities, sparking significant legal and social debates regarding the precise scope of the public's right to record and its implications for both law enforcement operations and civil liberties.

This article examines the dual nature of such recordings: they serve as a vital tool for public scrutiny, yet they can also become a source of legal contention, particularly when conducted within the nuanced environment of a police station. The increasing public interest in documenting police interactions stems from a profound desire for governmental transparency, enhanced accountability, and the fundamental ability to gather and disseminate information of public concern. These principles are deeply embedded in the constitutional frameworks of democratic societies. Accordingly, this article aims to provide a comprehensive legal analysis of the permissibility of recording police officers, with particular emphasis on the challenging environment of police stations.

Research Objectives

This article endeavors to ascertain the precise legal standing of recording police officers, particularly audio and video recordings of interactions within police stations. A primary objective is to identify the specific conditions and contextual factors under which such recording is legally permissible, or, conversely, constitutes a criminal or civil offense. This examination adopts a comparative focus on the legal frameworks of the United States and Nepal, highlighting their similarities, differences, and the practical implications for both citizens and law enforcement.

Methodology

This article employs a doctrinal legal research methodology, meticulously analyzing primary legal sources. This includes a thorough examination of constitutional provisions, relevant statutes, and significant judicial precedents from both the United States and Nepal. A comparative legal approach is utilized to systematically highlight the differences and similarities in the legal recognition and limitations of the right to record police, including public spaces and the more ambiguous private or restricted areas within a police station. The analysis integrates insights derived from authoritative legal commentary, reports from human rights organizations, and available official police guidelines to provide a multi-layered understanding of the practical application of these laws, as well as the challenges and controversies surrounding citizen recording.

Literature Review

Previous scholarship and reports have extensively explored the role of citizen recordings in ensuring police accountability. In the United States, scholars such as Johnson (2018) and organizations like the Electronic Frontier Foundation (2020) have emphasized that the First Amendment protects the right to record police as a form of free speech and citizen journalism. Studies indicate that video recordings deter misconduct, reduce excessive use of force, and enhance public trust in law enforcement.

In Nepal, however, limited academic attention has been given to this subject. Thapa (2020) has examined the principles guiding police use of force but does not address recording as a tool for accountability. Chaudhary (2024) has recently introduced the concept of a "right to record" as an extension of transparency rights, yet judicial interpretation remains absent. Human rights organizations globally continue to advocate for recording as a safeguard against abuse of power. This body of literature highlights a research gap in Nepal's context, where a comparative analysis with foreign jurisdictions could provide valuable guidance in developing clear policies.

Discussion

The Right to Record Law Enforcement

This study explains the laws regarding the recording of law enforcement as follows:

General Principles of Recording Police in Public Spaces (US Context)

In the United States, individuals possess a well-established constitutional right to record police officers engaged in the performance of their public duties. This right, rooted in the First Amendment, is recognized as a form of speech that enables citizens to gather and disseminate information of public concern. The ability to observe and document the functions of government, particularly those carried out by law enforcement, is considered an essential component of the public's First Amendment rights, whether captured through video, photography, or audio recordings. This right extends to any police activity performed in public or in locations where an individual otherwise has a legal right to be present. Courts have generally held that the public's right to record police activities is coextensive with that of the press, underscoring its importance in a free society.

Despite the broad nature of this right, it is not absolute and is subject to certain limitations. These limitations typically manifest as reasonable time, place, and manner restrictions. For such restrictions to be permissible, they must be content-neutral, narrowly tailored to serve a significant governmental interest, and ensure that reasonable alternative avenues of communication remain open. A critical limitation involves the prohibition against obstructing official duties. Individuals recording police activities may not intentionally or unintentionally take actions that unduly delay police attempts to conduct enforcement or emergency operations. Examples of such unacceptable obstruction include standing in the way of victims, suspects, witnesses, or emergency responders; impeding traffic; or engaging in similar actions. Police officers are legitimately empowered to order citizens to cease activities that genuinely interfere with law enforcement operations. However, it is important to distinguish between mere recording and actual interference; simply recording an officer, without an overt act that impedes their duties, typically does not constitute obstruction. Police body-worn cameras also have the potential to improve accountability and transparency in policing (Field, Verma, San, Eberhardt, & Jurafsky, 2023).

