

# Should the Right to Disconnect be Legally Enforced?

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## ABSTRACT

Using the "right to disconnect" discussion as a starting point, this article explores how this right can be achieved by focusing on the recommendations provided in this article and what are the loopholes that prevent it from being implemented. The purpose of this article is to assist unions in promoting and campaigning for the adoption of the right to disconnect in national laws. It is intended to minimise the use of electronic communication while simultaneously providing employees with the opportunity to improve their work-life balance and ensure adequate rest and healthy life. The "right to disconnect" can benefit both employees and enterprises as a whole. There is no doubt that the French law has been a major catalyst for movements around the world to legislate the right to disconnect, followed by other European countries like Germany, Italy, Belgium, Spain, Chile, Canada and so on. The author has demonstrated how it transitioned from being a part of the UDHR to a constitutional right guaranteed under Article 21. The author has also shed light on its practicality in India based on statistical data, concluding that whether its outcome is favourable or detrimental would be a matter of time and depends on each country's legislative and administrative mechanisms.

**KEYWORDS:** Disconnect, IT Act, labour, right to privacy, employment, right to life, El Khomri

## INTRODUCTION

Today, the line between personal and professional life has blurred. Work from home knows no work-life balance. In many professions work runs almost parallelly with our lives. Work calls follow us to our vacations, holidays, weekends, etc. It's hard to pinpoint where work ends and life outside work begins. Therefore, the need to get disconnected beyond working hours has increased globally. The right to disconnect is a proposed human right which permits workers to get disconnected in the non-working hours and there shall be no retribution by the employer. The average work day of an employee working from home in Canada, United States, United Kingdom and Australia has become longer by over 2 hours a day. Before the first lockdown, an average employee in UK was spending 9 hours on business VPN or the business networks. By January 2021, the 9 hours increased to 11. In the US, workers were spending 11 hours on VPN instead of 8. In Netherland and Austria they were spending 10 hours instead of 9. In France, Italy, and Spain one hour extra on business VPNs. At least 98% of employees in IT majors in India like TCS, Infosys, and Wipro

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are expected to continue working from home till March 2021. Further, TCS announced that 75% of its staff will permanently *work from home* by 2025.<sup>1</sup> All the above data clearly indicates that as fast as the communication and information technology is increasing, the physical and mental health is getting hampered with the same rapid speed. Several nations, mainly in Europe, have some form of the right to disconnect enshrined in their legislation but in other instances the Multinational Corporations contain it as a part of their policies. This is not a novel idea and has never been acknowledged. However, we may locate its remnants in the UDHR in various forms, implying that the ability to disconnect has always been a human right under different titles. Article 24, 23 of UDHR<sup>2</sup> states that everyone has the right to rest and leisure, work under

<sup>1</sup> Feza Tabassum Azmi, *Is it time for a right to disconnect*, THE WIRE (Jan. 28, 2021), <https://thewire.in/rights/is-it-time-for-a-right-to-disconnect>.

<sup>2</sup> UNITED NATIONS, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited Mar. 4, 2022).

favourable conditions, equal pay for equal work, just and favourable remuneration.

### ORIGIN:-

The 'right to disconnect rule' traces back to the ruling in the Labour Chamber of the French Supreme Court on 2<sup>nd</sup> October 2001 where it held that "the employee is under no obligation either to accept working at home or to bring there his files and working tools<sup>3</sup>, and a 2004 decision by the same court held that "an employee cannot be reprimanded for being unreachable outside working hours".<sup>4</sup>

After few years later of this judgment a bill commonly known as the "EL KHOMRI BILL" was basically introduced by the Myriam El Khomri, the Minister of Labour under the Second Valls Government. However, after several months of intense debate and public resistance, the President of the French Republic promulgated Law n°2016-1088 dealing with labour, modernization of social dialogue, and professional career security - the so-called "EL KHOMRI Law" or "Loi Travail" - on August 8, 2016 which amended the French Labour Code to include the right to disconnect. According to the law, it is the responsibility of the employers and unions to negotiate this new right, and such negotiations should take place in companies with at least 50 employees and should provide for the implementation of regulatory mechanisms regarding the use of new technologies in order to ensure compliance with rest times and holidays, as well as the employees' familial and personal lives.<sup>5</sup>

