

India's BJP government imposes death penalty for child rape

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India's Hindu supremacist Bharatiya Janata Party (BJP) government promulgated an ordinance last weekend that sharply increases penalties for those convicted of rape, including providing the death penalty for persons found guilty of raping, or participating in the gang rape, of children aged 12 and under.

The "Criminal Law (Amendment) Ordinance, 2018" is a cynical and transparent attempt to divert attention from the role BJP leaders in Jammu and Kashmir, India's only Muslim-majority state, have played in seeking to shield the perpetrators of the brutal gang rape and murder of an eight-year-old Muslim girl, Asifa Bano.

Last January's rape-murder of Asifa Bano was—as authorities in Jammu and Kashmir now concede—a communally motivated crime directed against the Bakkarwal, the impoverished, semi-nomadic Muslim community to which Bano belonged. Its perpetrators aimed to terrorise the Bakkarwal into fleeing Kathua, a Hindu-majority district, where for decades, if not much longer, they have grazed their goats, sheep, and horses for part of the year.

With their ordinance, Prime Minister Narendra Modi and his BJP government are also seeking to exploit public revulsion over Bano's horrific fate and several other recent instances of brutal sexual violence to promote their reactionary law-and-order agenda. In the name of "protecting India's daughters," the BJP government is increasing the repressive powers of the state and further befouling the political climate by equating "justice" with state violence.

Jammu and Kashmir police have charged six people—including the custodian of a Hindu temple and two police officers—with kidnapping, repeatedly raping and, after a week-long ordeal, murdering Asifa Bano. Two other police officers, those first tasked with investigating the case, are also under indictment for destroying evidence and otherwise protecting the accused.

BJP leaders in Jammu and Kashmir have mounted a communally charged agitation in defence of the Kathua rape

accused. They have organised meetings and protests at which they have denounced the police investigation as "biased" because it included Muslim officers and have demanded that the case be turned over to the BJP central government-controlled Central Bureau of Investigation.

After the BJP's actions provoked an all-India outcry and concern in Indian ruling circles that they were undermining New Delhi's shaky hold over the disputed Kashmir Valley, the BJP national leadership took action against the two most prominent BJP leaders associated with the agitation. The two were forced to resign their cabinet posts in the Jammu and Kashmir state government, in which the BJP serves as the junior partner of the Kashmiri Muslim-based Peoples Democratic Party.

Last weekend's ordinance was a further attempt at political damage control.

It was approved at what was described as an "emergency" cabinet session last Saturday. The next day, Indian President Ram Kovind, himself a former BJP legislator, signed the ordinance into law, saying he was "satisfied that circumstances exist which render it necessary" for the government to "take immediate action."

Ordinances are an arbitrary, anti-democratic power of India's executive, under which the sitting government can, with the president's approval, rewrite the country's laws when parliament is not in session. For such laws to remain in force permanently, they must be approved by parliament within six weeks of its reconvening.

Last weekend's ordinance amends the Indian Penal Code, the Evidence Act, the Code of Criminal Procedure, and the Protection of Children from Sexual Offences Act (2012).

It empowers courts to impose the death sentence on persons convicted of raping a child 12 and under and stipulates a minimum sentence of 20 years in prison. Those who participate in a gang rape of someone 12 or under are also liable to death by hanging but must receive at least a sentence of imprisonment for the "rest of life."

The minimum sentences have also been increased for rapes of children aged 13 to 15 from 10 to 20 years, with a

maximum penalty of imprisonment for the remainder of the “convict’s natural life”, and for all other rapes from 7 to 10 years, with a maximum penalty of life imprisonment.

In addition to these legal changes, the cabinet approved a series of institutional measures. These include setting up so-called fast-track courts in consultation with the states and high courts to speedily hear rape cases, the hiring of additional public prosecutors, and the provision of special forensic kits for rape cases to all police stations and hospitals.

No one should have the slightest illusion these measures will provide justice to rape victims.

India’s police are notorious for their corruption, incompetence, use of torture and fake-encounter killings, and, last but not least their subservience to their political masters, big business and the rich.

The courts are little better. They provide only a slightly more polished veneer for a system in which there is one law for the poor and oppressed and another for the rich and powerful.

Moreover, like other institutions, India’s legal system has become increasingly communalised. The BJP, Shiv Sena and Congress Party leaders behind numerous communal atrocities from the 1984 anti-Sikh riots in Delhi, to the 1992 razing of the Babri Masjid, and the 2002 anti-Muslim pogrom in Gujarat have gotten off scot-free. Only last week, the Gujarat High Court overturned the conviction of former BJP Gujarat minister Maya Kodnani for her well-documented role in inciting attacks on Muslims during the 2002 pogrom.

And as the BJP has trumpeted, the various “saffron terror” cases—that is, the prosecution of Hindu communalists charged with carrying out bombings and other terrorists attacks—have apparently unraveled “for lack of evidence,” one after another, after years of being stalled in the courts.

In so far as they have chosen to comment on Modi’s rape ordinance, the political establishment has by and large been favourable.

The Congress chief minister of Punjab, Amarinder Singh, tweeted, “Am all for death for Rapists [of] minor children. Such men deserve no mercy and I welcome the Ordinance passed by the Union Cabinet today. Exemplary and deterrent punishment is the need of the hour.”

The Congress, it should be noted, resumed executions in India after almost 10 years during which death sentences had been held in abeyance, ordering two in the space of three months, between November 2012 and February 2013.

The second—that of Azfal Guru, a Kashmiri Muslim who was framed up for the December 2001 terrorist attack on the Indian parliament—was especially calculated to demonstrate that India’s then-Congress-led UPA government was

prepared to act with utter ruthlessness. To prevent mass protests and a possible last minute appeal to the courts to stay the order of execution, the government carried it out in secret (see: “A legal lynching: Indian government executes Afzal Guru”).

The ordinance has been criticised by civil liberties organisations, some womens’ rights groups, and even the Delhi High Court.

Yesterday, a bench or panel composed of two Delhi High Court justices asked the government if it had “conducted any scientific assessment or study before passing of your ordinance.” The judges noted that the government was “not even looking at the root cause” of sexual violence or “educating people”, nor did its ordinance take account of the fact that many offenders are themselves below the age of 18 or family members.

Vrinda Grover, a prominent Delhi civil rights lawyer and outspoken opponent of the death penalty, for her part, warned that the harsh new minimum sentences and the prospect capital punishment imposed on rapists will likely dissuade victims from coming forward: “Far from reporting the crime, death penalty is going to deter the victim from reporting sexual assault when the offender is from the family or is known to them. This will lead to the crime being suppressed and the victim being left completely helpless.”

Indian Express columnist Shalini Nair cited a report from the National Law University in Delhi that shows the death penalty is “disproportionately imposed on vulnerable persons along the axes of economic and social parameters.” Based on interviews with 373 of the 385 prisoners currently on death row in India, it found that 23 percent of them had never attended school, 9.1 percent had not completed primary school, and 61.6 percent had not completed secondary school. The study also showed that more three quarters of those sentenced to death were from “backward classes” (i.e., Dalits and other traditional lower caste groups) or religious minorities.



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