

Before the Hon'ble Supreme Court of Aharat

(Under Art. 32 read with Art. 136 of the Constitution of Aharat)

IN THE MATTER OF:

MUSKLA AND ORS.

(PETITIONER-APPELLANT)

V.

UNION OF AHARAT

(DEFENDANT-RESPONDENT)

Memorial submitted on behalf of the Petitioner-Appellant

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LIST OF ABBREVIATIONS

§	Section
¶	Paragraph
¶¶	Paragraphs
AI	Artificial Intelligence
AIR	All India Reporter
App.	Appeal
Art.	Article
CEO	Chief Executive Officer
Co.	Company
Const.	Constitution
CPA	Consumer Protection Act
EULA	End User License Agreement
GoA	Government of Aharat
Govt.	Government
HC	High Court
HDA	High Driving Automation
Inc.	Incorporation
IPC	Indian Penal Code
ISP	Internet Service Provider
IT Act	Information Technology Act
LCI	Law Commission of India
MVA	Motor Vehicle Act
SC	Supreme Court
U.S.A	United States of America

u/s	Under section
Anr.	Another
C.J	Chief Justice
Cal	Calcutta
D.O.	Designated Officer
EU	European Union
i.e.	That is
Ind.	India
Ltd.	limited
No.	Number
Ors.	Others
Para	Paragraph
Pvt.	private
SCC	Supreme Court Cases
Sec.	Section
u/art.	Under article
UOI	Union of India
v.	versus
PC	Penal Code

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STATEMENT OF JURISDICTION

The Petitioner-Appellant has moved to the Hon'ble Supreme Court of Aharat under Art. 32 of the Constitution of Aharat in the matter of revoking the ban on M's firmware. The relevant provision is reproduced below:

Art. 32. Remedies for enforcement of rights conferred by this Part

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

Further, the Petitioner-Appellant has approached the Hon'ble Supreme Court of Aharat to hear the matter of High Court rejecting the petition to quash the criminal cases registered against the petitioners under Art. 136 of the Constitution of Aharat. The relevant provision is reproduced below:

Art. 136. Special leave to appeal by the Supreme Court

(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India

The Petitioner- Appellant humbly and respectfully submits to the jurisdiction of this Hon'ble Court.

STATEMENT OF FACTS

Muskla, a company based in USA specializing in e-mobility vehicles intends to launch its car M, equipped with Level 4 HDA in Aharat. Aharat refused approval to use auto-pilot as Muskla has an unsuitable non-local dataset, and it requires the amendment of the MVA. Muskla incorporated a subsidiary Muskla Aharat for the sale of cars and restricted the add-on feature of auto-pilot in Aharat. The end-users entered into agreement with Muskla Inc. that any usage of auto-pilot in prohibited countries could make usage of their M suspended. The launch event turned out to be controversial due to a statement by its CEO Melon Dusk - allegedly insinuating exploitation of known vulnerabilities to access auto-pilot in the country. Dusk tweeted an explanation and later Muskla fixed the vulnerability within six months.

In Nov 2021, one Kim Veersingha tweeted about a hack providing access to the auto-pilot feature for ~2 hours. The tweet was liked by Dusk. Later in March '22, she met with an accident while livestreaming the hack. While the Muskla intervened to take over the car remotely, it was late. Criminal proceedings were initiated against Kim for reckless driving. Muskla fixed the vulnerability within 10 days, and geo-blocked auto-pilot use in non-white countries.

In the meanwhile, Aharat Times leaked an internal memo which showed that Dusk silently encouraged use of the auto-pilot feature and that ~70% Aharat cars have already accessed the feature. GoA banned the M firmware server access, and the M app u/S. 69A. A criminal case was registered against Dusk and the CEO of Muskla Aharat under 304A of IPC and u/S. 188, read with 184, 190 and 198 of the MVA. The CEO was arrested, while Dusk's whereabouts were unknown. The GoA intends to press for Dusk's extradition. Muskla & its subsidiary moved to SC to revoke the ban. Muskla, Dhanraj, Dusk also moved to the HC to quash criminal case. They have now moved the SC challenging the HC Order. The Hon'ble SC combined both the petitions.

