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# Criminalization of Pothole: A Need of the Hour

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## ABSTRACT

*Every year deaths related to potholes increase, especially during monsoons; and just like every year compensation is given to the family of the victims for their loss. But is compensation enough? Instead of filing cases against contractors and engineers in cases of road maintenance, officials and politicians often blame the drivers for negligence. In 2019, nearly 1.5 lakh death was caused by a road accident in India, which means every hour 17 people die on the road accident. Out of 1.5 lakh, 9300 death in a road accident was caused by Potholes. Apart from deaths, 25000 no. an accident leading to major or minor injuries. The development of potholes in India roads is very common. Pothole, high traffic, the congested road is the major problem for any modern city planning. India is a developing country and roads are indirectly contributing to economic growth, so it should be in good condition: but the problem still has not been addressed.*

**Keywords:** Pothole, Accident, Death, India, Government, Citizen, Victims, Compensation.

## I. INTRODUCTION

Every year, pothole-related deaths make it to the headlines, especially during the monsoon season. The main reason for pothole is water. Due to the poor drainage system, the pothole is very common. Pothole not only damage vehicle but it also causes severe accidents. Pothole is caused by diesel spillages, mechanical damage by vehicle rims, accidents, and fires, by falling rocks in cuttings, animal hooves on road surfaces in hot weather, poor road design over certain subgrades such as expansive, collapsible and dispersive soils. The situation in India is instead of filing a complaint again the contractor or to the engineer or the government, police often blame the victims or drivers for ‘death due to negligence.

The road transport ministry uploaded the accident data of 2018. As per the report, Two-wheeler riders were the most vulnerable lot as 35.2% of those killed were two-wheeler riders. Cyclists, pedestrians, and two-wheeler riders had a 54% share of all deaths in a road accident<sup>3</sup>

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<sup>3</sup> Dipak K Dash / TNN / Updated: Nov 16, 2019. “Over 1.51 Lakh Died in Road Accidents Last Year; UP Tops among States: India News - Times of India.” *The Times of India*, TOI, [timesofindia.indiatimes.com/india/over-1-51-lakh-died-in-road-accidents-last-year-up-tops-among-states/articleshow/72078508.cms](https://timesofindia.indiatimes.com/india/over-1-51-lakh-died-in-road-accidents-last-year-up-tops-among-states/articleshow/72078508.cms).

<sup>4</sup>Manisha Bhoir, a Mumbai based woman lost her life, due to falling off her bike and coming under a bus. The incident happened after the woman fell post hitting a pothole on a water-logged street. Four days later, a 29-year-old man from Mumbai, lost his life after his two-wheeler skidded over a pothole on the road and was run over by a truck. These are just two cases among the many deaths caused because of potholes in India.

## II. NO. OF DEATHS

The government informed Parliament that over 9,300 people had been killed and nearly 25,000 were injured in road accidents as a result of potholes. <sup>5</sup>The Supreme Court had only expressed serious concerns over increasing accidents due to potholes on roads and said these are much more than deaths due to terror attacks. The Minister of State for road transport and highways, Masuk L Mandaviya was responding to a question by Member of Parliament Husain Dalwai. Ministry of Road Transport and Highways provided figures of 2015, 2016, 2017, and 2018 and compiled data of persons killed due to potholes in road accidents.

Year	Road accident	Person killed	Person injured
2014	4,89,400	1,39,671	4,93,474
2015	5,01,432	1,46,133	5,00,279
2016	4,80,652	1,50,785	4,94,624
2017	4,64,910	1,47,913	4,70,975
2018	4,67,044	1,51,417	4,69,418

Out of which no. of death due to potholes in 2017& 2018.<sup>6</sup>

Year	No. of accident	Person killed	Person injured
2017	9,423	3,597	8,791
2018	4,869	2,015	4,108

<sup>4</sup> "The Pothole Problem in India." *Media India Group*, 31 July 2018, [mediaindia.eu/business-politics/the-pothole-problem/](http://mediaindia.eu/business-politics/the-pothole-problem/)

<sup>5</sup> Sandhu, Kamaljit Kaur. "Over 9300 Deaths, 25000 Injured in 3 Years Due to Potholes." *India Today*, 23 July 2018, [www.indiatoday.in/india/story/over-9300-deaths-25000-injured-in-3-years-due-to-potholes-1294147-2018-07-24](http://www.indiatoday.in/india/story/over-9300-deaths-25000-injured-in-3-years-due-to-potholes-1294147-2018-07-24).

