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STATUS OF POTHOLE DEATHS IN INDIA
‘Potholes – the burning issue of the hour’

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ABSTRACT

Potholes are a huge concern especially in a country like India. But this concern is also the most neglected issue by all the government officials and to an extent even the society. India records an extremely high number of recorded pothole death cases in a country every single day. So many years and so many deaths due to a tiny hole on the road and yet this issue has not been addressed. The pothole concern in India is enormously growing and the threats of potholes are now equivalent to the terrorism threats in the nation.

The abrupt cracks in the roads and pavements form leading to various road accidents. This issue is growing to be a fiscal concern for all the local, state, and national authorities. But where does the name ‘Pothole’ come from?

Why is it that Indian roads have potholes?

Potholes are formed on the roads when water clogs on the roads. This could be water from the inefficient sewage system with no proper disposal or excess rainwater. This water along with heavy traffic results in such potholes on the road. To prevent potholes from the roots, there must be proper engineering and construction of the roads in such a way that they are too strong for any formation of a pothole. Potholes are formed when the excess water seeps into the pavement and the asphalt cracks. When the water that seeped inside happens to freeze, it creates a weak patch.

Are potholes too dangerous to cause deaths?

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1Why do they call them potholes?, Pothole Info, (December 7, 2020, 8:21 PM)
https://www.pothole.info/2010/09/251/
When there has been an excess amount of precipitation in the form of rain, too much presence of water on the roads does not allow our eye to point out the presence of a pothole. A pedestrian might walk towards this direction and fall into the pothole resulting in suffocation and death. Potholes also result in the damage of the tyres of a vehicle and can cause a flat tire. Sometimes, when a car hits a pothole the alignment of the vehicle might get disturbed.

**How can we solve the pothole issue for once and for all?**

Preservation of pavement is an effective remedy for this troublesome issue. When cracks in a pavement are visible, attending to it and sealing them a pivotal role in preventing potholes.

### NUMBER OF POTHOLE DEATHS IN THE COUNTRY:

How surprising it is to know that in 2017, nearly four thousand deaths have been recorded and more than twenty five people have been injured only due to the accidents caused due to the presence of potholes on the roads?!

Official statistics claim that during the years 2013-2016, in India potholes have claimed nearly twelve thousand deaths and left nearly forty thousand injured. The States in India that have maintained fairly a constant record of high number of deaths and injuries about potholes are Tamil Nadu, Maharashtra, Uttar Pradesh, and Madhya Pradesh. These are in the top 5 states in India accounting to such miserable accidents. States like Kerala, West Bengal, Andhra Pradesh, and Orissa are no less when compared to these States either. These states are also known to contribute to such high numbers recorded.

How many lives are lost due to potholes?

On an average, it has been given that every day at least 10 people lose their lives to the pothole in our country. Road Minister, Mansukh Mandaviya in his statement has told that 3,597 have been killed and 25,000 have been injured in 2017, potholes being the sole reason.

The Ministry of Road Transport and Highways in its official records provides figures of the exact number of deaths and injuries that occur in the country on a yearly basis. This needs to serve as an alarm to every single citizen of this country and especially each and every official of the Government to wake up and solve this minor issue which is proving to be as fatal as a terrorist attack to the people of the country. The Supreme Court has, in one of its statements,
said that India is recording a greater number of deaths due to potholes than terrorist attacks. Now this must help one realise in understanding how deadly this issue is and is becoming.

**LEADING CASES REGISTERED ACROSS THE COUNTRY:**

Few years back, Dadarao Bilhore lost his young son Prakash to a pothole in Mumbai. The vehicle crashed on the road when it hit a pothole and the young boy lost his life at the spot. His father was so agitated and troubled that he decided to resolve the issue of the potholes himself. He visited various authorities and requested them to repair the roads as soon as possible and before another person loses his life to a pothole. The only thing he was successful in getting was sympathies and false hopes. As we all can see, the matter is still the same as it was and there has not been any change.

