

# Lex Lexicon Journal

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## REDUNDANCY OF THE NO-PREGNANCY CLAUSE IN MODERN INDIA

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### ABSTRACT

*Actress Kareena Kapoor Khan is reportedly going to continue filming for her movie during her pregnancy, and her 'baby bump' is to be veiled using VFX. This news has brought to light the controversies that have followed a No-Pregnancy Clause (NPC) for actors in movie contracts. The clause prohibits conceiving of a child by an actress during the subsistence of the movie contract with the production house, the non-observance of which would result in a breach of the contract, thereby paving way for compensation or cancellation of the contract. Its legal implications are wide, the frontrunner being the obvious discrimination against sex at the workplace. The paper attempts to bring out the invalidity of the NPC in India by examining its position in reference to existing laws under contract, labour laws and the Constitution as well as several case laws. Its baselessness is further proved by use of special effects by production houses in films which have ousted the conventional need of such provisions in the contract. The paper, thereby, suggests a truly just and egalitarian work space for artists in the film industry which is in consonance with law in its true sense.*

## INTRODUCTION

Kareena Kapoor Khan's recent announcement of her pregnancy<sup>1</sup> came as an exemplar marking a shift in tide in the workplace scenario for female actors. Nearly six years ago, Kareena Kapoor was offered the contract for the movie 'Heroine' by director Madhur Bhandarkar as a replacement of fellow actress Aishwarya Rai Bachchan when the director learned of her pregnancy.<sup>2</sup> Even though the same cannot be verified, Kareena Kapoor Khan was rumoured to have been replaced by Deepika Padukone in 'Goliyon Ki Rasleela Ram-Leela' on account of not signing a 'no-pregnancy clause'.<sup>34</sup>

A remarkable change was noticed when it was reported that Kareena Kapoor Khan, who had nearly hundred days left of the shoot for 'Laal Singh Chaddha', would continue to work for the movie and her baby bump would be hidden by using special effects or VFX.<sup>5</sup> This topic, amidst congratulatory notes, was in major speculation when the public questioned whether the actress would be able to continue work for a movie in her state of pregnancy, the shooting of which was slightly postponed owing to the pandemic,<sup>6</sup> and, perhaps, covered

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<sup>1</sup>India Today Web Desk, *Kareena Kapoor pregnant, expecting second child with Saif Ali Khan*, INDIA TODAY, (Aug 12, 2020), available at: <https://www.indiatoday.in/movies/celebrities/story/kareena-kapoor-pregnant-expecting-second-child-with-saif-ali-khan-1710449-2020-08-12>.

<sup>2</sup> Bharati Dubey, *Should The No-Pregnancy Clause Be Included In An Actress' Contract?*, MID-DAY.COM, (Mar 22, 2014), available at: <https://www.mid-day.com/articles/should-the-no-pregnancy-clause-be-included-in-an-actress-contract/15168070>.

<sup>3</sup>Rituparna Roy Deshpande, *Actresses Replaced Thanks to 'No Pregnancy Clause'*, IDIVA, (Sep 26, 2012), available at: <https://www.mid-day.com/articles/should-the-no-pregnancy-clause-be-included-in-an-actress-contract/15168070>.

<sup>4</sup>HT Agencies, *Did Kareena lose Ram Leela due to no pregnancy clause?*, HINDUSTAN TIMES, (Sep 26, 2012), available at: <https://www.hindustantimes.com/bollywood/did-kareena-lose-ram-leela-due-to-no-pregnancy-clause/story-eyXAXajNtWmStUfAQJM.html>.

<sup>5</sup>Pragati Pal, *Kareena Kapoor Khan's Baby Bump To Be Hidden Via VFX In The Remaining Shoot Of 'Laal Singh Chaddha'*, BOLLYWOODSHAADIS.COM, (Aug 24, 2020), available at: <https://www.bollywoodshaadis.com/articles/kareena-kapoor-khan-will-be-shooting-for-lal-singh-chaddha-19993>.