<sup>6</sup> [https://morth.nic.in/sites/default/files/Road\\_Accidednts.pdf](https://morth.nic.in/sites/default/files/Road_Accidednts.pdf)

**(A) Acts/Laws**

The existing legislation for road safety, the Motor Vehicles Act, has no provisions to ensure the accountability of road authorities for defects in the engineering, design, and maintenance of roads. Thankfully, the Motor Vehicles (Amendment) Bill, 2017, which seeks to strengthen the Act, has attempted to address the issue of liability for road defects. For any road crash injury or death caused by defective road design and engineering, the designated authority responsible to construct and maintain the road is to be penalized with a sum capped at ₹1 lakh. The Bill directs that safety standards be prescribed by the Central government. Unfortunately, road contractors and engineers will still not be held criminally liable for causing deaths and injuries, which organizations like the Save LIFE Foundation have been demanding. But a fine, even if it is a small amount, is a step in the right direction

**(B) The Motor Vehicles Amendment Bill, 2017**

In 2014, the Bharatiya Janata Party drafted the Road Transport and Safety Bill to replace the Motor Vehicles Act of 1988, which governs road safety in the country. The act has no provisions to ensure the accountability of road authorities for defects in the engineering, design, and maintenance of roads. It was replaced by the Motor Vehicles Amendment Bill, 2017, which was passed by Lok Sabha and sent to Rajya Sabha. Earlier this week on July 23, the Opposition parties during the hearing of the bill claimed that it was mainly to help corporations. The discussion is expected to resume on July 31 in the Rajya Sabha.<sup>7</sup>

According to union road ministry officials, the provision for the fine against officials has been made in the Motor Vehicles Amendment Bill, 2017. The proposed bill has attempted to address the issue of liability for road defects. In case of any road crash injury or death caused by defective road design and engineering, the designated authority responsible to construct and maintain the road is to be penalized with a sum capped at INR 100,000. The bill directs that safety standards be prescribed by the central government. However, the bill will not hold road contractors and engineers criminally liable for causing deaths and injuries.

**III. WHAT IT IS AND WHAT IT IS OUGHT TO BE:**

Like every year, there is an uproar over potholes death this year too. Every year media reports about the accident caused by potholes but no such action is bee taken. The reasons behind those poor roads are not unknown: Corruption, lack of monitoring road construction work by the administration, and the general attitude of various authorities including the state government

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<sup>7</sup> “The Pothole Problem in India.” *Media India Group*, 31 July 2018, [mediaindia.eu/business-politics/the-pothole-problem/](http://mediaindia.eu/business-politics/the-pothole-problem/)

that allows multiple agencies to handle roads in one city. As long as the roads maintained by state agencies such as the public works department are concerned, the less said the better.

Now the question arises here is who can be held liable or which government authority could be held liable? Well, the authority which seems to be liable is PWD (Public Works Department), which is the government body. If we see previous judgment of the court, we will find that our judiciary is taking these road accidents which is happening due to government negligence, is so far taking very seriously & given strict judgment on it. The order passed by Himachal Pradesh high court directing the managing director of state road transport corporation and transport commissioner to appear before it in a matter relating to the bad condition of the roads causing bus accidents in the state. The court here passed the order on a petition filed by Ajay siphayia and directed Himachal Road Transport Corporation (HRTC) MD to file a fresh status report in the matter. Similarly, in an important judgment, a division bench of the Bombay high court, comprising of Justice Abhay Oka and Justice c.v. Bhadang has in an interim order passed on 20 may,2015, held that having pothole-free roads in reasonable condition is a fundamental right of citizens, which is included in Article 21 of the constitution. This order was passed in a suo moto public interest litigation (PIL) initiated in 2013 by an order of the chief justice Mohit Shah of Bombay high court. A letter addressed by Justice G.S. Patel to the chief justice of high court on 24th July 2013 initiated this PIL.<sup>8</sup>