In another incident, a 45-year old man fell into the pothole and got crushed to death when a passing truck ran over him. The number of deaths and injuries related to potholes could be dozens higher than what the actual number is as many go unreported and unaccounted and the protocols too vary from state to state.\(^2\)

In another incident that took place in Mumbai, a young woman named Manisha Bhoir lost her life after falling from a bike after hitting a pothole and fell under a running bus. Though India amounts to only 2 percent of the world’s motor vehicles, but India also accounts to 12% of the road deaths worldwide.

**PRESENT PERCEPTION AND LAW RELATING TO POTHOLES - WHAT IT IS AND WHAT IT IS OUGHT TO BE?**

The Motor Vehicles (Amendment) Bill must contain provisions and guidelines that attempts to address issues pertaining to the liability for road defects. With the inclusion of Section 198 A in the Motor Vehicle Act, 2019 there has been made a big step towards curbing situations like accidents caused due to pothole and various other road injuries. As per this Section, the concerned authorities are now legally bound to comply with the standards prescribed for the road engineering, road design, construction, and maintenance as well. As per the latest amendment made in the Motor Vehicles Act, for any road accident that causes either an

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injury or the death of the victim, the concerned authority that is responsible for the construction and maintenance of the roads must be penalised with a sum of one lakh rupees. But this would not hold either of the guilty parties criminally liable for being the reason of the cause of death. The Bill mandates all the concerned authorities to follow the guidelines prescribed by the Central Government.

The National Highways Authority of India collects toll from every vehicle that passes through the toll. This is taken for the maintenance of the roads and their repair. These taxes are pais by citizens to avail the smooth highways that are needed while commuting to prevent accidents on the roads. Thus, the road tax that we pay is solely for the repair and maintenance of the roads. Despite paying the road taxes, the NHAI has been negligent in looking into and performing their duty. Thus, the NHAI must be held accountable.

When we purchase any vehicle, we pay a life tax for the road. Such taxes levied by the Government are set aside only for the development of safe roads without any potholes. My question is what is the Government and the National Highways Authority of India doing with all these taxes and funds?

Making NHAI as a whole and the concerned officers personally accountable for the sheer negligence towards performing their duty under the provisions of the Indian Penal Code, 1860 is an effective way in not only making the criminals suffer for what they have done, or rather omitted their job responsibility but also make them understand the gravity of the issue which would open their eyes towards this issue.

The GHMC Act has certain provisions with respect to the construction as well as maintenance of the roads. This is covered under the Chapter 11 from Section 373 to 427. The Chapter, on a wider angle, deals with the construction, design, improvement of the roads and public streets as well as its maintenance. As given under Section 374, the Commissioner has the responsibility and the authority to ensure that the roads and streets are repaired, levelled, and altered as per the expectancy. Under Section 374 A it has been provided that the

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3 Motor Vehicle Amendment Act, Yourstory, (December 9, 2020, 9:43 AM)

4 GHMC Act, CGG Government, (December 14, 2020, 8:12 AM)
Government may depending on the circumstances take control from the Commissioner to level, repair and alter the roads.5 When the works are completed, the Government may transfer back the authority to the Commissioner again.

The various sections of the Indian Law that can hold the accused parties liable are as follows:

**Section 304 in The Indian Penal Code**6

304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder shall be punished with 1[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

**Section 304A in The Indian Penal Code**7

304A. Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Section 268 in The Indian Penal Code**8

268. Public nuisance.—A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or

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5 Road Accidents, (December 8, 2020, 7:56 PM)
https://morth.nic.in/sites/default/files/Road_Accident.pdf

6 Section 304, IPC, Indian Kanoon, (December 13, 2020, 8:59 PM)
https://indiankanoon.org/doc/409589/

7 Section 304 (A), IPC, Indian Kanoon, (December 13, 2020, 9:03 PM)
https://indiankanoon.org/doc/1371604/

8 Section 268, IPC, Indian Kanoon, (December 16, 2020, 7:12 AM)
https://indiankanoon.org/doc/209076/
to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage.

