



# Practice of the Muluki Criminal Code in Nepal

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*Article History : 2025 September 3*

## Abstract

The Muluki Criminal Code, 2074 is a significant modernization effort, its practice in Nepal is hampered by systemic challenges like judicial delays, resource shortages, investigative weaknesses, and access barriers. The prosecution process in Nepal is a complex legal journey defined by the Cr PC 2074 but significantly hampered in practice by systemic inefficiencies, resource limitations, and access barriers. This gap requires sustained efforts in judicial reform, increased investment in the justice sector, strengthening of institutions, enhanced training, and a greater commitment to protecting the rights of all individuals within the process. Landmark decisions demonstrate the Supreme Court's active role in ensuring the Muluki Criminal Code 2074 is implemented in a manner that upholds constitutional rights, promotes justice, and addresses systemic flaws in Nepal. The Criminal Code, 2074 exactly cannot represent the Nepali Social Phenomena in current law practice system in Nepal.

**Keywords:** *Muluki Criminal Code 2074, Prosecution Process, Judiciary, Landmark Decisions.*

## Background

From Muluki Ain 1963 to Criminal Code 2074 : Pre-2017: Nepal's criminal law was governed by the Muluki Ain 1963, a comprehensive but outdated code influenced by Hindu principles, emerging colonial-era laws, fifteen century and traditional practices. It contained archaic provisions, gender biases, and lacked modern concepts like cybercrime. The Need for Reform: Decades of political change, the promulgation of a new democratic Constitution in 2015 (2072 BS), and Nepal's commitments to international human rights treaties necessitated a complete overhaul.

Enactment of Criminal Code 2074: Formally adopted on September 1, 2017 (Bhadra 16, 2074 BS), this new code was a landmark effort to modernize, codify, and harmonize criminal law, replacing the Muluki Ain 1963 and numerous other scattered criminal statutes. Comprehensive Scope: Covers a vast range of offenses, from crimes against the state and public safety to crimes against the human body, property, family, and public morality. Modernization: Introduced new offenses like cybercrime (Part 13), explicitly criminalized marital rape (Section 219), and strengthened laws against human trafficking, domestic violence, and environmental crimes. Sentencing Structure: Established clearer categories (Criminal Offense, Felony,

Misdemeanor) and defined sentencing ranges, including provisions for fines and community service. Gender Sensitivity: A significant improvement over the 1963 code, aiming for greater gender equality (e.g., in adultery, rape, and dowry laws). Victim-Centric Approach: Introduced provisions for victim compensation and emphasized their rights within the justice process. Hierarchy of Courts: Clearly defined which courts (District, High Court, Supreme Court) have jurisdiction over different offenses based on severity.

## 1. The Muluki Criminal Code, 2074 (2017 AD)

Official Name: Muluki Ain 2074 (Nepali: मुलुकी ऐन २०७४). Enactment: Formally enacted on September 1, 2017 (Bhadra 16, 2074 BS), replacing the older Muluki Ain 1963. Scope: A comprehensive code covering a wide range of offenses, including: Crimes against the State (Part 2), Crimes against Public Safety (Part 3), Crimes against Administration of Justice (Part 4), Crimes against Public Tranquility (Part 5), Crimes against Human Body (Part 6—e.g., murder, assault, rape, kidnapping, trafficking), Crimes against Property (Part 7—e.g., theft, robbery, fraud), Crimes against Marriage, Family, and Society (Part 8—e.g., adultery, bigamy, child marriage, dowry), Crimes against Public Morality (Part 9—e.g., public nuisance, obscenity), Crimes against Public Health (Part 10), Economic and Financial Crimes (Part 11—e.g., counterfeiting, tax evasion), Environmental Crimes (Part 12), Cyber Crimes (Part 13)—relatively new provisions), Offenses by Public Servants (Part 14), General Provisions (Part 15)—e.g., attempt, abetment, conspiracy, compounding of offenses, limitation, sentencing principles).

