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## Book Review

Social Change

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JINEE LOKANEETA, *The Truth Machines: Policing, Violence and Scientific Interrogations in India*. Hyderabad, India: Orient BlackSwan, 2020, 250 pp., ₹795, ISBN 9789390122028 (*Paperback*).

Why do the Indian police frequently resort to beatings and torture to try and extract confessions out of accused instead of marshalling evidence in a scientific manner? James Fitzjames Stephens, the architect of India's Code of Criminal Procedure, 1872, and Evidence Act, 1872, offers a very simple answer—laziness. He quotes an 'experienced civil officer' who says, 'There is a great deal of laziness in it. It is far pleasanter to sit comfortably in the shade rubbing red pepper into the poor devil's eyes than to go about in the sun hunting up evidence' (Stephens, 1883).

On first impression, there is some truth in this statement. But is it the whole truth? How did a colonial regime which tolerated such behaviour from its agents also leave India with a remarkably modern law on criminal procedure and evidence?<sup>1</sup> And what explains the persistence of the use of torture by the police?<sup>2</sup> How do we make sense of the police's use of technology such as lie detectors, truth serums and brain mapping in the investigation of a case?

Jinee Lokaneeta's book, *The Truth Machines: Policing, Violence and Scientific Interrogations in India*, offers a nuanced argument on the nature of policing in India and in doing so also offers an insight about the Indian state itself. The 'truth machines' in the book's title relates to the techniques of lie detection, narco-analysis and brain mapping which experts have claimed, and police have attempted to use, to arrive at actionable truth in the context of criminal investigations. These techniques, though in vogue in India in the early 2000s, have now fallen out of fashion following a Supreme Court judgement which prohibited their use.

The Supreme Court in *Selvi vs. State of Karnataka* ((2010) 7 SCC 263) held that the police could not subject the accused to these techniques on the premise that such techniques amount to compelling an accused to incriminate herself in breach of clause (3) of Article 20 of the Constitution of India. The three-judge bench noted:

We are also of the view that forcing an individual to undergo any of the impugned techniques violates the standard of 'substantive due process' which is required for restraining personal liberty. Such a violation will occur irrespective of whether these techniques are forcibly administered during the course of an investigation or for any other purpose since the test results could also expose a person to adverse consequences of a non-penal nature. (para 222)

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If the Supreme Court has put an end to the use of these techniques by the police, can their use (largely in the first decade of the twenty-first century) shed light on the nature of the circumstances in which they came to be used and what it tells us about the Indian state? This is the crux of the book.

On the face of it, the use of these techniques might suggest that the police in India are moving away from the use of custodial violence as a technique to obtain confessions from the accused to ‘close’ cases. But, as pointed out in the book, it is a different kind of violence being inflicted on the accused by the police with the purpose only of avoiding ‘custodial deaths’. The concern among police officers seems to have been that a custodial death would lead to enquiries, investigation by the National or the State Human Rights Commissions or even a criminal case against them and a confession obtained through such ‘truth machines’ would reduce the risk of deaths. Nonetheless, she argues that the use of such forensic technologies and analysis do not take away, but merely mediate the infliction of state violence through the police.

The book also draws an interesting connection between the use of torture by the police and the provisions of the law which might unwittingly enable it, namely, Section 27 of the Evidence Act, 1872. Section 27 allows for the production in the court of evidence recovered based on the testimony of the accused—even though the confession itself is not admissible. The interpretation of Section 27 is one which has plagued lawyers and courts as well<sup>3</sup> with attempts having been made in the past to clear the confusion.<sup>4</sup> The problem has been compounded somewhat by the Supreme Court’s judgement in *Aghnoo Nageshia vs. State of Bihar* (1966 SCR (1) 134) interpreting ‘custody of the police’ widely enough to include even those accused who have not been formally arrested. One hopes that Lokaneeta’s work on this matter will inform the ongoing debates about necessary amendments to the criminal procedure in India.

Where the book really stands out from other accounts of police brutality though is her theorising of the Indian state as being a ‘contingent state’. She finds that it is not possible to neither use the Weberian notion of an ideal bureaucratic state nor Agamben’s notion of the sovereign’s exceptional powers of violence to understand how the police in India function. This novel approach promises a much needed insight into understanding the nature of the Indian police, a colonial institution that persists into post-Independence India and whose day-to-day functioning stands in stark contrast to the promise of a liberal democracy enshrined in the Constitution.

The topic of police violence and custodial deaths never goes away in India but has come into stark focus in 2020, thanks to the brutal enforcement of the lockdown by the police. The most shocking incident of all perhaps were the deaths of P. Jeyaraj and his son, J. Bennix, in Thoothukudi, Tamil Nadu in police custody following inhuman torture. This was not a usual case of police beating up the accused to extort confessions but violence inflicted upon them by the police *because they could*. Detailed reporting has shown the pattern of violence inflicted by police in the area,<sup>5</sup> the role of caste in these killings (*Frontline*, 2020) and the utter failure of the district judiciary in checking the police’s brutality. The book, especially the argument on understanding police violence within a ‘contingent state’ such as India, sheds much light on the whys of this incident as well.

What the book suggests is that there is a need to rethink some of our fundamental assumptions about the institution itself. A simple demand to increase numbers of police so that they are not so overworked in India or calling for separation of the police's law and order and investigation functions may not actually address the underlying pathologies of the institution. *The Truth Machines* is a valuable addition to the discourse on police reform in India precisely because it complicates the questions in the hope of avoiding the pitfalls of easy answers.

## Notes

1. So much so that such important rights as the right to bail, legal representation, cross examination, bail and so on are not provided for in the Constitution but in the Code of Criminal Procedure. Interestingly, this issue was discussed in the Constituent Assembly with the Assembly rejecting demands of certain members to include the same in the Constitution. See Constituent Assembly of India Debates (Proceedings), Volume IX, 16 September, 1949 available at [https://www.constitutionofindia.net/constitution\\_assembly\\_debates/volume/9/1949-09-16](https://www.constitutionofindia.net/constitution_assembly_debates/volume/9/1949-09-16) (last accessed 27 August 2020).
2. 1,727 cases of custodial death were recorded in India between 2001 and 2018 but only 26 policemen were convicted for such crimes. Five states, including Tamil Nadu, recorded over 100 custodial deaths but there were zero police convictions between 2001 and 2018 (Radhakrishnan, Sen, & Singaravelu, 2020).
3. See for instance <https://www.thehindu.com/data/five-states-including-tamil-nadu-recorded-over-100-custodial-deaths-but-zero-police-convictions-between-2001-18/article31949326.ece>
4. Law Commission of India, 69th Report and Law Commission of India, 185th Report of the Law Commission of India.
5. See <https://www.thenewsminute.com/article/tnm-investigation-sathankulam-cops-have-history-custodial-violence-127514> (accessed on 27 August 2020).

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