



AURO LITIGIOSUS COMMITTEE

## 4<sup>TH</sup> AURO NATIONAL MOOT COURT COMPETITION 2018

It was 9'o clock on a Sunday night, 27<sup>th</sup> November 2016, when a journalist named Logan came upon the scoop of his life. The 45-year-old, in his pyjamas at this hour, was sitting in his home at Gotham, a city in the country Neverland.

Neverland is a pluralistic society. In Neverland, religious scriptures, traditions as well as customary practices determine the ways of living. All aspects of life including marriage, divorce, succession, adoption, and even trading transactions were extensively dealt with by these scriptures and practices. Communities which differed on grounds of religion, caste, and creed, all lived together. Neverland had been colonised for over 200 years which had led to a change in their original ways of living and acting – ‘law became a guiding light for them’. Nevertheless, the scriptures and religious practices continued to have an upper hand over law.

For years Logan had been writing a popular blog about internet security, analysing threats of consumer data from big companies around the world. As his weekend came to an end, Logan was tipped off about a more sensational breach: an anonymous informant had emailed him a list of links, directing him to caches of data that had been stolen from servers at an Neverland

Firm called FML (Fevid Media Life). FML is a registered company under the Companies Act, 2013. It ran a notorious, widely publicized web service called ‘Affinity Foiled’, a dating site since 2010, with an explicitly admitted intention of helping married people have affairs with each other. “Life is short, have an affair”, was the slogan used by ‘Affinity Foiled’.

When Logan received his tip off, ‘Affinity Foiled’ claimed to have a membership of 20 lakhs, all of them assured that the use of this service would be “anonymous”, “100% discreet”. Only that Logan, and everyone in possession of the cache of data was now looking at the real names and credit card details of ‘Affinity Foiled’ members. He was looking at street addresses and postal codes, and the contacts made by members to other members, thus disclosing potential affairs between identifiable persons. Logan found a list of phone numbers of senior executives of ‘Affinity Foiled’; the personal number of even the CEO, Bruce Wayne, was listed.

A few hours later, in the west of Neverland, a contentedly married man, Steve Rogers woke up and went through his mundane morning routine, coffee, email, skimming through the news online.

Steve is a renowned lawyer working in the Supreme Court of Neverland. He got married to Stephanie Hunt in 2006 under the Hindu Marriage Act. Stephanie is an artist and a social worker who works with an NGO ‘Justice League’. Justice League works for the welfare of

women. Stephanie earns a considerable amount by exhibiting and selling her paintings and donates much of her earnings to the NGO she works with.

Steve and Stephanie had met while pursuing higher education at the University of Neverland, although they were in different departments. They got acquainted to each other during events held at the University; they developed a mutual liking. As they began to know each other more, their liking changed to love. After graduating they started to live-in. They got married to each other after living-in for seven years, excluding their college relationship of four years. They were Hindus but believed that societal traditions and customs were obsolete. Their thinking was modern and not traditional. Therefore, when Rogers' parents asked for a grandchild they tried to evade the conversations since they both were not interested in being burdened with parental responsibilities at this point in their careers.

Logan's story about a hack of servers at 'Affinity Foiled' had been quickly picked up by prominent media agencies. It was a lead item on every news page that Rogers browsed while skimming through the news that morning. "Infidelity site hacked", he read; a group calling itself the Impact Team claimed responsibility and threatened to release a full database of customers of 'Affinity Foiled'. More than 15 lakh people all over Neverland were affected. Rogers could say that there were many authentic adulterers who used the site because he was one of them. Rogers said that he'd taken some elementary precautions. He'd registered on 'Affinity Foiled' with a secret email address and chosen a username 'Captain America' through which he could not be personally identified. He had uploaded a photograph though because he had enough knowledge about adultery websites to know that "if you don't put a photo up you won't get many responses". But the picture he had chosen was small in size and he was wearing sunglasses in it.

