
DIGITAL BOUNDARIES AND RIGHT TO DISCONNECT: SOCIO - LEGAL ANALYSIS THROUGH CONSTITUTIONAL AND LABOUR LAW LENS

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ABSTRACT

What started as a campaign storyline for a commercial brand, named kit kat, has today become a mass movement for private employees. Though ignited in Kerala, this shall consume the corporate sector of the nation as the employers continue to infringe the private spaces beyond duty hours for the sake of their own capitalistic gains. These continuous penetrations have led to a devastating impact upon the mental, psychological, and physical sphere of the employees, as reflected by many research initiatives. Considering this tug of war between individual's Right to Life and Nation's economic aspiration, The Right to Disconnect is the ray of light that can act as a balancing force. But to become a union law, it must overcome its hurdles, which are explored under this article.

Keywords: Right to Disconnect, Inheritance from Constitutional and Labour Law, Personal Space, Fixed working hours, PSWGRC, Economic Development.

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Introduction:

What started as a revolutionary movement in the wake of COVID 19, years later, changed into a source of misery, depression, and life-threatening culture. The Right to Disconnect Bill of Kerala legislature is the manifestation of youths like Anna Sebastian, who died due to work related stress at Ernst and Young. Sadly, the nation has been blindly marching towards becoming the world's largest economy by heavily relying on ethos of professional commitment, given by profound and indigenous entrepreneurs like Infosys founder Narayana Murthy that are found to be stressful, overburdening and exploitative by many research initiatives², thereby, affecting overall spheres of human existence that in itself violates the settled fundamental rights and labour protections offered via a series of ever evolving labour legislations in India. The bill, presented by Chief Whip, Dr. N. Jayaraj creates a vacuum of uncertainty, for example, it does not explicitly provide for what means and includes "disconnect" as a human right, guaranteed to every workman. For this bill to become a national milestone for a uniform legislation throughout the country, it must overcome such hurdles at the micro level, otherwise it shall have destined fate like France, who first introduced such legislation but the stakeholders could not reap its benefits due to the lack of clear application of guidelines and difficulty in enforcement as there were no penal provisions for non-compliance. Debates have also surfaced as to whether treat this as a fundamental right or a mere legal right as the same has been indirectly protected by several codes of labour statutes.

Meaning and Evolution: from Europe to Indian Labour Codes:

In simple terms, Right to Disconnect can be termed as an employee's entitlement to disengage from any kind of employment related matters beyond agreed terms of contract of service. Allowing employees with sufficient bargaining power to determine their terms of employment even beyond stipulated work hours i.e. whether to answer work related calls and including other modes of communications like e- mails, Google meets, zoom calls, online conferences etc. It marks a shift from the "always on work" culture or the 24/7 availability trend that were popularly used as indicators of professional commitment in the rat race of corporate world in the wake of digital globalisation via technological advancement of AI³. The right to disconnect also provides the much required legal protection from predictable hire and fire of private

² Anoushka Sawhney, "50% of employees in India work at least 49 hours per week, shows data" Business Standard, Apr. 24, 2024.

³ Facundo MartinChiuffo, "The 'Right to Disconnect' or 'How to Pull the Plug on Work' " SSRN (2019).

employees or large scale layoffs that will follow, once individuals start to claim this right of disengagement to escape the chains of capitalistic agents.

The right to disconnect travelled from France to European countries like Belgium, Italy, Spain, and Portugal that legally recognised the work-life balance of their pillars of economy i.e. their workforce⁴. After years of independence, India still lacks an explicit legislation that recognises the said right. Although recent labour amendments such as The Code on Wages Act, 2019 under Section 13 provides for working hours and overtime, enabling the appropriate government to determine the normal working hours, beyond which the employees are entitled to be compensated. Also, as per the Occupational Safety, Health and Working Conditions Code, 2020, specifies under Section 25 that no worker be engaged for more than 8 hours a day or 48 hours a week with stipulated recognition of voluntary overtime work with a mandatory pay at double rate than the normal wages.

Today, India is at a crucial stage where digital footprints pose a significant challenge on employee privacy in the wake of remote work, digital tools, hybrid models and AI advancement, wherein the gig workers lack basic bargaining power such as refraining from sharing their location or inability to understand terms and conditions that are often put forth in comprehensive and complex foreign language which are ignorantly agreed upon by such illiterate and poor gig workers. To avoid such miscarriage of principles of equality, justice and preventing digital privacy to become an elitist concept, the legislature must pull up its socks and indulge all stakeholders to determine future prospect in this regard.