STATEMENT OF ISSUES

- I. Whether the government of Aharat's ban order prohibiting M's firmware or M's app to access its server maintained by Muskla Inc by connecting to the internet within Aharat is valid under section 69A of the IT Act?
- II. Whether Muskla Inc. and Muskla Aharat can be termed as intermediaries under the Section 79 of the IT Act?
- III. Whether Muskla Inc., Muskla Aharat can claim any immunity from prosecution under the Penal Code and Motor Vehicles Act?
- IV. If the above issue is answered positively, then can Dusk and Dhanraj also claim immunity from prosecution, given that they are just officers of Muskla Inc. and Muskla Aharat respectively?

SUMMARY OF ARGUMENTS

ISSUE 1: Whether the government of Aharat's ban order prohibiting M's firmware or M's app to access its server maintained by Muskla Inc by connecting to the internet within Aharat is valid under section 69A of the IT Act?

It is humbly submitted that apart from not providing an opportunity to be heard, the Govt. did not specify the reasons of the ban. The Govt. here misused its discretion and did not conform with these principles of natural justice making the ban untenable in law. After the accident took place, Muskla fixed the vulnerability within 10 days, and geo-blocked auto-pilot use in non-white countries. The ban was excessive in a sense that the Govt. did not issue any warnings and instead resorted to the most restrictive option. Thus, it does not conform with the essentials of Sec. 69A.

ISSUE 2: Whether Muskla Inc. and Muskla Aharat can be termed as intermediaries under the 79 of the IT Act?

Most respectfully it is submitted that both Muskla Inc. and Muskla Aharat will be intermediaries under the definition of Section 2(w) of the IT Act, 2000 and will not be barred by any exception of either 79(2)(b), 79(2)(c) & 79(3) as they merely act as the passive conduit of information, that take place automatically and have adhered to due diligence under the act and the subsequent rules made under.

ISSUE 3: Whether Muskla Inc., Muskla Aharat can claim any immunity from prosecution under the Penal Code and Motor Vehicles Act?

It is humbly submitted that both Muskla Inc. and Muskla Aharat can claim any immunity from prosecution either under the Penal Code or under the MV Act on the grounds that To attribute criminal liability on the company the act must be done by some human factor and not AI. The

concept of vicarious liability is alien to the Penal Code of Aharat. The casualty was caused because Miss Kim hacked the system without any authority and violated the agreement between the company and her which freed the company from all kinds of liabilities. Sec. 81 of the Penal Code provides immunity even if the system is considered to be the driver. MV Act doesn't deal with automated vehicles, it doesn't even approve of its testing. It was Miss Kim who misguided the AI to act in the manner it did.

ISSUE 4: If the above issue is answered positively, then can Dusk and Dhanraj also claim immunity from prosecution, given that they are just officers of Muskla Inc. and Muskla Aharat respectively?

Most respectfully it is submitted that both Mr Dusk and Mr Dhanraj can claim immunity from the prosecution because both were working in the interest of the company in a bonafide manner and not for their benefit. The principle of attribution doesn't work in reverse. Miss Kim was responsible for the accident and not the manufacturer of the system. The company wasn't any façade that was used by CEOs to make benefits for themselves, it's a well-established company. The law doesn't provide for their liability in a personal capacity and hence both of them are immune from prosecution

ARGUMENTS ADVANCED

I. Whether the government of Aharat’s ban order prohibiting M’s firmware or M’s app to access its server maintained by Muskla Inc by connecting to the internet within Aharat is valid under section 69A of the IT Act?

§ 69A (1) provides that the govt. may block of any public info, that is generated, transmitted, received, stored, or hosted in any computer resource, in the interest of sovereignty, integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above¹. ¶ 1

§ 69A imposes **restrictions on freedom of speech and expression** and the SC has² held that § 69A can be invoked³:

1. Blocking only if the Central Govt, is “satisfied” that it is **necessary or expedient** to do so,
2. Such necessity or expediency has **a nexus with grounds mentioned under Art. 19(2)**,
3. **Reasons to be recorded** so that they may be assailed in a writ petition u /A 226. ¶ 2

Technological inventions are for the benefit of mankind but at the same time, they have a probability of being misused. Atomic energy was **misused in Hiroshima and Nagasaki** but by harnessing it with adequate safeguards many countries are benefitting from it⁴. The Internet is one such invention of the 21st Century⁵. The Govt. of Aharat without providing the opportunity of