### Key Features are Codification:

Consolidated numerous scattered criminal laws. Modernization: Introduced new offenses (cybercrime, human trafficking, environmental crimes) and updated definitions. Sentencing: Established clearer sentencing ranges and principles, including provisions for community service and fines. Gender Sensitivity: Explicitly criminalized marital rape (Section 219) and dowry-related offenses (Section 150). Hierarchy: Defined degrees of offenses (Criminal Offense, Felony, Misdemeanor) based on punishment. Amendments: Amended several times, notably by the Criminal Code (First Amendment) Act, 2079 (2022 AD) which increased punishments for serious crimes like rape and murder.

## 2. Practice of the Muluki Criminal Code in Nepal

The implementation of the Criminal Code faces several challenges and realities:

- a. **Overburdened Judiciary:** Courts are severely backlogged, leading to **extremely long delays** in trial completion (often years or decades). This undermines the principle of "speedy trial" (guaranteed by Article 14(3) of the Constitution).
- b. **Resource Constraints:** Police, prosecution, and courts often lack adequate manpower, training, forensic capabilities, and infrastructure, hindering effective investigation and prosecution.

- c. **Police Investigation:** Investigations can be slow, lack technical expertise (especially for cyber/forensic crimes), and sometimes face political pressure or corruption.
- d. **Prosecution:** Public prosecutors may be overworked and lack resources for thorough case preparation. Plea bargaining provisions (Section 15) are sometimes used but face criticism.
- e. **Access to Justice:** Victims, especially from marginalized communities or rural areas, face barriers in accessing legal aid, reporting crimes, and navigating the complex system. Witness protection is weak.
- f. **Prison Conditions:** Prisons are overcrowded, with poor conditions, impacting the implementation of alternative sentencing like community service.
- g. **Legal Awareness:** Lack of awareness about rights and procedures among the public and sometimes even officials.
- h. **Application of New Provisions:** Implementing newer sections (e.g., complex cybercrime provisions) requires specialized training and resources that are still developing.
- i. **Constitutional Compliance:** Ensuring all provisions of the Code align with the progressive guarantees of the **Constitution of Nepal, 2072 (2015 AD)** (e.g., rights to equality, privacy, fair trial) is an ongoing process, sometimes challenged in court.

## The Prosecution Process

The prosecution process in Nepal is governed primarily by the Criminal Procedure Code, 2074 (2017 AD) alongside the Criminal Code, 2074 (2017 AD). It involves multiple stages, from investigation to final appeal, with distinct roles for police, prosecutors, and the judiciary.

### Key Stages of the Prosecution Process

**FIR Registration & Investigation** (प्रारम्भिक जाँच) Section 25-62, Cr PC 2074):

#### FIR (First Information Report):

A victim or informant files an FIR at the police station where the offense occurred or where the victim resides.

**Police Investigation:** The police investigate the case (collect evidence, record statements, make arrests, search premises, file charge sheets).

Arrests require a warrant or specific grounds under Section 46.

**Completion Report:** The police submit a "Completion Report" to the Chief District Officer (CDO) and the Public Prosecutor.

**Review by Public Prosecutor** (अभियोजना अधिवक्ताको समीक्षा) Section 63-65, CrPC 2074):

The Public Prosecutor (from the Office of the Attorney General at the federal level or the Office of the Chief District Attorney at the district level) reviews the police investigation file.

**The Prosecutor decides whether to:** File Charges: If sufficient evidence exists, they file a "Charge Sheet" (अभियोजना अभियान) in the relevant court. Recommend Further Investigation: If evidence is weak, they can send the case back to the police for additional investigation.

**Recommend Closure:** If evidence is insufficient or the offense is non-cognizable/non-compoundable, they may recommend closure (subject to court approval). **Filing Charges & Framing Charges** (अभियोजना दायरा र अभियोजना फ्रेमिङ) **Section 191-198, Cr PC 2074):**

The Prosecutor files the Charge Sheet in the appropriate court (District Court, High Court, or Supreme Court based on the offense's severity). The court examines the Charge Sheet. If satisfied, it issues a notice to the accused.

