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Pothole Related Deaths in India : Examining State Liability and Public Accountability

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Introduction

Every monsoon, the Indian newspaper brings out reports of fatal road accidents due to potholes that claim many lives and cause great damage. According to the data released by The Ministry of Road Transport and Highways (MoRTH)¹, several thousand accidents and hundreds of fatalities due to potholes have been reported year after year, despite the money spent on the maintenance of roads in the country. Road accidents, whether due to potholes or other reasons, are a matter of great concern because of the danger they pose to citizens. Though road deterioration due to monsoon rains is unavoidable, the problem of potholes in many cases is due to administrative negligence.

Road maintenance is the responsibility of the State Governments and municipal authorities. Thus it becomes a constitutional obligation for the authorities not to ignore such matters as the safety of the citizens by maintaining road infrastructure. By failing to maintain the roads, the authorities fail their constitutional responsibility of protecting the right to life of the people. Therefore, the article focuses on the legal compensation that can be claimed from the government in case of death due to potholes.

While courts have begun to award compensation to victims of pothole-related accidents,

¹ Ministry of Road Transport & Highways, Road Accidents in India 2022 (Government of India, 2023).

compensation is not a replacement for administrative oversight. The emphasis must instead be placed on preventing such accidents by maintaining roads and ensuring responsibility.. Thus, instead of compensating the victims in case of any accident, the state's duty should be to ensure that proper maintenance regulations are followed, along with strict punishment for authorities found guilty of neglecting their duty.

The Growing Crisis Of Pothole Related Death In India

India's road infrastructure has been of great concern because of the rising number of road accidents due to the poor condition of the roads. The main causes of road accidents involve driving at fast speeds, reckless driving, and driving violations. However, it is not unordinary that road defects also contribute to road accidents, with potholes being one of the defects. Potholes are one of the most avoidable causes of road accidents because they are dangerous to two-wheeled riders, who form a large percentage of India's road users and are more likely to lose control on the uneven road surface. Potholes, especially when they are filled with water during the rainy season, are difficult to spot, making them more dangerous, especially to two-wheeled riders and causing fatal road accidents.

According to India's ministry of roads,² most road accident deaths are registered due to damage done to persons in road accidents brought forth by potholes, with hundreds of people being injured gravely due to the road defect. However, the statistics on road accidents in India involving potholes have shown inconsistent percentages of road accidents over time. Experts argue that while India's road accident deaths involving potholes are high, the recorded percentage of the involvement of potholes in road accidents in India is low due to road accident investigations failing to register road defects as the main cause of road accidents and instead registering drivers' negligence as the primary cause, which leads to underreporting of the effects of potholes on road accidents in India. While official statistics report only a small number of accidents caused by potholes, experts believe that this number is greatly underestimated, mostly due to the fact that authorities tend to blame drivers for accidents rather than road defects.

² Ministry of Road Transport & Highways, Road Accidents in India 2022 (Government of India, 2023).

Pothole accidents take place all across India, especially in states like Maharashtra, Karnataka, Uttar Pradesh, Tamil Nadu and Delhi, due to inspection, maintenance and coordination problems of the government authorities. In several instances, road accident cases involve commuters who died after falling off their two-wheeled vehicles due to a pothole, only for the heavy vehicles to run over them. However, it is not uncommon that road accidents involving potholes have been caused by multiple factors, indicating poor road maintenance and management, poor road inspection systems, poor implementation of maintenance and repair systems after the identification of the road defect, and the lack of coordination between municipal authorities, local governments, and construction workers.

The frequent occurrence of road accidents involving potholes brings up a pressing tort issue, where the inaction of the responsible authority to inspect and repair the road defect can be considered a tort of negligence. The tort of negligence occurs when a person who owes a duty of care to another person fails to adhere to the standard of care resulting in harming another person. The authorities have a duty of care to ensure that roads are safe for citizens. Therefore, the frequent occurrence of road accidents due to potholes is a tort of negligence by the responsible authority, as it has failed to maintain the roads despite having the resources at its disposal and thus failed in its duty to ensure road safety for the average road user.