¹ Information Technology Act, 2000, §69 A, No. 21, Acts of Parliament, 2000 (India)

² Agij Promotion of Nineteenonea Media Pvt. Ltd. and Ors. vs. Union of India and Ors. (14.08.2021 - BOMHC) : MANU/MH/2191/2021

³ Shreya Singhal v UOI AIR 2015 SC 1523

⁴ State vs. A. Duraimurugan Pandiyan Sattai and Ors. (07.06.2022 - MADHC): MANU/TN/4378/2022

⁵ State vs. A. Duraimurugan Pandiyan Sattai and Ors. (07.06.2022 - MADHC): MANU/TN/4378/2022

being heard took an arbitrary step **which impacts the technological advancement** and harms the reputation of the petitioner-appellant. ¶3

Principles of Natural Justice Violated

Natural Justice or “*fair play in action*”⁶ is a great humanizing principle intended to invest in fairness and secure justice⁷. Where there is the power to decide, their duty to act judicially is present⁸. *Audi alteram partem* is an essential and **indispensable** feature of natural justice⁹. There is an inherent duty of the authority to act in good faith and listen fairly to both sides¹⁰ which has not been followed in the present case. It is humbly submitted that apart from not providing an opportunity to be heard, the **Govt. did not specify the reasons for the ban.** ¶4

Administrative decisions must be accompanied by reasons which would make it possible to test the validity of these decisions by the machinery of appropriate writs¹¹. Thus, **except in cases where it has been expressly/ impliedly barred by law**, recording reasons while passing the order is essential¹². The Govt. here **misused its discretion** and did not conform to these principles of natural justice making the ban untenable in law. ¶ 5

Timely Response by the Petitioner-Appellant

After the accident, Muskla fixed the vulnerability within 10 days, and geo-blocked auto-pilot use in non-white countries. The Petitioner-Appellant did not sit back but took an action within their

⁶ Schmidt v Secretary of State of Home Affairs [1969] 2 Ch. 149

⁷ Wiseman v Borneman [1969] 3 WLR 706, Maneka Gandhi v UOI AIR 1978 SC 597

⁸ Ridge v Baldwin [1964] AC 40, Associated Cement Companies Ltd v P N Sharma (1965) AIR 1595, State of Orissa v Dr. Binapani Dei (1967) AIR 1269

⁹ Russel v. Duke of Norfolk (1949) 1 All ER 109

¹⁰ Board of Education v. Rice (1911) AC 179; Byrne v. Kinematograph Renters Society Ltd. (1968) 2All ER 579

¹¹ John T. Dunlop v. Walter Bachowski (1975) 44 L.Ed.2d 377; Ministry of Law & Justice, Law Commission of India, Reform in Judicial Administration <https://lawcommissionofindia.nic.in/1-50/Report14Vol2.pdf>

¹² S. N. Mukherjee v. UOI AIR 1990 SC 1984

permitted sphere. Intention was never to encourage people to hack the auto-pilot mode. They already had EULA that prohibited using autopilot mode in a country where it isn't made available or modifying the firmware. Thus, no malice can be attributed to them. Furthermore, the Govt. can't merely rely on Aharat Times' leaked memo as it is no credible piece of evidence. ¶ 6

Proportionality Test Not Passed

This test has two prongs- 1. **Balancing Test** which scrutinizes the nexus between the object sought and achieved, 2. **Necessity Test** requires human rights infringement to be the least restrictive alternative¹³. If there is no nexus between the object sought to be achieved and the means deployed to achieve it then the discretionary powers can be quashed¹⁴. ¶ 7

The **ban was excessive** in the sense that the Govt. did not issue any warnings and instead resorted to the most restrictive option. The discretion was exercised keeping in view of **irrelevant considerations**¹⁵ like the report of Aharat Times and is consequently liable to be declared void. Govt. ignored the fact that vulnerability cannot be fixed until a moment is found when all the drivers are not using the auto-pilot mode. The **Govt. was using the sledgehammer to crack a nut** i.e. the proportionality test is not fulfilled. There is absolutely no nexus between the object sought and the means used to achieve it. ¶ 8

It is humbly submitted before the Hon'ble court that "*where paring knife suffices, battle axe is precluded*"¹⁶, thus the order of ban must be revoked.

