

**3rd SURANA & SURANA AND CUSAT SCHOOL OF LEGAL STUDIES,
Dr. A T MARKOSE MEMORIAL TECHNOLOGY LAW
MOOT COURT COMPETITION- 2022**

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MOOT PROPOSITION

Joint Organizer



Surana & Surana International Attorneys

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School of Legal Studies, CUSAT



Muskla and Others v Union of Aharat

Republic of Aharat (**Aharat**) is an island country in the Indian Ocean with beautiful beaches and picturesque mountains. Given the proximity to Aharat, it adopts a constitution and laws of India.

Muskla is a cutting-edge technology company specialising in e-mobility based out of the Silicon Valley in the USA. Muskla's CEO and founder Melon Dusk is a charismatic technologist and a social media icon with several business interests in hi-tech and mobility. Dusk has a history of engaging in social media both positively and negatively. He has created controversies due to his reckless tweets and over-enthusiastic support favouring artificial intelligence.

Muskla intends to launch its electric car, '**M**' in the Republic of Aharat, which deploys auto-pilot technology, enabling fully autonomous driving provided that the driver keeps her hands on the steering wheel. It takes complete control of the vehicle and only lets the driver take back the vehicle's control once they engage the steering wheel around. It is known in the industry as a level 4 high driving automation.

Muskla was in talks with the Government of Aharat to pilot the technology in Aharat. However, the Ministry of Roads & Transports has not yet issued any approvals to use the auto-pilot technology in Aharat. The Government responded that the (i) Motor Vehicles Act needs to be amended from a road safety and transport perspective and (ii) they are not confident that the auto-pilot technology based on AI, which is used by **M** extensively, relies on the US data for driving pattern and on-road behaviour of drivers and pedestrians and therefore is unsuitable for narrow and crowded roads of Aharat, which is similar to countries such as India.

Muskla realised that **M**, an iconic car, has enough demand in Aharat even without the auto-pilot technology. Therefore, Muskla incorporated Muskla Aharat, a private limited company in Aharat, a subsidiary of Muska Inc. Delaware and launched **M** in Aharat without the auto-pilot technology. The auto-pilot mode is usually sold as a separate add on for USD 5000 for 500 Hours of drive time, and that option to purchase auto-pilot mode was disabled on Muskla's Aharat website.

M will also have an embedded 4G SIM card, which will communicate to Muskla servers in the USA, using mobile network operators (**MNOs**) network provided by the MNO. Without first connecting to the internet, the **M's** cannot be driven.

The launch event in the year 2020 was attended by Dusk and drew in massive publicity in Aharat. During the launch event, Dusk mentioned on-stage, with a wink that:

"I know some of you are disappointed, you know- that you cannot use the Auto-pilot in Aharat. But if you want, you can always try, you know, different ways."



This led to speculation in Aharat that Dusk was referring to a known vulnerability in M's firmware, which allows users with intermediate knowledge to make a hack and get access to auto-pilot technology for 30 mins.

Dusk tweeted a few days later that:

“I meant that people could drive M's in other countries. We take this vulnerability seriously. The problem with fixing it is that we also need downtime for fixing it. We cannot apply a patch for fixing it until we find a moment where all drivers in the world are not using auto-pilot since the auto-pilot servers are in the USA.”

Within six months, Muskla fixed this vulnerability. However, within a few months, another vulnerability was found in 2021, which let the users hack and use the auto-pilot technology for 45 mins.

The launch of M in Aharat was a big success despite the hefty price tag of USD 100,000, around 40,000 models of M now ply the roads of Aharat. While the drivers could purchase the car from Muskla Aharat, they also entered into an End User License Agreement (EULA) with Muskla Inc., which governed all online services and use of the firmware. Muskla Inc. disclaimed any liability from auto-pilot use and said as follows:

“If you are using autopilot, from a country where it is not made available, you violate the terms of this agreement, and your use of M could be suspended. Making any changes, modifications or changes to the Firmware is explicitly prohibited, and we reserve the right to suspend your online account with Muskla.”

Kim Veersingha is a well-known social media influencer based in Aharat. She purchased an M car in Aharat in 2021. In 2021 November, she flaunted on her social media accounts that she managed to extend auto-pilot enablement to up to 2 hours after finding an innovative hack. Interestingly, Dusk also liked this post on Twitter. Kim was also very thrilled about it and thanked Dusk specifically for it by posting a screenshot of this.

In the early morning of 1 March 2022, Kim used the commonly known hack to get access to auto-pilot mode while on her way to work. She had interestingly figured out another hack and decided to experiment with it on the same day. She used an adhesive on her rather heavy gloves and placed them over the steering wheel of M, which meant that she could hack M, to think that she had put her hands on the wheel. She did a live video of this on Instagram and Facebook and claimed that she made M go to level 5 and could now even work while M is taking care of stressful driving. "Future of Work and mobility" she exclaimed. While she was shooting this video, her car was speeding around 100 KM per hour, the allowable speed limit on that highway. While the live video



was going viral, Muskla Aharat's social media team immediately tagged this to the tech support team of Muskla US.