Road accidents involving potholes in India are not only a tort issue but also an infringement of the rights of ordinary citizens. Ordinary citizens expect the government to utilize government fees to provide and maintain quality services. The frequent occurrence of road accidents involving potholes shows a breakdown in the system due to the lack of proper road maintenance systems, which causes distress to ordinary citizens. This distress brings up issues concerning the rule of law, as the lack of proper road maintenance indicates a failure by the government to provide basic services, as well as transparency and accountability in the utilization of public resources. The death toll in the road accidents that involve potholes, therefore, raises questions about the infringement of the right to life and the government's inability to protect the rights of its citizens. It is worth noting that although several road accident cases involving potholes have been taken to the court of law, the compensation awards that have been made to the families of the road accident victims have not incentivized changes in the maintenance and management of roads in India.

State Liability: Constitutional and Tort Principles

The liability of the State for deaths caused due to potholes arises from various sources – constitutional, tortious and statutory. Road Construction authorities have a responsibility to provide roads that are reasonably safe for use. When the authorities neglect their duty to repair dangerous potholes which cause death or injuries, the question of legal liability arises.

The Right to Life and Liberty (Article 21) of the Constitution provides that no person shall be deprived of his life or liberty except in accordance with law.³ The Supreme Court has held that the Right to Live includes the Right to Live with Dignity and the Right to a Safe Environment. Although the Constitution does not explicitly provide a “Right to Safe Roads”, it can be argued that the State cannot fulfill its obligation to protect the life and liberty of the people if the roads are unsafe. Deaths occurring due to the negligence of the State in maintaining the roads may be considered as violation of the Right to Life and Liberty.

Besides the constitutional remedies, deaths caused due to road accidents can be considered as cases of negligence resulting from failure to perform statutory duties. Under the law of torts, in order to claim damages for Negligence, it has to be proved that (a) there was a duty of care owed by the Defendant to the Plaintiff, (b) the Defendant breached this duty, (c) this breach of duty caused the Plaintiff’s injury, and (d) the Plaintiff sustained loss or damage due to this injury. It is undisputed that the local authorities who maintain the roads owe a duty of care to all road users. If they do not regularly inspect the roads and act on complaints to remove dangerous potholes, it is a dereliction of duty. In cases where the failure directly results in an accident causing death or injury, the next of kin of the deceased or the injured can claim damages in a civil court.

The doctrine of Constitutional Tort has evolved wherein the compensation awarded to persons whose rights have been violated by the State can be claimed directly from the government. In the case of *Nilabati Behera v. State of Orissa*, the Supreme Court held that compensation to the victims of custodial death is a just and proper remedy for the violation of Article 21 by the State.⁴ A similar argument can be advanced for deaths occurring due to the government’s failure to maintain roads which causes road accidents. Since compensation is a valid remedy against the State for the violation of the fundamental rights by the administrative agencies, the State will be liable for damages for failure to maintain roads.

³ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

⁴ *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746.

The doctrine of Sovereign Immunity protects the State from being sued for torts committed by it. However, the Supreme Court has held that the State cannot plead Sovereign Immunity as a defense when its administrative agencies commit wrongs of a non-justiciability nature. In *N. Nagendra Rao & Co. v. State of Andhra Pradesh*, the Supreme Court held that the doctrine of immunity is not available to the State for negligence committed by its administrative agencies in the discharge of welfare and administrative activities.⁵ Routine road construction and maintenance works carried out by State agencies for the benefit of the people fall under administrative activities.

Therefore, the State cannot raise Sovereign Immunity as a defense in cases of road accidents caused due to negligence on the part of the road maintenance authorities.

