

## Power, Silence, and Sexual Abuse in Custody: A Constitutional and Human Rights Analysis of Women's Safety Behind Bar

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### Abstract

This paper analyzes sexual abuse of women in custody in the United States as both a constitutional violation and a breach of international human rights law. Drawing on Amnesty International reports, Bureau of Justice Statistics data under PREA, and oversight findings from the OIG, it documents persistent patterns of staff-perpetrated sexual misconduct—ranging from assault to coercive “consensual” contact—alongside systemic underreporting driven by fear of retaliation, evidentiary hurdles, and staff codes of silence. The analysis situates custodial sexual abuse within international prohibitions on torture and cruel, inhuman, or degrading treatment (ICCPR, ICESCR, DEVAW) and within U.S. constitutional doctrine recognizing prisoners’ rights to bodily integrity and freedom from deliberate indifference under the Eighth Amendment. It further examines intersectional vulnerabilities (including race, disability, language, sexual orientation, and gender identity, with particular risks to transgender women), and maps uneven state statutory frameworks, noting remaining gaps (e.g., Vermont’s absence of a specific prohibition, defenses premised on “consent,” and penalties that chill reporting by criminalizing prisoners). The paper argues that zero tolerance under PREA requires

enforceable standards, independent investigations, felony-level penalties for staff misconduct, and survivor-centered remedies, and concludes that bridging the law-practice gap is essential to ensure women's safety behind bars.

### Keywords

Custodial sexual misconduct; Women in custody; Eighth Amendment; Prison Rape Elimination Act (PREA); Amnesty International; Underreporting; International human rights law; Torture and CIDT; Transgender women; Intersectionality; State statutes; Deliberate indifference.

### INTRODUCTION

Amnesty International's 1999 report "Not part of my sentence" : Violations of the Human Rights of Women in Custody and 2001 report Abuse of Women in Custody: Sexual Misconduct and Shackling of Pregnant Women featured the way that sexual maltreatment on account of staff is a standout amongst the most horrifying maltreatment looked by women in care. It is an unforgiving reality looked by numerous women who are imprisoned in the US, paying little respect to their sentence. Women are exposed to explicitly hostile language, male staff contacting their bosoms and private parts when leading inquiries, male staff viewing while they are bare, and rape<sup>48</sup>.

Amnesty International, the United Nations Committee against Torture<sup>49</sup> and different associations, both legislative and nongovernmental, have discovered that custodial sexual wrongdoing is far reaching. An UN report archived boundless sexual wrongdoing by male

<sup>48</sup> <https://www.nytimes.com/interactive/2023/12/19/us/ford-chicago-sexual-harassment.html.doc> accessed at 21.38 hrs on 15.08.23 IEC University, Baddi, Solan (H.P).

<sup>49</sup> The Committee notes concern over the treatment of female detainees and prisoners—sexual assault by law enforcement officers and prison personnel as well as generally humiliating and degrading conditions. United Nations High Commissioner for Human Rights, "Conclusions and Recommendations of the Committee against Torture: United States of America," 05/15/2000. CAT/C/24/6 (Concluding Observations/Comments)..doc accessed at 21.53 hrs on 15.08.23 IEC University, Baddi, Solan (H.P.).

rectification staff against women detainees, including a wide scope of harsh sexual practices with regards to guardianship in the US<sup>50</sup>. The discoveries of the report, written in 1999 by the previous United Nations Special Rapporteur on viciousness against women, its causes and outcomes, remain profoundly important. The Department of Justice's Bureau of Justice Statistics (BJS) reports that in 2004, claims of staff sexual offense were made in everything except one state jail and in 41% of the neighborhood correctional facilities and private detention facilities and prisons that it overviewed. In the overview attempted as per PREA details, the Bureau of Justice Statistics analyzed in excess of 2,700 remedial offices holding 79% all things considered and adolescents in care and, utilizing factual testing strategies, found an aggregate of 2,298 claims of staff sexual unfortunate behavior against male and female detainees and 624 charges of staff inappropriate behavior. The Bureau of Justice Statistics showed that 30% of these were substantiated and that the greater part of the substantiated cases included women as unfortunate casualties. It further notes that women are overrepresented among casualties of sexual maltreatment given that there are far less women than men in detention facilities and prisons. Also, the Office of the Inspector General (OIG) reports that from monetary years 2000 to 2004, the OIG opened sexual maltreatment examinations of 351 subjects who purportedly explicitly manhandled detainees in government offices.

