

**MOOT PROBLEM**

1. The Republic of Enduras was under the colonial power of the United Kingdom and became independent in 1947. The legal system is based upon Common Law still forms part of the Republic of Enduras. Neighbouring the Republic of India and having cordial relations with India, the laws of the Republic of Enduras are *in pari materia* to that of India. Some of which include: The Narcotic Drugs and Psychotropic substances Act, 1985; the Indian Penal Code, 1860; the Prevention of Immoral Trafficking Act, 1956; Prevention of Child from Sexual Offences Act, 2012 etc.
2. Williander (hereinafter Willy, aged 22), is a medical student of the Delf Institute of Medical Sciences, Delf Province. He has been a stud during his college days, a charming personality at college often considered as flirtatious and always found in the company of girls. He has been into several relations and has had his own share of break-ups and patch-ups. After a series of relationship failures, Willy became sceptical about long-term relationships and became interested only in temporary relationships as he thought, in these relationships he got girls who would expect zero benefits. Willy though not an addict, was always in the habit of consuming drugs. When pressure starts mounting in the college, especially the days before examinations, he would often be found being high on *marijuana* (stash). He was an alcoholic as well. Redwane (also aged 22 years), who is also a medical college student, Willy's classmate and his confidante. Both of them used to often share their mutual interests in women and most of their conversations would be pertaining to each other's relationships and their sex lives. Redwane, a day scholar, was habitual to getting *escorts* to the 2BHK, rented apartment he had taken near the Delf Institute of Medical Sciences.
3. On a normal day, while sitting in the Institute' canteen, talking over a cup of coffee, Redwane shared with Willy that off-late, he has been using the dating *app* called as *Love-Finder* (an online dating *app* similar to *Tinder*). The *Love-Finder* helps one find some casual sex with 'no strings attached'. According to the *Enduran Times*, 'Many men in the Republic of Enduras who use a smart-phone are registered on the *app* and are looking for some 'quick hook-ups'. Redwane started using the *app* and was dating a girl named Gloria whom he met on *Love-Finder* but the relationship did not last beyond the first-date.
4. Impressed by Redwane's introduction about *Love-Finder*, Willy who had a Samsung Galaxy *One Nxt* installed the *Love-Finder App* for the first time and was amazed with the girls' profiles he saw on *Love-Finder* (Willy at times used to think that, it was just a matter of swipe right).

When Willy started using the *App*, he was interested in few girls and had dated few of them, none of them, however, matured into a serious relationship. Also that at no point in time Willy had become sexually intimate with the girls he had dated using *Love-Finder*.

**THE DATE WITH MS. A (NAME CHANGED TO PROTECT HER IDENTITY)**

5. Within months of using *Love-Finder*, Willy came into contact with, Ms. A (the victim herein-name not-disclosed to protect her identity *See* below), whose Tinder profile read as follows: Ms. A, Student, St. Peter's High School, Harlam, The Republic of Enduras; Relationship Status: Single; Date of Birth: 02-10-1997 (19 years old). Willy was instantly attracted to Ms. A when he saw Ms. A's profile picture and showed interest by liking her profile (swiping right). Ms. A reciprocated by liking Willy's picture and soon both of them started messaging each other in *Love-Finder*, *Whatsapp*, and started making video calls from *Facebook Messenger*.
6. It is to be noted that at the time of coming into contact with Willy, Ms. A was just 16 years old, and a higher secondary student at St. Maria's Higher Secondary School, doing a major in Biology. She had in fact, misrepresented her age, posed as an adult and had created Facebook and Tinder profiles where she had stated that stated she was 19 years old. In this relationship, Willy was really interested and committed to Ms. A and made her feel special and Ms. A, considered Willy precious and true at heart. However, at no point in time during the continuation of the relationship, Ms. A made a disclosure that she was just 16 years old and not 19 years as it is stated in her profile. She once made an attempt to tell Willy, but never did. Ms. A would frequently meet Willy, and while doing so would lie to her family saying that she has *remedial classes at her school* over at her friend's place for studying and would end up hanging around Willy. The both would meet at coffee shops, public parks and would take some good photographs of each other and themselves. In his Samsung Galaxy *One Nxt*, Willy had usually kept a picture of himself and Ms. A, where both of them are seen kissing each other.