The authorities responsible for road construction and maintenance have constitutional, tortious and statutory liabilities to maintain safe roads. The State legislatures have provided specific duties to local bodies and government departments concerned with road maintenance. Unless these duties are discharged, the authorities can be held accountable by the courts or the department concerned. However, in many cases, the apportionment of duties and liabilities between local bodies and State government agencies becomes quite complex and causes delays in repairs as well as in fixing liability in case of accidents.

Various principles of law provide that the State is answerable for deaths occurring due to administrative negligence. However, the enforcement of these laws and the actual implementation of remedies still remains a challenge.

Judicial Approach to Government Accountability

Indian Courts recognize defective roads as a problem that goes beyond mere administrative issues because it affects the very life of citizens. While there is no specific law that deals with the issues that arise when a person dies due to a road accident, the courts have been quick to observe that deaths due to potholes are a consequence of administrative negligence. Various Public Interest Litigations and writ petitions have been filed to remind the administrative machinery of its responsibility towards maintaining road infrastructure and to compel them to adhere to their constitutional responsibilities.

⁵ *N. Nagendra Rao & Co. v. State of Andhra Pradesh*, (1994) 6 SCC 205.

One of the recent developments in this area is the introduction of compensation as a remedy by the Constitutional Courts. In the cases of *Rudul Sah v. State of Bihar* and *Nilabati Behera v. State of Orissa*, the Supreme Court ruled that compensation could be awarded in cases where the fundamental rights enshrined in Article 21 are violated⁶. Although the cases dealt with the violations of the fundamental rights in various spheres, the judgments gave rise to a new dimension of compensation jurisprudence in cases of death resulting from administrative action or omission. The Supreme Court has acknowledged that the deaths due to potholes have reached an alarming level which needed urgent attention. During the hearing of *Rajasekaran v. Union of India*, the Court noted that pothole-related deaths had become a social evil and authorities had failed to address it despite thousands of people losing their lives due to poor road conditions.⁷ Further, the Court directed the Supreme Court Committee on Road Safety to consider the issue and submit recommendations concerning compensation to bereaved family members of those killed due to potholes. During another hearing concerning the deaths due to potholes, the Hon'ble Chief Justice raised concerns about 14,926 deaths between 2013 and 2017 that occurred due to road accidents. He pointed out that there was no compensation policy for the next of kin of the deceased or any punitive actions taken against errant officials in the road maintenance authority. The Chief Justice remarked that authorities, including municipal corporations, State Governments, and National Highways Authority of India, responsible for maintaining clear road infrastructure should be answerable for their gross administrative negligence leading to the deaths of thousands of people. Thus, the Supreme Court has been instrumental in providing compensation to accident victims and reminding administrative authorities of their responsibility in such cases.

The Bombay High Court has been at the forefront of Public Interest Litigation concerning open manholes and potholes causing people to die in Mumbai. In the PIL of 2013 (PIL No. 71 of 2013), the Court condemned the blame game between corporations and government agencies responsible for maintaining infrastructure and road conditions in the city⁸. The Court observed that people died or were severely injured in road accidents that occurred due to defective road conditions during monsoon and that the inaction of authorities indicated extreme indifference to the citizens' lives. Consequently, the Court directed authorities concerned to make sure that proper compensation was awarded to the next of kin of people

⁶ *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141; *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746.

⁷ *Rajasekaran v. Union of India*, Order dated July 20, 2018; Order dated Dec. 6, 2018

⁸ In re: PIL No. 71 of 2013 (Bombay High Court, continuing proceedings concerning potholes and open manholes)

who died in road accidents and those injured in such accidents unless proven otherwise. The Court further observed that unless civic authorities are held accountable for their omissions and commissions in ensuring road safety, the compensation to accident victims would be a meaningless gesture.

