

LEGAL FOUNDATIONS FOR THE RIGHT TO DISCONNECT IN INDIA: CONSTITUTIONAL IMPERATIVES, LEGISLATIVE LACUNAE, AND A COMPARATIVE FRAMEWORK

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ABSTRACT

The digitalisation of work, accelerated by the COVID-19 pandemic, has engendered an "always-on" culture, eroding the boundaries between professional and personal life and posing significant risks to worker well-being. This article provides a critical examination of the legal foundations for a "Right to Disconnect" (RTD) within the Indian legal landscape. It argues that while a robust constitutional basis for the RTD exists anchored in an expansive interpretation of Article 21 (Right to Life) and supported by Directive Principles of State Policy, the newly consolidated Labour Codes of 2019-2020 represent a profound legislative lacuna in failing to explicitly codify this right. The article employs a comparative methodology, analysing the legislative frameworks of France, Italy, and Spain, to distill transferable principles for the Indian context. It engages with counterarguments from employer flexibility and global competitiveness perspectives, providing a nuanced rebuttal grounded in sustainable productivity. The article concludes by proposing a multi-stakeholder model for India, advocating for a specific amendment to the Occupational Safety, Health and Working Conditions Code, 2020. Its primary contribution lies in its synthesis of constitutional doctrine, critical legislative analysis, and a pragmatic comparative framework to propose a uniquely Indian model for institutionalising this essential right for the modern digital workforce, including those in platform-based work.

Keywords: Right to Disconnect, Digital Labour Law, Indian Constitution, Indian Labour Codes, Comparative Labour Law, Work-Life Balance, Platform Work, Occupational Health, Article 21.

1. Introduction: The Juridical Challenge of Digital Permanence

The 21st-century workplace is characterised by a paradigm of digital permanence, where information and communication technologies (ICTs) have dissolved the spatial and temporal boundaries that once defined work. For a significant segment of the Indian workforce, this translates into an expectation of perpetual availability, leading to the normalisation of digital overtime and the colonization of private life by professional demands. This "always-on" culture precipitates a host of detrimental outcomes, including employee burnout, psychological stress, sleep deprivation, and the degradation of social and familial bonds.

In response, the "Right to Disconnect" (RTD) has emerged as a critical juridical concept in global labour law. It constitutes an employee's right to refrain from engaging in work-related digital communications such as emails, messages, and calls, outside of stipulated working hours without incurring any detriment or penalisation. It is, fundamentally, a right to rest and a safeguard for personal autonomy in the digital age.

This article posits that India exhibits a stark dissonance between its constitutional commitments and its statutory response to this modern challenge. It advances a two-fold argument: first, that the Indian Constitution, through its progressive judicial interpretation, provides a compelling and sufficient foundation for the RTD; and second, that the recent legislative endeavour to modernise labour law through the four Labour Codes constitutes a critical missed opportunity to explicitly codify and enforce this right. The analysis is framed within a capabilities approach, viewing the RTD as essential for enabling workers to achieve well-being and lead flourishing lives. Furthermore, a feminist lens reveals the RTD's critical role in mitigating the gendered inequities of unpaid care work and professional demands. By employing a comparative analysis of European models and engaging directly with counterarguments of economic flexibility, this article contributes a nuanced and actionable framework for integrating the RTD into Indian labour jurisprudence, thereby aligning statutory law with constitutional morality. This framework is particularly crucial for the growing platform economy, where algorithmic management and performance metrics create intense pressure for constant connectivity, blurring the lines between independent work and dependent employment.

2. Constitutional Foundations: Articulating an Implicit Right

Although the Indian Constitution contains no explicit mention of a right to disconnect, its foundational principles and the judiciary's transformative interpretation provide a powerful implicit basis for its recognition.

2.1. Article 21: Life, Dignity, and the Right to Rest :The most potent constitutional anchor for the RTD is Article 21's guarantee of the protection of life and personal liberty. The Supreme Court of India has consistently eschewed a narrow construction of this article, transforming it into a repository of rights essential for a life of dignity.

In *Francis Coralie Mullin v. The Administrator (1981)*, the Court unequivocally held that the right to life encompasses the "right to live with human dignity and all that goes along with it." The perpetual encroachment of work into private life through digital means constitutes a direct assault on this dignity, eroding the autonomy and solitude necessary for human flourishing. Furthermore, in a landmark judgment, *Consumer Education and Research Centre v. Union of India (1995)*, the Court explicitly integrated occupational health into the ambit of Article 21, declaring that the right to health is indispensable to the right to life. The psychological harm induced by stress and burnout from constant connectivity is a direct threat to this right. Therefore, the RTD can be jurisprudentially construed as a necessary precondition for the meaningful exercise of the rights to health and dignity under Article 21. This protection holds particular significance for women, who disproportionately bear the burden of unpaid care work; the erosion of private time through digital work intensifies this double burden, making the RTD a tool for gender justice.

2.2. Directive Principles of State Policy: A Constitutional Mandate for Legislation: The Directive Principles of State Policy (DPSP), though not directly enforceable, provide the philosophical bedrock for labour legislation and impose a constitutional duty on the state to enact laws for social justice.