**Framing of Charges:** The court formally reads out the charges to the accused. The accused must plead guilty or not guilty. If they plead guilty, the court may proceed to sentencing. If not guilty, the trial begins.

**Trial** (मुद्दा) - Section 199-291, CrPC 2074):

**Prosecution's Case:** The Prosecutor presents evidence (witnesses, documents, forensics) to prove the accused's guilt "beyond a reasonable doubt." **Accused's Defense:** The defense counsel cross-examines prosecution witnesses, presents their own evidence, and argues for the accused's innocence. **Final Arguments:** Both sides present closing arguments. **Judgment:** The judge/judicial bench deliberates and delivers a judgment: Acquittal (दोषमुक्त) or Conviction (दोषी ठहराइ).

**Sentencing** (सजाय दिने) **Section 292-305, CrPC 2074):**

If convicted, the court imposes a sentence based on the Criminal Code 2074. Sentences can range from fines and community service to imprisonment and, for the most severe crimes, the death penalty (though its application is rare and controversial).

**Appeals** (अपील) **Section 306-341, Cr PC 2074):**

**First Appeal:** The convicted person or the prosecution (if acquitted) can appeal to the High Court against the trial court's judgment or sentence.

**Second Appeal:** Further appeal to the Supreme Court is generally limited to questions of law, not fact, unless exceptional circumstances exist.

**Key Institutions Involved** **Police:** Investigates offenses.

**Office of the Attorney General (OAG):** Head of the prosecution service at the federal level. Advises the government on legal matters and represents it in court.

**Office of the Chief District Attorney (OCDA):** Heads prosecution at the district level. Prosecutes cases in District Courts.

**Judiciary:** Comprises District Courts, High Courts, and the Supreme Court. Adjudicates cases, ensures fair trial, and delivers judgments.

## **Critical Challenges in Practice**

**Severe Backlogs:** Courts are overwhelmed with cases, leading to extremely long delays (often years or decades) in trial completion, violating the right to a speedy trial (Article 14(3) of

the Constitution). Resource Constraints: Lack of adequate police investigators, prosecutors, judges, forensic labs, and court infrastructure. Police Investigation Quality: Investigations are often slow, lack technical expertise (especially for cyber/forensic crimes), and can be influenced by corruption or political pressure. Prosecutorial Independence: While legally independent, prosecutors can face pressure from political or other vested interests. Witness Intimidation & Protection: Weak witness protection mechanisms deter witnesses from testifying. Access to Justice: Marginalized groups (women, Dalits, poor) face significant barriers in accessing the formal justice system. Prison Overcrowding: Overcrowded prisons impact the implementation of alternative sentencing and rehabilitation.

The Supreme Court of Nepal has played a crucial role in shaping the practice of the muluki Criminal Code, 2074 (2017) through landmark decisions addressing systemic issues like delays, police misconduct, victim rights, and constitutional alignment. Here are key precedents:

### 1. Right to Speedy Trial & Case Management

**Case:** Sano Sansar Samaj Kalyan Kendra v. Office of the Prime Minister and Council of Ministers (Writ No. 3251, 2077 BS / 2020 AD). **Key Directive:** The Court issued sweeping directives to address trial delays: Established a 30-day limit for the police to submit investigation reports to the Public Prosecutor. Mandated the Public Prosecutor to file cases in court within 15 days of receiving the report. Ordered High Courts to ensure district courts complete trials within 6 months for simple cases and 1 year for complex cases. Required the government to create a National Case Management System and fill vacant judicial positions.

**Impact:** This decision remains the cornerstone of efforts to reduce Nepal's massive judicial backlog, directly impacting how the Criminal Code is administered.