Amnesty International trusts the occurrence of custodial sexual unfortunate behavior might be altogether higher than official or different reports can record<sup>51</sup>. Scientists of sexual maltreatment in a noncustodial setting have discovered that exploited people regularly don't

<sup>50</sup> The Special Rapporteur on violence against women, its causes and consequences, "Report of the mission to the United States of America on the issue of violence against women in state and federal prisons," the Fifty-fifth session, Item 12 (a) of the provisional agenda, E/CN.4/1999/68/Add.2, January 4, 1999..doc accessed at 22.09 hrs on 15.08.23 IEC University, Baddi, Solan (H.P.).

<sup>51</sup> <https://www.bjs.gov/index.cfm?ty=abu.doc> accessed at 22.39 hrs on 15.08.23 IEC University, Baddi, Solan (H.P.).

report, particularly in the event that they know the culprit or live in nearness. These issues are amplified in a jail setting. As revealed in "Not part of my sentence", detainees, attorneys and different sources have disclosed to Amnesty International that detainees<sup>52</sup> are frequently hesitant to grumble for an assortment of reasons, including the accompanying:

- a. The trouble of demonstrating a claim, especially when the main proof is the detainee's record;
- b. The likelihood that creation an objection may put a detainee in defensive isolation while the grievance is explored, which many have said they find corrective;
- c. Dread of striking back.

The issue of underreporting is recognized by the BJS, which states in its report the accompanying:

Authoritative records alone can't give dependable appraisals of sexual viciousness. Because of dread of backlash from culprits, a code of quiet among prisoners, individual shame, and absence of trust in staff, unfortunate casualties are regularly hesitant to report episodes to remedial experts. At present there are no solid appraisals of the degree of unreported sexual exploitation among jail and correctional facility prisoners and youth held in private offices.

Remedial staff may likewise think that it's hard to report—due to a "code of quietness" directing that staff secure each other as opposed to pursue legitimate method. Besides, it is essential to remember while evaluating the quantity of announced cases that just a little level of the detailed episodes lead to disciplinary activity; even less lead to criminal arraignment and even less to genuine feelings.

In the "Underlying Report of the United States of America to the United Nations Committee

<sup>52</sup> Women comprise 8.6% of the total number of inmates in prisons and jails in the US. Allen J. Beck and Paige M. Harrison, *Prison and Jail Inmates at Mid-Year 2004*, Washington, D.C.: The Bureau of Justice Statistics, Office of Justice Programs, April 2005..doc accessed at 23.29 hrs on 15.08.23 IEC University, Baddi, Solan (H.P.).

against Torture" the US Department of State concedes that the nonattendance of solid national insights blocks an exact measurable depiction of the recurrence with which occurrences of maltreatment and mercilessness by law authorization happens. The absence of insights might be helped by PREA, which requires the BJS to grow new national information accumulations on the frequency and predominance of sexual viciousness, including custodial sexual savagery, inside remedial offices<sup>53</sup>. The Bureau of Justice Statistics is presently creating instruments to accumulate injured individual reports of sexual viciousness, and its first report, discharged in July 2005, depended upon episodes answered to remedial experts. Artificial intelligence firmly empowers government, state and nearby experts to take part in this significant exertion by creating steady announcing and following components and imparting this data to BJS<sup>54</sup>. A detainee's race, language, handicap, sexual direction, sex character or different status may influence the probability of maltreatment and influence her capacity to get cures. Inclination from remedial staff based on a women's character may likewise mean they are more in danger of countering<sup>55</sup>. Amnesty International is worried by the treatment of transgender women in guardianship. In its 2005 distribution Stonewalled: Police Abuse and Misconduct Against Lesbian, Gay, Bisexual and Transgender People in the U.S<sup>56</sup>, AI recorded various instances of custodial sexual<sup>57</sup> wrongdoing including transgender women on account of restorative staff just as by different detainees, in which staff either actuated maltreatment or remained by while

<sup>53</sup> <http://www.businessinsider.com/the-government-is-drastically-underreporting-police-killings-2015-6.doc> accessed at 10.47 hrs on 16.08.23 IEC University, Baddi, Solan (H.P.).