Public safety concerns further justify certain restrictions. Individuals can be directed to move or restricted from specific areas if necessary to ensure the safety of officers, victims, witnesses, and third parties. Officers may also establish marked perimeters to control public access to, or recording of, crime scenes and tactical operations. Furthermore, the right to record is generally limited when an individual is on private property, where the property owner retains the authority to set rules regarding photography. Disobeying such rules can lead to charges such as trespassing.[‡‡‡].

*A foundational principle underpinning the right to record police in public is that officers performing their duties in a public setting generally do not have a reasonable expectation of privacy (**Principle of Officium in publico gerens, ius privatum non habet**).*[§§§]

This principle is crucial in determining the legality of recording police actions and conversations in public spaces, as it removes the basis for many privacy-based objections. Moreover, police officers generally may not confiscate or demand to view a citizen's photographs or videos without a warrant. They are explicitly prohibited from deleting any recordings under any circumstances. Even during an arrest, a warrant is typically required to search the digital contents of a cell phone.

The constitutional right to record police in public is unequivocally established by judicial precedent, with cases like *Glik v. Cunniffe* [****]affirming it as a "clearly established" right. However, a persistent gap exists between this clear legal pronouncement and its consistent application by Despite the legal clarity, reports indicate that some law enforcement personnel may unlawfully order citizens to stop recording, demand to view or confiscate devices, or even make arrests for refusal to comply with such illegal orders. This discrepancy between the established constitutional right and its practical enforcement by individual officers can lead to instances of unlawful interference with citizen recording. Consequently, citizens may be subjected to unlawful arrests, harassment, or intimidation, even when their actions are entirely within their legal rights. Such situations can create a chilling effect on the exercise of constitutional rights, deterring individuals from recording legitimate public interactions due to fear of arbitrary legal repercussions or physical confrontation. This underscores the ongoing challenge of ensuring that police accountability extends beyond mere legal

[‡‡‡] Agrilife.org. (2025, May 5). Federal court upholds constitutionality of Iowa law aimed to prevent trespassing recording. Retrieved from https://agrilife.org/texasaglaw/2025/05/05/federal-court-upholds-constitutionality-of-iowa-law-aimed-to-prevent-trespassing-recording/

[§§§] Principle of Officium in publico gerens, ius privatum non habet.: "*One who performs a duty in public does not have a private right.*"

[****] **Glik v. Cunniffe**, No. 10-1764, 655 F.3d 78 (1st Cir. 2011), https://law.justia.com/cases/federal/appellate-courts/ca1/10-1764/10-1764p-01a-2011-08-26.html (last visited Feb. 1, 2026).

pronouncements, highlighting the need for robust police training and internal disciplinary mechanisms to align on-the-ground practices with established law.

Recording Conversations: Consent Laws (US Context)

The legality of recording conversations in the United States is primarily governed by federal and state wiretapping laws, which differ significantly in their consent requirements. The principal federal statute, 18 U.S. Code § 2511, generally prohibits the intentional interception of wire, oral, or electronic communications. However, a crucial exception exists: the law does not apply when one of the parties to the communication has given prior consent to the interception, provided the recording is not made for the purpose of committing a criminal or tortious act. This is commonly referred to as the "one-party consent" rule.

While federal law permits one-party consent recording, state laws vary significantly[††††]. A majority of US states, along with the District of Columbia, have adopted laws similar to the federal standard, allowing recording if at least one party to the conversation (including the person doing the recording) consents[‡‡‡‡]. Examples of one-party consent states include Alabama, Alaska, Arizona, Arkansas, Colorado, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming[§§§§].