<sup>6</sup>Pinkvilla Desk, *Laal Singh Chaddha: Pregnant Kareena Kapoor Khan to wrap up the shoot of the film in the coming months?*, PINKVILLA, (Aug 16, 2020), available at:

under Paragraph 11 of Form A of The Cine Workers And Cinema Theatre Workers (Regulation Of Employment) Rules, 1984.<sup>7</sup>

What is a no-pregnancy clause in movie contracts for actresses and whether or not there exists in the Indian film industry a concept of ‘pregnancy discrimination’? Does Kareena Kapoor Khan’s recent announcement hints towards a valuable, refreshing revolution in the professional workspace? This paper aims to answer all such questions and mentions few cases of a no-pregnancy clause (NPC) as reported in Bollywood and the varied discourse it ensued, so as to bring out its irrelevance in contemporary times. It establishes the legal position on the clause vis-à-vis law of contract, labour laws and rights under constitutional laws. Further, the paper portrays the role played by technology in cases relating to the film industry and whether, if any, changes sustained by advanced technology could be brought to the contract technology alongside its legal implications.

## **NO PREGNANCY CLAUSE AND ITS PREVALENCE**

An NPC in a contract is a clause prohibiting pregnancy or conceiving a child during the existence of the contract, breach of which would lead to the termination of the employment. The clause affects women actors, specifically, who must look a certain type, perhaps a “slender, non-pregnant body” acting as

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<https://www.pinkvilla.com/entertainment/news/laal-singh-chaddha-preggers-kareena-kapoor-khan-wrap-shoot-film-coming-months-556728>.

<sup>7</sup>Central Government made the Rules in exercise of powers conferred by Section 23 read with Section 3 of the Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981, Act No. 50 of 1981.

a “bona fide occupational qualification (BFOQ)”<sup>8</sup> for the role in a film contract and are disallowed from conceiving a pregnancy while the film is being shot and including any other terms of duration that the contract states. Breach of the clause can lead to dismissal of the actor, a claim for damages or any other compensation specifically stated in the contract.

Under this clause, the artist undertakes that she shall not plan pregnancy during the term of the agreement, and that based on such “specific representation of the artist, the producer has agreed to engage her for the role. The artist acknowledges that breach of this representation will cause grave and irreparable loss to the producer.”<sup>9</sup> Though, it is mentioned to be a ‘gender neutral’<sup>10</sup> clause, *prima facie*, it solely affects the female artists.

The object of such a provision is attributed to the trouble revolving shooting such scenes which might pose risk on the health of the pregnant actor, or show a mid-riff which is not in accordance with the script, and cause disturbance in the shooting plan in light of inaccessibility of the actor on the agreed dates, prompting budgetary loss for the producer.<sup>11</sup>

The rationale behind the NPC was stated to be for the woman actors to keep up their appearances to show ‘obligation’ to their work.<sup>12</sup> With the amount of capital involved in the making of the film, costs to remake the film owing to a

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<sup>8</sup>Diane Klein, *Pregnancy Discrimination in Show Business: Tylo v. Spelling Entertainment Group*, UCLA ENTERTAINMENT LAW REVIEW, 4 (2), 1997.

<sup>9</sup>*supra* note 2.

<sup>10</sup>Ayushi Singhal, *Analysing The Legal Viability Of ‘No Pregnancy Clauses’ In Film Contracts*, INDIA LAW JOURNAL, available at: <https://www.indialawjournal.org/analysing-the-legal-viability-of-no-pregnancy-clauses-in-film-contracts.php>.

<sup>11</sup> *Id.*

<sup>12</sup> See Director Mukesh Bhatt’s statement on NPC, Bharati Dubey, *Should The No-Pregnancy Clause Be Included In An Actress’ Contract?*, MID-DAY.COM, (Mar 22, 2014), available at: <https://www.mid-day.com/articles/should-the-no-pregnancy-clause-be-included-in-an-actress-contract/15168070>.

change in this appearance could be hefty, as per movie makers and producers. The renowned film critic Taran Adarsh has said, “I think it’s an important clause (of not getting pregnant) since the budgets are huge and crores of rupees are at stake. Even otherwise, pregnancy can throw the shooting schedule of a film out of gear, resulting in financial losses.”<sup>13</sup> Including an NPC in the contract would exhibit the zeal of the woman actor to be devoted to the work for the amount of time in which the movie was shot, and would bind her to keep the ‘personal’ out of the ‘professional’.