<sup>54</sup> Bureau of Justice Statistics, *Sexual Violence Reported by Correctional Authorities, 2004, 07/2005*, p.2. doc accessed at 10.59 hrs on 16.08.23 IEC University, Baddi, Solan (H.P.).

<sup>55</sup> <https://caselaw.findlaw.com/us-1st-circuit/1367529.html.doc> accessed at 11.18 hrs on 16.08.23

<sup>56</sup> <https://www.amnesty.org/en/documents/AMR51/122/2005/en/>.doc> accessed at 19.29 hrs on 16.08.23 IEC University, Baddi, Solan (H.P.).

<sup>57</sup> US Department of State, "Initial Report of the USA to the UN Committee Against Torture," Part I, p. 16.doc accessed at 19.00 hrs on 16.08.23 IEC University, Baddi, Solan (H.P.).

it occurred. Such concerns have additionally been accounted for by Stop Prison Rape and ACLU<sup>58</sup>.

The issue of custodial sexual wrongdoing takes on included earnestness when considered in light of the way that numerous women in guardianship have endured sexual maltreatment preceding their detainment. An examination by the US Department of Justice found that women in jail are substantially more likely than those in the all-inclusive community to have been casualties of sexual maltreatment. 33% of those overviewed in state penitentiaries and a fourth of those in nearby correctional facilities said they had been assaulted before imprisonment. Besides, roughly 30%, twice the same number of as the all-inclusive community said they had been mishandled as kids<sup>59</sup>. Concentrates in penitentiaries in New York and Ohio revealed significantly all the more stunning measurements, finding that the same number of as 90% of women detainees had been explicitly mishandled before their imprisonment<sup>60</sup>. While it is hard to know the definite size of the issue, plainly a noteworthy part of women in guardianship have been casualties of sexual maltreatment before. Individual history of maltreatment can make women significantly increasingly helpless against being manhandled in guardianship. What's more, custodial sexual unfortunate behavior can be significantly increasingly destructive for women who have been exploited people previously, as resulting misuse can make women remember the injury they encountered after the underlying maltreatment.

<sup>58</sup> <https://www.aclu.org/other/words-prison-did-you-know.doc> accessed at 19.56 hrs on 16.08.23 IEC University, Baddi, Solan (H.P.).

<sup>59</sup> Caroline Wolf Harlow, Ph.D., BJS Statistician, "Prior Abuse Reported by Inmates and Probationers," US Department of Justice, Bureau of Justice Statistics, April 1999, NCI 172879, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/parip.pdf.doc> accessed at 20.38 hrs on 16.08.23 IEC University, Baddi, Solan (H.P.).

<sup>60</sup> Angela Browne, et al., "Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women" (*International Journal of Law & Psychiatry* 22 (3-4), 1999. Correctional Institution Inspection Committee, Evaluation and Inspection Report on the Ohio Reformatory for Women, p. 135 August 12, 2005, available at <http://www.ciic.state.oh.us/reports/orw.pdf.doc> accessed at 20.49 hrs on 16.08.23 IEC University, Baddi, Solan (H.P.).

## LEGAL FRAMEWORK

Under global law, assault of a detainee by restorative staff is viewed as a demonstration of torture<sup>61</sup>. Different types of sexual maltreatment are unmistakably infringement of the globally perceived restriction of savage, brutal or debasing treatment or discipline, which governments are called upon to decipher "to expand the most extensive conceivable insurance against maltreatment, regardless of whether physical or mental." Sexual maltreatment likewise abuses different rights, including the privilege to be treated with deference for human poise, the privilege to protection, the privilege to freedom and security of the individual, and the privilege to approach assurance under the law, all revered in the International Covenant on Civil and Political Rights (ICCPR—which the US has approved). Sexual maltreatment further abuses rights, for example, the privilege to the most noteworthy feasible standard of physical and emotional well-being, which is a piece of the rights contained in the Universal Declaration of Human Rights (UDHR) and formally expressed in the International Covenant on Economic, Social and Cultural Rights (ICESCR, which the US has marked yet not endorsed). Sexual maltreatment in guardianship is incorporated inside the securities of the Declaration on the Elimination of Violence against Women<sup>62</sup>, which noticed that women in confinement are