### 2. Prohibition of Torture & Custodial Rights

**Case:** *Rajendra Kumar Ghimire v. Government of Nepal* (Writ No. 4710, 2075 BS / 2018 AD) & *Subsequent Orders*.

**Key Directive:** The Court issued comprehensive directives to prevent custodial torture and deaths: Mandated video recording of arrests and confessions. Required medical examinations of detainees within 24 hours of arrest. Ordered the formation of a Central Investigation Bureau (CIB) to investigate torture allegations. Directed the government to provide compensation to victims. **Impact:** These directives fundamentally changed police practice under the Criminal Code, strengthening protections for the accused during investigation (Sections 46-49, Cr PC 2074).

### 3. Witness Protection & Rights

**Case:** *Forum for Protection of People's Rights (FOPPR) v. Government of Nepal* (Writ No. 7895, 2079 BS / 2022 AD).

**Key Directive:** The Court ordered the government to immediately implement the Witness Protection Act, 2076 (2019):

Directed the formation of a Witness Protection Fund. Mandated the establishment of a Witness Protection Secretariat.

Required the development of rules for witness identity concealment, relocation, and security.

**Impact:** Directly addresses a critical weakness in prosecuting cases under the Criminal Code, ensuring witnesses can testify safely.

#### 4. **Victim Compensation in Rape Cases**

**Case:** Krishna Prasad Chaulagain v. Office of the Attorney General (Writ No. 5750, 2077 BS / 2020 AD - Related to Kanchanpur Rape Case).

**Key Directive:** The Court ordered the government to provide ex gratia relief (500,000 NPR) to the victim's family and ensure full compensation and rehabilitation for survivors of sexual violence.

**Impact:** Established a precedent requiring the state to provide adequate compensation and support to victims of heinous crimes under the Code, particularly gender-based violence.

#### 5. **Progressive Interpretation: Marital Rape**

**Case:** Bishal Sharma v. Government of Nepal (Writ No. 6909, 2078 BS / 2021 AD) & Related Orders. **Key Ruling:** While not directly striking down marital rape, the Court affirmed that Section 219 (Rape) of the Criminal Code applies to all women, regardless of marital status. It emphasized that consent obtained through force, intoxication, or coercion is invalid.

**Impact:** Strengthened the prosecution of marital rape by affirming that the perpetrator can be a husband, clarifying a provision often misunderstood in practice.

#### 6. **Death Penalty & Sentencing**

**Case:** Various rulings on sentencing, including State v. Govinda Prasad Mainali (DSC, 2079 BS / 2022 AD - Upholding Death Sentence)

**Key Stance:** The Court generally upholds the death penalty for the "rarest of the rare" crimes (like multiple murders, terrorism, rape-murder) as prescribed in the Code (Sections 20, 118, 219, etc.). However, it consistently emphasizes the "principle of reform" and the need for proportionality. **Impact:** Guides sentencing practices under the Code, ensuring severe punishments are reserved for the most egregious offenses while considering mitigating factors.

#### 7. **Bail & Under-trial Prisoners**

**Case:** Numerous Writ Petitions (Mandamus/Prohibition) on bail and overcrowding.

**Key Directive:** The Court has consistently directed lower courts to grant bail more liberally, especially to undertrial prisoners who have served more than half their potential sentence. It has ordered the government to expedite trials for undertrials.

**Impact:** Directly addresses the problem of excessive pre-trial detention, a major issue in Criminal Code practice.

#### 8. **Advisory Jurisdiction on Death Penalty**

**Case:** Advocate Sunil Pokharel v. Government of Nepal (Writ No. 5311, 2078 BS / 2021 AD). **Key Directive:** The Court issued a landmark advisory opinion that the government should abolish the death penalty in practice, as it violates the fundamental right to life (Article 19) and is inherently cruel. It recommended commutation to life imprisonment.

**Impact:** While not an immediate abolition, this powerful advisory puts immense moral and legal pressure on the legislature and executive to move towards abolition, influencing the long-term practice and philosophy of punishment under the Code.