**THE LE COCO RESORT PARTY – CHRISTMAS EVE**

7. It was Christmas Eve and Redwane, who came to know about an 'unlimited liquor and food party'(also alleged but not proved 'drug party') being held at the *Le Coco* Resort, located alongside Delf's East Coast Road (ECR) on account of Christmas Eve (A Premium Entry to the party along with a Private Room was fixed at £600-Inclusive of 'unlimited food and

liquor'). The invite to the party was sent *via* Whatsapp to Redwane from a member of a 'closed Whatsapp group' in which he was a member. The invitation was titled "**Rock-on Christmas Eve 2016: Have a Blast**". Redwane had proposed to Willy that he is very much interested in attending the party and urged Willy to join. Redwane also suggested that Willy could bring Ms. A along with him for the party.

8. Redwane, now a pro in using Tinder, had just started using the new feature of the *Love-Finder app* called 'Commune' (similar to Tinder's 'Social'). The *Love-Finder app*'s Commune, enables the user who has activated this feature to message multiple matches in *Love-Finder*, see *where they are going* and ask *if they would join you at the party, and connect with them once you get there*. Redwane has forwarded the party invite that he got, to one of his match in *Love-Finder* Helena, told her about the party and invited her to join the party as well. Helena's whose *Love-Finder* profile read that 'she is a St. Dominique University's Student doing an honours in English Literature. It also had the following quotes as a description about herself, "*I am a nice, friendly and fun loving girl. If you want to spice up your free time, I am the right person*". Redwane contacted her and to his surprise he was told that she would be ready to join but Redwane would have to pay £300 to her for her to accompany him throughout the party. Redwane was not too late to grasp what Helena was hinting at and had soon agreed to the proposal. Helena assured Redwane that she would be meeting him at the party venue and would reach there on her own. Astonished by what Helena just told him, he started to see Helena's profile in detail and in her 'Photos Album' titled 'Bahamas Beach' found six photos (*The Love-Finder app allows a user to keep six photos*) of Helena wearing *bikinis*. Attracted sexually, seeing Helena's photos, Redwane told to himself that 'he was not stupid enough to waste so much money (£300) on Helena'.
9. Meanwhile, The Delf City Police, had received a tip-off that certain illegal activities like substance abuse, prostitution (involving an illegal sex racket), and gambling are likely to take place at the party had arranged for two trap-witnesses Mr. Albert and Ms. Yasmine, who would pose as a couple and would enter the party venue paying the necessary fees. As scheduled, the party commenced at around 9:00PM at the *Le Coco* Resort and for the party Willy had come with Ms. A. Also present at the venue, were, Redwane, Helena and Stella (aged 23, whom they met at the party).
10. Approximately at around 11:00 PM, a police team led by Mr. Danish, entered the resort and conducted a search upon the Resort's premises. While searching Room No.17 of the Resort,

the police found Willy, Ms. A, Redwane, Helena and Stella, nude in an inebriated state and were allegedly being involved in some sexual act that seemed to be an ‘orgy’. All the **five** of them were arrested and taken to custody. From the Room No.17, liquor bottles, condoms, mobile phones which contained ‘pornographic material’ (*See below*) were recovered. A seizure memo of the same was made and signed by witnesses including Albert and Yasmine.

11. During the enquiry, it was revealed to the police by Ms. A that her actual age was 16 and that she had indeed misrepresented her age in the *Love-Finder* profile and insisted that she talk to her parents immediately. This came as a shocker to Willy and the others as none of them knew she was a minor. This revelation shocked Mr. Danish, who was investigating the case. He intimated the parents of Ms. A, Mr. & Mrs. Fleming. The Flemings totally ignorant what Ms. A had done, made a written complaint against Willy for dragging their minor-daughter into the relationship and involving in acts of ‘aggravated sexual assault’ against Ms. A. The next day, Ms. A, was sent to the Delf City Medical College for medical examination and preliminary treatment. in accordance with the Government guidelines (Similar to the *Government of India’s Guidelines & Protocols for Medico-Legal Care for Survivors/Victims of Sexual Violence*. The medical examination showed that the victim was ‘sexually violated’.

The entire saga led to the following FIR’s being filed:

- 1) FIR NO.321/2016, registered against Willy, Redwane, Helena and Stella for getting involved in ‘lewd and obscene acts’ by performing an orgy;
- 2) FIR bearing No.121/2016 was registered against Willy, Redwane, Helena and Stella for the offence of ‘sexual assault on a child’;
- 3) In the FIR bearing No. 718/2016 Redwane was booked for the offence of ‘prostitution’ whereby Helena is booked for ‘soliciting prostitution’.