In contrast, a smaller but significant group of states requires all parties involved in a conversation to be informed of and agree to the recording before it begins. These "all-party consent" or "two-party consent" states include California, Delaware, Florida, Illinois, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, and Pennsylvania. In these jurisdictions, consent can be given actively or passively. Some states, such as Connecticut and Oregon, have mixed consent laws, with different requirements for electronic (e.g., phone calls) versus in-person conversations. The legal requirements become even more complex for interstate calls. While federal law generally governs, state laws, particularly the law of the recording party, may also apply. For instance, the California Supreme Court has ruled that its all-party consent rule applies to conversations between someone in California and someone in a one-party consent state.

[††††] https://www.rcfp.org/introduction-to-reporters-recording-guide/

[‡‡‡‡] Hollenbeck, S. (2024, February 27). Recording Phone Calls: Laws by State. Rev. https://www.rev.com/blog/phone-call-recording-laws-state

[§§§§] Scribble Vet. (2025, April). Recording consent laws across the US. Scribble Vet. https://www.scribblevet.com/blog/recording-consent-laws-across-the-us

A critical distinction emerges when considering the "expectation of privacy" in the context of recording conversations with police officers. While general state consent laws are paramount for recording private conversations, police officers performing their duties in public generally have no reasonable expectation of privacy. This is a crucial nuance: the general consent requirements for recording conversations may be superseded or rendered irrelevant when the conversation involves a public official performing public duties in a public space, precisely because the official lacks a reasonable expectation of privacy in that context. The nature of police work, particularly when conducted in public view, inherently reduces an officer's individual privacy expectations. This reduction in privacy expectation directly impacts the applicability of general wiretapping or consent laws, making it less likely that recording such interactions would be considered an unlawful interception of a private conversation. This implies that even in "all-party consent" states, recording an officer's public conversation might still be legal if the context (public duty, public location) negates any reasonable expectation of privacy. However, this distinction is often misunderstood or ignored by officers, leading to practical challenges for citizens attempting to record.

The stark differences between one-party and all-party consent states, coupled with the complexities of interstate recording, create a highly fragmented legal landscape. This fragmentation means that a citizen might unknowingly violate a state's specific consent law, even while attempting to exercise their perceived constitutional right to record police. The variability and complexity of state-specific consent laws pose a significant barrier to citizens confidently exercising their right to record, particularly for audio recordings. This legal ambiguity and potential for misinterpretation directly contribute to a chilling effect on citizen recording. Individuals may hesitate to record, fearing legal repercussions such as felony charges for unlawful interception or the practical difficulties of navigating differing state laws, especially when traveling or interacting across state lines. The fragmented legal framework places an undue burden on citizens, requiring them to be legal experts in every jurisdiction where they might encounter police, thereby undermining the accessibility and effective exercise of a fundamental right.

Recording in Police Stations: A Specific Legal Challenge

There is no issue of greater consequence for police and law enforcement professionals than the use of force (Thapa, 2020). Therefore, it is necessary for citizens to record police actions when force is used, both to protect themselves and to gather evidence. Recording within a police station presents unique legal and practical challenges that differentiate it from recording in open public spaces. While sidewalks, parks, and streets are unequivocally public, the definition of "public place" also extends to "buildings designated for public use, such as libraries, and the open and common areas of government buildings." This suggests that a police station's public lobby or waiting area would likely fall under this definition, implying a general right to record in such spaces.

However, the legal status of internal areas of a police station—such as interrogation rooms, administrative offices, or secure areas—is less clear. These spaces are not explicitly defined as "public" in the same way, and the expectation of privacy within them may differ significantly from open public environments. Anecdotal evidence from Nepal indicates a common perception that, while filming in public is generally allowed, directly filming a person or public servant—even while on duty—might be treated differently, and police often assert authority to stop recording or seize devices in such contexts. This highlights a practical ambiguity in the interpretation of "public place" within government facilities.