## Summary:

While the Muluki Criminal Code, 2074 is a significant modernization effort, its practice in Nepal is hampered by systemic challenges like judicial delays, resource shortages, investigative weaknesses, and access barriers. The gap between the law on paper and its effective implementation remains a major concern, though efforts for reform and improvement continue. The prosecution process in Nepal is a complex legal journey defined by the Cr PC 2074 but significantly hampered in practice by systemic inefficiencies, resource limitations, and access barriers. While the legal framework is modern, bridging the gap between law and practice remains a major challenge for the Nepali justice system.

The practice of the Muluki Criminal Code 2074 in Nepal is characterized by a tension between progressive legislation and systemic inefficiencies. While the code itself is a significant step forward in modernizing and humanizing criminal law, its effective implementation is hampered by deep-rooted challenges in the justice system's capacity, resources, and independence. Bridging this gap requires sustained efforts in judicial reform, increased investment in the justice sector, strengthening of institutions, enhanced training, and a greater commitment to protecting the rights of all individuals within the process.

Above landmark decisions demonstrate the Supreme Court's active role in ensuring the Muluki Criminal Code 2074 is implemented in a manner that upholds constitutional rights, promotes justice, and addresses systemic flaws in Nepal's criminal justice system. They are frequently cited by lawyers, judges, and activists to demand accountability and reform. The Muluki Criminal Code, 2074 exactly cannot represent the Nepali Social Phenomena in current law practice system in Nepal.

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**Constitution of Nepal, 2072 (2015):** Provides the overarching framework for rights and governance, which the Criminal Code must respect. *Citation:* नेपालको संविधान, २०७२ (Constitution of Nepal, 2072). Nepal Law Commission.

**Supreme Court of Nepal:** Landmark judgments interpreting the Criminal Code provisions and addressing practice issues (e.g., delays, victim rights, constitutional compliance). Searchable on the Supreme Court website. *Example:* Various writ petitions (मुकदमा) challenging delays, police actions, or specific interpretations of the Code.

- Criminal Code (First Amendment) Act, 2079 (2022):** Amended key sections like 219 (rape), 118 (murder), 153 (kidnapping), etc. *Citation:* दण्ड संहिता (प्रथम संशोधन) ऐन, २०७९ (Criminal Code (First Amendment) Act, 2079). Nepal Gazette.
- Reports by National Human Rights Commission (NHRC):** Often document systemic issues in criminal justice administration, including delays, police torture, prison conditions, and access to justice. *Citation:* Annual Reports and Thematic Reports of the National Human Rights Commission, Nepal.
- Reports by NGOs (e.g., Forum for Women, Law and Development - FWLD, Advocacy Forum):** Provide critical analysis of practice, especially concerning gender-based violence, access to justice, and marginalized groups. *Example:* FWLD's reports on marital rape, acid violence, or implementation challenges.
- Academic Research:** Law journals and studies analyzing specific aspects of the Code's implementation.
- The Criminal Procedure Code, 2074 (2017 AD):** The primary procedural law governing investigation, prosecution, trial, and appeals. *Citation:* नेपालको दण्ड संहिता, २०७४ (Criminal Code of Nepal, 2074) and नेपालको दण्ड प्रक्रिया संहिता, २०७४ (Criminal Procedure Code of Nepal, 2074). Published by the Nepal Law Commission.
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- Reports by National Human Rights Commission (NHRC):** Document systemic issues like delays, police torture, and access to justice. *Citation:* Annual Reports and Thematic Reports of the National Human Rights Commission, Nepal.
- Reports by NGOs (e.g., Forum for Women, Law and Development - FWLD, Advocacy Forum):** Provide critical analysis of prosecution practices, especially concerning gender-based violence and marginalized groups.
- Special Courts Act, 2075 (2018 AD):** Established special courts to expedite cases related to corruption, human trafficking, and rape. *Citation:* विशेष अदालत ऐन, २०७५ (Special Courts Act, 2075).