CLINICAL TRIALS: SHOCKING VIOLATION OF HUMAN RIGHTS

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INTRODUCTION

Clinical Trials are research studies that explore how a medical strategy, treatment or device reacts in a human body and how the body reacts to these drugs before it is made available for use by the doctors[1]. Clinical Trials hold enormous potential for benefiting patients from any nation and therefore these trials ought to be done carefully under calibrated statutory regimes following certain strict scientific standards, otherwise it could prove to be very dangerous putting many human lives at stake[2]. Though unfortunately, many companies and countries do not value life as much as they value their own profits and therefore indulge in such unethical, illegal and negligent clinical trials without following the proper standards. The sole purpose for such researches is to save the lives of the people, but if these standards are weak and inefficient and the drugs starts becoming a reason for the deaths of innocent people, then it is high time to bring a new law which deals particularly with all the issues of clinical trials.

There are many instances which will be dealt in this research paper where it will prove that these clinical trials have been misused by the trans national companies who come to India in search of people who can become victims of their medical experiments. As India is a developing country with a huge population comprising of a large number of poverty stricken people, therefore many global clinical trial organizations have relocated their clinical trial research units to India which has become one of the most cost-efficient destinations in the

[1]F. Hoffmann, La Roche Ltd, 'Understanding Clinical Trials', http://www.roche.com/dam/jcr:1d4d1b52-7e01-43ac-862f-17bb59912485/en/understanding_clinical_trials.pdf, last accessed on 10/06/2017.

2Colin Gonsalves, 'Crookery of clinical trials', http://www.thehindu.com/sci-tech/health/crookery-of-clinical-trials/article17894601.ece, last accessed on 10/06/2017.

world as there is always a need for money in India forcing the poor to become a commodity treating them as mere guinea pigs and reducing them to mere objects of medical experiments[3]. The human rights to life, liberty and dignity are completely ignored by these organizations. Moreover, the laws relating to clinical trials in India are not stringent and anyone can easily get away with the punishment. Therefore such organizations do not fear if any mishap happens while experimenting on humans.

This paper specifically deals with the issue of Bhopal Gas Tragedy that happened on 2-3 December, 1984, which is known for the worst industrial disaster ever happened that shook the world in 1984 taking thousands of innocent lives and it still has continuing effects on three generations making people mentally and physically challenged. But what if that tragedy was not an accident, but was a planned clinical trial to test the effect of poisonous killer gas 'methyl isocynate' on people of Bhopal. The paper will deal with the Conspiracy behind the Bhopal gas leak and how ineffective the laws are which needs to be changed.

CLINICAL TRIALS: SHOCKING VIOLATION OF HUMAN RIGHTS

Clinical trials are research studies that are done in order to understand how the medicine or treatment works on living beings in curing their illness. The government of India realized the potential benefits of the clinical trials and therefore brought the 2005 amendment in the Drugs and Cosmetics Act of 1940 (C & D). The main amendment was to define 'Clinical Trials' and to prescribe the procedures of conducting these trials. It is defined under Section **122 DAA of Drugs and Cosmetics (IInd Amendment) Rules, 2005[4]**. But the Trials should be done following the proper safety standards following the three stages of Testing.

Stages of Testing: In the first stage the medicine or device is developed by the scientists and this new idea is tested in the laboratory. If the result seems promising then the next step may involve animal testing. This stage shows how the particular medicine affects a living body and

[3]Swadhin Mondal & Dinesh Abrol, "Clinical trials industry in India: A Systematic Review", http://isid.org.in/pdf/WP179.pdf, last accessed on 14/06/2017.

[4] "A systematic study of new drug(s) in human subject(s) to generate data for discovering and/or verifying the clinical, pharmacological (including pharmacodynamic and pharmacokinetic) and/or adverse effects with the objective of determining safety and / or efficacy of the new drug."

whether it is harmful. Though it is not sure if an approach works well on animals or in labs, react in the same effective manner on human beings. Therefore, the next step becomes indispensable which requires it to test on human beings. And for the safety purposes, the clinical trials are experimented first on a small group of patients and then done on a large number of people and researches with time learn more about the benefits and risks of this new approach[5].

