
THE URGENT NEED FOR A “RIGHT TO DISCONNECT” IN INDIA

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ABSTRACT

The technological advancement has brought about major changes including some negative impacts in the work culture. One of them is the blurring of boundaries between employees' work and private lives. One way to tackle this problem is through the “Right to Disconnect”. This right which basically means refraining from work-related communications after the working hours aims to guarantee employee's right to rest and promote safe and healthy working conditions. Employees are expected to remain online at all times leading to stress, fatigue and reduced productivity.¹

This paper extensively discusses about this topic involving its emergence, current situation in different countries and also provides the reasons for it to be implemented in India. It also discusses about the legal action that needs to be taken in case of its violation. It explores how this right can be achieved by giving recommendations on how to overcome the existing loopholes that prevent it from being implemented. Finally, it argues that recognising this important in order to protect employees' mental health, dignity and establish a work-life balance in this new digital era.

Keywords: Right to disconnect, mental health, working hours, technological advancement, employees and work-life balance.

¹ Ankit Sharma, *The Right to Disconnect*, J. POL'Y & ADMIN. L., Issue 29, at 22 (2021), https://www.jopafl.com/uploads/issue29/THE_RIGHT_TO_DISCONNECT.pdf

Emergence of the Right to Disconnect

Technology has developed incredibly over the years and has affected us in ways that would have seemed impossible at the beginning. It has provided us with numerous benefits that have positively impacted the work environment and our way of doing things. It has led to the introduction of flexible working hours and has completely changed the way employees perform their work. Despite the many benefits that it brought, it also led to negative impacts. One of the main problems is the blurring of boundaries between employees' work and private life. This arose from the employer's demand for the constant availability of employees, which had been made possible by today's digital development. Employees are expected to achieve unrealistic goals and complete tasks immediately, even if it means being online all the time.

This requirement has made it difficult to calculate the actual number of hours worked especially when employees tend to respond to work-related messages even from home. It has directly affected employees' mental state of mind leading to more stress, anxiety and even physical problems because of this new lifestyle of being online at all times. It has also resulted in reduced productivity and invasion of privacy of employees and this dangerous phenomenon can be reduced by enabling the employees to exercise their right.

The right to disconnect has been in existence for a long time, but due to the Covid-19 pandemic, our approach to work has completely changed and the need for flexible working arrangements has become more prevalent. During the pandemic, a large population had to work from home, making the boundary between work life and private life more visible. The concept of remote work emerged due to the concern for public health and safety so that work continues even in the extreme situations without the need to step out of one's homes. This accelerated the disruption of work-life balance as there were demands for a more flexible approach mainly because of the temporary closure of schools and offices and it has continued even in the post-pandemic, making it the "new normal".

The concept of "always on" culture describes a world with a tendency to be permanently connected through digital devices making it quite difficult for individuals to escape and disconnect from work. People are living in a world where it is mandatory to reply instantly due to the possibility of working anytime and from anywhere and this has revolutionised the working structure of the organisations work patterns. The impact of the "always-on" culture is

also embedded in the organisation practices.² It has become very common for employees to be available 24/7 as it is often seen as way to evaluate their performance. As a result, it has become normal for employees to remain continuously connected to their workplace, even outside working hours.

Currently, this right has not been explicitly stated in any human rights document, but many of them, such as the Article 24 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Economic, Social and Cultural Rights, and International Labour Organisation Convention, provide a strong foundation for it by including about the fair working conditions, the specific work hours as well getting sufficient rest time.³ The right to disconnect revolves around a few important aspects, such as the employees' right to not engage in work after the end of their working time, the right to not be punished for refusing to work after the specified time, and to be respected for carrying out their right.⁴

The need for such law is urgent in the context of labour law because of the current trend where employees, even after physically leaving office, remain mentally tied to their work which has negative effects on their mental health. Often, it happens that the employer would call the employee saying that he just needs just a "small favour" and end up making employee complete the task till late hours and eating up their entire free time. Now, this has become a habit which cannot be changed so easily, and it becomes difficult for the employee to refuse the employer. In the case of *Bright v. Houston Northwest Medical Center Survivor*, it was found that a technician was forced to remain on a call for 24/7. There was also an article about a thirty-one-year-old journalist who died of heart failure due to overwork.⁵

