

# (Un)truth Technologies to Subvert Justice

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The Hathras rape case (Jha 2020), where the accused were made to undergo polygraph tests and brain electrical oscillation signature, the custodial killings of P Jeyaraj and his son J Bennicks (Gorringe and Damodaran 2020), and the *Ritesh Sinha v State of UP* judgment (Narang nd) wherein the Supreme Court directed the accused to furnish voice samples for the purposes of investigation, squarely bring forth the significance of Jinee Lokaneeta's book, *The Truth Machines: Policing, Violence, and Scientific Interrogations in India*.

The book has six chapters besides the introduction. Each chapter discusses the complexities of addressing torture embedded at all levels of the criminal justice systems. The book draws on the in-depth analysis of cases, reports, and documents related to narcoanalysis, brain scanning, and lie detectors. The stakeholder interviews with the police, lawyers, forensic psychologists, and activists across the five cities of Delhi, Mumbai, Gandhinagar, Hyderabad, and Bengaluru bring out the complicit role of the state in practising, whilst it views itself as a liberal democracy.

The book attempts to dislodge the state's premise of addressing physical torture with the use of lie detectors, brain fingerprinting (BFP), brain electrical oscillation signature (BEOS), brain scans, and narcoanalysis, called the truth machines by Lokaneeta. Lie detectors (polygraphs) record physiological changes in the body while a person answers questions. The BFP and BEOS tests use electroencephalogram (EEG) to indicate whether a person has participated or has any knowledge of the crime. Narcoanalysis or truth serum requires injecting the person with sodium pentothal to elicit information.

Torture in the Indian criminal justice system is rampant, routinely used, justified, and resorted to with impunity in all cases. These truth technologies were introduced ostensibly to replace physical

## **The Truth Machines: Policing, Violence, and Scientific Interrogations in India** by Jinee

Lokaneeta, *Orient BlackSwan*, 2020; pp xiii + 250, price not indicated.

torture, thereby making the system human rights-compliant. It is an open secret that torture is used to extract confessions. So, logically it emerges that a confessional paradigm is contiguous with torture and this underlying logic needs to be addressed upfront.

The book emphasises on the everyday practice of the state as against a monolithic conception of the Weberian bureaucratic monopoly over state violence constrained by rules or Agamben's framing of a sovereign exceptional act, which explains state violence operating with impunity over bare life (p 16). Focusing on everyday practice explicates how front-line state actors execute rules and laws and yet escape accountability for any transgression as the "disaggregated, decentred, multilayered pluricentred and fluid nature" (p 10) of the state allows for numerous "unintended outcomes" (p 10) to be accommodated.

## **Police Malfeasance**

Third-degree torture is synonymously used with policing in India. Numerous complaints of misbehaviour, mala fide practices, and unlawful action have been debated upon, documented, and reported in media, scholarly writing, and in jurisprudence (Arzt 2016). These have led to numerous constitutional and legal protections to ensure the rights of individuals in custody, yet torture is all pervasive for both routine and exceptional cases. Interestingly, most police officers and allied staff refer to their duty to maintain law and order through measures and procedures vested in them by the law but conveniently forget that these procedures and measures can in no way infringe upon any of the rights of the

accused. Thus, the critique of police being the extension of colonial brutality as well as the Marxist perspective, which highlight police being a repressive arm, led the police to embrace scientific techniques to address the issue of torture. The technologies, additionally, satiated the postcolonial state's desire to be seen as progressive and modern and one willing to address its own shortcomings! Unfortunately, as one reads the book, the unpalatable truth becomes clearer that the techniques were not introduced to eliminate torture but to prevent custodial deaths that the police fear. One can safely surmise that the will to end torture is not inherent in the adoption of the truth machines. It is here that Lokaneeta discusses the pastoral and repressive role of the police.

## **Forensics Misfeasance**

Chapter 3 of the book focuses on the social and cultural history of the truth technologies in the United States and India. The chapter contemplates on the legal and scientific validity of the techniques and hasty injudicious acceptance by the state. In her elaboration of the state forensic architecture in India (Chapter 4), Lokaneeta focuses on why these techniques were adopted with such haste. She examines the development of the regulatory and legal framework of the technologies and juxtaposes it with candid extractions from the interviews with state and semi-state actors. The analysis in the chapter strengthens the reader's suspicion that the acceptance of truth machines is an outcome of the arbitrary decision of some state actors led by forensic psychologists in forensic science labs who popularised the techniques despite the fact that they had no scientific validity backing their claims. They exploited the state desires to be seen as scientific and modern, which was under scrutiny for its seemingly dismal human rights standards in the 1990s. The commercial interests of the producers of technologies emerge as another important reason for their hasty acceptance.

The official justification manifestly proclaims that the technologies will address the problem of torture through

scientific techniques as they elicit information (confession), from the accused without physically brutalising the body. The authority's decision to ignore the scientific review committee's scepticism of the validity of brain mapping methods and its recommendation to exercise caution on the use of such techniques as evidence until they are validated in the Indian context and have robust guidelines, further raises one's discomfort with these technologies. The fact that other actors, such as the forensic psychologists, become complicit in torture reinforces the point that addressing torture was not the reason for the hasty uncritical acceptance of these technologies.