The Bombay high court in 2013 said that the victims and their family members have the rights to claim compensation. But is the compensation is enough for the loss of life? Shouldn't be government officer held personally liable and get punishment? Citizens are paying taxes to the government, which should also be used in maintaining roads, highway, public property but in return of paying taxes, citizens are not even getting good & safe roads. The court has already given many judgments still the government and government authority is neglecting their words, isn't it is misconduct of courts of decision.

#### **IV. CHALLENGES FACED BY VICTIMS**

Potholes can cause instant damage to the vehicle and the person. Last year, there have been several incidents where people have been badly injured by the pothole. And at last who suffer! the victims. There have been many challenges faced by the victims and their families like getting compensation, physical or financial loss.

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<sup>8</sup> India, legal Service. *Negligence by Government Authorities Leads to Loss of Life*, [www.legalservicesindia.com/article/2168/Negligence-by-Government-Authorities-Leads-to-Loss-of-Life.html](http://www.legalservicesindia.com/article/2168/Negligence-by-Government-Authorities-Leads-to-Loss-of-Life.html)

**(A) Physical, psychological trauma, plus financial losses**

In October 2019 a man in Bangalore along with his wife and child who was 3yr old was navigating his scooter and his front wheel of the scooter bumped into the pothole that has been filled with rainwater and he lost control and both man and his wife fell. He was driving at 20 km/hr because it was raining heavily. They were admitted and was discharged after 6-7 days. He had to undergo surgery with titanium plated & screw, his wife too had multiple injuries & the child has endured physical & psychological trauma. Because of his accident, he had to take bed rest for a month or so and he even loses his job.<sup>9</sup>

These kinds of an accident are very much common in this city and other cities too. This man could get a job in the future but what about the family who has only one member who earns and dies due to the negligence of the government. Potholes do not just lead to death or injuries but they even cause several chronic diseases including spondylitis & lower back pain.

**(B) The Fight for Compensation**

The court has said that the victims and their families have rights under the law to claim compensation, but even after giving hospital bills, FIR, and any other thing to the government, they hardly give any response. Victims and their families have to fight for compensation. And the compensation which they get is 1 lakh, is that enough instead of giving they should work on the road and use good materials

**V. RECOMMENDATIONS**

The most effective way to deal with potholes is to prevent them from happening in the very first place. The government should ensure that the road, streets, highway have a proper drainage system. The local authorities should maintain the road, street & highway and should repair time to time. The local highway authorities should ensure that the material which is being used for the road is of good quality. Thought the government does give compensation to the victims but they have to fight for that, also the compensation is very less than the injury suffered by the victims. Citizens pay tax for the benefit of their own and the county, but even after giving taxes, they don't get any benefits instead of that they get roads which are worst in condition. Giving compensation is a different thing instead of giving compensation in the first place they should work on the road and provide a good and better quality road.

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<sup>9</sup> Gatty, Harsha Raj. "Bangaluru's Pothole Victims' Pain Continues, No Formal Way Yet to Claim Compensation:" *Citizen Matters, Bengaluru*, Citizen Matters, Bengaluru, 30 Jan. 2020, [bengaluru.citizenmatters.in/bengalurus-pothole-victims-pain-continues-no-forthemal-way-yet-to-claim-compensation-39259](http://bengaluru.citizenmatters.in/bengalurus-pothole-victims-pain-continues-no-forthemal-way-yet-to-claim-compensation-39259).