After the arrest, medical examination and subsequent investigation, the charge sheet was filed and the case was committed for trial. At the trial of the four accused in the respective crimes mentioned above, **all or any** of the following situations are pertinent to note:

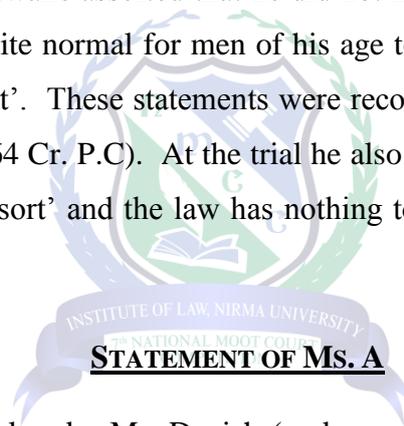
#### **VIDEO RECORDING OF SEXUAL ACTIVITY**

12. Willy’s phone was seized from the above said Room No.17 and was sent to the Central Forensic Sciences Laboratory (CFSL) and a video recording was extracted. This video recording is the only evidence that had shown all the accused including Ms. A, getting involved in a ‘group

orgy'. There is no other evidence of the accused getting involved in group sex except for this video recording. The trial court, while perusing the video, did not ensure the compliance of the conditions pertaining to the production and admissibility of electronic evidence (similar to section 65B, Indian Evidence Act), but still went ahead holding it against the accused.

**REDWANE'S STATEMENT**

13. While in police custody, Redwane was produced before a Delf City's Magistrate and to the Magistrate, he confessed that it was him who had floated the idea of a 'group orgy' thinking that it is perfectly legal between adults when the same is consensual. He also denied that he had prior knowledge about Ms. A's Age and it was only an act of good gesture inviting her to the party and had no other motive. He further added that he had acted on the presumption "all the members of the orgy were consenting adults who were eighteen or more than eighteen". With reference to Helena, Redwane asserted that he did not have any 'intention' of soliciting prostitution and that it was quite normal for men of his age to use apps like *Love-Finder* for dating girls with their 'consent'. These statements were recorded by the Magistrate (under a provision similar to section 164 Cr. P.C). At the trial he also pleaded that, the alleged sexual act took place in a 'private resort' and the law has nothing to do with something happening within 'four walls'.



14. The statement of Anny was taken by Mr. Danish (under a provision similar to Section 161 Cr.P.C) in the presence of her parents Mr & Mrs. Flemming. In her statement, she admitted that she had misrepresented her age in the Tinder profile without realizing its consequences. After meeting Willy, she had 'truly' fallen in love with him and wants to share her future with him. Her statements were the same throughout all the proceedings. She testified that she was sexually attracted to Willy, but never had any fetish towards group orgy. It was Redwane who had mooted out the idea of having a group orgy. Willy though was reluctant earlier, started persuading me for this.

**STATEMENT OF MS. HELENA:**

15. Helena's statement was recorded by Mr. Danish (under a provision similar to Section 161 Cr.P.C), wherein she had stated as follows:

“Studying isn’t cheap so I decided to take up escorting part-time as the easiest way to make some quick money and subsidise my education. There is nobody at her home, except her ailing father who could help me with my education. I also have the additional burden of taking care of my father and his medical expenses. When I had made up my mind to do escorting, *Love-Finder* made me gain access to a wide database of men who would be interested in me. To these men whom I meet in Tinder, I always make it clear that I am an escort. I have also given a brief description about me in my *Love-Finder* profile. Men understand me by this description of me. *Love-finder* helped me find men who would pay for sex. All the men I have met on *Love-Finder* solely want to meet for sex. They don’t want to date. Dating is not attractive for them. Hence, I charge £60 for 15 minutes, £80 for 30 minutes and £100 for an hour. I make so much money that I have rented an apartment at *Jean d’Arc* one of the prime localities in Delf as this would help me more in gaining men who are economically better. At the trial, she pleaded that *Love-Finder* is a ‘social app’ having ‘terms and conditions’ of use by adults and no law in the Republic of Enduras prohibit the use of Tinder and using it does not mean that one is ‘soliciting prostitution’.

**TESTIMONY OF ‘TRAP WITNESSES’:**

16. The two trap witnesses, Albert and Yasmine, testified throughout all the proceedings that they had seen all the five people taken to custody by Mr. Danish boozing and having fun. They also had seen Willy and others enter the Room No.17 of the *Le Coco* Resort but was not sure as to what happened after that. Therefore, suspecting something going on inside the room, Albert and Yasmine had signalled Mr. Danish.