**Section 283 in The Indian Penal Code**

283. Danger or obstruction in public way or line of navigation.—Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

Classification under Schedule 1 of the Code of Criminal Procedure (CrPC) provides for causing of death by any rash or negligent Act that allows for a punishment of imprisonment for up to two years of fine or both.

**Section 337 in The Indian Penal Code**

337. Causing hurt by act endangering life or personal safety of others.—Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

**JUDGEMENTS:**

In the case of Marakkar V. State of Kerala, on the 18th of September, 2009 (AS No. 918 of 1997), the Kerala High Court after carefully reviewing the matter, made it a point to give a loud and clear note of caution to all the public authorities. The Court has said that the public authorities have gained confidence that the Court cannot be made for any culpable acts that

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9 Section 283, IPC, Indian Kanoon, (December 17, 2020, 2:12 AM) https://indiankanoon.org/doc/1162540/


they commit, and this must be changed as soon as possible. We have reached such a state that it has become necessary for the Courts to issue orders for the Government to take steps towards public welfare, which in this case is repairing roads. This mandates the courts to invoke jurisdiction to rescue the public from such horrendous acts. The Court has issued an order that unless the concerned Government authorities do the best and sufficient in discharging their obligations towards the society, they would be in peril and will have to pay for their apathy.

As per the study of the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), the road accidents in India amount to a whole of 3% of its Gross Domestic product (GDP) every single year.

**POTHOLE ISSUE MUST BE MADE A ‘CRIME’:**

As provided under the Section 304 (a) of the Indian Penal Code, 1860 any act that has been caused due to the sheer negligence amounting to culpable homicide but not murder is an offense and the guilty party shall be punished with an imprisonment or fine or both. The pothole cases that would be registered in future across the country must cover this section, making the guilty parties criminally liable.

The current legislation has no provision for making the guilty parties liable who have caused road accidents owing to potholes. Any case registered across the country with the current legislation is a cake walk for the guilty parties as they do not face any strict consequences. As they are aware that they would not have to face any dire consequences, this adds to the negligence of the authorities.

Once the laws in the country are made more serious and biding and when the punishment for such negligent acts is made strict, loud and clear, this would serve as a message, rather a warning to all the authorities concerned with the maintenance of roads and highways.

**WHAT IS THE GOVERNMENT DOING TO CURB THIS ISSUE?**

Arvind Kejriwal, the Chief Minister of Delhi in his press meet addressed the pothole issue in the country.\(^\text{12}\) He said that he wants to take a step towards making Delhi pothole free and that

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\(^{12}\) Potholes issue, Livemint, (December 15, 2020, 8:21 PM) https://www.livemint.com/
the Public Works Department (PWD) would locate the damaged roads that need to be repaired.

He said that the PWD would use certain smart apps to locate the potholes on the damaged public roads and thus these potholes would be addressed to very immediately that are caused due to wear and tear of roads as well as water clogging.

The Bengaluru Government also said that the entire state would turn into a sensor-based technology to track and locate potholes on public streets and roads. With this pilot project in proposal, the authoritative bodies in Bengaluru aim to give more importance than ever to the maintenance of public streets. These sensor-based apps also allow the government authorities to analyse the strength of the roads through such smart technology apps.13

Road Metrics is an initiative started by Babariya and Mishal Jariwala along with an industrial expert that identifies any kind of defects on the road such as cracks, potholes or for that matter even tiny cracks that could eventually end up as a pothole. This app alerts its users of the rough conditions on the roads and thus guides them to take another alternative road for their destination.14

Pothole Raja is another such initiative, which is an NGO run by a Former Indian Air Force Pilot with an aim of filling the potholes and repairing roads in Bengaluru to made public roads and streets safe.15 This NGO’s aim is to ensure that no person must lose his or her life to a pothole or for that matter any kind of a road accident. This NGO was founded in the year 2016 and has already filled more than 5000 potholes in the city of Bengaluru.