A ruling by the Bombay High Court determined that videotaping inside a police station does not constitute "spying" under India's Official Secrets Act, suggesting that some internal areas can be recorded without violating specific laws. However, this interpretation is narrow and jurisdiction-specific, not a universal principle. Citizens have a constitutional right to videotape police, noting that while the right “promotes First Amendment principles,” it is subject to reasonable time, place, and manner restrictions (Johnson, 2018). While police officers generally lack a reasonable expectation of privacy when performing duties in public, this expectation may shift within the confines of a police station, particularly in non-public areas. Recording laws often address "situated harms," where recording alters behavior in physical spaces. This implies that the unique nature of a police station-which may involve the presence of victims, sensitive information, and ongoing investigations-could introduce privacy concerns not typically present in an open public street.

The arguments for allowing recording in police stations largely mirror those for recording in public spaces, emphasizing accountability and transparency. Recordings, including those from police body cameras, have demonstrably improved police accountability and reduced reports of misconduct. They serve as objective evidence to document statements, observations, and behaviors, thereby deterring unprofessional or illegal actions. Such recordings also protect officers from false accusations. Public access to these records fosters confidence in law enforcement and builds greater trust between officers and the community. Furthermore, recordings can be invaluable tools for training new and existing officers, allowing for review and improvement of performance in difficult encounters.

Conversely, significant arguments exist against unfettered recording in police stations, centering on privacy, safety, and operational interference. Concerns are often raised that recording within a police station can be invasive, potentially violating the privacy of individuals present, such as victims, witnesses, or other civilians, who may not consent to being recorded. It is also argued that recording might decrease the safety of law enforcement agents or negatively impact their physical and mental well-being. Additionally, recording could damage openness and create barriers to effective communication and relationship-building between police and citizens, particularly in sensitive situations. A primary concern is the potential for obstruction of legitimate law enforcement operations. This includes actions like tampering with a witness or suspect, inciting others to violate

the law, or being so physically close as to present a clear safety hazard or interfere with an investigator's communication.

The concept of a "public place" is not a simple binary but rather exists along a continuum, particularly within government facilities such as police stations. While the right to record in "public places" is well established, its application to the interior of a police station remains ambiguous. The inclusion of "open and common areas of government buildings" as public suggests that a police station lobby might be considered a public space. Anecdotal evidence from Nepal indicates a practical distinction, wherein direct filming of officers—even while on duty—is often met with resistance.

This inherent ambiguity creates a significant grey area, allowing law enforcement officers to assert authority to prohibit recording based on perceived privacy concerns or operational needs, even if such prohibitions lack explicit legal backing for that specific area. Consequently, citizens attempting to exercise their rights may face conflicts and challenges. Without clearer legal definitions or specific departmental policies delineating which areas within a police station are considered "public" for recording purposes, and the precise conditions under which recording is permissible or prohibited, both citizens and officers operate in a zone of uncertainty. This lack of clarity can result in arbitrary enforcement, undermining trust and accountability.

There is an inherent and complex conflict between the public's demand for maximum transparency and the legitimate needs of law enforcement for operational effectiveness, safety, and the protection of individual privacy (e.g., victims, witnesses) within a police station. The arguments for recording, such as accountability, transparency, and improved officer behavior, are compelling and align with the broader public interest in oversight. However, the arguments against, including privacy invasion, officer safety, and operational interference, highlight legitimate concerns specific to the sensitive environment of a police station. Unfettered recording in all areas of a police station could genuinely compromise sensitive investigations, endanger individuals, or violate the privacy of non-officers. Conversely, blanket prohibitions on recording could undermine accountability. This tension necessitates a careful balancing act. The absence of well-defined, publicly accessible policies regarding recording within police stations means that this critical balance is often left to on-the-spot discretion, which can be inconsistent or biased. This suggests a strong need for clear, nuanced guidelines that acknowledge the public's right to record while also safeguarding legitimate operational and privacy interests, potentially through designated recording areas or specific protocols for sensitive interactions.