<sup>61</sup> In a report to the United Nations Commission on Human Rights, then United States Special Rapporteur on Torture Professor Kooijmans noted that "since it was clear that rape or other forms of sexual assault against women in detention were a particularly ignominious violation of the inherent dignity and the right to physical integrity of the human being, they accordingly constituted an act of torture." United Nations Committee on Human Rights, UN Doc E/CN.4/1992/SR.21, 21 February 1992, para. 35. Furthermore, other international bodies have also found this: European Court of Human Rights, case of Aydin v. Turkey (57/1996/676/866), Judgment of 25 September 1997, para. 86; Mejía v Peru, 1 March 1996, Annual Report of the Inter-American Commission on Human Rights 1995, page 187. International Criminal Tribunal for Rwanda, Prosecutor v. Jean-Paul Akayesu, Case No. ICTR- 96-4-T, ICTR Chamber I, judgment of 2 September 1998, para. 597; International Criminal Tribunal for the former Yugoslavia, Prosecutor v. Zejnil Delalic, Case No. IT-96-21, ICTY Trial Chamber II, Judgment of 16 November 1998, discussion, paras. 475-496, and findings, paras. 943, 965; Prosecutor v. Anto Furundzija, Case No. IT-95-17/1-T, ICTY Trial Chamber, Judgement of 10 December 1998, paras. 264-9.doc accessed at 21.19 hrs on 16.08.23 IEC University, Baddi, Solan (H.P.).

<sup>62</sup> <http://www.un.org/documents/ga/res/48/a48r104.html.doc> accessed at 20.02 hrs on 16.08.23 IEC University, Baddi, Solan (H.P.).

particularly defenseless against brutality<sup>63</sup>.

Also, the high rate of rape inside detainment facilities may damage the US Constitution<sup>64</sup>. The US Supreme Court has explicitly recognized that "a detainee has a protected appropriate to be secure in her real trustworthiness and free from assault by jail monitors" and has held that the privilege to be secure in one's real uprightness incorporates the privilege to be free from sexual maltreatment. The Supreme Court has additionally decided that pondered lack of interest to the significant danger of rape damages detainees' rights under the Cruel and Unusual Punishments Clause of the Eighth Amendment<sup>65</sup>.

In 2003, Congress passed the Prison Rape Elimination Act (PREA). PREA is the main government law to address assault and rape in detainment and applies to all US remedial and confinement offices. Among the expressed reasons for the Act are building up a zero-resilience standard of rapes of any sort inside detainment; to make the anticipation of jail assault a top need in every jail framework; to create and execute national norms for the location, aversion, decrease, and discipline of jail assault; and to expand the accessible information and data on the occurrence of jail assault, therefore improving the administration and organization of restorative offices.<sup>66</sup> The Act was drafted essentially to battle prisoner on-detainee rape<sup>67</sup>, yet its language clarifies that it is likewise worried about staff sexual unfortunate behavior<sup>68</sup>

<sup>63</sup> Declaration on the Elimination of Violence against Women G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, UN Doc. A/48/49 (1993).doc accessed at 20.19 hrs on 16.08.23 IEC University, Baddi, Solan (H.P.).

<sup>64</sup> [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2\\_rul\\_rule90\\_sectionb.doc](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule90_sectionb.doc) accessed at 19.49 hrs on 16.08.23 IEC University, Baddi, Solan (H.P.).

<sup>65</sup> Farmer v. Brennan, 511 U.S. 825 (1994).doc accessed at 21.28 hrs on 16.08.23 IEC University, Baddi, Solan (H.P.).

<sup>66</sup> Prison Rape Elimination Act of 2003, Public Law 108-79, 108th Congress.doc accessed at 21.43 hrs on 16.08.23 IEC University, Baddi, Solan (H.P.).

<sup>67</sup> <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1080&context=jleg.doc> accessed at 21.59 hrs on 16.08.23 IEC University, Baddi, Solan (H.P.).

<sup>68</sup> PREA defines staff sexual misconduct as any behavior or act of a sexual nature directed toward an inmate by an employee, volunteer, official visitor, or agency representative. Romantic relationships between staff and inmates are included. Consensual or nonconsensual sexual acts include intentional touching of the genitalia, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, arouse, or

(and a lesser offense, staff inappropriate behavior<sup>69</sup>, which PREA additionally thinks about a type of sexual brutality).