- **Article 39(e)** obligates the state to ensure that the health and strength of workers is not abused.
- **Article 42** mandates the state to make provision for securing just and humane conditions of work.

- **Article 43** directs the state to endeavour to secure conditions of work that ensure a decent standard of life and leisure.

The "always-on" culture is the antithesis of "just and humane conditions." It represents a systemic abuse of the worker's psychological strength and denies the "leisure" explicitly guaranteed by Article 43. The DPSPs, therefore, create a positive obligation on the legislature to craft laws that protect workers from the perils of digital exploitation.

3. The Labour Codes of 2019-2020: A Legislative Lacuna

The four Labour Codes, intended to consolidate and modernise India's archaic labour laws, present the ideal vehicle for recognising the RTD. A critical analysis, however, reveals a significant failure to address the realities of the digital workplace.

3.1. The Occupational Safety, Health and Working Conditions Code, 2020: A Near Miss-

The OSH Code is the most natural legislative home for the RTD. Its definition of "health" is commendably broad, encompassing "physical, psychological, and emotional well-being" (Section 2(zd)). This directly implicates mental health issues stemming from constant connectivity.

Furthermore, Chapter X meticulously regulates "Hours of Work, Annual Leave with Wages, and Off-Days," stipulating an 8-hour work day, weekly holidays, and rest intervals (Sections 24, 25, 27). The **principle of rest** is unequivocally established. The RTD is the logical and essential digital corollary to these provisions; a weekly holiday is rendered meaningless if an employee is obligated to monitor work emails. Yet, the Code remains silent on digital communications, representing a curious anachronism in a statute meant to be forward-looking. This omission creates a regulatory vacuum where the principle of rest is not enforced in the domain where it is most frequently violated.

3.2. The Code on Wages, 2019 and the Spectre of Wage Theft- This code is critically relevant for defining "working hours" for wage calculation. Any labour performed, including responding to emails or messages, constitutes work and must be compensated. The code mandates overtime wages at twice the ordinary rate for work beyond stipulated hours (Section 14).

Without an explicit RTD, employers can mandate "quick checks" or "urgent responses" outside

work hours without recording them as overtime, leading to systemic wage theft. A statutory RTD would clarify that any communication expecting a response qualifies as work, shifting the burden of proof and deterring such exploitative practices.

3.3. Critical Analysis: A Failure of Legislative Foresight- The Labour Codes lay the groundwork for the RTD implicitly but fail to make it justiciable. This omission is not merely technical but philosophical. It suggests a lag between legislative drafting and technological reality, potentially reflecting a deliberate prioritisation of employer flexibility over employee well-being in the political economy of the Codes' formulation. The absence of a clear provision renders the right unenforceable for the individual employee, who lacks a specific legal instrument to challenge digital encroachment, thus maintaining a significant power imbalance

4. A Comparative International Perspective: Models and Lessons

A comparative analysis reveals a spectrum of approaches to legislating the RTD, offering valuable lessons for India.

4.1. France: The Mandatory Bargaining Model- France's pioneering 2016 law obligates companies with 50+ employees to negotiate with unions on the use of digital tools and the implementation of the RTD. Its strength lies in promoting social dialogue and creating tailored solutions through a "charter of good conduct." However, its efficacy is contingent on strong union presence, a potential limitation in the Indian context outside of large, organised sectors.

4.2. Italy: The Individual Agreement Model- Italy's 2017 approach requires that remote workers be governed by an "individual agreement" that includes RTD provisions. While flexible, this model risks exacerbating power imbalances, as individual employees may lack the bargaining power to negotiate favourable terms, potentially leading to the contractual waiver of rights.

4.3. Spain: The Strict, Sanction-Based Model- Spain's 2018 law is among the strongest, granting employees the unequivocal right to ignore digital communications after hours. It mandates internal company policies and is backed by the sanctioning power of labour inspectors. This model provides the strongest individual protection but is often criticised by business for its perceived rigidity.

4.4. Key Transferable Principles for India:

1. **A Legislative Backbone is Non-Negotiable:** All models are predicated on a clear statutory right.
2. **Flexibility in Implementation is Key:** A one-size-fits-all model is impractical for India's diverse economy. The French model of principle-based legislation with implementation through negotiation is highly instructive.
3. **Compensation and Recording are Crucial:** Effective laws must explicitly link digital work to overtime compensation.
4. **Enforcement Mechanisms Determine Efficacy:** Laws must be backed by credible threats of sanction, requiring a rejuvenated and empowered labour inspection system.
5. **Engaging Counterarguments: Competitiveness and Flexibility**

A robust scholarly discussion must engage with legitimate counterarguments.