Whenever Rogers used to visit the site he used to be very careful. If he wanted to log on to 'Affinity Foiled' to talk to women he would only do so on a work laptop he kept in his office which was in his home. Rogers had installed six internet browsers on the laptop, and one of these browsers could only be loaded via an external hard drive – and this was the browser he used to arrange his online affairs. This browser functioned much like the Tor, and it would ping his IP address through a host of masking proxies, so that the original IP address is never logged in the access database of the website he visits. So, Rogers was irritated and surprised to realise on that Monday morning, that his elaborate precautions had been pointless. He tried to think of ways in which he could be exposed if the hackers went through with their threat to release 'Affinity Foiled's' customer database.

Subscriptions to the site were arranged so that women could use the service for free while men needed to pay a monthly fee. This was meant, in theory, to encourage more women to register and thus ensure a balance in the membership numbers. Rogers had joined 'Affinity Foiled' after reading about it in a newspaper. He recalled getting a deal as a new signee in December, 2015, and being charged something like ₹500 for his first month. He used his credit card to pay. The profile name and email address he'd chosen were no threat, and the photograph deniable too, "but your credit card," Rogers realised, "is your credit card." At this time a lot many men across Neverland were probably thinking the same thing – your credit card is your credit card!

On 12 January, 2017, 'Affinity Foiled's' entire customer database was indeed put online. Politicians, pundits, military members, civil servants, celebrities – these and hundreds of other public figures were found listed on the membership list. Thousands of formerly anonymous men, suddenly had their private details spilled out on the internet. Details varied according to the caution an individual had exercised when signing up to the site, and

to their luck, owing to their gender, men were more exposed because of 'Affinity Foiled's' requirement that they use their credit card to make the payments.

Logan, with some prescience, wrote a blog advising sensitivity: "There's a very real chance that people are going to overreact," he wrote. "I wouldn't be surprised if we saw people taking their lives because of this."

A few suicides were reported. Peter Parker a pundit in Louisiana and friend of Rogers was amongst them. Speaking to the media after his death, Peter's wife said that he had discovered his name on the list before he killed himself. She said she would have forgiven her husband, and so too would have God. "God's grace in the midst of shame is the centre of the story for us, not the hack. My husband knew that grace, but somehow forgot that it was his when he took his own life."

During the early weeks of the crisis FML, the company behind 'Affinity Foiled', stopped responding in any sort of adequate way to calls and emails from its terrified customers, including from Rogers. Countless marriages were at risk, relations at stake, and parentage of children in question; and people teetered on appalling decisions. FML made superficial adjustments to the homepage of its website, at some point deciding to remove the graphic that described 'Affinity Foiled' as "100% discreet".

Consequently, the masses who were sent spinning by the leak could not turn to FML for advice. Most of them could not easily turn to their partners either. Someone had to fill this enormous absence, hear out the grievances. Tony Stark, a mild-mannered technology consultant from Krypton, a city in Neverland, had not expected it would be him. Tony, who is in his late 30s, has his expertise in internet security; he teaches courses in it. As a side project, since 2013, he has run a free web service, Himtoo.com, that allows concerned citizens of the internet to enter their email addresses, go through a simple process of verification, and then learn whether their personal information has ever been stolen or otherwise exposed in a data breach.

Only this time, Tony recalled, desperate, difficult and extremely personal messages began arriving in his inbox almost immediately after the leak. Mostly there were men who emailed him – the paying customers of 'Affinity Foiled' who erroneously believed that Tony, having sifted through the leaked data, might be able to help them. Could he somehow scrub their credit cards from the list? Tony described the tone of these emails as fearful, illogical, and "emotionally distraught".

Rogers confessed to Tony his reasons for subscribing to 'Affinity Foiled' in the first place: "I joined 'Affinity Foiled' one night bored, honestly... Curiosity..." He volunteered to him what he'd done, or nearly done, or hadn't done at all. He described what it was like to learn about the leak: "The worst morning of my life... sheer fear... sick and foolish... I can't work or eat or sleep and on top of that I am trying to hide the fact that something is wrong from my wife..." He pleaded to Tony who could do nothing for him. He apologised to him, a stranger. He wondered if he should admit everything to his wife and the people who mattered to him, and he wondered what that might cost him.