Nepal's Legal Framework for Recording Police and Conversations

Nepal's legal framework governing the recording of police and conversations is primarily articulated in its **National Penal Code, 2074,** alongside other relevant acts and judicial pronouncements.

National Penal Code, 2074

- **Section 293: Prohibition on Listening to or Recording Others' Conversations without Permission (National Penal Code, 2074 [2017]) :** This section generally prohibits the use of any mechanical device to listen to or record conversations between two or more persons without their consent. A violation can result in imprisonment for up to two years, a fine of up to NPR 20,000, or both. Crucially, this prohibition "shall not apply to any speech or statement made publicly." However, the detailed conditions or definition of what constitutes a "public speech or statement" in this context are not explicitly provided.Section 295:

- **Prohibition of taking or disfiguring photograph of any person without his or her consent (National Penal Code, 2074 (2017))[*****].** This section prohibits taking a person's photograph or altering an image by combining it with another person's photograph without their consent. A significant exception exists: it is not considered a crime if an individual is included unintentionally in a photograph of a "public place." The punishment for taking photographs without consent is imprisonment not exceeding one year, a fine of up to NPR 10,000, or both. For disfiguring or publishing disfigured photographs, the penalty is imprisonment of up to two years, a fine of up to NPR 20,000, or both.

- **Section 297: Prohibition of Opening Letters or Tapping Telephone Conversations (National Penal Code, 2074 (2017))[†††††].** This section specifically prohibits tapping or recording another person's telephone conversation using a mechanical device without appropriate legal authorization from either the government or the individual concerned. A violation may result in imprisonment for up to two years, a fine of up to NPR 20,000, or both. It is important to note that this section specifically targets telephone conversations and does not explicitly address the legality of recording in-person conversations within a police station.

- **The table below summarizes the key provisions of Nepal's National Penal Code, 2074 relevant to recording:**

	Prohibition	Key Exceptions/Conditions	Punishment
293	Listening to or Recording Others' Conversations without Permission (via a Mechanical Device)	Public Speeches or Statements" (Conditions Undefined)	Imprisonment of up to two years, a fine of up to NPR 20,000, or both

[*****] Ibid
[†††††] Ibid

295	Taking Photograph of a Person without Consent OR Disfiguring/Publishing Disfigured Photos	Individual included unintentionally in photograph of a "Public Place"	Taking Photo: Imprisonment up to 1 year OR fine up to NPR 10,000 OR Both; Disfiguring/Publishing: Imprisonment up to 2 years OR fine up to NPR 20,000 OR Both
297	Tapping/Recording Telephone Conversation without Legal Permission or Consent	Legal Permission from Government OR Consent of Person	Imprisonment up to 2 years OR fine up to NPR 20,000 OR Both

A significant challenge in Nepal's legal framework governing recording is the absence of clear and actionable definitions for crucial exceptions that could otherwise legitimize the recording of public officials by citizens. Section 293 provides an exception for "public speeches or statements," and Section 295 provides an exception for the unintentional inclusion of individuals in photographs taken in a "public place." However, the available information explicitly indicates that the conditions or definitions of these exceptions are not clearly detailed.

This definitional ambiguity directly results in legal uncertainty for citizens. Without clear guidance on what constitutes a "public speech or statement" or a "public place" within the nuanced context of a police station, individuals are left to interpret these terms independently, which may differ significantly from law enforcement interpretations. This ambiguity permits arbitrary enforcement by police, who may demand the cessation of recording or confiscate devices, as suggested by anecdotal evidence.