Within 10 minutes of this, Kim's car met with an accident. A lorry in front of Kim's M braked suddenly, and to avoid a collision, Kim's M suddenly applied its breaks. Given that it was under the impression that Kim was holding the wheel, it waited for a few milliseconds for Kim's input on whether to turn the steering wheel to right or left. Due to the sudden breaking, Kim's phone hit her head very hard, and she was under a sudden shock and could not react. It steered right after a few milliseconds and rammed into a shop, killing two people. While deciding to turn right, it avoided turning left based on the information that a school was on the left side.

While the Muskla US tech support team intervened to take over the car remotely, it was too late.

Kim was hospitalised with minor injuries. Criminal proceedings were initiated against Kim for reckless driving.

This event became international news. Major TV channels and newspapers criticised both Kim and Dusk. Dusk, upon hearing this news, immediately tweeted saying:

"No technology is stupid-proof."

Aharat media was immediately on Dusk's case and claimed that he was calling people of Aharat stupid. They criticised his hypocrisy due to his previous actions, including his behaviour on media which encouraged hacking of M's to gain access to auto-pilot.

Dusk deleted his tweet. Muskla Aharat immediately did a press release condemning reckless use of auto-pilot technology. It said that it is seriously looking into the cases of drivers using the auto-pilot technology using the vulnerability. It claimed that as per the logs of Kim's M, it took a right turn to avoid accidentally hitting any school children. Within 10 days, it fixed the vulnerability. It released another statement that it has now implemented geo-tag to avoid any non-white listed country users (such as from Aharat) from using autopilot mode.

Aharat Times did a newspaper report, claimed that out of the 40,000 models sold so far, at least 70% of those cars, atleast once used auto-pilot. They leaked an internal memo which, showed that Dusk himself was aware of this and silently encouraged the use of the auto-pilot feature to gather more data from Aharat to perfect the autopilot before the final launch. Social media users continued a frontal attack on Muskla and Dusk claiming that the M, turned right to save school children of a school, which was shut on account of a local holiday. They claimed that Muskla Aharat was using non-reliable data for autopilot in Aharat.



On 15th March 2022, the Government of Aharat banned the (i) internet service providers and telecom service providers, from making available the servers of M firmware or M's Apps in Aharat, (ii) app stores from making available M App in Aharat, under section 69A of the information technology act. This essentially meant that all the M cars in Aharat were rendered useless since the vehicles would not work without first authenticating the user credentials online. Besides quoting section 69A, it did not mention any other reasons for the ban.

President of Musers association, who is a corporate lawyer, wrote an OPED on Fint business newspaper which thanked Aharat government for making his USD 100,000 M just an air conditioned music pod to listen to music from a thumb drive. He criticised that the one errant user cannot be the reason to ban a new age high tech service and that Aharat was becoming anti-technology. His OPED received mixed reactions online with some supporting him and many criticising him for being elitist.

In the meantime, a criminal case was registered against Dusk and the CEO of Muskla Aharat, Dhanraj Pillai, under 304A of the Penal Code. They were also booked under section 188, read with 184, 190 and 198 of the Motor Vehicles Act. Dhanraj was arrested on March 18th while Dusk's whereabouts were unknown. The government of Aharat intends to press for Dusk's extradition to face trials and is planning to initiate the proceedings for the same.

Muskla Inc. and Muskla Aharat moved the Supreme Court to revoke the ban on M because it was arbitrary and done without hearing them. M Users association of Aharat also joined the petition.

Muskla Inc., Dhanraj, Dusk and Muskla Aharat also moved to the high court to quash criminal cases registered against them. However, the high court rejected their petition. They have now moved the Supreme Court challenging the High Court's Order.

The Honourable Supreme court of Aharat has an unusual move, combined both the matters and will be hearing it on ...October, 2022. The questions related to the maintainability have been decided and the Supreme Court will consider the following questions:

- 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?
- Whether Muskla Inc. and Muskla Aharat can be termed as intermediaries under the 79 of the IT Act?
- Whether Muskla Inc., Muskla Aharat can claim any immunity from prosecution under the Penal Code and Motor Vehicles Act?



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- 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?

Note:

- The Constitution and laws of the Republic of Aharat are in *pari materia* to the laws of India.
- This moot proposition is a work of fiction. Names, characters, businesses, places, events and incidents are either the product of the author's imagination or used in a fictitious manner. Any resemblance to actual persons, living or dead, or actual events is purely coincidental.
- The decisions of the organizers shall be final and binding.

The moot proposition is drafted by Adv. Nikhil Narendran.