The increasing global trend of healthcare research, particularly involving human subjects has raised ethical and legal concerns in recent years. Developing countries are made research centres due to various reasons such as the poorer countries are more prone to diseases than prosperous countries, and due to its huge population, a diversity of illnesses and diseases can be found for experimenting. Moreover, the rules for complying with the standards of testing are not very stringent and even the amount of compensation given to the patients of their research is very less[6]. The patients are treatment-naive and therefore they can do away with the essential requirement and responsibilities of informed consent towards their patients. Many pharmaceuticals organizations and trans-national companies have started conducting clinical trials in India on a big scale. India has supportive government policies, skilled workforce, huge population, knowledge of medicines, established pharma industry and global linkages, which makes it more conducive and sustainable for research sector[7].

Informed Consent -

Informed Consent[8] is a legal process in which before enrolling a recruit for clinical trial, is instructed about the key facts like the adequate information about the drug, what will be done with them as a part of the experiment, the duration of trial, the benefits incurred by the patient and the risks involved, the compensation to be given on any mishap etc. Information disclosure is important for a patient to make an informed decision and is one of the essential elements of

[5] http://www.nhlbi.nih.gov, last accessed on 8/9/2016.

[6] Subhash Chandra Singh Jr., Clinical Trials in Developing Countries: Issues and Concerns, https://papers.ssrn.com, last accessed on 18/09/2012

[7] Pankaj M. Madhani, A resource based view (RBW) of Indian clinical and contract research sector, 19.03.2010, https://papers.ssrn.com.

[8] Section 2(4) of the Drugs and cosmetics (IInd Amendment) Rules, 2005, which says that in all trials, a freely given informed written consent is required to be obtained using 'Informed Consent Form' and both this form and patient information sheet should be approved by the ethics committee and then furnished to the License Authority.

informed consent[9]. The process must be explained in participant's native language so that it can be understood properly and his consent is not tainted due to language barrier. After understanding the complete scenario and taking their own time, people will decide whether to sign the document and participate in the clinical trial[10]. They will have the right and freedom to become a subject of any research but that should be voluntary based on informed consent. Since it is not a contract, the patients have all the right to leave the trial whenever they want to quit and are not bound to it. But for however small duration they had become a subject, a reasonable amount of compensation have to be given. Informed consent is a critical part of ensuring patient safety in research[11].

CONSEQUENCES OF CLINICAL TRIALS

The worst incident of the breach of informed consent is from Khammam district of Andhra Pradesh. In July 2009, thirty thousand girls between the ages of 10 to 14 years were administered 3 doses of HPV (human papilloma virus) that causes cervical cancer. These clinical trials were conducted by the state government ministry of health and family welfare in collaboration with the Indian Council of Medical research along with PATH International, an NGO. It was funded by the Bill and Melinda Gates Foundation. It was alleged that the doctors who were involved in this clinical trials were given a huge amount of money. The girls were forced to indulge in these trials and were not provided with any information about it. Moreover, the informed consent of the parents was not taken. Out of girls who participated in the trial, 7 died and many suffered injuries. The legal issues related to informed consent came to limelight where it was seen that the girls were minor and in case of minors, consent of parents is mandatory. But the government of Andhra Pradesh brought an Order dated 2nd June, 2009 which gave powers to all the hostel wardens and school Ashrams to sign the consent form on behalf of the parents, which is illegal. In another 1948 cases, illiterate parents who did not understand anything were asked to put their thumb impressions. And in 69 consent forms, there

[9]Umesh Chandra Gupta, Informed consent in clinical research: Revisiting few concepts and areas, 2013, www.ncbi.nlm.nih.gov, last accessed on 14.10.2016.

[10] U.S Food & Drug Administration, http://www.fda.gov/, last visited on 09.09.2016.

[11] Informed Consent, National Cancer Institute, https://www.cancer.gov, last visited on 14.10.2016.

were no witness signatures and the names of the parents did not match their signatures. All the consent forms were filled negligently and were incomplete and inaccurate[12].

In 2002, a multinational company Novo Nordisk conducted Phase III clinical trials of a diabetes drug even before receiving the results of Animal Testing. This careless behaviour could have led to catastrophic results on human beings and are violative of the guidelines. Also in 2008, a RTI query filed by an NGO reported that from 2006-2008, 49 infants had died in 42 clinical trials conducted by AIIMS and raised questions about the compliances of the guidelines from Regulatory authorities[13]. According to the 2005 Amendment Rules, the drugs that are expected to be used on children must be first tested on the older children before extending the trial to younger children or infants. AIIMS breached these rules and directly tested on infants which were dangerous enough to take their lives. This gross violation of rules will continue to take toll on lives if no law is made by the Legislature regarding clinical trials. As these are only rules and guidelines which are directory in nature and do not constitute any punishment, therefore the wrongdoers have no fear of prosecution and so do not refrain from doing these careless and illegal activities.