The Government also said that it has initiated a ‘Road Safety Audit’ at each step in all the highway projects being undertaken to provide more safer roads to the public while commuting. The engineers and the contractors who are appointed by the National Highways


Authority of India (NHA). They firstly inspect the project undertaken of the highway in their jurisdiction and take both long term and short-term measures to ensure that the roads are laid properly from the scratch and that they are pothole free.

A civic body named Bruhat Bengaluru Mahanagara Palike (BBMP) came up with an innovative technique known as micro surfacing. This technique revolves around the concept of coating the road with a 6 millimeter thick slurry seal which would protect the asphalt on the road and prevent it from crumbling thus disabling the formation of potholes.

The Vision Zero Programme was launched in Haryana which aims at getting the number of road accidents and fatalities down. This proved to be an effective way as in ten districts of Haryana, five percent decline was recorded in any kind of road incidents.

CHALLENGES FACED BY THE VICTIMS OF POTHOLE DEATHS AND INJURIES IN QUEST FOR THE JUSTICE

The victims of pothole injuries and families of victims who have lost their dear ones have a real challenge in attaining justice for the same. The issues of potholes might seem to be a minor one, but the threat is a major one and needs to be addressed as quick as possible. It is the responsibility of the Government, the Public Works Department (PWD) and the GHMC to address these issues. All it needs to put an end to issue for once and for all is to fill the potholes and repair the current damaged roads. The new roads that are being laid are to be given more importance as having a strong core of the roads would reduce the chances of road damages in future.

The main challenge that the victims face is very much ironical. Instead of blaming the contractors and the engineers who have constructed such faulty roads and the Government authorities for such poor, in fact negligible maintenance, the victims are often blamed saying that they were negligent which was the cause of the accident.

Justice Deepak Gupta and others have said that the injuries and deaths that were cause in between 2013 and 2017 due to potholes is a clear indication that the concerned authorities

were not doing their duty.\textsuperscript{17} It is time for the Government to start acting and being more responsible towards their duty.

The Minister of Public Works Department (PWD) of Maharashtra in a press meet said that the presence of potholes cannot be blamed for the deaths and injuries being caused in Mumbai as they are so many others who are travelling safely on a daily basis.\textsuperscript{18} Such is the condition of these lousy government officials who are not only neglecting the performance of their duties but also exhibiting such kind of an attitude.

**POSSIBLE COLLECTION OF DATA ON VICTIMS**

Mr. Bilhore, who lost his son to a road accident because of a pothole, pledged to fill one pothole at a time in Mumbai to save lives. In his interview he said that he was often badgered and criticised as to why he is doing the job of the concerned government authorities. His response to that was that when the government is not doing its job, I as a victim would want to make sure that there are no more people who are losing their lives to a small pothole on the road.

Pothole Warriors is a similar NGO working towards the betterment of roads. Founded by Mushtaq Ansari, took up this initiative in Mumbai when he began to observe the rapidly increasing number of road accidents. Through this platform, he aimed at educating the public through social media platforms.

**PAVITHRA CASE:**

Pavitra, a 3-year-old innocent boy from Faridabad lost his life to a pothole while returning to his house from a marriage on February 10, 2014. Mr. Manoj Kumar, the father of the victim has then decided to take this pothole issue into his own hands and resolve it as much as he can. So, with a help of few of his friends and family, he started filling one pothole after