The employees now live in this situation where the employer could order them anytime to work overtime, ignoring the maximum limit for their working time and rest periods. It has become difficult to keep a track of the people who are permanently working outside their work space or those who divide their working time between the workplace and home. In many cases, the

² Ravi Kumar & Neha Singh, *Work-Life Balance and Digital Stress*, 5 INT'L J. MULTIDISC. ACAD. RSCH. 88 (2018), <https://www.ijmar.org/v5n3/18-008.html>

³ Daria Dolobac, *The Right to Disconnect in the Age of Digitalisation*, 14 POL. POL'Y & UAM J. 115 (2021), http://ppuam.amu.edu.pl/uploads/PPUAM%20vol.%2014/08_Dolobac.pdf

⁴ WORKPLACE RELS. COMM'N, *CODE OF PRACTICE FOR EMPLOYERS AND EMPLOYEES ON THE RIGHT TO DISCONNECT* (2021), https://www.workplacerelations.ie/en/what_you_should_know/codes_practice/code-of-practice-for-employers-and-employees-on-the-right-to-disconnect.pdf

⁵ Jeffrey M. Hirsch, *Overwork and Occupational Stress*, 23 MARQ. BENEFITS & SOC. WELFARE L. REV. 77 (2020), <https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1074&context=benefits>

employees also struggle with venue issues, that is, where they have to arrange for a quiet place to work remotely and also the technical problems in the absence of appropriate equipment or a good connection outside.⁶

Employees should be allowed to not respond to calls, texts or emails after their shift is done without having to worry about retaliation in the form of dismissal or other strict measures. Employers should not promote the “always available” working culture by favouring the ones who ignore their right as compared to the ones who do not. The term “disconnect” should be used in a broader sense and not just restrict itself to the Internet but also to telephone and other messages.

Situation in Different Countries

EUROPEAN UNION

The European Union, as of now, does not explicitly state about the right to disconnect. However, upon careful examination, many Directives under the EU law contain provisions of the right to disconnect. The most significant is Directive 2003/88/EC of the European Parliament and of the Council of 4 September 2003, which covers certain aspects regarding the working time, stating that all workers should get adequate rest.⁷ The concept of ‘rest’ is expressed in units of time, that is, as days, hours, etc. Rest should be sufficient and continuous to prevent any accident due to fatigue or other irregular working patterns.

On 21st January, the European Parliament adopted a resolution in which recommendations were provided to the Commission to take a strong action and adopt a directive that will not only guarantee the employees’ right to disconnect but also make sure that exercising their right would not retaliate in the form of negative consequences. It highlights the issues arising from technological advancement, including the need to always being connected and its impact it has on employees, such as lack of concentration, anxiety, burnout, lack of sleep, dependence on technology as well muscle strain and musculoskeletal disorder. The directive should aim to protect health and safety of employees and provide a healthy working environment and should extend to all workers irrespective of their status and apply to both the private and the public

⁶ Pankaj Kumar et al., *The Right to Disconnect* (2022),
https://www.researchgate.net/publication/364079001_The_Right_to_Disconnect

⁷ EUROFOUND, *RIGHT TO DISCONNECT* (2021),
<https://assets.eurofound.europa.eu/f/279033/50e4ba79e7/ef21049en.pdf>

sector.

Before the pandemic, only 5% of the EU workforce used to work through the means of telecommunication, and just 14% did so either regularly or occasionally. However, this quickly changed and by July 2020, the numbers went up with close to 50% of the EU workforce who were engaged in teleworking regularly or partially, with 34% of the workforce teleworking in response to public health restrictions.⁸ Data from the European Working Conditions Survey 2015 (EWCS 2015) also show that people who regularly work from home are more than twice as likely to go beyond the maximum of 48 working hours per week than those working at their workplace and are less likely to have access to the legally mandated minimum daily rest of 11 hours.

A report formulated by the European Parliament shed light on the challenges arising from overdependence on technology to perform work related tasks. Work overload, longer or unpredictable schedules, and an “always available” culture, all of this violates workers’ fundamental rights, work life balance as well as equality within their organisation. Some member states of the European Union agreed to bring about legal provisions regarding the right to disconnect while others decided to stick with legislative or soft-law measures to implement appropriate measures to protect employees' rest time.