Rationale behind Right to Disconnect:

As previously highlighted, the over digital connectivity has provided increased responsiveness and locational flexibility but, on the other hand, has interfered in personal life of the employee and his family members. This can also be referred as time colonisation which leads to increased stress, frequent burnout, and other mental health issues due to increased digital presenteeism. The rationale behind introducing this right is to restore these temporal boundaries to enable the worker to disengage from his professional life and lead a meaningful personal life beyond the

⁴ Right to Disconnect Bill, 2018 – a Contemporary Analysis of Employee Rights in India, Centre for Labour Laws available at: <https://cll.nliu.ac.in/1669-2>.

contracted hours of work.⁵ Where such contracted hours of work are not mutually agreed upon, the appropriate government shall fix such hours of daily and weekly work.

Secondly, this right is inherently connected to International and Constitutional statutes such as the Right to Rest and Leisure, recognised by ILO Convention no. 101 and 106, wherein, rest refers to active and discretionary disengagement of an employee from any employment related matters. The Indian judiciary has widened the scope of Article 21 i.e. Right to Life and Liberty to include mental health, privacy, and human dignity. Articles 38, 42 and 43 of the Directive Principles of State Policy strengthen the bedrock of the right to disconnect by calling for humane conditions of work and living/floor wage.

On the other hand, the employers often label it as “anti-productive” or a hurdle in the nation’s aspiration to become the largest economy of the world, contrarily, there is an organisational rationale behind it. The ground realities reflect that hyper connected employees have less efficiency due to prolonged fatigue and decreased cognitive performance, often leading to low job satisfaction and delay in delivery of professional targets. Thus, the rationale extends to employers too i.e. if such right is legally recognised, it shall ensure long term human resource well-being, reducing burnout and fostering innovation.

Fourthly, the technological and data protection rationale mandates the right to disconnect to act as a counterbalance, by limiting the employer’s reach via ICTs into worker’s private life that earlier raised privacy and surveillance concerns, especially, in a gig economy like India. For e.g. Spain have already embedded the right to disconnect within their digital protection legislation, recognising the inevitable interaction between them. By limiting the reasonable use of technological tools to the contracted hours of work, the right to disconnect ensures that technology is used to serve human ends, not to transform every moment into labour time.

Legal Insight of the Right to Disconnect Bill:

The intent of Kerala legislature can be highlighted by the following provisions of the bill:

Statement of Objects and Reasons: The bill is premised upon Article 24 of Universal Declaration of Human Rights that along with other legal statutes recognised the Right to Life

⁵ Puranik, H., Koopman, J., & Vough, H. C.(2021). Disconnecting to detach: The role of impaired recovery in negative consequences of workplace connectivity, *Academy of Management Journal*, 64(5), 1413-1442.

and Leisure that protected the equilibrium between fixed working hours and paid overtime for employees. It extends to all private employees.

Recognition of Right to Disconnect: It defined the Right to Disconnect as an employee's right to refuse to answer or receive any work related communication beyond prescribed working hours. The right covers all those communications made over mobile phones, e-mails, messages, video conferencing, or any other type of digital communication.

It covers following ambit of human existence:

Personal: At an individual level, the right guarantees every private sector employee to rest, enjoy family life and devote time for their personal development, free from any work related intruders such as device alerts or calls from HR that might hamper their ability to recuperate or nurture personal relationships on evenings, weekends, or holidays. Hence, it establishes temporal sovereignty i.e. the capacity to control one's own time.

Professional: The Right establishes clear boundaries of employer control and employee obligation. It limits the unreasonable expansion of unpaid digital overtime and ensures enforcement of contracted hours of work only. It also protects gender equality in Indian society where the female counterpart is associated with domestic and household tasks. The right balances these societal expectations and professional roles, reducing the burden of the female workforce. Hence, it provides for defined working time boundaries, no conditional expectation for constant availability and mandatory employer's policy that circumscribe after hour communication with employees.

Technological: In the digital sphere, it refers to the ability of employer to monitor and control the activities of the employee from his own office to their home. Monitoring tools, remote access, algorithmic oversight etc. are capable to easily penetrate a constant engagement culture. The right to disconnect mandates reasonable and justified use of these technologies by the employers through pre mediated policies on awareness training and internal regulation on post work related engagement.

Societal: At the macro level, the right fortifies sustainable work culture with recognised mental health campaigns and human centred productivity that were ignored when the Indian economy shifted from manufacturing to services sector. It re manifested the 8-8-8 hour principle that

provides for 8 hours of work, 8 hours of entertainment and 8 hours of sleep.⁶

Prohibition upon punitive measures: The bill expressly prohibits any employer from initiating any disciplinary or termination proceedings on mere grounds that they exercised of their right to disengage from their employment beyond stipulated hours. The ambit also covers any other kind of work related disadvantage such as demotion, dismissal, denial of training opportunities or reduction of any other benefits provided to other employees at the same level of skill set and that are ejusdem generis in common practice of trade, commerce, service etc.