\textsuperscript{17} Supreme Court expresses concern over pothole deaths, Hindustan Times, (December 12, 2020, 7:12 AM) https://www.hindustantimes.com/india-news/sc-expresses-concern-over-large-number-of-deaths-due-to-potholes-in-last-5-years/story-f3MJLUi4Gp0aubUZItSCDM.html

another, starting in his own locality. He wanted this to reach the eyes and ears of all the concerned government authorities and government officials who might then feel embarrassed about them not doing their duty. Mr. Manoj has filed a FIR and has the determination to see the concerned authority’s negligence which cost his innocent son’s life. He has the strong will to make the two authorities that is, National Highway Authorities of India (NHAI) and Larsen and Turbo (L & T). As the dreadful accident took place on the Delhi-Agra Highway, the cause of action arose on the Highway thus making the NHAI liable for this negligence too. It has been more than 6 years since the accident took place and Mr. Manoj is still fighting for justice and not only does he want compensation but also want to make these two authorities criminally liable. This would ensure a betterment and a step progress towards the repairing of the roads resulting in less road accidents.

Mr. Manoj has firstly submitted an affidavit at the local court charging the accused under Section 173 of CRPC for the parties have caused grievous injuries along with endangering personal safety and life, merely due to negligence. Mr. Manoj has only one question to ask the authorities. When one common man was able to fill the potholes one after one and when it is such a simple task that could save so many lives, why are the concerned authorities so reluctant? When a common man can do it, what is taking the Government so long to address this issue?

This is the first time ever that an attempt has been made to hold these negligent parties criminally liable in a pothole death case. Usually when any pothole victim files a complaint, the victim gets a very minimal compensation, that too if the victim is lucky enough to drag his case to the court. The only kind of justice given to victims of pothole deaths and injuries are a small amount of money. There is no effort made to put an end to issue. Mr. Manoj Kumar must be praised, and his efforts are to be acknowledged as being the aggrieved person, he is not worried about how much compensation he gets. His aim is to make the guilty parties pay for it in such a way that the negligent parties in this case, that is the National Highways Authority of India as well as Larsen and Turbo, and for that matter any

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19 Faridabad man fixes potholes, Logical Indian, (December 12, 2020, 6:12 AM) https://thelogicalindian.com/exclusive/faridabad-man-fixes-pothole-19495
such authority who has a responsibility towards ensuring safer roads for the citizens be cautioned from any such road accidents taking place in future.  

Mr. Manoj is fighting this case since several years and has pledged to remain silent only after the government authorities wake up and after the two guilty parties are made liable, criminally under the provisions of Section 304 A of the Indian Penal Code, 1860.  

**COMMUNICATIONS MADE FROM MY END:**

Research on this topic has made me realise the importance that needs to be given to the rising pothole issue in the country. Awareness must be brought about amongst people only then will they understand the gravity of the situation. I would like to take my own example for this. Before starting my research on this topic, any road accident relating to pothole was just another newspaper headline to me. But after reading various articles and as a law student corelating it with the legal provisions has made me realise how much this issue has been neglected. We, as citizens have neglected this issue by leaving it to the concerned authorities and waiting for them to address the issue. The Government authorities are neglecting this issue by not dedicating enough time and funds to address the issue. The law-making bodies need to see this as a grave threat to the society and as a response, need to make must stricter laws ang making the guilty parties of such incidents criminally liable.

As a part of my research, I spoke to various people from different professions. This has made me more curious to work towards the betterment of roads.

My grandfather, who is a social worker was firstly very glad to know that I have been working on such a small but an important cause for quite sometime now. He as a social worker, told me that he too had made various attempts to get the roads repaired in my locality. He had written various letters to the Prime Minister of India, the Ministry of Road Transport and Highways and various NGO’s. After repeated calls he made to the local authorities, the Greater Hyderabad Municipal Corporation, made a step towards the repairing

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21 Support Manoj Kumar Wadhwa, Milaap, (December 14, 2020, 3:11 AM)
https://milaap.org/fundraisers/support-manoj-kumar-wadhwa?user=existing
of the damaged roads by sending two of their officials to my locality. These officials only examined the roads and never responded. This made my grandfather very furious as even after repeated approach to the GHMC they were least bothered to repair the roads. My grandfather said that he did give up his hope with his so not supporting health, but he refuses to give up writing letters to the higher authorities. He says that though this is a social work that he is doing but takes it as a personal work more as he believes that anyone of use could one day be victims of such road accidents. He said prevention is better than cure.