¹³ Coimbatore District Central Cooperative Bank v. Coimbatore District Central Coop Bank Employees Assn. (2007) 4 SCC 669, Anuradha Bhasin v. Union of India, (2020) 3 SCC 637

¹⁴ Chintaman Rao v State of M.P. AIR 1951 SC 118; Halsbury's Laws of England (4th Edn.), Reissue, Vol 1(1), para 78

¹⁵ State of Bombay v. K. P. Krishnan AIR 1960 SC 1223

¹⁶ Coimbatore District Central Cooperative Bank v. Coimbatore District Central Coop Bank Employees Assn. (2007) 4 SCC 669

II. Whether Muskla Inc. and Muskla Aharat can be termed as intermediaries under the Section 79 of the IT Act?

A. Muskla Inc. and Muskla Aharat are Intermediaries as they act as mere facilitators of information between servers and Users of M.

An 'intermediary' has been defined in § 2(w)¹⁷ of the Act as “*any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to...*”

This term has belied a narrow construction. Typically, intermediaries are persons who facilitate **the use of the internet.** Interestingly, **the definition of an intermediary includes cyber cafes, and is not restricted to online intermediaries.** Although a disparate range of functions are performed by intermediaries; functions include hosting content, collecting information, information exchange, aggregating information, providing access to the internet etc ¶ 9

In this case, it is to be humbly submitted:

1. The role of Muskla Inc. is to provide access to the Internet for the collection of important critical system data for the operation of M.
2. It merely facilitates the information exchange between M and Servers, and is not involved in acts which take it beyond the domain of § 2(w). ¶ 10

B. Entities are entitled to exemption under § 79 of IT Act, 2000.

There is no bar of § 79(2) on Muskla Inc. or Muskla Aharat

¹⁷ Information Technology Act, 2000, §2(w), No. 21, Acts of Parliament, 2000 (India)

An intermediary could claim safe harbour hinged largely on two factors i.e., **actual knowledge about the unlawful act and compliance with due diligence obligations**. Prior to the 2008 amendment, § 79 of the act provided immunity to ISP only with respect to liability arising from the IT Act, 2000 and there was absolutely no protection from liability under other legislations. With the amendment of 2008, the definition of the intermediary under § 2(w) was broadened. ¶ 11 §79 was also amended to create a safe harbor provision for intermediaries. Reversing the burden of proof, an intermediary, now, would not be liable for any third-party information, data or communication link made available or hosted by it. Borrowed from A.12 of the **EU Directive**, means that the ISP should be providing services of a passive or automatic nature hence acting as a mere conduit to the information.¹⁸ The EU Directive¹⁹ stresses particularly on the absence of modification of the information contained in the transmission as a condition precedent to availing the safe harbour. ¶ 12

Neither the IT Act, or the Rules delineate what an intermediary can do, but §79 only talks about what they can't do to benefit from the exemptions. They don't restrict the activities of the intermediaries.²⁰ ¶ 13

Muskla Aharat is an intermediary and not barred by § 79(2)²¹ as:

1. It does merely perform the role of selling the cars, providing add-on features from the website and as a conduit of information to users, and prospective buyers of M.

¹⁸ Chinmayi Arun, "Gatekeeper liability and article 19(1)(A) of the Constitution of India" NUJS Law Review (2015)

¹⁹ E-Commerce Directive 2000/31/EC Article 12(2).

²⁰ Snapdeal v. Godaddycom llc & ors. CS(COMM) 176/2021

²¹ Information Technology Act, 2000, §79(2), No. 21, Acts of Parliament, 2000 (India)

2. It is not involved in any initiation of information, selects the receiver and does not perform any modification in the information.
3. Muskla Aharat stores information and act as a conduit on behalf of Muskla Inc, and the users, and prospective buyers of M. It is a passive intermediary, satisfies the test of § 79(2)(a) & 79(2)(b). There has been no account of lapse on the part of Muskla Aharat with regard to due diligence and other such guidelines in force at the time. ¶ 14

Muskla Inc is also an intermediary under §79 and not barred by §79(2) as:

1. Muskla Inc. merely act as an **automatic** information conduit which allows the firmware and the Users of M to interact with the servers of Muskla Inc.
2. The acts of intervention on part of Muskla Inc. as in the case of the accident leading to an unfortunate and arbitrary ban, is an emergency procedure necessary to monitor and control the flaws in the technology.
3. The due diligence u/S. 79(2)(c) is also satisfied as:
 - a- EULA clearly provides for the penalty on the usage of HDA features.
 - b- Not every post in social media claiming to be a hack **can be monitored** in absence of sufficient information.
 - c- The necessary time to fix vulnerabilities is usually months due to inherent systematic requirements and cannot be done away with. ¶ 15