Grievance Redressal Mechanism: This bill mandates the creation of a Private Sector Workplace Grievance Redressal Committee at the district level, which shall be chaired by Regional Joint Labour Commissioner. The body is tasked with responsibility to monitor the adherence of work hours by the private establishments, investigate complaints of employees and issue any other relevant directions that it may deem fit to maintain work- life balance in the corporate world under its jurisdiction.

The committee shall include the Regional Joint Labour Commissioner as the chairman, the District Labour Officer as secretary and Deputy Labour Commissioner, as member. It shall have wide ranging role from monitoring downsizing to investigating work conditions, checking on overtime, examining remote pressures on employees, scrutinising workplace control, preventing exploitation of designations and providing guidelines to reduce workplace stress and safeguarding employee wellbeing. Hence, they are designed to humanise employment conditions by recognising personal freedom, employee's privacy and their mental health in modern workplaces.

Powers of Enforcement: The labour commissioner is endowed with the power to conduct inquiries and recommend punitive measures against the employers when found guilty, thereby ensuring the Act's enforceability through neutral administrative oversight.

Manoeuvring the Shortcomings: Policy Recommendation

The first and major challenge that lies in the implementation of this bill is the lack of uniformly stipulated hours of work. These working hours not only vary from individual-to-individual

⁶ Raghuram, S., Hill, N. S., & Gibbs, J. L. (2021). Virtual work in India: Cultural and structural considerations, *International Journal of Cross Cultural Management*, 21(1), 27-44.

employer, for example, Infosys founder Narayana Murthy advocated for a 70-hour work week for a young IT professional. While the international standards of organisation like OECD provide for a 40 hour work week.⁷

It further varies from profession to profession, such as emergency medical services and healthcare requires round the clock commitment. In a country like India, which is home to key start-ups that usually ask for attention like a child, the hours of work may further extend, often consuming festive breaks⁸. Determining the set standard of hours of work could be a humongous task for the appropriate government as treating every sector with one stick approach is bound to fail.

To achieve the implementation of this bill and enactment of fixed hours of work, the appropriate government must give greater autonomy to the private employers, who by consensus of the employees, should formulate policies on the hours of work, required and tailored as per the needs of that specific sector and service, leaving room to accommodate emergency and unforeseen events. While delimiting these standards, the organisations must not forget that India is still a developing country with loads of untapped economic opportunities. Hence, striking an equilibrium between capitalistic agendas and employees right to life and liberty, is the need of the hour that can only be achieved by following a bottom up approach as economy can thrive when its workforce is exhausted.

Secondly, another significant practical consideration is that most employment contracts in the private sector already contain clauses stipulating that employees may be required to work beyond normal working hours, depending on business exigencies or operational requirements. Such contractual provisions could potentially dilute the applicability of the statutory right to disconnect, as the Bill itself carves out an exception under Clause 3, providing that where no agreement exists between the employer and the employee, the employee shall have the right to refrain from responding to work-related communications made after fixed working hours. Consequently, if such clauses continue to be standard practice, a large segment of employees may effectively be excluded from the protection of this right unless the Bill or subsequent rules

⁷ Varma, A., & Maroto, A. (2022), Technostress and its impact on employee wellbeing in the Indian context, *International Journal of Stress Management*, 29(3), 276-289.

⁸ Upadhya, C., & Vasavi, A. R. (2020). *Work, culture, and sociality in the Indian IT Industry: A sociological study*. Routledge, India.

clearly delineate the permissible scope of such contractual waivers or impose safeguards to prevent their misuse.

Thirdly, its implementation will require employers to rethink long-standing workplace norms and operational practices. For example, while the Bill delineates the constitution and composition of the grievance redressal committees, it remains silent on the procedural modalities governing their functioning, specifically, the manner in which complaints may be lodged, the timelines for adjudication, and the availability of appellate recourse. It is likely that such procedural details shall be prescribed through the rules pursuant to the enactment of the Bill.

Conclusion

The Bill represents a timely and progressive step toward redefining the contours of work-life balance in India's private sector. By seeking to institutionalize employees' right to digital disengagement, it aligns with global trends that recognize the psychological, social, and productivity benefits of regulated work boundaries. However, its success will depend on clear implementation guidelines and sector-specific flexibility for industries that require continuous operations. Employers will need to recalibrate workplace cultures, introduce communication protocols, and use technology responsibly to ensure compliance while maintaining efficiency. If implemented thoughtfully, the Bill could serve as a model for other Indian states and pave the way for a national framework that balances employee wellbeing with evolving business realities.