The lack of clarity thus acts as a significant impediment to the exercise of the right to information and citizen oversight in Nepal. It creates a legal grey area that can be exploited, leading to a chilling effect on citizens' willingness to document police interactions, even when such documentation might ultimately be deemed lawful under a broader interpretation of these exceptions. This situation underscores the critical need for judicial clarification or legislative amendment to provide precise and operational definitions of these terms.

There is a notable legislative tension or contradiction in Nepal, where a constitutional right aimed at transparency appears to be curtailed by later statutory criminalization of information gathering, particularly concerning public officials and private information. **The Constitution of Nepal** enshrines the "Right to Information‡‡‡‡‡" as a fundamental right, designed to ensure transparency and accountability of state functions. However, the National Penal Code, 2074 , introduces criminalizing

‡‡‡‡‡ Also Known as Right to Know.

provisions (Sections 293, 295, 297, 298) that penalize recording and publishing information without consent, including for public figures, with significant punishments. While the **Right to Information Act, 2064** (2008) aims to facilitate access to public information,[§§§§§] the Penal Code's broad prohibitions on recording without consent create a legal environment that can significantly restrict the practical exercise of this right, especially for direct citizen oversight. This legislative conflict can lead to legal challenges and uncertainty for journalists and citizens alike. This legislative dissonance can lead to a chilling effect on freedom of expression and the press in Nepal. Citizens and journalists may self-censor or avoid documenting interactions out of fear of criminal prosecution, even when the information is of public importance. This undermines the very accountability mechanisms that the Right to Information was designed to foster.

Right to Information Act, 2008

The Right to Information Act, 2008 aims to make state functions open and transparent by ensuring citizens' access to information of public importance held by public bodies. It broadly defines the "Right to Information" to include the right to study documents, observe proceedings, obtain verified copies, and visit or observe locations where construction of public importance is taking place.

However, the Act also contains certain limitations. These include restrictions on information that "seriously jeopardizes the sovereignty, integrity, national security, public peace, stability, and international relations of Nepal" or that "interferes with an individual's privacy and the security of body, life, property, or health." This privacy limitation could potentially be invoked to restrict recording in certain contexts, particularly within police stations where sensitive information or vulnerable individuals may be present.

Potential Offenses and Legal Risks Associated with Recording

Recording interactions with law enforcement, particularly in sensitive environments such as police stations, carries potential legal risks, primarily concerning obstruction of justice or official duty and violations of privacy laws.

Obstruction of Justice or Official Duty: Defining Interference

In the U.S. context, merely recording police is generally not considered obstruction. An offense arises only if the act of recording actively interferes with legitimate police operations. Examples of such actionable interference include tampering with a witness or suspect, inciting others to violate the law, or positioning oneself so physically close as to create a clear safety hazard or interfere with an investigator's communication.

[§§§§§] See Preamble of the Right to Information Act, 2064 (2008).

In Nepal, a specific and comprehensive law addressing "obstruction of justice" is currently lacking. However, various provisions within existing legislation address related conduct that may be interpreted as interference with official duty. These include creating obstacles while lawful orders (such as summonses, arrest warrants, or searches) are being executed, preventing public officials from discharging their duties by force or other means, or obstructing individuals who are providing information to the police. Anecdotal reports from Nepal suggest that police sometimes interpret "obstruction" broadly as a basis for detaining individuals who record them, even in the absence of clear physical interference.

The subjective and often expansive interpretation of "interference" or "obstruction of duty" by law enforcement creates a significant loophole that may be used to suppress citizen recording arbitrarily, even when no actual obstruction occurs. Both U.S. and Nepalese legal frameworks acknowledge that recording should not interfere with police duties. However, the definition of "interference" can be inherently subjective. In the United States, it is generally linked to overt, physical acts of obstruction. In Nepal, despite the existence of provisions addressing obstruction, anecdotal evidence suggests that police may apply a broad interpretation to deter or penalize recording, even without tangible disruption.