Then there was the jarring moralising tone in the messages the Impact Team put out: "Learn your lesson and make amends, live by our Great Country's Ideals" was the Team's advice to the affected users of 'Affinity Foiled's' who were left devastated by its leak. Impact Team said it wanted to stop the users of 'Affinity Foiled' because what they were doing was immoral and went against Neverland's traditions, practices and scriptures. Members and former members of 'Affinity Foiled' began to receive anonymous extortion letters. Rogers received several: "Pay us in seven days", he was threatened in one email, "or you

know what will happen! You can inform authorities but they can't help you. We are professionals." Rogers was unnerved by the emails but ignored them. The world, in small increments, got shabbier.

The various blogs written by Logan, stirred interest of one and all into the leaks. One hacker named AFLolz had spent hours and hours digging through 'Affinity Foiled's database after the leak, going out of his way to draw attention to his most salacious findings. He made some of the findings that he'd subsequently publicized through an AFLolz Twitter feed and an AFLolz website. He noted with some pride that in one of his deep searches he'd come across emails that suggested members of 'Affinity Foiled's staff were themselves having extramarital affairs. He posted screenshots of incriminating personal messages, and several magazines and newspapers picked up on his findings and ran stories. That night Rogers found that screenshots from his secret name Captain America's profile had also come up.

AFLolz might not have been involved in the 'Affinity Foiled' hack, but he was certainly involved in giving it an impactful afterlife. He was asked what had motivated him – Disapproval? Revenge?

"Because it was very humorous," he said eventually. "And very interesting. No mission statement, just looking for 'lols'."

As he sat in his home office, reading developments about the 'Affinity Foiled' hack on the news sites, Rogers wondered if his wife was doing the same; he was keenly aware of his own culpability. He did not think he had anyone else to blame but himself. Who was he really going to blame? 'Affinity Foiled'? "I think it would probably be a little naive of me to expect high standards from a company that was promoting itself as a meeting point for people looking for adulterous affairs. It's a bit like lending money to your drug dealer and expecting him to pay it back." Rogers simply accepted what was going on and watched, with a numb fascination, as the crisis rolled on.

Rogers's situation was complex and real. As life partners, he and his wife fit really well. They were very good friends. They used to go out together on dates whenever they got time from their busy schedules. They performed their religious duties together. They used to socialise together. They used to visit each other's parents as well as take care of each other's needs. They were living a happy life together. But still Rogers felt there was a missing dimension in their relationship. Over all these years they had become good partners but the element of love had got lost somewhere. 'Affinity Foiled' had been Rogers' way to try to account for that missing dimension. It was not always, a particularly satisfying way though.

He wasn't even sure that every woman he had spoken to during his time on the site was genuine. Sometimes, when the conversation had a flavour of "classic soft porn", he had wondered if his correspondents were employees of the company, typing out standard stuff from scripts.

The likely truth, as suggested by internal documentation made available by the leak, was even stranger. Coders at 'Affinity Foiled' had created a network of fake, flirtatious chatbots to converse with men like Rogers, teasing them into maintaining their subscriptions with

the site. It was for this reason that commentators began to doubt whether ‘Affinity Foiled’ had as many subscribers as they advertised, though Fevid Media Life, ever since the leak, claimed to have a healthy and even growing user base.

However, Rogers had been corresponding online with someone real through ‘Affinity Foiled’. Like him, she too was in a stable companionable marriage, lacking only a certain dimension. She lived in the north of Neverland; she had children. She and Rogers shared tastes in books and spoke a lot on the phone too but they had never met in person. Sometimes they discussed their partners and their respective marriages, other times they steered from the subject. There was a sexual element to the affair, Rogers said, but they had never slept together. It was a relationship that was valuable to Rogers.

“If you’re going to chat a woman up in a bar, or at a work conference, or wherever,” Rogers had told his friend Peter, “then: ‘Hello, I’m married’ is not a good opening line. Whereas if you’re going on to a website like ‘Affinity Foiled’– they already know. It’s a bit ridiculous to talk about honesty in terms of these relationships. But they actually start with honesty. Because you’re not pretending to be something you’re not.”