Recently, the Bombay High Court has directed that compensation of ₹6 lakh should be paid to the next of kin of people killed in road accidents involving potholes or open manholes. Victims of injuries in such road accidents should also be compensated depending on the seriousness of their condition. In this regard, the Court stated that compensation in cases of pothole-related deaths or injuries was justified since they resulted from violations of the right to life enshrined in Article 21 of the Constitution.

In *Marakkar v. State of Kerala*, the Kerala High Court was called upon to decide whether compensation could be awarded to a cyclist who had died due to an accident that occurred when the victim was riding into a pothole in the road⁹. The Court held that the petition for compensation was maintainable. Thus, the decision indicates that pothole-related deaths may result in a cause of action for compensation based on tort. This observation by the Court can be expected to have a considerable impact on future litigation concerning deaths or injuries that occur due to poor road conditions.

While the Indian Judiciary has taken several steps to ensure that compensation is awarded to accident victims and that authorities responsible for maintaining road conditions are held accountable for their omissions and commissions, most of these measures are only reactive. Courts can provide compensation to accident victims and punish errant road maintenance agencies, but such punitive measures do not prevent road accidents from happening. As such, it is vital for authorities to perform their duties efficiently and ensure that roads are regularly inspected and repaired so as to avoid accidents. Further, the agencies involved in road maintenance and repair should clearly define their areas of responsibility so that in the case of an accident, it is easy to identify the party responsible for ensuring compensation for the accident victims.

Challenges and the Need for Reform

Despite having a legal framework that ensures government's accountability in maintaining roads fit for travel, death by man-made holes has continued unabated because the authorities

⁹ *Marakkar v. State of Kerala*, A.S. No. 918 of 1997 (Ker. H.C. Sept. 18, 2009)

have no motivation to prevent them. This dereliction of duty has been aided by the absence of an accountability policy that discourages taking action until the issue has been blown out of proportion or taken to the courts of law.

One of the first steps towards addressing public roadblocks to life is coming up with an accountability policy for road users. Responsibility for road maintenance is often divided among the PWD, municipal corporations, State Highway Authorities and the NHAI, creating uncertainty over accountability. A policy that clearly lays down the expectations of agencies and ensures that there is an appropriate authority accountable for specific road segments or projects will ease much of the burden currently felt in the region.

Aside from coming up with an accountability policy, it will also be important to invest in technology to prevent pothole-related deaths. While apps and portals put up by states for individuals to complain about potholes and have them repaired get plenty of complaints, they do little to compel the authorities to respond quickly to these complaints. Governments should develop response mechanisms that are mandatory, such as regular audits with reports made public for easier tracking. Contractors who do not meet the expected standards when constructing or repairing roads should also be debarred from participating in future tenders.

The final step in preventing death caused by potholes is punishing errant officials. Having independent regulatory agencies that investigate and punish government officials who neglect their duties and responsibilities should be implemented to help increase accountability. Rewarding whistle-blowers and citizen journalists who report government malpractices is also a good way to supplement this process. Unless authorities are willing to do away with compensation payouts as a knee-jerk reaction to deaths in most cases, pothole-related deaths will continue unabated, and they will be reluctant to prevent them from happening.

Conclusion

Pothole deaths cannot merely be treated as an unfortunate incident on the road or in other words the pothole related deaths are a product of administrative failures. As per the Constitution, law of torts, and various judgments passed by the judiciary, the responsibility for deaths caused due to poor maintenance of roads lies with the state. Although Indian judiciary plays a very important role in protecting the citizens and providing compensation to them, however, mere judicial interventions cannot compensate for administrative inefficiencies and thus, to combat the problem of potholes-related deaths, there is a need for a

multi-pronged approach comprising of codifying the duties, providing for prompt maintenance of roads, and enhanced accountability of the authorities coupled with transparency in all the administrative actions. The right to life envisaged under Article 21 of our Constitution cannot simply be taken away due to the government's administrative failures. Unless and until these aspects are addressed through a combination of proactive and preventive measures can the law deliver justice to the affected people and also serve the greater good of the citizens at large.