Debate over the moral outlook of many on the hot topic of NPC has been in the frontlines. The first of the many incidents to have sparked controversial standpoints over the clause was in 1993 when Madhuri Dixit was made to sign the clause for Subhash Ghai’s film ‘Khalnayak’ in 1993.<sup>14</sup> The topic was a major polemic when Aishwarya Rai Bachchan, in 2011, left the cast of film ‘Heroine’,<sup>15</sup> owing to which Madhur Bhandarkar reportedly suffered from losses worth crores.<sup>16</sup> Later, in 2014, there was rampant conjecture over Sujoy Ghosh’s film in which Kangana Ranaut was rumoured to have replaced Vidya Balan owing to the latter’s supposed pregnancy.<sup>17</sup>

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<sup>13</sup>Upala KBR, *Does Bollywood need a no-pregnancy clause?*, TIMES OF INDIA, (Jun 30, 2011), available at: <https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/Does-Bollywood-need-a-no-pregnancy-clause/articleshow/9038577.cms>.

<sup>14</sup>*Id.*

<sup>15</sup>*supra* note 2.

<sup>16</sup>Poulomi Ghosh, *Movies or babies? Is this even a question to ask, Bollywood?*, DAILO, (Oct 23, 2018), available at: <https://www.dailyo.in/variety/koffee-with-karan-no-pregnancy-clause-movies-or-babies-is-this-even-a-question-to-ask-bollywood/story/1/27376.html>.

<sup>17</sup>*supra* note 2.

Actress Hema Malini upheld the need for an NPC in modern times for limited durations, giving the reasoning that, ‘Back then, film shoots would go on endlessly and it was not always possible for an artist to wait for the producer to finish shooting.’<sup>18</sup> Actress Shabana Azmi supported this stand, saying, ‘Insurance companies in Hollywood insist on many clauses, including a no-pregnancy to safeguard their huge monetary investments. It's not sexist at all.’<sup>19</sup>

Actress Sonam Kapoor commented that, ‘It makes sense ... It's professional.’<sup>20</sup>

While many came out in support of the clause, there have been some who have not capitulated to it. Mahesh Bhatt called out the clause for its ‘foolishness’, maintaining it was a “lady’s privilege”.<sup>21</sup> Sushmita Sen opined, ‘I would show the producer the door if he or anyone would tell me that [there is] a time span when you cannot get pregnant, I wouldn't tolerate that. If you do not believe that I am professional, don't sign me, and if you believe that I'm a professional, don't question my professional integrity and tell me about my personal life.’<sup>22</sup> Producer Ramesh Taurani assented to letting an actress ‘give importance to her personal life’, enunciating that ‘work is centered around the rapport between the concerned people, and contracts are secondary.’<sup>23</sup>

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<sup>18</sup>*Id.*

<sup>19</sup>*Id.*

<sup>20</sup>The National staff and agencies, *Sonam Kapoor: ‘A no-pregnancy clause makes sense’*, THENATIONAL.AE, (Apr 3, 2014), available at: <https://www.thenational.ae/arts-culture/sonam-kapoor-a-no-pregnancy-clause-makes-sense-1.453370>.

<sup>21</sup>*supra* note 13.

<sup>22</sup>Zakia Uddin, *Sushmita Sen slams ‘no pregnancy’ clause movie contracts*, DIGITAL SPY, (Jul 17, 2011), available at: <https://www.digitalspy.com/bollywood/a327776/sushmita-sen-slams-no-pregnancy-clause-movie-contracts/>.

<sup>23</sup>*supra* note 2.

With opinions, to each their own, subjective variation can occur. Yet, there must be concrete discussions to check for its legal viability, and whether it has become irrelevant, as a new decade encroaches?

## **LEGAL VALIDITY OF NPC**

In modern days and age, it is important to critique the position of a no-pregnancy clause in relation to law. Thereby, it is imperative to view the clause in light of the existing provisions in law of contract, labour law and constitutional law.

### **A. LAW OF CONTRACT**

The Indian Contract Act, 1872<sup>24</sup> ('Contract Act') cites the ingredients for when a contract becomes voidable by nature.<sup>25</sup> Under Section 19A, when consent to an agreement is caused by undue influence, the contract is voidable at the option of the party upon whom such undue influence was asserted. A situation involving undue influence has been mentioned under Section 16 wherein the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and, then, uses that position to obtain an unfair advantage over the other.

Under section 16(2) of the Contract Act, a person is said to be in a position to dominate the will of another (a) where he holds a real or apparent authority over

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<sup>24</sup>Act No. 9 of 1872.