At last, custodial sexual unfortunate behavior is a wrongdoing in each state yet one (Vermont). See further talk of state enactment underneath<sup>70</sup>. It is likewise critical to take note of that universal law ensures casualties of human rights infringement, incorporating women in care who are casualties of sexual unfortunate behavior, a privilege to a solution for the infringement they have endured<sup>71</sup>. The UN Human Rights Committee, the Committee Against Torture, and territorial human rights bodies have all discovered that states must direct a brief, exhaustive and compelling, and free, examination concerning charges of human rights infringement, for example, custodial sexual wrongdoing, and that the examination should prompt the ID and indictment of those capable.<sup>72</sup>

## **EXTENT OF THE REPORT**

Amnesty International accepts there ought to be consideration in general continuum of sexual maltreatment<sup>73</sup>. In the first place, Amnesty International is worried that there are numerous maltreatment that, in view of the actualities, ought to be arraigned as assault or (as proper) first-degree rape. Unmistakably neither the states nor the government have sufficient examinations and indictments of these violations of assault in custodial settings<sup>74</sup>. Second,

<sup>69</sup> Gratify sexual desire; or completed, attempted, threatened, or requested sexual acts; or occurrences of indecent exposure, invasion of privacy, or staff voyeurism for sexual gratification..doc accessed at 22.17 hrs on 16.08.23 IEC University, Baddi, Solan (H.P.)

<sup>70</sup> <https://oig.justice.gov/special/0504/index.html>.doc accessed at 22.43 hrs on 16.08.23 IEC University, Baddi, Solan (H.P.).

<sup>71</sup> International Covenant on Civil and Political Rights, Article 2 (3). General Comment 20, referring to article 7 prohibiting torture and cruel treatment or punishment and specifically mentioning people deprived of their liberty, adds that, "Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective.".doc accessed at 22.59 hrs on 16.08.23 IEC University, Baddi, Solan (H.P.).

<sup>72</sup> See, e.g., Velasques Rodrigues v. Honduras (IACtHR) para. 174; Assenov v. Bulgaria (ECtHR) para. 102; Hajrizi Dzemajl v. Yugoslavia (CAT) para. 9.4; Sadik Onder v. Turkey (ECtHR) para. 42.doc accessed at 23.17 hrs on 16.08.23 IEC University, Baddi, Solan (H.P.).

<sup>73</sup> <https://www.amnesty.org/en/latest/news/2018/04/iraq-women-children-with-perceived-ties-to-is-denied-aid-sexually-exploited-trapped-in-camps/>.doc accessed at 23.28 hrs on 16.08.23 IEC University, Baddi, Solan (H.P.).

<sup>74</sup> <https://www.hrw.org/reports/1996/Us1.html>.doc accessed at 23.32 hrs on 16.08.23 IEC University, Baddi, Solan (H.P.).

Amnesty International is worried about the wide scope of coercive sexual practices between restorative staff and temporary workers and detainees that don't qua life under existing laws as assault however should be researched and rebuffed as maltreatment of basic rights.

These relations, regardless of whether clearly started by the prisoners or not, are inalienably harsh in view of the gross contrast in power between the gatherings. Taking part in such relations might be the essential route for detainees to access fundamental parts of nobility, for example, prescription, clean items, and expanded kid visits, or parts of life that ascent above jail survival, for example, access to more nourishment or cigarettes. These cooperation's depend on the control of such merchandise by the express, the remedial staff as the immediate merchants of the products—a significant number of which comprise rights—and the failure of prisoners to consult in some other manner. The lawful obligation regarding such coercive relations consequently lies with the state and its operators, restorative staff and temporary workers<sup>75</sup>. By definition, sexual movement between remedial staff and prisoners is an infringement of the staff's custodial obligations. Along these lines, as noted in the segments beneath, neither the state's nor the staff part's reaction can incorporate contending that the prisoner "agreed," as agree is unimportant to the components of the wrongdoing submitted by the staff.

Amnesty International has included another classification of inquiries to this overview so as to evaluate the arrangements and methods set up to deliver official reaction to charges of custodial sexual unfortunate behavior. This was finished after reports to the association that while enactment and a few approaches forbidding the training have been actualized in many states, numerous culprits are not arraigned under the law and now and again don't meet with

<sup>75</sup> <https://www.ohio.edu/ethics/1999-conferences/the-ethics-of-police-deception/.doc> accessed at 09.59 hrs on 17.08.23 at Home.

managerial repercussions for their activities. By and large, people are essentially set on managerial leave or terminated, however no further move is made, to dodge attention and outrage. Amnesty International is worried that reaction to claims of custodial sexual unfortunate behavior may habitually be improper and deficient.