Muskla Inc. and Muskla Aharat have not acted in any manner to be barred by §79(3)

§79, para (3)(a)²², adds that the intermediary does not conspire, partake in, or abet the commission of some criminal act and subsection 3(b) places a premium on due diligence and real information. As noted, the Supreme Court in *Shreya Singhal v. Union of India*²³ judgment, read down “actual knowledge” when there is a court order or notification from an appropriate government authority.

It is to be humbly contested:

1. Muskla Inc. and Muskla Aharat have sufficiently passed the norms of due diligence under the Act and subsequent Rules.
2. Muskla Inc. and Muskla Aharat does not have any actual knowledge of the vulnerabilities and have acted expeditiously in the face of difficulties in fixing vulnerabilities while cars around the world are connected to the servers.
3. Muskla Inc. has a system in place to deal with **and has acted expeditiously** to take over the controls once the vulnerability has been flagged by the social media team. ¶ 16

In regards to the above submission, it is requested before the Hon'ble Court that Muskla Inc. and Muskla Aharat both are Intermediaries as per the definition of S.2(w), and S.79 of the IT Act, 2000 and there is no bar under either clause (2) or clause (3) of Section 79. ¶ 17

III. Whether Muskla Inc., Muskla Aharat can claim any immunity from prosecution under the Penal Code and Motor Vehicles Act?

It is humbly submitted that the liability on anyone can only be imposed when the offence has been committed by it/him or in the instance of the presence of involvement and hence Muskla Inc. and Muskla Aharat are immune under both PC of Aharat and MV Act. ¶ 18

²² Information Technology Act, 2000, §79(3), No. 21, Acts of Parliament, 2000 (India)

²³ *Shreya Singhal v UOI* AIR 2015 SC 1523

Muskla Aharat and Muskla Inc. can't be held Criminally liable under Penal Code of Aharat

The Indian case law lacks any confirmation of a single model of corporate criminal liability. Thereby the Indian Courts have ascribed to a **combination of vicarious and identification doctrine** without drawing the necessary distinction. These are mere ad-hoc decisions depending more on the facts of each case rather than a set jurisprudence²⁴. There is a full-fledged debate about the corporation to be included by the provisions of the PC, whereas § 11²⁵ of the PC of Aharat includes corporations but practically the provisions have been considered too alien to include corporations be it punishment by imprisonment because in such cases what the court can impose is penalty which can sufficiently be imposed by civil law and it strikes at the very need of corporate criminal liability as **V.S. Khanna** has suggested that corporate civil liability serves the purpose adequately and thus attaching criminal liability to corporations ought to be given up²⁶. Even the criminal procedure code cannot be applied to the corporation as it requires the presence of the accused which is not possible in the case of a corporation except for representation by a lawyer. ¶ 19

Under the PCA there is no provision regarding corporate liability for the offences prescribed. There is a whole dilemma about prohibiting the attribution of criminal liability on a corporation in cases of **mandatory imprisonment** as punishment or mens rea. It must additionally be remembered that whereas an **individual has complete control over his own acts, a company cannot have the same level of control** for the acts of its employee. This capability of exercising control over one's

²⁴ Sumit Baudh, 'Corporate Criminal Liability: A review of TATA-ULFA NEXUS', 10 The Student Advocate 45

²⁵ Indian Penal Code, 1860, §11, No. 45, Acts of Parliament, 1860 (India)

²⁶ V.S. Khanna, Corporate Criminal Liability: What Purpose Does It Serve? 109 Marv L Rev 1477 (1996)

acts is an essential precondition for assigning liability under criminal law as is evident from the acceptability of insanity as a complete or partial defence to the commission of an offence.²⁷ ¶ 20