**STATEMENT OF MS. STELLA:**

17. Statement recorded by Mr. Danish (under a provision similar to Section 161 Cr.P.C). The essence of the statement is as follows: “Stella, is a student of psychology at the University of South Enduras. She had not known the others prior to the *Le Coco* party. Since it was Christmas Eve and all her friends had gone home for vacation. She was all alone and was looking for avenues to spend time and that’s when she came across the party invite which was forwarded to her by some friend. She was interested in it and so she had gone to attend the party. Also when she was using *Love-Finder* to find some company, she came to know about yet another user, Redwane, being present in the same locality. She met Redwane and Helena at the party along with Willy and Ms. A. They all boozed and Redwane was quick to propose

the idea of having a ‘group orgy,’ as this according to him would be ultimate fun. Though she hesitated in the beginning, however, agreed to the proposal which she felt was ‘fascinating’. She also thought having group orgy was perfectly legal in the country. Even at the trial she contended that, the alleged sexual activity happened within four boundaries, in a private property and the police or the state had nothing to do with this. The very act of group sex did not violate ‘community standards of obscenity’ for which she is being prosecuted.

**STATEMENT OF WILLY:**

18. Willy had maintained his innocence throughout all the proceedings. For the offence of aggravated sexual assault, he had also produced an expert, Dr. Evgenia, to prove that he is not a paedophile. By this he asserted that he acting in ‘good faith’ believed Ms.A’s age to be 20 years. Both during the investigation and a the trial for the ‘aggravated sexual assault of the child’, he maintained that had he known that Ms. A was under 18 years, he would not have entered into any sort of relationship as he knew that the same was illegal. He pleaded before the court that, since it was the fault on the part of Ms. A, he should not be held criminally responsible.
19. After the appreciation of evidence in the respective proceedings, Willy, Redwane Helena and Stella are convicted for the offence ‘sexual assault’ of Ms. A and were sentence to imprisonment for a period of three years. In the case of ‘obscenity by involving in orgy’ all of them were convicted and sentenced to three months imprisonment. Additionally, Redwane is convicted to 2 years imprisonment for the offence of ‘prostitution’ and Helena is convicted to six months imprisonment for soliciting prostitution.
20. Willy, Redwane, Helena and Stella (individually and jointly) approach the High Court of the Delf Province by way of a criminal appeal seeking the annulment of all the above said convictions. In addition to this, the Society Vigilante Group (SVG) also filed a case before the Delf High Court, for imposing a ban on the *app* which on the guise of being a dating *app*, acts as a platform for soliciting prostitution and that more and more *hookers* have resorted to *Love-Finder* to solicit clients and the same has led to degradation of the moral values of an orthodox society. In this regard, SVG approaches the High Court to impose a ban on *Love-Finder* and also pleaded to direct the investigating authorities to register a FIR against Mr. Berny Thomas, the CEO of *Love-Finder* End. Inc. holding him responsible for the alleged criminal activities committed using *Love-Finder* as a medium.

21. The SVG asserted that there are profiles advertising sexual services frequently- approximately one out of 25 or 30 swipes. The SVG also alleged that innocent youth are being deceived to use the *app* and there is a sprout in the HIV cases after more and more people started dating using *Love-Finder*. Responding to these allegations, *Love-Finder*'s spoke person, Jason Nathaniel, in a press meet, proclaimed that, "use of Tinder for purposes of solicitation of prostitution is against the app's *Terms of Service*, which forbids commercial solicitation of any kind including 'advertising or soliciting any user to buy or sell any products or services not offered by the Company'". He also added that, whenever a user's profile is being reported for its offensive content, *Lover-Finder* usually has the policy of shutting it down. But unfortunately, the company does not have any effective mechanism to check the number of such profiles. Before the High Court of the Delf Province, the parties are permitted to raise appropriate issues for argument.

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*\*\*\* This is a hypothetical problem drafted by Mr. Varadharajan Udayachandran, Assistant Professor, Institute of Law, Nirma University exclusively for use in the 7<sup>th</sup> ILNU National Moot Court Competition-In Association With The Chambers Of Mr. K.T.S. Tulsi, 2017. The problem is not intended to depict any actual situation. Any relation with any actual situation is mere incidental and not intentional. The participating teams are required not to contact the author and the same will lead to disqualification.*