<sup>25</sup>Sections 19 and 19A, Indian Contract Act, 1872.



the other, or where he stands in a fiduciary relation to the other. The production house acts as a real or apparent authority over the female actors, by way of an employer-employee relation, thereby gaining an undue influence over them when the latter is influenced to submit to a no-pregnancy clause for a specified duration.

Employers might use coercive powers from a position of real or apparent authority to induce ambitious or working women to have abortions, rather than themselves accommodating an employee's pregnancy. Actress Hunter Tylo, in the case of **Hunter Tylo v. Superior Court (Spelling Entertainment Group, Inc.)**,<sup>26</sup> was sure that, “this sort of thing [threatened loss of a job due to pregnancy] has forced other actresses to feel the pressure to not have a family and forfeit their pregnancy.”<sup>27</sup> There is a tremendous pressure put on workers in appearance-oriented industries, like the film industry, to avoid pregnancy, so demonstrated by requests to use gestational surrogates. Yet, as discussed in relation to labour laws below, surrogacy is now covered by the Amendment<sup>28</sup> brought of the Maternity Benefit Act, 1961<sup>29</sup> in 2017 which covers ‘commissioning women’<sup>30</sup> under its scope.

Section 23 of the Contract Act encapsulates which objects and considerations in an agreement are unlawful, thereby making the contract void. An agreement, the object or consideration of which is unlawful, cannot be enforced by law.<sup>31</sup>Section

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<sup>26</sup>No. BC149844 (Superior Court of Los Angeles County, CA).

<sup>27</sup>Pam Lambert, et al., *Bringing up Babies: As Clocks Tick and Instincts Prevail, Stars Single and Married are Heeding the Nesting Urge*, PEOPLE, Jul 8, 1996.

<sup>28</sup>Act No. 6 of 2017.

<sup>29</sup>Act No. 53 of 1961.

<sup>30</sup>Section 3 (ba), The Maternity Benefit Act, 1961.

<sup>31</sup>B V R Sarma, *Lawful objects and considerations under Section 23 of Indian Contract Act 1872 – An analysis*, Articles, MANUPATRA.COM, available at: <http://docs.manupatra.in/newsline/articles/Upload/01CAB3F7-FEF2-47EF-8D1B-AE4A3EB4C2D8.pdf>.



23 creates a limitation on the ‘freedom of a person in relation to entering into contracts and subjects the rights of such person to the overriding considerations of public policy and the others enunciated under it.’<sup>32</sup>Section 23 comprises three things—‘consideration for the agreement, the object of the agreement and the agreement.’<sup>33</sup>

The section encapsulates those objects and considerations to be unlawful which are of ‘such a nature that if permitted, will defeat the provisions on law’. It takes note of the performance of an agreement, by which an attempt is made to entail or seek a transgression of the provision of an enacted law. Since there is no explicit law relating to NPC in contracts, it is fundamental ‘to traverse back to the penultimate champion of law in the country – the Constitution of India—to seek guidance on such matters. In the present situation involving signing of an NPC, the object is unlawful for if it is permitted, then it will defeat the purpose of the fundamental rights undertaken by the Constitution. Scope of the NPC in relation to constitutional law has been covered below in this part.

Furthermore, Section 23 also captures those agreements as unlawful, the object or consideration of which the Court regards as immoral or opposed to public policy. Lord Atkin determined that ‘the doctrine does not extend only to harmful effects; it has to be applied to harmful tendencies. Here the ground is less safe and treacherous.’<sup>34</sup> In the absence of a definition of ‘public policy’ in the Contract Act, the Hon’ble Supreme Court broadened the scope of the term in **Central**

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<sup>32</sup>In Re K.L. Gauba (23.04.1954 – BOMHC) [AIR 1954 Bom 478].

<sup>33</sup>*supra* note 31.

<sup>34</sup>Fender v. St John Milday [1983 AC 1 (HC)].

**Inland Water Transport Corporation Limited and Anr. v. Brojo Nath Ganguly and Anr.**<sup>35</sup> to cover agreements in which the object or consideration is “contrary to (i) fundamental policy of Indian Law; (ii) the interest of India; (iii) justice or morality; (iv) in addition, if it is patently illegal.” Viewing the section alongside the constitutional framework of the country, it is *prima facie* unlawful to include a no-pregnancy clause in the contract to be signed by a female actor, as opposed to a male actor because the clause discriminates against actresses. Moreover, “a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution”<sup>36</sup> and should not come in the decision-making hands of the bosses at work.