Note that the legitimate routine to react to sexual maltreatment isn't sex explicit<sup>76</sup> , and Amnesty International stresses that it ought to be vivaciously implemented in all conditions, paying little heed to whether the unfortunate casualty is male or female. Since this report centers around women, media reports and cases tending to charges and episodes of custodial sexual offense against male prisoners have not been incorporated. Be that as it may, various such cases exist.<sup>77</sup>

Amnesty International is additionally worried about disturbing rates of detainee on-prisoner rape in penitentiaries and correctional facilities over the United States<sup>78</sup>. Notwithstanding, we trust that custodial sexual unfortunate behavior is a particular issue that must be managed in a way steady with the points of interest of that circumstance. For instance, issues emerging from exploring sexual offense and shielding unfortunate casualties and observers from striking back are altogether different if the supposed culprit is a staff part or a detainee.

### **OVERVIEW OF STATUTES ON CUSTODIAL SEXUAL MISCONDUCT**

At the point when Amnesty International distributed "Not part of my sentence" in 1999, 14 states had no laws explicitly forbidding sexual relations among detainees and staff of prisons

<sup>76</sup> <https://sapac.umich.edu/article/52.doc> accessed at 10.17 hrs on 17.08.23 IEC University, Baddi, Solan (H.P.).

<sup>77</sup> According to the BJS, 69% of the victims of custodial sexual misconduct in state prisons were male and 67% while 30% of victims in local jails were male. BJS report, page 8.doc accessed at 10.28 hrs on 17.08.23 IEC University, Baddi, Solan (H.P.).

<sup>78</sup> <https://bpr.berkeley.edu/2017/12/04/a-place-run-by-criminals-an-insight-into-the-american-prison/.doc> accessed at 10.42 hrs on 17.08.23 IEC University, Baddi, Solan (H.P.).

and penitentiaries<sup>79</sup>. Since that time, Amnesty International activists have battled for change, working with other human rights organizations and officials. In 2001, at the season of the primary distribution of Abuse of Women in Custody, six states still had no law.<sup>80</sup> Today, just a single state, Vermont, has no law denying custodial sexual unfortunate behavior.

Both the meaning of sexual unfortunate behavior and the punishment forced for infringement fluctuate from state to state<sup>81</sup>. In certain states custodial sexual unfortunate behavior laws, while apparently expected to ensure the privileges of detainees, may in reality damage them. For instance, four state resolutions incorporate arrangements that might be utilized to punish the prisoner for custodial sexual unfortunate behavior—in one case, even in case of physical compulsion. Amnesty International firmly bolsters the modification or fortifying of existing laws that don't give adequate insurance, just as the presentation of powerful and rights-advancing enactment in Vermont, which does not have any assurance.

It ought to be noticed that current state assault rules are expected to cover prisoners—implying that a case will be arraigned as assault dependent on the proof<sup>82</sup>, paying little mind to who the person in question and affirmed wrongdoer might be. Inability to demonstrate assault at that point would require the arraignment of the lesser offense of custodial sexual unfortunate behavior, where such enactment exists<sup>83</sup>. The way that the injured individual in such cases is imprisoned should naturally trigger at least a custodial sexual unfortunate behavior examination and, if proof is revealed, indictment. This report analyzes the laws in regards to

<sup>79</sup> 21<sup>7</sup><http://www2.ohchr.org/english/bodies/hrc/docs/ngos/86HRC.doc> accessed at 10.58 hrs on 17.08.23 IEC University, Baddi, Solan (H.P.).

<sup>80</sup> These states were: Alabama, Minnesota, Oregon, Vermont, Wisconsin and Utah, which had a bill pending signature into law.doc accessed at 11.16 hrs on 17.08.23 IEC University, Baddi, Solan (H.P.).

<sup>81</sup> <https://definitions.uslegal.com/s/sexual-misconduct/.doc> accessed at 11.29 hrs on 17.08.23 IEC University, Baddi, Solan (H.P.).

<sup>82</sup> <https://statelaws.findlaw.com/california-law/california-rape-laws.html.doc> accessed at 11.41 hrs on 17.08.23 IEC University, Baddi, Solan (H.P.).

<sup>83</sup> <https://www.cps.gov.uk/publication/cps-policy-prosecuting-cases-rape.doc> accessed at 19.04 hrs on 17.08.23 IEC University, Baddi, Solan (H.P.).

custodial sexual unfortunate behavior and does not look further into resolutions managing assault by and large.

