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**‘Arsenic in the natural environment’**

# **Expertise and environmental justice**

[p.j.atkins@durham.ac.uk](mailto:p.j.atkins@durham.ac.uk)  
[manzurulh@gmail.com](mailto:manzurulh@gmail.com)  
[c.e.dunn@durham.ac.uk](mailto:c.e.dunn@durham.ac.uk)

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*Dr Peter Atkins, Durham University*  
*Dr Christine Dunn, Durham University*

*Dr Manzurul Hassan,*  
*Jahangirnagar University*

The authors have written 12 papers so far on arsenic in Bangladesh:

- Risk mapping
- Social consequences
- Governance
- Environmental irony
- Legal geographies (see *Transactions of the Institute of British Geographers* vol. 31 (2006) pp 272-85)

# Legal circumstances

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A legal *cause célèbre* is that of Binod Sutradhar suing the Natural Environment Research Council over a 1992 British Geological Survey report on groundwater quality in his region of Bangladesh that did not mention arsenic.

But some water experts say that this was perfectly reasonable and that one would only have tested if (a) arsenic seemed to be a hazard; or, (b) if requested to do so.

# Sutradhar v NERC



- 1992, Davies & Exley report
- 2001, Binod Sutradhar decided to sue NERC
- 2002, Writ lodged
- 2003, High Court
- 2004, Court of Appeal
- 2005, Appellate Committee of HoL
- 2006, House of Lords rejects appeal
- ?, European Court of Justice

# Arsenic different

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- No industrial pollution or corporate greed
  - No oil slick or radiation cloud drifting across national borders
  - No non-human victims and no threat to the environment generally
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# Negligence



Plaintiff must prove:

- duty of care,
- breach in that duty
- loss or harm suffered

# Duty of care

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‘You must take reasonable care to avoid acts and omissions which you can reasonably foresee would be likely to injure your neighbour [i.e...] persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation.’

Lord Atkin, *Donoghue v Stevenson* 1932

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‘It seems to me that the alleged implied statement about arsenic in the BGS report is no different from a statement in an authoritative textbook on geology to the effect that the aquifers of Bangladesh are very unlikely to contain arsenic’.

Lord Hoffmann, HoL, 2006



Likely contributory factors in failure of  
the case beyond the legal arguments  
about 'foreseeability' and 'proximity'

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- Cost of going to European Court
- cohort of claimants too large?
- case needed tighter focus?
- consequences too far-reaching?

1. Proximity better seen as 'networked association'?
2. Crisis of expertise. 'Duty of care' better judged in terms of research and information from service provider?
3. Should weight 'duty of care' according to vulnerability?

# Proximity

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‘...not from my choices or foresight, nor from our policies, but from your vulnerability’

Manderson 2006, 176