## **B. LABOUR LAW**

### 1. Maternity Benefit Act, 1961

The Maternity Benefit Act, 1961<sup>37</sup> is the primary act governing benefits related to pregnancy and maternity in the country. With the introduction of the legislation, job security and employment status of pregnant workers and employees has improved considerably. Unfair termination of contract owing to the pregnancy or a lawful maternity leave stands as a violation to the provisions of the Act.

In **Hunter Tylo v. Superior Court (Spelling Entertainment Group, Inc.)** actress Tylo's pregnancy led to a termination of her contract with the defendant

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<sup>35</sup> (1986) IILLJ 171 SC.

<sup>36</sup> Suchita Srivastava v. Chandigarh Administration [2009 (9) SCC 1].

<sup>37</sup> Act No. 53 of 1961.

for a soap opera. It was questioned whether ‘termination of an actress who becomes pregnant’ an ‘impermissible discrimination on account of sex or pregnancy’<sup>38</sup> The Pregnancy Discrimination Act, which was the legislation referred to in the particular case, established pregnancy discrimination as a ‘form of discrimination on the basis of sex, thereby actionable under Title VII’. Justice Thurgood Marshall, in **Phillips v. Martin Marietta**,<sup>39</sup> widened the scope of Title VII to convey that ‘employment opportunity may be limited only by employment criteria that are neutral as to the sex of the applicant.’<sup>40</sup> Applying this “neutral” judgment in Tylo's case would have required that the expectant father Rob Estes, hired at the same time as Hunter Tylo, be fired for the same reasons that were applied to the pregnant actress.

The recent Amendment of 2017<sup>41</sup> to the Maternity Benefit Act, 1961 adds clause (4) to section 5 to state that a woman who legally adopts a child below three months of age or a ‘commissioning mother’<sup>42</sup> shall be entitled to maternity benefit. A commissioning mother is a biological mother who uses her egg to create an embryo implanted in any other woman. In such a case, whether the woman actor legally adopts or is a commissioning mother, maternity benefits as mentioned under Section 5 shall apply to her. What this amendment ensues is that a female actor may stand in breach of contract of NPC, by extension, if she chooses to become a commissioning mother, or legally adopts a child below the age of 3 months. This limits and challenges her reproductive autonomy even further.

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<sup>38</sup>Supra note 8.

<sup>39</sup>11 F.2d 1 (5<sup>th</sup> Cir. 1969).

<sup>40</sup>400 U.S. 542, 547 (1971).

<sup>41</sup>Supra note 28.

<sup>42</sup>Section 3 (ba), The Maternity Benefit Act, 1961.

## 2. Production houses as ‘shops’ and ‘factory’

It is pertinent to take note of an argument presented at this stage: that production houses are not covered by the term ‘factory, mine or plantation’ under the Maternity Benefit Act, 1961. Yet, judicial precedents have announced that the definition of ‘shops’ under [name of State] Shops and Establishment Act,<sup>43</sup> which is a state legislation differing in some aspects for each state, is ‘a place where systematic economic or commercial activity is carried on.’<sup>44</sup>In **Bangalore Turf Club v. Regional Director**,<sup>45</sup> the court took it upon itself to define shops with regard to ‘sale or purchase of goods or services, and includes establishments which facilitate sale or purchase of goods or services as well.’

Moreover, in **Bengal Motion Pictures Employees Union, Calcutta vs Kohinoor Pictures Private Ltd.**<sup>46</sup>case, the Calcutta High Court declared ‘producer units of cinema industry’ to clearly come ‘within the definition of a factory’ as given under Section 2 (m) of the Factories Act, 1948<sup>47</sup> which is an Act passed by the Central Government. This debases the argument put forward and ensures that the production house is hit by the provisions of the Maternity Benefit Act, 1961.

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<sup>43</sup>E.g., The Delhi Shops and Establishments Act, 1954 (Act No. 7 of 1954), The Bombay Shops and Establishments Act, 1948 (Act No. 79 of 1948), The Andhra Pradesh Shops and Establishments Act, 1988 (Act No. 20 of 1988).