### SITUATION UNDER OTHER COUNTRIES:-

#### GERMANY-

After France, many European countries have tried to include this right as a part of their legislation but they don't have proper laws. The companies already resorted to it in their policies like in 2011 Volkswagen stated that I would freeze email servers from sending emails to its employees between 6pm to 7am. In 2014, Daimler Company came up with an idea of software, called as "Mail on Holiday" which automatically deleted emails from the employee's phone as an employee steps out of his office.<sup>6</sup>

<sup>3</sup>LÉGIFRANCE, <https://www.legifrance.gouv.fr/juri/id/JURITEXT000007046319/> (last visited Mar. 6, 2022).

<sup>4</sup>LÉGIFRANCE, <https://www.legifrance.gouv.fr/juri/id/JURITEXT000007473856/> (last visited Mar. 6, 2022).

<sup>5</sup>LÉGIFRANCE, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000032983213/> (last visited Mar. 6, 2022).

<sup>6</sup>Megan Gibson, *Here's a Radical Way to End Vacation Email Overload*, TIME (Aug. 15, 2014, 12:47 PM), <https://time.com/3116424/daimler-vacation-email-out-of-office/>

### ITALY-

The right to disconnect in Italy took the form of law on 14<sup>th</sup> June 2017 through Senate Act no. 2233-B or Law No. 81/2017 "Measures to safeguard non-entrepreneurial self-employment and measures to facilitate flexible articulation in times and places of subordinate employment".<sup>7</sup> Article 19(1) of the Act states-

*"The Agreement on Aggregate Work shall be stipulated in writing for the purpose of administrative and probative regularity and shall govern the performance of the work performed outside the premises of the company, including with regard to the forms of exercise of the executive power the employer and the tools used by the worker. The agreement also identifies the worker's rest periods as well as the technical and organizational measures necessary to ensure that the worker is disconnected from the technological equipment."*

### BELGIUM-

The right to disconnect was originally enshrined in a law known as the "Act regarding the strengthening of economic growth and social cohesion".<sup>8</sup> The statute required firms with more than 50 employees to consult with the workplace health and safety committee about disconnection and the use of digital tools. Recently, Petra De Sutter, Minister of Civil Service for Belgium's Green Party has issued a letter that from 1<sup>st</sup> February 2022 civil officials in Belgium will have the legal right to ignore calls from their employers outside of work hours.<sup>9</sup>

### CHILE-

As we have seen the right has got sanction mostly in European Countries but Chile is the first country outside Europe who has recognized it and enforced Law 21220 on 26<sup>th</sup> March 2020.<sup>10</sup> This law is not vast and does not clearly or strictly mentions about the

<sup>7</sup>SENATO DELLA REPUBBLICA, [https://www.senato.it/japp/bgt/showdoc/17/DDLMESS/0/1022243/index.html?part=ddlmess\\_ddlmess1-articolato\\_articolato1](https://www.senato.it/japp/bgt/showdoc/17/DDLMESS/0/1022243/index.html?part=ddlmess_ddlmess1-articolato_articolato1) (last visited Mar. 6, 2022).

<sup>8</sup>JUSTEL LÉGISLATION CONSOLIDÉE, <http://www.ejustice.just.fgov.be/eli/loi/2018/03/26/2018011490/justel> (last visited Mar. 6, 2022).

<sup>9</sup>*Employees get 'right to disconnect': boss is not allowed to call civil servants after hours*, DEMORGEN (Jan. 4, 2022, 07:06 AM), <https://www.demorgen.be/nieuws/werknemers-krijgen-recht-op-deconnectie-baas-mag-ambtenaar-na-de-uren-niet-meer-bellen~bca49067/?referrer=https%3A%2F%2Ft.co%2F>

<sup>10</sup>BIBLIOTECA DEL CONGRESO NACIONAL DE CHILE / BCN, <https://www.bcn.cl/leychile/navegar?idNorma=1143741> (last visited Mar. 6, 2022).

disconnection; however, it stipulates that an employee and employer can make flexible arrangements for the “smart working” as in the case of Italy. Law 21220 also states that there shall be a gap of 12 hours for rest between the periods of work.