- **The Competitiveness Argument:** Critics may contend that an RTD would hamper India's competitiveness, particularly in globalised sectors like IT and ITeS that operate across time zones. While this argument holds superficial appeal, a deeper analysis suggests that sustainable, long-term productivity is derived from a rested, healthy, and thus more innovative and engaged workforce, not from a burned-out one. Furthermore, the RTD does not prohibit work but mandates its transparent recording and fair compensation, ensuring equity and preventing wage theft, which ultimately fosters a more stable and committed workforce. This is even more critical for platform-based work, where the absence of regulation threatens to create a race to the bottom on labour standards.
- **The Flexibility Argument:** It is argued that a strict RTD undermines genuine flexible work arrangements. The apt response is that the RTD and autonomy are not mutually exclusive but are, in fact, complementary. The goal is to regulate *exploitative* flexibility where the employee is always on call and promote *autonomous* flexibility where the employee has control over their schedule, including the right to be offline. A well-designed RTD empowers employees to manage their time effectively without fear of reprisal.
- **The Formal Sector Bias:** A valid critique is that the RTD primarily benefits the formal, elite workforce, highlighting the deeper chasm between the organised and unorganised sectors. This does not invalidate the right but underscores the need for parallel, vigorous efforts to extend core protections and dignity to all workers, including those in the informal and platform economy. The RTD can serve as a benchmark for redefining decent work across all sectors.

6. Conclusion and The Way Forward: A Proposed Framework for India

The analysis confirms the stark dissonance between India's constitutional vision and its statutory reality. To bridge this gap, a multi-pronged approach is essential.

1. Legislative Amendment: The most effective solution is a targeted amendment to the **OSH Code, 2020**. A new section, 28A, should be inserted in Chapter X:

"(1) Every employee shall have the right to disengage from and shall not be obliged to respond to work-related electronic communication beyond the stipulated hours of work. (2) Any work performed pursuant to such communication shall be considered overtime work and shall be compensated at twice the rate of the ordinary wage of the employee, as per Section 14 of the Code on Wages, 2019. (3) The appropriate Government may prescribe guidelines for employers, based on the establishment's size and nature of work, to formulate a policy on the right to disconnect."

2. A Hybrid Implementation Model:

- **For Large Organised Sector Establishments:** Mandate the French model of negotiation between employers and unions/work committees to create a company-specific "Digital Engagement Policy."
- **For SMEs and the Unorganised Sector:** The government should publish a "Model Policy" as a guideline. Digital labour platforms should be required to incorporate RTD principles into their terms of service. This framework is particularly crucial for the platform economy, where algorithmic management and performance metrics create intense pressure for constant connectivity.

3. Judicial Activation: Until legislative action is taken, the judiciary must adopt a purposive interpretation of the existing Codes, reading the RTD into the provisions on health (OSH Code) and overtime (Wage Code) to provide immediate relief.

By enacting a clear yet flexible RTD, India would not merely be catching up with global trends. It would be fulfilling its constitutional promise of dignity and health for all citizens, fostering a more sustainable and productive economy, and establishing itself as a leader in crafting humane labour legislation for the digital age.

References

1. Adams, Z. & Deakin, S. (2015) *The corporate foundation of labour law*. Oxford: Hart Publishing.
2. Consumer Education and Research Centre & Ors v. Union of India & Ors, AIR 1995 SC 922.
3. De Stefano, V. (2018) ‘The rise of the “just-in-time workforce”’: On-demand work, crowdwork, and labour protection in the “gig-economy”’, *Comparative Labor Law & Policy Journal*, 40(3), pp. 461–471. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2682602 (Accessed: 21 September 2025).
4. Eurofound and the International Labour Office (2019) *Working anytime, anywhere: The effects on the world of work*. Luxembourg: Publications Office of the European Union; Geneva: International Labour Office. Available at: <https://www.eurofound.europa.eu/publications/report/2017/working-anytime-anywhere-the-effects-on-the-world-of-work> (Accessed: 21 September 2025).
5. Finkin, M. (2016) ‘Beclouded work in historical perspective’, *Comparative Labor Law & Policy Journal*, 37(3), pp. 603–618. Available at: <https://ssrn.com/abstract=2712722> (Accessed: 21 September 2025).
6. Francis Coralie Mullin v. The Administrator, Union Territory of Delhi, AIR 1981 SC 746.
7. Government of India (2019) *The Code on Wages, 2019*. No. 29 of 2019. Available at: <https://www.indiacode.nic.in/handle/123456789/15793>(Accessed: 21 September 2025).
8. Government of India (2020) *The Occupational Safety, Health and Working Conditions Code, 2020*. No. 37 of 2020. Available at: <https://www.indiacode.nic.in/handle/123456789/22449>(Accessed: 21 September 2025).
9. International Labour Organization (ILO) (2021) *World Employment and Social Outlook: The role of digital labour platforms in transforming the world of work*. Geneva: ILO. Available at: https://www.ilo.org/global/research/global-reports/weso/2021/WCMS_771749/lang--en/index.htm (Accessed: 21 September 2025).
10. Sen, A. (1999) *Development as freedom*. Oxford: Oxford University Press. Available at: <https://doi.org/10.1093/0198297580.001.0001>(Accessed: 21 September 2025).
11. Zbyszewska, A. (2016) *Gendering European working time regimes: The working time directive and the case of Poland*. Cambridge: Cambridge University Press. Available at: <https://doi.org/10.1017/CBO9781316343951>(Accessed: 21 September 2025).