

Govt to add death penalty for rape of boys under 12

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NEWDELHI: Less than a week after the Criminal Law (Amendment) ordinance, 2018 — which provides for death penalty for those convicted of raping girl below 12 years — was promulgated, the Union women and child development (WCD) ministry is set to move the Cabinet seeking approval for the same punishment for those guilty of sexually abusing young boys of the same age, two senior government officials familiar with the matter said.

The April 22 ordinance amended Section 376 of the Indian Penal Code (IPC) that deals with rape. It also changed Section 42 of the Protection of Children from Sexual Offence (POCSO) Act, a special legislation enacted in 2012 to address sexual offences committed against those below 18 years of age, to say that newly amended IPC section would apply to children below 12 years of age.

But while POCSO is gender-neutral, the amended Section 376 mentions the word “woman”. This meant that those guilty of raping boys below the age of 12 years old would not be subject to the death penalty provision.

“It resulted in an anomaly

DISPARITY

- The provision for death penalty is part of the anti-rape legislation under IPC Section 376, which does not recognise male victims — adult or minor
- According to the April 22 ordinance, child rape cases would be punishable by death by invoking Section 376, thus covering only female victims
- The government will now amend sections of the POCSO act to make the rape of a child, irrespective of gender, punishable by death

where the same crime committed against a girl and a boy is treated differently. The ordinance that was brought in to punish those raping girls less than 12 years contradicts the spirit of POCSO, which is gender-neutral,” one of the officials cited above said on condition of anonymity.

To correct this, the WCD ministry has finalised the proposal to amend sections 4, 5 and 6 of the POCSO Act, which will make rape committed against “any child” below 12 punishable with the death penalty.

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“We are in the process of sending the proposal to all stakeholder ministries including law for consultation after which we will go to the cabinet,” the second official said.

Sections 4, 5 and 6 deal with aggravated penetrative sexual assault on children under 18 years, which is currently punishable with up to 10 years in jail, extendable to life imprisonment, under the POCSO Act.

One of the officials said that the

ordinance that was promulgated on April 22 has to be approved by the Parliament within six weeks of reassembling, failing which it will cease to be functional. “By the time the Parliament reconvenes and the ordinance is approved and made into a law, we will try to get the POCSO amendments approved by the Cabinet and make them part of the common law,” he added.

Asked why similar punishment for sexual offences committed against minor boys was not part of the April 22 ordinance, the first official said, “Ordinances are temporary laws and are brought in as a response to extraordinary situation that required immediate intervention. In the present case it came in the aftermath of the brutal rape of an eight-year-

old girl in Kathua district of Jammu & Kashmir.”

But legal experts said the Criminal Law (amendment) ordinance was “constitutionally unsound” and “legally questionable.”

“Article 14 & 16 of the Constitution provides for equality before law. One cannot differentiate between genders. The ordinance does not reflect equality of sexes. How can you have different punishment for male and female child when it comes to heinous crimes,” said Anil Malhotra, a family law practitioner.

Malhotra was part of the special investigation team constituted by the Punjab and Haryana High Court in 2012 to inquire into allegations of rampant sexual abuse of minors at Apna Ghar, a

childrens’ home in Rohtak, Haryana.

“In the course of our investigation, we had come across several cases where minor boys were sexually abused by the accused who ran the children home. The boys were as traumatised as the girls. Having different punishment based on gender is legally untenable in such a scenario,” Malhotra said.

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