This concept of **vicarious liability appears good for civil remedies**, because the employee may not be able to compensate the victim, while the corporation can. But the question is whether the same standard can be applied to criminal prosecution. It is one of the basic principles of criminal jurisprudence that a person can be punished only for his such act or omission, which is punishable. A company has an independent existence as a person. If therefore, it was to be punished, there ought to be evidence that it has committed the crime. To bring home the charge against the corporation, it must be proved that the rash or negligent driving was done under the instructions of the corporation. The standard of proof required will be beyond a reasonable doubt. If indeed, the complaint alleges a role for the corporation in the commission of the offence, the corporation can be arraigned; but it, perhaps, cannot be conceived that a transport company will instruct its driver to drive negligently.²⁸ In the present case it wasn't Muskla which gave instructions to AI to drive negligently but it was the result of AI's algorithmic arrangements. ¶ 21

The doctrine of vicarious liability, in the light of S.K. Alagh case²⁹, foreign to the scheme of IPC, 1860. The PC of Aharat is in Pari Materia to that of India so the same concept applies to it.

The Court of Appeal³⁰ concluded that, unless an identified individual's conduct, characterizable as gross criminal negligence, can be attributed to the company, the company is not, in the present state of the common law, liable for manslaughter. A non-human defendant cannot be convicted of the crime of manslaughter by gross negligence in the absence of evidence establishing the guilt of

²⁷ Souvik Kr. Guha and Abhyudaya Agarwal, 'NOTES AND COMMENTS: CRIMINAL LIABILITY OF CORPORATIONS: DOES THE OLD ORDER NEED TO CHANGE?' (2008) 1 (2) NUJS Law Review 329

²⁸ Samsung India Electronics Pvt. Ltd. v. State of Assam, 2012 SCC OnLine Gau 270

²⁹ S.K. Alagh v. State of U. P (2008) 5 SCC 662

³⁰ Attorney-General's Reference (No. 2 of 1999) [2000] 3 All ER 182

an identified human individual for the same crime. In the present case it is the AI which is responsible for the casualty and no individual as such, the algorithms work themselves in cases of advanced technology and hence there is non-human defendant in this case whose act can't be attributed to any agent of the company or the company itself, Aharat Inc. and Aharat India both are immune from prosecution under PC of Aharat. ¶ 22

It is humbly submitted that the casualty occurred due the negligence of the owner cum driver who herself hacked the system of the car without any authorisation from the company and then tricked the car by putting her gloves on the steering instead of hands as required by company even during auto-pilot mode. By doing so she breached the EULA she signed with Muskla Inc. while purchasing the car which specifically disclaimed all liabilities if the driver/owner used auto-pilot mode where it is not made available. Considering all the relevant facts and principles of laws laid down the scope of liability of Muskla Inc. is sufficiently done away with. ¶ 23

Sec. 81 Penal Code of Aharat talks about the immunity provided to a person for the commission of an act which is otherwise an offence under the code if the act was done to prevent a higher degree of danger. In this case, AI worked in a particular way to save the children which could have been present in the school. To apply this particular article, it is not required to assess if the judgement of the person accused became successful but what is to be judged is the reasonability of the judgement. The move of the AI was sufficiently reasonable. ¶ 24

Automated Vehicles are out of the purview of MV Act

It is humbly submitted that The **MV Act doesn't deal with automated cars**. And hence this field is immune from MV Act. No manufacturer can be made liable under the MV Act, which does not even allow the testing of self-driving vehicles on Indian roads. ¶ 25

As the Act provides that only a **person above the age of 18** who has a **driving licence** is permitted to drive a vehicle, the rule itself becomes redundant for autonomous vehicles. Further section 109 of the Motor Vehicles Act states, every motor vehicle shall be so constructed and so maintained as to be always under the **effective control of the person driving the vehicle**, which is not the case when it comes to autonomous vehicles. ¶ 26

MV Act includes in itself the principle of No-fault liability as recommended in *Manushri Raha v. B.L. Gupta*³¹, the same got incorporated by an amendment³² to the Act. Hence the driver of a motor vehicle is strictly liable for accidents, under the MV Act. Applying this statutory provision, it is aptly clear that the driver will be responsible even when the auto-pilot mode is active in the automated cars due to the principle of strict liability. ¶ 27

The definition of driver from **art. 4 para 1 Geneva Convention and art. 1(v) Vienna Convention** requires that a **driver is a person**. Although this does not seem to exclude a legal person, given the current state of the discussion, the time of writing of the Conventions and the overall structure of the Conventions – namely, a legal person with a driving permit³³, a fit physical and mental condition of a legal person³⁴ – by person in this context a human is meant. Therefore, neither the manufacturer of the automated vehicle nor the company that programmed the software can be classified as the driver of the automated vehicle within the meaning of the Conventions.³⁵ ¶ 28