Acc to a WHO bulletin report in 2008 titled 'Clinical trials in India: ethical concerns', the transnational drug companies are moving to India for doing business of Clinical Trials. It has seen that an increasing number of hospitals are now owned by theses drug companies creating their monopoly on these. The clinical trials have become a 3000 crore business in India, giving a new urgency to clinical trials registry reform so that the government has the complete data of the number of clinical trials going on in different parts of the country and the effects, be it risks or benefits on the trials subject[14]. The DCGI should make it obligatory for all trials to register themselves before taking their first participant and whoever fails to comply with this requirement should be given penalty or punishment. It will then also be easy through registration so as to ascertain that to how many people the compensation has to be given instead of exploiting them.

CONSPIRACY BEHIND BHOPAL GAS TRAGEDY

[12] Clinical Trial in Andhra Pradesh, https://papers.ssrn.com., last accessed on 14.10.2016.
[13]Shayonee Das Gupta, Trial By Error? A comment on the need compensating for participants for research related injurious in clinical trials in India, https://papers.ssrn.com., last accessed on 14.10.2016.
[14] Clinical Trials in India: ethical concerns, Bulletin of the World Health Organization, http://www.who.int, last accessed on 14.10.2016.

The Bhopal Gas Tragedy is considered as the most devastating industrial disaster that ever hit the world. The killer methyl iso cyanate gas was leaked in the midnight of 2-3 December 1984 from Union Carbide India Limited (UCIL). The scene was so horrific when the smoke of the gas escaped and reached to the people who desperately started running in the middle of the night and arrived at hospitals breathless and blind. Within few hours, there were more than 10,000 people who died and suffered severe internal damages and injuries in body. The gas has affected generations and has continued to do it. Till now the approximate figure of injuries reached to 5 lakh people[15]. Rashida Bibi, one of the victims of the gas leak stated that those who died at the very night were the lucky ones rather than those who are still alive and fighting for justice physically and mentally handicapped.

The industrial accident shook the whole nation. But this is the unfinished story of Bhopal Gas Tragedy. The worst part is what if it was not an accident, but a planned experiment? The Union Carbide Corporation of Warren Anderson was an American Company which was involved in making and selling arms during the wars. They wanted something which can take away the lives without destroying the properties, as it cost huge amount of money to rebuild everything. There are few gases which are used to make chemical bombs and one of the gases is methyl isocyanate, which is considered as the most toxic and lethal substances known to man. Therefore they thought of using methyl iso cyanate in the bombs whose poison will kill people conveniently without harming the property. Hence, India was chosen as the destination for testing this new gas and its effect on people. Because such experiments cannot happen in rich and developed countries like USA, as their lives are considered to be valuable and the laws are very strict even if it is an accident. Moreover the compensation they would have to pay to the victims or their families were too much to bear. Therefore, this American Company targeted India to test its new chemical bombs. And to their disbelief, the results were surprising as it took 10,000 and more lives within few hours and left more than 5 lakh of people injured. This gas affected three generations and the damage is permanent.

When the investigation was done by Mr. Rajiv Dixit, he pointed out that there was Iran-Iraq war going on from 1984-87, and it shows the use of methyl iso cyanate gas in that war by Iran in invading Iraq[16]. The gas was found in the blood of the victims who died and even those who

[15] The Bhopal gas tragedy, Bhopal Memorial Hospital & Research Centre, bmhrc.org, last accessed on 19.09.2016.
[16] CS Senthilkumar, TL Malla, NK Shah & N Ganesh, Methyl Isocyanate Exposure And Atypical Lymphocytes, Int J Occup Environ Med 2013;4:167-168, https://www.researchgate.net, last accessed on 14.10.2016.

survived but succumbed to severe injuries. These chemical bombs are poisonous and more dangerous than the guns as when it is thrown, the whole environment gets poisoned and whoever comes in contact with the environment suffers the poisonous reactions leading to their death[17]. After the disaster happened, the Indian Central Bureau of Investigation (CBI) investigated the matter and stated that water was filled in the container which had methyl iso cyanate gas, and in few hours when the pressure increased due to chemical reaction, 42 tonnes of gas escaped from tank number 610 and let it seem like it all happened due to an industrial accident.