<sup>44</sup>ESIC v. Hyderabad Race Club [(2004) 6 SCC 191].

<sup>45</sup>AIR 2009 SC 2965 682.

<sup>46</sup>AIR 1964 Cal 519.

<sup>47</sup>Act No. 63 of 1948.

### 3. Following ILO conventions ratified by India

India has ratified<sup>48</sup> to International Labour Organization's Discrimination (Employment and Occupation) Convention, 1958 (No. 111)<sup>49</sup> ('the Convention'), in accordance with which, it pledges to put an end to discrimination on the basis of sex in employment contracts.<sup>50</sup> By way of Article 1(2), any 'distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.' In connection to this, a case was filed by two federations against the Government of Qatar and the Qatar Airlines in 2014, in which it was argued that the Airlines discriminated against the air-hostesses and unfairly terminated their contracts.<sup>51</sup> The ILO, in its 105<sup>th</sup> Session, upon hearing the case, considered the NPC clauses in contracts with air-hostesses to be a violation of the Convention.

The case of **Gerdorn v. Continental Airlines**<sup>52</sup> was not about pregnancy but weight restrictions. The question posed before the Ninth Circuit was regarding the permissibility of enforcing weight restrictions for female stewardesses, but it found no such counterpart for weight restriction in its male 'directors of passenger service'. The Ninth Circuit observed that if the positions differed only by sex and not by function, the policy would be discriminatory. Judge Schroeder held that, "whenever an employer applies a rule only to employees in a sex-segregated job

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<sup>48</sup>From date Jun 3, 1960 and in force, available at:

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:102691](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102691).

<sup>49</sup>Adoption: Geneva, 42<sup>nd</sup> ILC session, Jun 25, 1958.

<sup>50</sup>Article 1(1) read with Article 2, Discrimination (Employment and Occupation) Convention, 1948.

<sup>51</sup>Individual Case (CAS) – Discussion: 2016, Publication: 105<sup>th</sup> ILC Session (2016), available at:

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID,P13100\\_LA\\_NG\\_CODE:3284602.en](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID,P13100_LA_NG_CODE:3284602.en).

<sup>52</sup>692 F.2d 602 (9<sup>th</sup> Cir. 1982).

classification and not to other employees, a prima facie case of discrimination has been shown.”

Consequently, on its standing vis-à-vis labour laws, the no-pregnancy clause appears to be prejudiced against female actors. To differentiate on the basis of sex, and in the absence of their male counterparts being subjected to such clauses for the simple reason of anatomy, is a case of discrimination in the workplace. The NPC clause, then, acts in juxtaposition to the labour laws followed in the country. The next part explores its position with regard to the constitutional law.

### C. CONSTITUTIONAL LAW

Under the Part III of the Constitution of India, the Fundamental Rights ensures equal protection of the law within the territory to all persons.<sup>53</sup> It warrants prohibition of discrimination<sup>54</sup> against citizens on grounds of religion, race, caste, sex and place of birth.

In **EP Royappa v. State of Tamil Nadu**,<sup>55</sup> the Hon’ble Supreme Court viewed pregnancy as being an ‘immutable characteristic of married life’. It was held that the provision in the contract which spoke of termination of the air hostess’ employment on her first pregnancy was ‘arbitrary’ in as much as it compelled the air hostess to not have children. Ayushi Singhal<sup>56</sup> put forth the inconsistency in the reasoning behind the decision of the court in the aforementioned case for ceding the contract because of the third pregnancy of the air hostess, as not being in accordance with Article 14, with the rationale being given as ‘population

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<sup>53</sup> INDIAN CONST., art. 14.

<sup>54</sup> INDIAN CONST., art. 15.

<sup>55</sup> (1974) 4 SCC 3.

<sup>56</sup> *supra* note 10.

explosion’, ‘not the incapacity of woman to work during certain months of pregnancy’. This view can be supported by words of the actress Priyanka Chopra, who, abhorring the NPC, said in an interview<sup>57</sup>, ‘If I can’t deliver [with good acting in movies] when I am pregnant, you have the right to terminate my contract. If I can deliver, and you don’t want me to, then I have the right to terminate.’

