



SCIENCE ON TRIAL

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The only legal case that tried to redress victims of a territorial scale poisoning brought charges against a surprising actor, geologists.

SUTRADHAR VS. NERC

The legal case that tried to bring justice to the victims of a territorial scale poisoning brought together alliances between Bangladeshi NGOs and the sophisticated legal process of tort law. In 2004, several NGOs on behalf of Binod Sutradhar, a villager from Ramrail village, Brahmanbaria district located northeast of the capital Dhaka launched a legal case against National Environment Research Council (NERC), the parent body of British Geological Society. The leading NGOs were Brotee and Bangladesh Legal Aid and Services Trust (BLAST) and later Dhaka Community Hospital.

In 1992 British Geological Society had tested the well water in Sutradhar's village for toxicity but failed to test for arsenic. The report titled "Short term BGS Pilot Project to Assess the Hydro chemical Character of the Main Aquifer Units of Central and North-eastern Bangladesh and Possible Toxicity of Groundwater to Fish and Humans" made no mention of arsenic. The claim centred on this report and how, first Sutradhar drank polluted water for years and developed arsenic-related illness and second, how it was used as a policy document by the state. Leigh Day & Co. a UK based law firm approached Brotee with the idea of a toxic tort, where they had significant expertise. Rather than the UN or the State the case implicated geologists as negligent who owed Sutradhar duty of care. At that time no previous litigation existed on the culpability of fallible technical reports by a scientific institution working on a development project: science as aid.

In 2006, in a court of appeal at the House of Lords, Leigh Day lost the case when the judges decided that the proximity between the plaintiffs and the British Geological Society was so remote that no duty of care could arise. This is the very opposite of a globalisation perspective, which is supposed to diminish distance, thus showing that this scenario is matter of choice for the north. Although as a proviso that is the minority judgment, one of the three judges pointed out that in the expert witness statement of Dr. Sara Bennett, a Canadian environmental specialist consulting on Bangladesh's Northeast Regional Water Management Plan, the government of Bangladesh relies

heavily upon foreign organisations for data gathering and analysis, which implied that the 1992 report was in close associative proximity to their decision-making processes.

The failure of a British geologist to test Sutradhar's water set off a chain of events as the Government of Bangladesh, donor countries, UN NGOs and development agencies could assure themselves that it was perfectly fine to launch a territorial scale hydraulic intervention to use groundwater as the only alternative for drinking water. The work also involved social dimension of convincing the rural poor to no longer drink surface water thus shifting local knowledge to adapting that of the development players. When it was discovered that the government had produced a water policy based on the reports findings Brotee initiated the casework against the NERC. It is not clear how Sutradhar came to be the one person in whose name the case would be made. As I discovered competing interests of lawfirms and NGOs played a bigger factor in how the case took shape, rather than the victim himself. In the case of Sutradhar vs. NERC it was the very absence of arsenic in the report, which implicated science.

Cluster: Earth Poison

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