This ambiguity enables police officers to exercise wide discretion, potentially leading to unlawful orders, harassment, or arrests of individuals who are merely recording. The absence of clear, objective standards defining "interference" in the context of recording allows decisions to be based on immediate perception rather than precise legal criteria. This vulnerability to arbitrary enforcement significantly chills the exercise of the right to record, discouraging citizens from documenting interactions due to fear of unfounded charges. Consequently, there is a critical need for clearer legislative or policy definitions of "interference" that are narrowly tailored to actual disruption, rather than mere presence or recording.

Violation of Privacy Laws

In the United States, as previously discussed, recording conversations in "all-party consent" states without the consent of all participants may constitute a criminal offense. In Nepal, the National Penal Code, 2074 includes provisions (Sections 293, 295, and 297) that criminalize recording conversations or taking photographs without consent. Nepal's constitutional right to privacy is also a significant consideration. Section 21(1) of the National Civil Code, 2074 defines acts that violate privacy, including recording discourse or sound through technological means without consent.

Crucially, Section 21(2) of the National Civil Code, 2074 provides an important exception: the right to privacy is not deemed violated if the act (such as taking a photograph or recording sound) is carried out for a "literary or artistic purpose or in the public interest." The interpretation of "public interest" in this context is central to determining the legality of recording police officers.

Nepal's legal framework therefore contains a powerful, though potentially underutilized, "public interest" exception that could provide a legal basis for citizen recording of police. If police activities—particularly those involving public interaction or potential misconduct—are deemed to fall within the scope of "public interest" (for example, to ensure accountability or document abuse), such recording might be legally permissible under this provision, potentially overriding general consent requirements.

This clause offers a potential legal defense against charges of privacy violation when recording police officers. If a court were to interpret police actions within a station as matters of public interest, the recording would not constitute an offense. However, in the absence of clear judicial interpretation or legislative guidance defining the scope and application of "public interest" in this context, its practical effectiveness as a defense remains uncertain for the average citizen.

This uncertainty suggests a crucial avenue for legal advocacy in Nepal: seeking judicial clarification or legislative amendment explicitly recognizing that police interactions-particularly those occurring in public-facing areas or during the performance of official duties-fall within the ambit of "public interest." Such clarification could significantly strengthen the right to record police and enhance accountability, providing a meaningful counterbalance to the restrictive provisions of the Penal Code.

Public Grievance and the Demand for Accountability

A discourse was also initiated through a formal inquiry I submitted via the "Hello Sarkar" portal (Ticket No: HS-WEB-87462-UY), addressing the growing friction between law enforcement and civil liberties. The request sought clarification on whether citizens have the legal standing to record police officers during their official duties in public spaces. This inquiry was prompted by reports of arbitrary phone seizures and harassment faced by members of the public when attempting to document police interactions. I specifically asked which statutory frameworks protect this act of "citizen journalism" and what disciplinary measures exist to penalize officers who overstep their legal authority by confiscating personal devices without cause.

In their official response, the Ministry of Home Affairs and Nepal Police Headquarters grounded the citizen's right to record in the Supreme Law of the land. They highlighted Article 19 of the Constitution of Nepal, which guarantees the Right to Communication and explicitly prohibits prior censorship of audio-visual materials. Furthermore, Article 27 was cited to reinforce the Right to Information, establishing that every citizen is entitled to access information held by public bodies. Crucially, the authorities clarified that the state is constitutionally barred from seizing or canceling the registration of electronic equipment used for broadcasting or recording information, provided such use does not infringe upon specifically protected legal boundaries.

The response addressed the complex balance between the Individual Privacy Act, 2075 (2018), and the National Penal Code, 2074. While Section 295 of the Penal Code generally prohibits taking photographs without consent, the police clarified a vital legal exception: capturing images or videos in a public place—even if individuals are incidentally included—does not constitute a criminal offense. This distinction is critical, as it confirms that the "expectation of privacy" is legally diminished in public settings, thereby permitting citizens to document police conduct, provided the recording occurs in a government-recognized public area.