It is most respectfully submitted that in the present case, the manufacturer has been made liable for abetment u/s 188, MVA. As held in *Behurst v. Crown Cork & Seal USA, Inc*³⁶ robots act more

³¹ *Manushri Raha v. B.L. Gupta* AIR 1977 SC 1158

³² THE MOTOR VEHICLE (AMENMENT) ACT ,2019, No. 32 of 2019

³³ Art. 41, Vienna Convention on road traffic, 1968; Art. 24 The Geneva Convention on road traffic, 1949

³⁴ Art. 8 Para. 3 Vienna Convention on Road Traffic

³⁵ Vellinga, NE 2019, 'Automated driving and its challenges to international traffic law: which way to go?', *Law, Innovation and Technology*, vol. 11, no. 2, pp. 257-278

³⁶ *Behurst v. Crown Cork & Seal USA, Inc*, Civil No. 04-1261-HA

autonomously, it may be more **difficult for humans to predict the robot's actions**, and thus to act with the appropriate precautions so as to make them liable, the manufacturer of AI has no control over it, but the AI itself make arrangements in the form of multiple permutations and combinations. Hence to make the manufacturer which has no control over the system is not good either law or in sense. Accident in the present case Miss Kim acted negligently by taking unauthorised access to auto-pilot mode. As has been held in *Naoshir Cama*³⁷, there is **no scope of manufacturer's liability if the driver was involved in negligent driving**. Hence Ms. Kim is solely liable in the present case and the manufacturers are sufficiently immune under MV Act. ¶29

IV. If the above issue is answered positively, then can Dusk and Dhanraj also claim immunity from prosecution, given that they are just officers of Muskla Inc. and Muskla Aharat respectively?

It is humbly submitted that neither Dusk nor Dhanraj can be prosecuted in the present case in their personal capacity, for the acts of the company.

The principle of the corporate veil is well settled in the field of law, according to which the shareholders or office bearers of a company can't be held liable for the acts of the company, first introduced in *Salmon v Salmon*³⁸. The **piercing of a corporate veil is not a regular practice** but a thing of rarity which comes into effect when the office bearer/agent/employee of the company acted for his own interest. The piercing of the corporate veil isn't automatic as has been pronounced in multiple judgements. ¶ 30

³⁷ *Haji Zakaria v. Naoshir Cama* AIR 1976 AP 171

³⁸ *Salomon v A Salomon & Co Ltd*, [1896] UKHL 1

In Palmer's case³⁹ it was held that it should be emphasised that the **rule in *Solomon's case* is still the principle** and the instances of piercing the veil are the exception. ¶ 31

In **O'Brien v. Dawson**⁴⁰ where the issue was raised regarding the personal liability of the director Mr. Doyle for a breach of contract by the company, the court observed that a company 'cannot act in its own person for it has no person' so it must of necessity act by directors, managers and other agents. The company, if it were guilty of a breach of its contract, in this case, acted through its director the respondent Doyle, but it is neither 'law nor sense' to say that Doyle in the exercise of his functions as a director of the company combined with it to do any unlawful act or become a joint tortfeasor. Again, it is equally fallacious to assert that Doyle knowingly procured the company to break its contract. The acts Doyle were the acts of the company and not his personal acts which involved him in any liability to the plaintiff. In the present case, the CEOs were not at all involved in this negligence which resulted in casualty because-

- a- The driver herself put her in danger by using the restricted auto-pilot mode and then tricking the system by putting gloves on the steering.
- b- The driver herself consented to the risk and so it's totally a case of volenti-non-fit-injuria
- c- The auto-pilot mode is a system completely based on AI which works as per its own technological arrangements hence the CEOs can't be held liable for the negligence. ¶32

In the present case, the **casualty occurred due to the negligence of the driver** who hacked the system of the car without any authorisation from the company and then tricked the car by putting her gloves on the steering instead of her hands as required by the company even during auto-pilot

³⁹ Riggs v. Palmer, 115 N.Y. 506 (1889)

⁴⁰ O'Brien v. Dawson, [1942] HCA 8

mode. The CEOs of both Muskla Inc. and Muskla Aharat are nowhere involved in any of way to the negligence and the present is totally a case of case *volenti non-fit-injuria*. ¶ 33

If a servant is **acting bona fide within the scope of his authority** and causes the breach of a contract between his employer and a third person, he does not thereby become liable to an action of tort at the suit of the person whose contract has thereby been broken.⁴¹ The same concept applies in criminal cases and as the CEOs of both companies did nothing which caused any harm to the company or with the intention of doing wrong to anyone. Both of them can't be impleaded.