#### CANADA-

The Province of Ontario passed Bill 27, Working for Workers Act, 2021.<sup>11</sup> This Act amends the Employment Standards Act, 2000 and adds the definition of disconnecting from work-

*“not engaging in work-related communications, including emails, telephone calls, video calls or the sending or reviewing of other messages, so as to be free from the performance of work.”*

#### Further it states that-

*“An employer that, on January 1 of any year, employs 25 or more employees shall, before March 1 of that year, ensure it has a written policy in place for all employees with respect to disconnecting from work that includes the date the policy was prepared and the date any changes were made to the policy.”<sup>12</sup>*

#### INDIA-

Supriya Sule, MP from the NCP, introduced “The Right to Disconnect Bill” in the Lok Sabha in 2018.<sup>13</sup>

As per Section 7 of the Bill, no disciplinary action can be taken if an employee does not answer to work-related calls after working hours. This bill is; however, a weak ray of hope as it was a private member's bill, it could not be passed, and no such bill has become an Act in India since 1970; however, these bills have had an impact on governments and subsequent legislation on critical problems, thus they are of great significance. Its basic objective is to provide a structured life by reducing the stress and tensions between employees professional and personal life. It includes-

- Enterprises with more than ten employees to form an Employee Welfare Committee and then negotiate details like working hours, overtime compensation, and so forth with the employees.
- Safeguard from retribution if an employee doesn't respond to the employer after working hours.

- Local governments will provide counseling services and develop “digital-detox centers” to the workers so that they could maintain balance.
- If an employer violates the law, he or she will face a fine of 1% of total company payroll.

#### IS IT FEASIBLE IN INDIA?

It is obvious that every law has both advantages and disadvantages. A particular act will be advantageous to one class or arena while being detrimental to another. What counts here is the magnitude, i.e., how advantageous the law is and how destructive it is to the other class. Although the right to disconnect appears to be very beneficial, there are a few flaws that must be addressed:

1. If this becomes law, any incidents at the factory will not be addressed immediately since the responsible worker might claim that it is outside of his working hours. Then who will be responsible for such mishaps. This is the most important question that must be answered before adopting such a right.
2. In India there is a backlog of work in most companies, due to which disconnecting cannot be possible and could lead to more mismanagement. There are many people who procrastinate their work and never meet the deadline. If they can't take the burden of their work then how can they enjoy the benefits? Before adopting this right the basics need to be corrected first.
3. It appears to be very easy to implement this right in a developed country like France or Germany, but in a developing country like India, where competition is intense in every field due to overpopulation and there is constant fear of being outperformed by other countries, it is challenging.
4. Unlike India, many developed countries have strict labour rules and work duration is limited to 35 hours each week.
5. The bill does not indicate which sectors will be exempted from the regulations. However, there are some sectors, such as public transportation, the medical field, law enforcement, and the media, where keeping fixed hours is not feasible.

If enacted, and the above-mentioned loopholes are adequately addressed, and a remedy for each loophole is shown then this freedom to disconnect will prove to be very feasible and good move for Indian workers, and will, of course, reduce psychiatric diseases caused by mental stress.

Now another question arises that why should an organization consider granting its staff the right to disconnect? Because if they don't, they're putting their

<sup>11</sup>LEGISLATIVE ASSEMBLY OF ONTARIO, <https://www.ola.org/en/legislative-business/bills/parliament-42/session-2/bill-27#BK4>(last visited Mar. 6, 2022).

<sup>12</sup><https://www.ola.org/en/legislative-business/bills/parliament-42/session-2/bill-27#BK4>same aayega as of 11<sup>th</sup> footnote, confused of ibid or supra or any other citation.

<sup>13</sup><http://164.100.24.219/billstexts/LSBillTexts/AsIntroduce/d/2317as.pdf>

staff at risk of burnout. Long work hours have been linked to an increased risk of hypertension, cardiovascular disease, and depression as per research. Men who do not take vacations are 30 percent more likely to suffer heart attacks, according to one longitudinal study. Women are at a 50 percent higher risk than men. In a meta-analysis of 228 studies, Jeffrey Pfeffer, an organisational behaviour professor at Stanford's Graduate School of Business, and his colleagues discovered that work-life conflict is worse for one's health than secondhand smoke, and that overwork increases the chance of death by 20%.<sup>14</sup> Therefore, we need to think of our labour force before this data is further increased.