Adding to these fundamental rights is Article 21 which warrants protection of life and personal liberty. In light of the recent landmark judgement<sup>58</sup> on guaranteeing right to privacy as a fundamental right under Article 21, the Apex Court clarified that the term ‘life’ is inclusive of all aspects which go to making a life meaningful, complete and worth living. The right to privacy is understood, states Aparna Chandra,<sup>59</sup> as ‘protecting individual autonomy by preserving a person’s bodily integrity, as well as her autonomous decision-making capacity.’ Thereby, the right encloses with it an idea that the process of fashioning personal decisions and information shall not be interfered with.<sup>60</sup> Chandra further writes, ‘The legal regulation of gender is perhaps most starkly evident in laws that have an impact on sexual and reproductive autonomy, two issues the Puttaswamy judgment considers to be fundamental: personal choices protected by the right to privacy.’<sup>61</sup>

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<sup>57</sup>Binjal Shah, *Priyanka Chopra was once compelled to sign a no-pregnancy clause*, YOUR STORY, Oct 25, 2016, available at: <https://yourstory.com/2016/10/priyanka-chopra-no-pregnancy-clause>.

<sup>58</sup>K Puttaswamy v. Union of India [(2017) 10 SCC 1].

<sup>59</sup>Aparna Chandra, *Privacy and Women’s Rights*, ECONOMIC AND POLITICAL WEEKLY, Vol. LII No. 51, Dec 23, 2017, p. 46, (last accessed Sep 18, 2020), available at: <https://uniteforreproprights.org/wp-content/uploads/2018/01/privacy-and-womens-rights.pdf>.

<sup>60</sup>*supra* note 59.

<sup>61</sup>*supra* note 60.



There could be other similar cases where pregnancy is not planned but impossible to control, for example, rape. For married women actors, laws that do not give recognition to marital rape (Section 375 Exception 2, Indian Penal Code, 1860<sup>62</sup>; Section 9, Hindu Marriage Act, 1955<sup>63</sup>) can enhance the discordance presented for violating the right to privacy. The legislation in India governing abortion is the Medical Termination of Pregnancy (MTP) Act, 1971,<sup>64</sup> which prohibits abortions unless on certain limited grounds, all requiring the opinion or act of registered medical professionals.<sup>65</sup> Explanation 1 to section 3 articulates that when a pregnancy is ‘alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.’<sup>66</sup> The plurality opinion of the Puttaswamy judgment is considered to have implications which can upend the aforementioned provisions of the MTP Act.

Even so, the question is now being asked: If procreative decisions are truly within the zone of privacy... should it not be the woman’s decision whether or not to abort a child for whatever reasons she deems fit?<sup>67</sup> In the situation that the actress cannot legally abort a pregnancy, matters concerning the NPC become more complicated and worrisome. Unwanted pregnancies, then, would legally act as a breach of contract for an NPC, but are on the part of the female actors, prompts of powerlessness.

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<sup>62</sup>Act No. 45 of 1860.

<sup>63</sup>Act No. 25 of 1955.

<sup>64</sup>Act No. 34 of 1971.

<sup>65</sup>Sections 3, 5, The Medical Termination of Pregnancy Act, 1971.

<sup>66</sup>Section 3, Explanation 1, The Medical Termination of Pregnancy Act, 1971.

<sup>67</sup>Nivedita Menon, *Abortion as a Feminist Issue*, OUTLOOK, (May 12, 2012), available at: <https://www.outlookindia.com/website/story/abortion-as-a-feminist-issue/280902>.

## SHIFT IN TIDE: TECHNOLOGY IN THE FILM INDUSTRY AND ITS LEGAL IMPLICATIONS

In this rapidly evolving tech-savvy world, the film industry takes maximum advantage of special effects<sup>68,69</sup> for the production of the film. For Kareena Kapoor Khan's leftover filming days for 'Laal Singh Chaddha', VFX will be used to conceal the baby bump.<sup>70</sup> Various computer graphics and editing mechanisms were used to disguise Scarlett Johansson's pregnancy in the movie 'Avengers: Age of Ultron'<sup>71</sup> and Gal Gadot's pregnancy while filming 'Wonder Woman'.<sup>72</sup> Similar computer generated imagery has been used to hide pregnancy signs in television series<sup>73</sup> like 'Homeland', 'House of Lies' and 'How I Met Your Mother'.