The ex- collector of Bhopal in 1984, Moti Singh wrote a book named "Unfolding the betrayal of Bhopal gas tragedy", where he disclosed how Warren Anderson was arrested under the non-bailable offence, but then also on the orders of senior officials were given bail to flee not only from Bhopal but also from India never to come back. Moti Singh reveals that Warren Anderson was taken in a car with him and the then SP, Swaraj Puri to the Airport maintaining the secrecy. He left by a State Plane and reached Delhi in mid night[18]. Moti Singh later found a gas mask at the back seat of his car, which shows that Anderson was aware of the industrial accident as it was already planned and was well equipped to save himself from the killer gas. Activist Abdul Jabbar submitted Moti's book in the court as evidence against him for facilitating Anderson's escape who exposed more than 5 lakh people to the toxic fumes.

But the horror did not end there. The victims of Bhopal Gas leak were rushed to various hospitals and one of the hospitals was the Bhopal Memorial Hospital & Research Centre (BMHRC), where the violence on the victims continued, but this time by the doctors of their own country, of their own city. The Bhopal gas leak survivors were used as "guinea pigs" for clinical trials of new drugs and it was reported that 279 people were illegally tested without their knowledge or consent at the Bhopal Memorial Hospital and Research Centre (BMHRC) and in consequence 14 died. The ethics committee of BMHRC had 19 members, out of which 13 doctors were involved in the clinical trial. The Pharmaceutical companies Quintiles and

[17] Rajiv Dixit, Conspiracy Behind Bhopal Gas Tragedy, Documentary video.
[18] Neeraj Santoshi, 1984 collector's book cited as proof of his role in Anderson's escape, http://www.hindustantimes.com/bhopal/1984-collector-s-book-cited-as-proof-of-his-role-in-anderson-s escape/story-2NInwrXltW7UVSXE86j2nK.html, last accessed on 15.6.2017.

Sanofi who conducted these trials had failed to follow norms while conducting the trials and the health ministry listed 3 instances of breaking the rules:

Firstly, in 2010, an inspection on clinical trials of Telavancin conducted by Quintiles was done which showed that in many cases, the participants of the trials were not given compensation and the serious adverse events were not reported in time. It is a rule that in case of any serious adverse event, if there occurs any death, then within 14 days it has to be communicated by the sponsor to the licensing authority and to other Investigators participating in the Trials[19]. And it is the responsibility of the Investigators under that in all unexpected and serious adverse events, it is to be informed to the sponsors within 24 hours and within 7 days to the Ethics Committee[20]. But the principal investigator informed after months and in some cases even after 2 years. The Drug Controller General of India (DCGI) only sent warning to the company and did not take any action against it. These Rules are just on paper and are not followed by the companies and regulatory authorities.

Again in 2011, an inspection was done on the clinical trial of Tigecycline by Quintiles, where the same issue came up of non payment of compensation to the trial subjects and non reporting of deaths or adverse events in time. And this time also the DCGI only gave warning to the pharmaceutical company in 2012.

Third inspection happened in 2012 and the same issues emerged, where the DCGI did not feel important to take action and again sent just the warning[21].

This shows that how ineffective these rules and regulations are and the need of the hour is to bring a law that strictly deals with the clinical trials and calls for punishment if there the patients are subjected to unethical and illegal treatment. Moreover, it should also provide provisions for punishment to the DCGI or Ethics Committee as they do not take human lives seriously and just send warning notes without taking any required actions against them. This makes these authorities also liable for all the harm that is caused to the people.

[19] Section 2(2)(iv) of Drugs and Cosmetics (IInd Amendment) Rules, 2005.
[20] Section 2(3) of the Drugs and Cosmetics (IInd Amendment) Rules, 2005.
[21] 'Bhopal gas victims used as guinea pigs for drug trials', 17.12.2013, http://timesofindia.indiatimes.com, last accessed on 14.10.2016.

REGULATORY FRAMEWORK

In India, **Central Drugs Standard Control Organization (CDSCO)** which is headed by the Director Control General of India is the national regulatory body for Indian pharmaceuticals and medical devices and is the primary authority of Clinical Trials. An approval from DCGI is mandatory conducting the Clinical Trials in India. Along with CDSCO, the **Medical Council of India Act, 1956** and the **Central Council for Indian Medicine Act, 1970** also regulate the conduct of clinical trials in India. **"Drugs and Cosmetics Act, 1940"** (along with the rules framed there under) is the principal legislation for the regulation of clinical trials. Schedule Y of the Drugs and Cosmetics Rules, 1945 ("Rules") and the Amendments of 2005, 2013 and 2016 provides for the detailed conditions, and compliances relating to clinical trials in India.