The "right to disconnect" can help both employees and organizations as a whole. Establishing an appropriate work-life balance for employees is likely to prevent staff burnout and overload, resulting in a more productive workforce during working hours. Reduced stress may offer other benefits such as greater staff retention rates and increased employee morale, as well as employees' perceptions that their mental health is recognized and supported by their workplace.

However, this right must be exercised carefully. Employers should exercise with caution while implementing new laws or policies that provide the "right to disconnect" in their job.

As India continues to develop and flourish as an economy, there are limited job opportunities in many areas, leading to lower bargaining capacity of our workers and compromises in their health and personal lives. These workers do not bargain with these corporations and are willing to do anything they are instructed. We are already a huge labor provider to the rest of the globe, implying that we are on our way to becoming a global labour capital. Office workers' social and public lives have been destroyed by long working hours, particularly in the private sector. In India, the work culture and environment has robbed its workers of their leisure time. Hence, we require stringent legislation in this area.

"Right to Life and Personal Liberty" is guaranteed under Article 21 of the Indian Constitution. This right 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.

#### **RECOMMENDATIONS:-**

In this section, let's examine the various laws and ideas in order to establish a set of guidelines that

<sup>14</sup>CROWDSTAFFING,

<https://www.crowdstaffing.com/blog/right-to-disconnect-policies> (last visited Mar. 7, 2022).

might be used when attempting to enact a right to disconnect in federal law. These are listed below:

#### **1. Define the Right- What and Why :**

Firstly, the right to disconnect must be defined, i.e., what this right entails. As we all know, it includes the right to refuse to answer the emails, calls, messages from the employer after work-hours and to avoid any negative repercussions, but it also includes the duty for others to respect this right to disconnect (e.g. by not sending emails after hours).

#### **2. Communication is the key:**

The employer should also design a complete communication strategy to inform employees both before and throughout the implementation of a right to disconnect, so that employees can understand the context and rationale for the change. Once the policy has been finalised, more communication is required to ensure that employees understand what the policy is and what cultural changes are required.

#### **3. Monitoring the Policy :**

It is proposed that a follow-up committee comprised of both employer and trade union representatives be formed to monitor the implementation of the right to disconnect policy through performance indicators and employee surveys. Employees should also be provided with regular reports on their use of digital tools and compliance with the policy.

#### **4. Instituting a Complaints Procedure:**

Setting up a complaints procedure can be a good solution for employees who's right to disconnect has been violated by their employer. It may be worthwhile to investigate whether it's viable in a particular country or not by depending upon its administrative and legislative frameworks, as well as the function and strength of its trade unions. The present laws that establish a right to disconnect do not include such methods, nor do they define punishments for employers who violate the right.

#### **5. Special Provisions to be made for Emergency sector Employees:**

All workers should have the right to disconnect, regardless of their job status (full-time/part-time/self-employed), sector of work (public/private), employment type (managerial/ non-managerial), work location (office/ remote), and so on. However, in areas such as public transportation, the medical industry, law enforcement, and the media, additional measures should be made for employees so that they can obtain appropriate rest even while maintaining their duties, as keeping fixed hours is not practicable in these types of jobs.

## CONCLUSION:-

The right to disconnect could be a game-changer in the coming years. In India, irrespective of whether such a law is passed, it will be impossible to determine whether it can be properly enforced. India, being a developing nation, is still reliant on the international market. This makes it difficult to implement a consistent work regulation across different industries. However, where Parliament places less emphasis on labour laws, the inclusion of

this right in legislation can be interpreted as a victory sign. Time will tell whether or not this right to disconnect will be able to successfully break the code and adopt appropriate right-to-disconnect rules. A positive outcome might have a significant impact on employees across the globe. Workers have reached a breaking point, regardless of country, and any development that alleviates even a little bit of the burden and stress is welcomed.