SLOVAKIA

In Slovakia, it is recommended that employees should specifically emphasise the right to disconnect in their employment contract, stating that the employer should not disturb the employees on their days off. An amendment to the Labour Code introduced a new concept of legal regulation of homeworking and teleworking. On 1 March 2021, the right to disconnect came into effect stating that an employee does not need to use his work equipment during his rest periods unless they have agreed to work overtime or during some obstacles to work. It also states that employees should also be treated equally irrespective of whether they work in private or public sphere.⁹ In order to achieve the purpose of the law, the employers and employees should coordinate with one another regarding the internal regulations of the employment

⁸ Ankit Sharma, *The Right to Disconnect*, J. POL'Y & ADMIN. L., Issue 29, at 22 (2021), https://www.jopafll.com/uploads/issue29/THE_RIGHT_TO_DISCONNECT.pdf

⁹ Daria Dolobac, *The Right to Disconnect in the Age of Digitalisation*, 14 POL. POL'Y & UAM J. 115 (2021), http://ppuam.amu.edu.pl/uploads/PPUAM%20vol.%2014/08_Dolobac.pdf

contract and clearly define what would be considered as work equipment.¹⁰

UNITED STATES

In this regard, the United States has an occupational health and safety administrative legal regime that deals with workplace safety and health issues under the Occupational Safety and Health Act (OSHA) and could be used to work on issues of disconnection from work. The OSHA allows employers to meet the health and safety standards while also providing effective solutions of their own, known as permanent variances.¹¹ It also covers complex issues such as productivity, privacy and autonomy without compromising the main objective.

A study shows that a majority of workers in the United States are often overworked. It has been discovered that the work is no longer just confined to the workplace but also extends to vacations. This has raised serious questions about safety concerns and has also deprived the employees of their time engage in some leisure or recreational activities with family and friends. There has also been a rise in workplace suicides in the United States which go often viral because they act as a voice of the workers rather than merely being seen as outrageous acts.

The United States lags behind other countries regarding the right to disconnect. However, New York City City's Council has introduced a bill that would stop its citizens from checking their emails after working hours. In case of non-compliance, a fine of two hundred fifty dollars would be imposed. If there is unlawful retaliation, full compensation along with wages and benefits lost and also with five hundred dollars and equitable relief would be given and if the unlawful retaliation results in discharge, then a requirement of full compensation including wages and benefits lost, two thousand five hundred dollars and equitable relief, including reinstatement.

FRANCE

Among all countries, France was the first one to take lead in the matter of disconnection from work. As of January 1, 2017, a majority of French employers have been stopped from

¹⁰ Daria Dolobac, *The Right to Disconnect in the Age of Digitalisation*, 14 POL. POL'Y & UAM J. 115 (2021), http://ppuam.amu.edu.pl/uploads/PPUAM%20vol.%2014/08_Dolobac.pdf

¹¹ Jeffrey M. Hirsch, *Overwork and Occupational Stress*, 23 MARQ. BENEFITS & SOC. WELFARE L. REV. 77 (2020), <https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1074&context=benefits>

contacting the employees after working hours. The law makes it mandatory for the employers to either sign an agreement with the employees or introduce a charter stating that the employees are not under any obligation to carry out work even after at the end of their shift.

GERMANY

In Germany, the employers have taken the initiative to opt for voluntary self-regulation that works for industry while providing relief to employees at the same time. This is because of their self-awareness about the harmful effects caused due to overworking. For example, firms such as Volkswagen, BMW, and Puma have put up some restrictions on the managers to prevent them from emailing after the working hours. Volkswagen, in particular, does not forward any emails to the employees after thirty minutes after the end of their working day and thus respecting the interests of both the employer and the employees. Germany follows a “work hard, play hard” attitude concentrating on the productive and effective use of employees. Even after all these efforts, there still is no law to regulate the communications after the working hours.

NETHERLANDS and PORTUGAL

The right to disconnect was first introduced in the Netherlands and Portugal because of the rise in the blurring of boundaries between work and private life as a result of the excessive use of technology and also because of the existing legislation which had proved to be futile in its job regarding disconnection after work hours. In the Netherlands, the Labour Party, adopted a bill in 2019 on the “right to be inaccessible” which was based on risks associated with constant connection. It encouraged the establishment of agreements stating specifically when employees should not be contacted but preference was given to the flexible and tailor-made solutions.