‘Affinity Foiled’ was thought of by Rogers like many others, as a way of having a “safe affair” – safe in the sense that he did not think it likely that he’d be found out by his wife; he had his special browser, his secret email ID. It was also safe in the sense that he didn’t think anyone would get hurt. Since the leak happened, Rogers had not used ‘Affinity Foiled’ nor spoken to the woman who stayed in northern Neverland. His wife, as of February 2017, found out about his affairs and had a talk about it with her friend Jarvis who was working in the NGO with her. Stephanie and Jarvis discussed the problem and after a long discussion and debate thought about the problem from a larger perspective. Stephanie even told Jarvis about Peter’s suicide; she told her about the threat to commit suicide that she received from Rogers when she had confronted him by telling him that she would leave him. But it was not just Stephanie who had suffered this; other married couples have suffered as well.

However, after thinking over the issue, Stephanie decided to go ahead and file for a divorce in the lower court; on the basis of the evidence of the leaked chats by AFLolz amounting to cruelty and on the ground of infidelity, the lower court granted her divorce.

An appeal was filed by Steve Rogers in the High Court, which challenged the decision of lower court of granting divorce on the ground of considering the hacked chats as valid evidence since essentially these were actions done in private sphere of life, and their public access was a violation of his right to a private life. He also filed a writ petition for a mandamus directing the Government to take down the servers hosting, flashing or re-publishing the leaked data.

Considering the plea, the High Court first granted the mandamus, and then also reversed the judgement of lower court and declared that divorce would not be granted and the hacked chats were unethically extracted, and contained amorous content serving prurient interests, and were therefore non-est in the eyes of law, and could not be considered as valid evidence.

## 4<sup>TH</sup> AURO NATIONAL MOOT COURT COMPETITION 2018- MOOT PROBLEM

An Appeal by Special Leave is now filed in Supreme Court by Stephanie, challenging the High Court decision on the validity of evidence presented in the lower court. She also wrote to the Attorney General to challenge the decision in the writ petition, which was acceded to and the Government of Neverland also filed an Appeal by Special Leave challenging the decision in the Writ Petition.

In a parallel move, Steve Rogers sued 'Affinity Foiled' for damages. The lower court ruled in his favour on the basis that there was a contract for consideration, to keep the information confidential; the court ordered damages to be paid to Rogers by Affinity Foiled.

'Affinity Foiled' filed an appeal to the High Court against the decision of the lower court relying on the judgment in Writ Petition that "amorous purposes would not lead to valid contracts" and the consideration paid was for doing something illegal and hence it was a void contract. The High Court however disagreed with this obiter from the previous decision, and upheld the order of the lower court saying that first, the contract was enforceable, and from another viewpoint, 'Affinity Foiled' had every reason to protect private information received in a fiduciary capacity, even without a contract, and thus 'Affinity Foiled' was liable to pay the damages.

Aggrieved by the judgment of the High Court, 'Affinity Foiled' filed an appeal in the Supreme Court challenging the decision of High Court.

Considering the issues at hand, both these petitions were clubbed together under the Supreme Court Rules, 2013 and the Supreme Court decided to hear the matter in March 2018. The laws of Neverland are pari materia to the laws of India. In addition, the EU law on Privacy and Data Confidentiality is treated to be enforceable so long as it is not in conflict with the laws of Neverland.

### ISSUES:

- **Can internet infidelity amount to cruelty and adultery as a ground for divorce filed by Stephanie?**
- **Should the hacked internet chats by AFLolz be considered as relevant evidence?**
- **Can High Court grant a mandamus seeking removal of data from websites?**
- **Can compensation claims be made against a non-state entity only in an enforceable contract or under common law as well?**

(The list of issues provided is not exhaustive in nature and the participants have the liberty to include as many issues as they desire).

All facts in the moot problem are fictitious and any resemblance to any incident or person, if any, is not intended, but merely co-incidental and should be relied as it is.

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