Despite recognizing the general right to record, the documentation forwarded to me outlines specific "Sensitive Zones" where police authority takes precedence over public recording. The authorities noted that restrictions apply in contexts involving ongoing criminal investigations, the protection of victim or accused identities, and secure facilities such as armories and detention cells. The police emphasized that, although recording is not inherently illegal, it must not interfere with the execution of official duties or compromise the privacy of third parties. This portion of the response underscores that the right to record is not absolute but is governed by the need to maintain public order and investigative integrity.

Result and Discussion

The findings of this study reveal that while the United States has established a relatively robust constitutional right to record police in public, inconsistencies remain due to differing state consent laws for audio recordings. Nepal, on the other hand, criminalizes non-consensual recordings under the National Penal Code but leaves ambiguously defined exceptions for "public interest" and "public places." This legislative gap creates uncertainty, often leading to arbitrary enforcement by police officers. From a human rights perspective, recording serves as a safeguard against abuses of power and supports accountability mechanisms, especially in closed environments like police stations. However, concerns regarding privacy, the safety of victims, and potential interference with investigations also carry weight. This discussion highlights the urgent need for Nepal to adopt clearer legislative or judicial definitions that balance accountability with legitimate operational concerns.

Conclusion

The legality of recording police officers, particularly within the confines of police stations, is a complex and highly nuanced issue, marked by significant variations across different jurisdictions. In the United States, the First Amendment broadly protects the right to record police in public, subject to reasonable time, place, and manner restrictions, provided such recording does not obstruct official duties. However, the diverse landscape of state-specific consent laws for audio recording introduces considerable variability, requiring citizens to be aware of the specific requirements in their location.

In Nepal, the National Penal Code, 2074 generally prohibits recording conversations and taking photographs without explicit consent. Nevertheless, it includes crucial, yet ambiguously defined, exceptions for "public speeches or statements" and "public places." Furthermore, the "public interest" exception within the National Civil Code, 2074 offers a potential legal basis for recording, though its interpretation in the context of police interactions remains largely untested and undefined. Despite official policies from the Nepal Police promoting accountability and human rights, practical enforcement often reveals instances of police obstructing citizen recording and reluctance to investigate internal complaints, highlighting a significant gap between stated policy and actual practice.

Recommendations

To bridge the gap between constitutional guarantees and field-level police conduct in Nepal, the government must move toward **Legislative Precision and Definitional Clarity**. Current ambiguities within the National Penal Code, 2074 (2017) regarding "public statements" and "incidental captures" allow for arbitrary enforcement and suppression of citizen oversight. Policymakers should amend the National Penal Code to explicitly include a **"Public Interest Exception"**, recognizing that recording law enforcement officers in the line of duty is a protected act of transparency rather than an infringement on personal privacy. Defining "public places" to include public-access areas of police stations—such as reception desks and filing areas—would provide citizens with a clear "safe harbor" to document their interactions without fear of criminal prosecution.

Furthermore, the **Ministry of Home Affairs** should issue a **Standardized Protocol for Police-Citizen Interactions** that specifically addresses the use of personal recording devices. This policy should adopt a **Zone-Based Access** model within police stations, clearly demarcating public areas where recording is permitted from high-security zones, such as interrogation rooms or armories, where operational secrecy is paramount.

Finally, the sustainability of these reforms depends on **Institutional Training and Independent Oversight**. Law enforcement curricula should be updated to include modules on the "Right to Information" and "Citizen Journalism," shifting the internal culture from secrecy to mutual accountability. To ensure these policies are effectively implemented, the **National Human Rights Commission (NHRC)** and the **National Information Commission** should establish a dedicated fast-track mechanism for grievances related to obstruction of recording. By granting citizen-captured recordings **"Presumptive Admissibility"** in administrative and judicial proceedings, Nepal can transform bystander footage from a source of conflict into a vital tool for judicial truth-seeking and human rights protection.

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