The principle of attribution is to be applied to implead a company for the act of its employees and not the other way round as the court stated “to impute a criminal intention to the company on account of the criminal intention of its '**alter ego**' and **cannot be applied in a reverse** scenario to make the directors liable for offences committed by the company.”⁴² ¶ 34

The **law around lifting of the corporate veil** has been crystallised around six principles formulated by **Munby, J. in Ben Hashem case**⁴³ The six principles are as follows⁴⁴:

- 1-Ownership and control of a company were not enough to justify piercing the corporate veil;
- 2-The court cannot pierce the corporate veil, even in the absence of third-party interests in the company, merely because it is thought to be necessary in the interests of justice;
- 3-The corporate veil can be pierced only if there is some impropriety;
- 4-The impropriety in question must be linked to the use of the company structure to avoid or conceal liability;

⁴¹ Said v Butt, [1920] 3 KB 497

⁴² Sunil Bharti Mittal v. Central Bureau of Investigation, AIR 2015 SC 923

⁴³ Ben Hashem v. Ali Shayif, 2008 EWHC 2380 (Fam)

⁴⁴ Rakesh Mahajan v. State of U.P., 2019 SCC OnLine All 4766

5-To justify piercing the corporate veil, there must be both controls of the company by the wrongdoer(s) and impropriety, that is use or misuse of the company by them as a device or facade to conceal their wrongdoing; and

6-The company may be a "façade" even though it was not originally incorporated with deceptive intent, provided that it is being used for the purpose of deception at the time of the relevant transactions. The court would, however, pierce the corporate veil only so far as it was necessary in order to provide a remedy for the particular wrong that those controlling the company had done.

Officers or employees of limited companies are protected from personal liability unless it can be shown that their actions are themselves tortious or exhibit a separate identity or interest from that of the company so as to make the act or conduct complained of their own.”⁴⁵ ¶ 35

“Vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect⁴⁶. Statutes indisputably must contain provisions fixing such vicarious liabilities⁴⁷. **Neither the PC nor MV Act provides for the vicarious liability** of the office bearers in the present case. In furtherance, no wrongdoing has been done by the CEOs to do anything unlawful. **The company wasn’t established with wrong intent**, Muskla is a well-established company having business all over the world established with a **bona-fide intent of doing business and not some façade**. It is a cutting-edge technology company based out of Silicon Valley in the USA. Melon Dusk is a charismatic technologist and a social media icon and his company is not a cloak used by its CEOs with the mere intent to deceive people. Thus, to implead Mr. Dusk & Mr. Dhanraj being officers of Muskla is not good either in law or in sense.

⁴⁵ Finlayson J.A., ScotiaMcLeod Inc. v. Peoples Jewellers Ltd, 1995 CanLII 1301 (ON CA)

⁴⁶ Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd, 2021 SCC OnLine SC 806

⁴⁷ Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668

PRAYER

Wherefore in light of the facts stated, issues raised, arguments advanced and authorities cited, the Petitioner-Appellant most humbly and respectfully requests the Hon'ble Supreme Court of Aharat to adjudge and declare that:

1. The Government of Aharat's ban order prohibiting M's firmware and M's app to access its server maintained by Muskla Inc within Aharat is not valid under Sec. 69A of the IT Act.
2. Muskla Inc. and Muskla Aharat are intermediaries under Sec. 79 of the IT Act and will receive exemptions u/sec. 79.
3. Muskla Inc., Muskla Aharat can claim any immunity from prosecution under the Aharat Penal Code and Motor Vehicles Act.
4. Mr. Dusk and Mr. Dhanraj have immunity from prosecution.

AND/OR

Pass any other order it may deem fit, in the interest of Justice, Equality and Good Conscience.

All of which is most humbly and respectfully submitted.

Sd/ _____

Counsel for Petitioner-Appellant