The question that this development presents for the film industry is: if it is ultimately possible to use advanced technological systems in order to edit out certain appearances (such as a 'baby bump' or development of a mid-riff), then what is the actual requirement of a No-Pregnancy Clause? And if it is deemed to be unnecessary, then it brings conviction in the arguments presented in favour of actors to not be subjected to such conditions in their contract.

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<sup>68</sup>See Gabriel F. Giralt, *The Interchangeability of VFX and Live Action and Its Implications for Realism*, JOURNAL OF FILM AND VIDEO, Vol. 69 No. 1, 2017, p. 3, last accessed (Sep 18, 2020), available at: [www.jstor.org/stable/10.5406/jfilmvideo.69.1.0003](http://www.jstor.org/stable/10.5406/jfilmvideo.69.1.0003).

<sup>69</sup>See Dominic Lees, *Many ways of directing a film: Teaching the 'Modes of creative practice'*, 21<sup>st</sup> Century Film, TV and Media School Book – Volume 2: Directing, Semerdjiev et al, 2019, last accessed Sep 18, 2020, available at: <https://uwe-repository.worktribe.com/output/1492850/many-ways-of-directing-a-film-teaching-the-modes-of-creative-practice>.

<sup>70</sup>Supra note 5.

<sup>71</sup>Zach Johnson, *Scarlett Johansson Required Three Stunt Doubles to Hide Her Pregnancy Curves in Avengers: Age of Ultron*, E, (Jul 17, 2014), available at: <https://www.eonline.com/news/560686/scarlett-johansson-required-three-stunt-doubles-to-hide-her-pregnancy-curves-in-avengers-age-of-ultron>.

<sup>72</sup>Nicole Sperling, *Gal Gadot did reshoots for Wonder Woman while pregnant*, ENTERTAINMENT WEEKLY, (Apr 25, 2017), available at: <https://ew.com/movies/2017/04/25/gal-gadot-wonder-woman-reshoots-pregnant/>.

<sup>73</sup>Jackson McHenry, *How 10 Shows Hid Their Stars' Real-life Pregnancies*, VULTURE, (Mar 15, 2016), available at: <https://www.vulture.com/2016/03/pregnancy-on-tv-hiding-the-baby-bump.html>.

An NPC clause is inserted by film makers for ‘practical reasons’ so as to inhibit financial losses.<sup>74</sup> While editing requires its own bundles of cost, it is an expense that can be foreseen and must be accounted for in the budget of the films. In light of the budding transformations in the field of technology and its proficient use in the film industry, an NPC stands completely incompetent when brought as an argument to substantiate any agreement which takes away the fundamental right of privacy and choice in matters of pregnancy and personal family-planning.

## CONCLUSION

To conclude, law must be interpreted as is relevant to time, and in the absence of explicit precedents in the case of no-pregnancy clauses in contracts with an actor, provisions of law may be construed in a manner so as to recognize the futility, with its obvious corollary – invalidity – of the no pregnancy clause. This is the stand taken when such a clause is viewed in reference to existing contract laws, labour laws and constitutional laws. Furthermore, technological effects involved in movie productions render such clauses superfluous and inessential, if they were deemed to be necessary prior to such advancements. The author concludes by giving the following suggestions as regards the no-pregnancy clause which can be practically applied in the Indian workspace:

1. That no such clauses be inserted to uphold the cardinal law of the country enshrined in the Constitution of India.
2. That production houses must map out their budgets accordingly, so as to reach an estimate of costs involved in case special effects are to be used for some reason.

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<sup>74</sup>*supra* note 13.

3. That production houses must provide an egalitarian workspace for all the staff and personnel involved in a film, so as to be done away with discrimination on the basis of sex. The merit, and not the appearance, of the performing actors must be taken into account.
4. That female actors, like their male counterparts, be given the opportunity to decide and plan for their personal space, without any interference from the workplace.
5. That no one involved in the industry forget about the basic tenets of the law of the country they reside and work in.
6. And finally, that a just, egalitarian society is formed to keep up with the growing expectations of a non-sexist workspace in the coming decades.

The professional domain maintains a spatial distance from the personal, and professionalism requires conditions which need not include no-pregnancy clauses for actors in modern day and times. The clause, in its entirety, is thereby redundant, unnecessarily conservative and dispensable when viewed in the context of contemporary legislations and their implications.