SPAIN

In Spain, the banking sector has an agreement for recording of working time, creating a direct relationship with the right to disconnect. For this purpose, a new system needs to be introduced for all workers making it mandatory to register the start and end of every working day with the use of a specific digital application. In addition, specific guidelines need to be published for accurately recording the working time of all the workers in addition to the establishment of measures to introduce the right to disconnect.

Reasons for India to Adopt

In India, “The Right to Disconnect Bill” was introduced in the Lok Sabha in 2018. As per Section 7 of the bill, no disciplinary action can be taken against the employee if he refuses to attend to work related communications after the working hours. However, the bill has not been very powerful since it was a private member's bill and thus could not be passed. Similar bills have been introduced before, but none of them has become an Act in India since 1970.¹² Still, they have had impact on governments and subsequent legislation regarding critical problems. The main purpose of the bill is to promote a balanced life which could be done by reducing stress among the employees.

The Way Forward

Before adopting this right, there are a few things that need to be taken care of. Implementation of this right is easier in developed countries as compared to in the case of a developing country like India where factors like intense competition and overpopulation pose major challenges. In addition, India already faces a backlog of work in most of the companies, it is difficult to establish the right to disconnect as it could lead to more mismanagement. So before enacting this right in India, these loopholes need to be addressed for better implementation.

Laws should be made clearly defining the working time of workers across all sectors. Clear guidance should be provided prohibiting employers from calling, texting or engaging in any other forms of communications with their employees after working hours. The different time zones across the world should be taken into consideration. In the case remote or flexible working, appropriate timings must be set by employers to engage in communications. While sending written messages, the tone of the message should be proportionate so that they do not be mistaken for those of urgent matters. Only in certain exceptional circumstances requiring immediate action this right be waived off, and such waiver are required to be justified.

Software could be developed that could set reminders when the working hours starts to come to an end and also help to accurately calculate the number of hours worked. Also, the application could also restrict the messages that come after the working hours are complete so that they could only be opened when the next working day starts. If an employee goes on a

¹² Sunita Verma, *Impact of Digitalisation on Working Hours*, 5 INT’L J. TREND SCI. RSCH. & DEV. 421 (2021), <https://www.ijtsrd.com/papers/ijtsrd49909.pdf>

vacation, his account could be deleted for the time being so that, upon returning they would have zero mails instead of a thousand and in the case of important messages, the sender could send it again once the employee comes back.

Managers should also check if any employee is waiving off their right, as it could be a sign of overwork or performance issues. In such cases, the managers should take action by ensuring that the employees have clear and realistic goals and by guiding them when they are unable to carry out the tasks accordingly.¹³

Workplaces should conduct training and awareness campaigns to explain about the negative impacts of overwork including physical and mental problems and also about its effect on long term productivity. On violation of this right, strict action should be taken and must include both monetary relief and punitive damages.

A committee could be formed having the responsibility to keep a check on the implementation of the right. They should regularly conduct surveys and prepare reports on the usage of digital tools and monitor the performance of the employees.

CONCLUSION

This research encourages India to adopt the right to disconnect and regulate the use of digital tools in order to protect the employees. It suggests that all employees have the right to disconnect regardless of their job status or the sector in which they are employed.¹⁴ As India continues to grow in the digital sphere, it is important to put reasonable limitations on the use of digital tools in the workplace so that they do not interfere with personal lives. Employees should have sufficient rest time to promote a healthy working environment. This can help to establish a work life balance for employees and reduce the chances of stress, fatigue, mental health problems as well as boost the morale of employees.¹⁵ The right to disconnect should not only be seen as a right to a dignified life, but also as a right to a peaceful and stress-free life in the current context.

¹³ WORKPLACE RELS. COMM'N, *CODE OF PRACTICE FOR EMPLOYERS AND EMPLOYEES ON THE RIGHT TO DISCONNECT* (2021), https://www.workplacerelations.ie/en/what_you_should_know/codes_practice/code-of-practice-for-employers-and-employees-on-the-right-to-disconnect.pdf

¹⁴ Ravi Kumar & Neha Singh, *Work-Life Balance and Digital Stress*, 5 INT'L J. MULTIDISC. ACAD. RSCH. 88 (2018), <https://www.ijmar.org/v5n3/18-008.html>

¹⁵ Sunita Verma, *Impact of Digitalisation on Working Hours*, 5 INT'L J. TREND SCI. RSCH. & DEV. 421 (2021), <https://www.ijtsrd.com/papers/ijtsrd49909.pdf>