To get a legal perspective on this topic, I spoke to my friend’s father who is a practicing advocate. He said that a Public Interest Litigation (PIL) can be filed as every citizen of this country has a right to life guaranteed under Article 21 of the Indian Constitution. Thereupon certain directives towards the repairing and maintenance of roads can be issued to all the municipal corporations. We, as responsible and dutiful citizens are paying the taxes on a timely basis and it is the duty of the Government to ensure that the concerned authorities are look into this matter. When any such local body is not looking into the matter, the officers must also be made personally accountable. When any officer does the job he is assigned, this could be entered in his service records so that this could come in the way of promotions.

I have used my twitter account to alert various officials, the Government and the press channels to address the rising pothole issue in the country. I am attaching the screenshots of the same.

**MY RECOMMENDATIONS AND SUGGESTIONS:**

I urge the Government and all the concerned authorities to kindly pay attention this burning issue of the hour. The Ministry of Road Transport and Highways must take efficient and effective measures as soon as possible to curb this issue for once and for all. Various NGO’s of various states across the country have taken up great result promising initiatives that the Government must also adopt.

When the Government hires engineers and contractors for building roads, they must hire only efficient and qualified engineers who propose a nice plan that promise a long-term safety for the roads. When the roads are being laid, the Government must appoint a government official to carefully investigate the works of the assigned engineer or the contractor.

The technological times that we are living in now, has its own benefits. Utilising this in the right way may take India a step towards growth, progress, and development. Smart apps with sensors that can detect any defects on the roads, as already proposed by various NGO’s
across the country must be made a Government based so that it gains a lot of importance and spreads awareness.

Locality wise, responsible citizens can start forming associations which would not only help in curbing this issue sooner but also create awareness on a larger note.

I also suggest that when a complaint is lodged for any repairing of the roads, it must be addressed as soon as possible and within a reasonable period that could be between 5 to 7 days.

I suggest that the print and press media must give more importance to such issues so that a greater number of people are aware of such minor yet life claiming issues.

Pothole incidents must be treated as a crime. This is because such pothole deaths and injuries are caused due to sheer negligence on the part of the concerned government authorities. When activists with hardly any manpower and resources can fill potholes, why can the Government not do the same with all the resourced and funds they have.

Various writs can be issued such as the Writ of Mandamus where the higher authorities have the right to order the local and the inferior authorities to perform the public duty that they are supposed to be performing.

I hereby urge that the negligent parties in any road accidents that occur, especially accidents that occur due to the presence of potholes must not only be ordered to look into the matter of potholes and repair and maintain them as per the prescribed standards but also hold them criminally liable. Such incidents occur and many lose their lives for no good reason and the only one to be held accountable is the accused who has been sheerly negligent towards performing their duty. In the case of Pavitra, a minor three year old boy, the National Highways Authority of India (NHA1) and the Larsen and Turbo (L &T ) must be made criminally liable under the sections 268, 283, 304 (a) and 337 of the Indian Penal Code, 1860 for being negligent towards performing their duty and this negligence endangering lives of people.

Making the authorities criminally liable would not only be the right thing to do but also serve as a crystal clear loud and clear warning to all such other authorities who are responsible for the repairing and maintenance of roads in future. This would induce a sense of fear and responsibility in all the officials who need to be doing this job in the first place.
NHAI is the main culprit that needs to wake up and start using the road taxes and funds in an effective manner towards the betterment of the roads and thus the citizens of the country. This one small step could bring such a huge change in the country and would save thousands of innocent lives.

- Y. Keerthana Reddy