### Impugned Techniques

With the police and forensic "experts," approval of the technologies, the courts too were keen to accept techniques that would assist in weaning the system from the antiquated colonial dependence on custodial violence. In fact, prior to 2010, consent of the accused for the use of the techniques was not deemed important. Taking cognisance of the evidence presented by unrelenting human rights defenders, the Supreme Court in 2010 (*Selvi v State of Karnataka*) questioned both the use of these technologies without consent and its evidentiary significance. While the Court has ruled against forcible administration of these methods, it has ignored concerns regarding their reliability and has been silent on whether the initial utilisation of these techniques is unconstitutional (p 121). Chapter 5 has a detailed yet comprehensive overview of the legal discourses around involuntary administration of the impugned techniques that violate the right against self-incrimination enumerated in Article 20(3) of the Constitution.

Lokaneeta talks of the scaffolding of the rule of law that drives the nail in the coffin with narratives from experiences of terror suspects in the Mecca Masjid case in Hyderabad and Mumbai blasts case. She draws on Abdul Wahid Shaikh's book *Begunah Qaidi*, who wrote the book while he was in prison for his alleged role in the Mumbai serial train blasts of 2006. He was exonerated of all charges in 2015 by the Maharashtra

Control of Organised Crime Act (MCOCA) court. In the book, he recounts the first, second, and third levels of torture the police—Anti-Terrorism Squad (ATS) in his case—resort to, to get a signed confession. He writes extensively on his experience of narcoanalysis. He talks of the possible fatalities associated with truth serum if not administered with care. His book leaves no one in doubt that narcoanalysis can be grossly misused to "generate a false truth." His account exposes how the rule of law is reduced to a scaffold that uses procedures to mask state violence. With procedures and safeguards reduced to checkmarks, their factious purpose is revealed. The disengagement with the constitutional safeguards, by actors across the criminal justice system and by the doctors and forensic psychologists who perform interrogation, explicates the scaffolding that needs to be identified to reveal the underlying violence and address it upfront.

### The Contingent State

Lokaneeta concludes her book with a theory of a "contingent state" that points towards the continually negotiated nature of the relationship between state power and legal violence. A contingent state brings forth the duality of the state's intent, which condemns custodial violence but looks the other way when state actors are caught perpetrating it. One is left wondering then why these truth technologies have not been used on the erring state actors as well.

*The Truth Machines* addresses the complex reality of torture and explicates the layers by introducing the readers to pastoral policing, scaffolding of the rule of law, and the contingent state. These three concepts address the questions that students have been befuddled with over decades on the reasons behind

erratic police response in different regions and cases, laws not being implemented to the letter when the state promulgates them, and finally how to address the incongruent and non-contiguous nature of the system to make it compliant with human rights.

Lucidly written, *The Truth Machines* seamlessly navigates political theory, legal discourse, forensic psychology, and technologies. Extensive notes and references make it an indispensable book for anyone who wants to explore state violence and comprehend the latent patterns that maintain it. It provokes the reader to introspect the ubiquity of torture in the justice system of a liberal democracy. It dispels the notion that science is objective and infallible. It explicates the legal violence the state metes out through custodial torture and questions the state's intent in aligning with a technical solution that has no robust validity to address torture within the system.

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### REFERENCES

- Arzt, C (2016): "Police Reform and Preventive Powers of Police in India: Observations on an Unnoticed Problem." *Verfassung und Recht in Übersee/Law and Politics in Africa, Asia and Latin America*, Vol 49, No 1, pp 53–79, retrieved 12 July, 2021, <http://www.jstor.org/stable/26160092>.
- Gorringe, H and K Damodaran (2020): "Justice for Jayaraj and Bennix Means Ending a Culture of Impunity." *Wire*, 2 July, <https://thewire.in/rights/jayaraj-bennix-custodial-deaths-impunity>.
- Jha, Vaibhav (2020): "Explained: The Accused in Hathras Rape Case Will Undergo Brain Fingerprinting: What Is It?" *Indian Express*, 29 November, <https://indianexpress.com/article/explained/hathras-rape-case-brain-fingerprinting-7070587/>.
- Narang, S (nd): *Ritesh Sinha v Union of India Needs a Recheck*, Legal Service-India, retrieved 12 July 2021, <https://www.legalserviceindia.com/legal/article-3733-ritesh-sinha-v-s-union-of-india-needs-a-recheck.html>.
- Ritesh Sinha v State of Uttar Pradesh & ANR* (2019): 8 SCC 1, AIR 2019 SC 3592.

### EPW Index

An author-title index for *EPW* has been prepared for the years from 1968 to 2012. The PDFs of the Index have been uploaded, year-wise, on the *EPW* website. Visitors can download the Index for all the years from the site. (The Index for a few years is yet to be prepared and will be uploaded when ready.)

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