The study in this area centers on custodial sexual unfortunate behavior resolutions. The segment gives a depiction of the insurance the law offers, including the punishments for violators indicted under the law—and features<sup>84</sup> those parts of laws that are destructive to the privileges of detainees.

#### **Does the resolution force a criminal punishment on the detainee?**

Resolutions must be assessed for whether they punish the detainee for sexual action<sup>85</sup>. Amnesty International trusts that despite the fact that states may control sexual movement inside penitentiaries to the degree required by security and in similarity with basic privileges of security and real trustworthiness as ensured by universal human rights norms, prisoners ought to never be punished for approaching and revealing sexual maltreatment, which would be the commonsense ramifications of resolutions that take into account punishing detainees for sex with restorative staff. Casualties of rape will be scared not to report the maltreatment to specialists<sup>86</sup>, paying little heed to the custom of the protest, in the event that they might be undermined with arraignment in the event that they proceed with their case. As revealed in "Not part of my sentence", numerous prisoners who are exposed to mishandle are as of now hesitant to approach since they dread their cases are hard to demonstrate, given the conditions wherein the maltreatment has occurred, or on the grounds that they dread countering by the denounced staff part or his associates. Amnesty International trusts that a resolution that

<sup>84</sup> [http://www.stopvaw.org/custodial\\_sexual\\_assault.doc](http://www.stopvaw.org/custodial_sexual_assault.doc) accessed at 19.21 hrs on 17.08.23 IEC University, Baddi, Solan (H.P.).

<sup>85</sup> <https://www.nytimes.com/2015/04/18/opinion/why-we-let-prison-rape-go-on.html.doc> accessed at 19.37 hrs on 17.08.23 IEC University, Baddi, Solan (H.P.).

<sup>86</sup> <https://www.bestcolleges.com/resources/preventing-sexual-assault/.doc> accessed at 19.49 hrs on 17.08.23 IEC University, Baddi, Solan (H.P.).

makes striking back for protests of sexual unfortunate behavior by staff legitimate and endorsed is an infringement of the rights to a viable solution for infringement just as of the equivalent security of the law<sup>87</sup>.

**Does the rule spread every single significant type of sexual maltreatment?**

A few resolutions limit the types of sexual maltreatment for which restorative taffy can be indicted to those circumstances when entrance is included<sup>88</sup>. Amnesty International trusts that all sexual contact among detainees and restorative staff is innately injurious and ought to be secured by the resolution<sup>89</sup>. Custodial sexual unfortunate behavior under the resolution ought to be broadly characterized to incorporate coercive sexual practices (in cases not adding up to assault), or strike and compromised rape, and a wide scope of sexual contacts, for example, wrong contacting (as between the staff and detainee, or including pressured or exchanged sexual exercises between detainees at the command of staff).

In spite of the fact that AI has not concentrated on unequivocal language and motions as a type of custodial sexual offense, AI considers such conduct damaging and trusts it ought to be disallowed and rebuffed in like manner.<sup>90</sup> The Prison Rape Elimination Act separates staff inappropriate behavior including verbal explanations of a sexual sort or disgusting signals from staff sexual offense (characterized as including such sexual conduct as deliberate sexual contacting, sexual acts, obscene presentation, intrusion of security and staff voyeurism for sexual satisfaction). Under PREA, both staff sexual offense and staff inappropriate behavior are viewed as types of sexual viciousness.

<sup>87</sup> <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/86HRC.doc> accessed at 20.03 hrs on 17.08.23 IEC University, Baddi, Solan (H.P.).

<sup>88</sup> [https://en.wikipedia.org/wiki/Sexual\\_assault.doc](https://en.wikipedia.org/wiki/Sexual_assault.doc) accessed at 20.18 hrs on 17.08.23 IEC University, Baddi, Solan (H.P.).

<sup>89</sup> <https://oig.justice.gov/special/0504/index.html.doc> accessed at 20.34 hrs on 17.08.23 IEC University, Baddi, Solan (H.P.).

<sup>90</sup> <https://www.tandfonline.com/doi/full/10.1080/0731129X.2018.1441227.doc> accessed at 20.47 hrs on 17.08.23 IEC University, Baddi, Solan (H.P.).