Further, The Indian Council of Medical Research (ICMR) is the apex regulatory body for clinical trials and is one of the oldest and largest medical research bodies in the world, which was set up to promote research culture in India and to develop the infrastructure for conducting these Trials and the Governing body is presided over by the Union Health Minister.

But the clinical trials system in India has come under intense scrutiny, after so many malpractices and unethical conducts lead to thousands of deaths. Therefore in May, 2012 the Indian Parliamentary Standing Committee on Health and Family Welfare was set up to look into the matter and bring necessary changes. The Committee produced a report on the CDSCO where it was alleged that the organization put the interest of the drug industry ahead of consumers. The committee accused the CDSCO for continued negligence towards the poor and said that it should issue a mission which clearly maintains that these clinical trials are meant for public health. Human lives are precious and must not be taken carelessly and therefore the committee asked that CDSCO should recruit more staff and upgrade their laboratories and offices.

There are so many regulatory bodies, but then also most of the times, rules and norms are broken by the companies and medical research industries and according to the government figures, more than 2500 people died in recent years. CDSCO says that informed consent from each participant is mandatory. But the rules of the informed consent is so crucial to follow, then also it is taken carelessly as people are poor and so get pressurized in the want of money to become the subject of clinical trial. In case of minors, the parents consent is mandatory, but they are not informed properly about the treatment and research conducted on their children.

Compensation mechanism for clinical trial injuries in India -

The moral arguments for compensating any patient of clinical trial for any research related injury is deep rooted in the notions of fairness and justice[22]. So if any person has volunteered to take that risk which is intended for the benefit and welfare of the society and is sponsored by the government or any institution, then the injury is liable to be compensated. But in India, the picture of compensating victims of clinical trials is not very attractive. In 2010, about 25 people died but only 5 families got the compensation ranging from Rs 1 lakh to 3 lakh. ICMR clearly states that if a person suffers from physical injury while participating in the clinical trials, then he is to be compensated either financially or through other assistance through equitable compensation in case of temporary or permanent disability. And where the death has occurred, then the dependants are liable to material compensation. But the amount of compensation was not prescribed and In case of death it would vary. Further, according to the reports, out of 2868 people, only 45 got the compensation. This is pure exploitation of human beings and violation of their human rights.[23]

The worst part of these laws and regulations are that these are only guideline and are not binding in nature. Therefore even if there is infringement of these regulations by the companies and medical industries which leads to death or injury, then also they have not been given punishments. Therefore, there is an urgent need to bring a codified law which will be binding and any violation of it will result in the punishment or penalty of the wrongdoer- be it the sponsors, investigators or DCGI himself. Human's life is not cheap and people should understand this and make strict provisions so that these rich developed countries may not target developing countries like India for exploiting them by making the people their guinea pigs and then not even compensating.

CONCLUSION

Clinical trials are performed to evaluate the safety and efficacy of the new drugs and it is a compulsory practice before bringing those new drugs to the market for its use. India has become the hub for foreign companies to conduct trials because of significant cost advantage and other

[22] Shayonee Das Gupta, Trial By Error? A comment on the need compensating for participants for research related injurious in clinical trials in India, https://papers.ssrn.com., last accessed on 14.10.2016.
[23] Priyesh Sharma, India: Future of Clinical Trials in India, 28.06.2013, www.mondaq.com, last accessed on 15.10.2016.

factors like population, patients and physicians[24]. The Government of India also realized the potential benefits of conducting Clinical Trials in India which can be very helpful and life saving in future and therefore brought amendments in 2015 in various provisions of the Drugs and Cosmetics Act, 1940. But these Clinical Trials are not following the ethical guidelines of informed consent and compensating victims, nor are they registering their clinical trials. The careless, unethical and illegal activities that are being conducted on innocent people raises human rights questions. Even victimizing people who are already victims of Bhopal gas leak by conducting clinical trials on them without their knowledge and consent is preposterous and need to be stopped. And that can only happen when legally binding laws come into force rather than long list of guidelines and rules.

[24]Pankaj M Madhani, Clinical research industry in India issues and opportunities, November 2007, https://papers.ssrn.com., last accessed on 14.10.2016.