**Does the law enable an officer to guarantee that a prisoner assented to the sexual act(s) to maintain a strategic distance from arraignment?**

In certain states, the custodial sexual wrongdoing rules enable restorative staff individuals to shield themselves by expressing that the sexual contact being referred to be consensual<sup>91</sup>. As referenced above, Amnesty International trusts that sexual relations among staff and prisoners are intrinsically damaging a direct result of the extensive distinction in power between the gatherings. Rules should bar sexual contact among staff and detainees and rule out exemptions.

**Does the rule spread all caretakers and staff in contact with detainees?**

Prison guards are not by any means the only individuals in an unequal position of intensity who come into contact with detainees. All custodial staff individuals or temporary workers who manage detainees are in a situation to mishandle the power differential with a prisoner<sup>92</sup>. Amnesty International trusts that it is of incredible significance that the rules accommodate the largest conceivable meaning of staff—including sellers, kitchen staff, medicinal staff and probation officers.

**Does the resolution spread all spots where a detainee may be mishandled?**

It is basic that state rules spread all spots of detainment. The quantity of locales and the a wide range of kinds of settings where imprisoned people come into contact with restorative staff and contractual workers imply that the rule should expressly cover all spots of confinement—from detainment facilities to prisons to people under custodial control of the state outside of jail<sup>93</sup>. Amnesty International is worried that the absence of complete inclusion could result in

<sup>91</sup> <https://oig.justice.gov/special/0504/index.html> accessed at 20.59 hrs on 17.08.23 IEC University, Baddi, Solan (H.P.).

<sup>92</sup> <https://oig.justice.gov/special/0504/index.html> accessed at 21.17 hrs on 17.08.23 IEC University, Baddi, Solan (H.P.).

<sup>93</sup> Amnesty International is concerned that many incidences of coercive sex by officers against persons not yet charged or in conditions of formal detention are currently irremediable under CSM statutes as drafted. In the case of Mejia v. Peru [Case 10.970, Report No. 5/96, Inter-Am. C.H.R., Peer-Reviewed | Refereed | Indexed | International Journal | 2024  
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exemption for staff who misuse prisoners outside of the regions ensured by the resolution or who are utilized in offices past the scope of the rule.

### **Is the punishment a lawful offense?**

A few states have a graduated methodology, characterizing specific kinds of sexual offense as either a lawful offense or a crime, relying upon the nature and seriousness of the infringement. Different states characterize all such lead as a lawful offense, and still others treat all such direct as a wrongdoing. This classification records the kind of punishment forced in each state, featuring the errors between wards. Amnesty International is worried that the dimension of the punishment is proportionate to the idea of the mischief and trusts that a lawful offense allegation must be accessible to investigators. For no situation should states utilize the custodial sexual unfortunate behavior rule as a catchall arraignment to Amnesty them from leading the essential request to decide the genuine idea of the maltreatment, including assault indictments.

### **Conclusion**

Women's safety in custody cannot be left to policy aspiration or internal discretion: the record shows persistent staff-perpetrated sexual abuse, chronic underreporting shaped by fear and retaliation, and uneven statutory protections that still invite impunity through "consent" defenses and weak penalties. Framed through international law, custodial sexual abuse constitutes torture or cruel, inhuman, or degrading treatment; under U.S. constitutional doctrine, it squarely violates the Eighth Amendment where officials are deliberately indifferent to a known, substantial risk. Bridging the law-practice gap demands enforceable PREA-aligned standards; independent, trauma-informed investigations; felony-level sanctions for staff misconduct; protections that

OEA/Ser.L/V/II.91 Doc. 7 at 157 (1996)] the Inter-American court found that rape by military police in a woman's home was sufficiently "in custody" to justify the application of the torture prohibitions of the American Convention on Human Rights which the US has signed but not ratified. Likewise the views of the Human Rights Committee, which oversees the implementation of the ICCPR have made it clear that custodial violations such as torture and CID may occur outside of formal incarceration, as well as in detention for other purposes such as of asylum seekers or of mental health patients.doc accessed at 21.32 hrs on 17.08.23 IEC University, Baddi, Solan (H.P.).

never punish incarcerated survivors; and intersectionally competent responses that address heightened risks faced by transgender women and others at the margins. Embedding these measures in transparent oversight, robust data systems, and survivor-centered remedies is essential to convert formal guarantees into real bodily integrity and dignity behind bars.

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