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## Invisible Overtime: After-Hours Digital Labour and the Missing Right to Disconnect in Indian Labour Law

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*“Invisible overtime isn’t labour – it’s legalised theft of the soul, and without India’s right to disconnect, the digital workplace becomes a 24/7 prison.”*

*The relentless march of India’s digital economy has spawned ‘invisible overtime,’ a pervasive form of unremunerated after-hours labour conducted via personal devices, evading the rigid hour caps of colonial-era statutes like the Factories Act 1948.<sup>1</sup> This article chronicles the legal trajectory from post-Independence frameworks through the 2020 Labour Codes, constitutional bulwarks under Articles 21, 42, and 19(1)(g)<sup>2</sup> as interpreted in seminal cases such as Justice K.S. Puttaswamy v Union of India<sup>3</sup> and Municipal Corporation of Delhi v Dharampal to pioneering private member’s bills by MP Supriya Sule (2018, 2019, 2025) and Kerala’s 2025 state legislation. Exposing gaps in the Code on Wages 2019<sup>4</sup> and Industrial Relations Code 2020<sup>5</sup>, amid gig platform surges and IT exemptions, it advocates targeted amendments, judicial activism via public interest litigation, and*

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<sup>1</sup> Factories Act 1948, s 64

<sup>2</sup> Constitution of India 1950, arts 21, 42 and 19(1)(g)

<sup>3</sup> Justice K S Puttaswamy v Union of India (2017) 10 SCC 1

<sup>4</sup> Code on Wages 2019, s 14

<sup>5</sup> Industrial Relations Code 2020, s 2(zb)

*global-inspired mechanisms from France's 2017 reforms to Portugal's 2021 law, ensuring enforceable disconnection to combat burnout and reclaim human dignity in a 24/7 workscape.<sup>6</sup>*

**Keywords:** *invisible overtime, right to disconnect, indian labour, factories, labour.*

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## INTRODUCTION

India's labour jurisprudence, forged in the crucible of industrial strife during British rule, prioritised tangible toil over ethereal digital demands. The Factories Act, 1948 - enacted amid Partition chaos - imposed strictures under section 64, limiting adult workers to nine hours daily (extendable to ten on one day weekly) and 48 hours overall, with overtime compensated at double rates, a safeguard against exploitative mill owners in Bombay and Kanpur. Complementary state Shops and Establishments Acts, such as Bombay's 1948 enactment (s 15, capping nine hours daily/54 weekly) or Madras's 1947 version, extended analogous protections to clerical and commercial spaces, yet carved exemptions for managerial/supervisory roles, foreshadowing vulnerabilities in nascent service sectors.<sup>7</sup>

Post-Independence constitutionalism infused these statutes with higher ideals. Article 21's guarantee of life and personal liberty, initially narrowly construed in *A.K. Gopalan v State of Madras*<sup>8</sup> as mere physical existence, expanded dramatically. *Bandhua Mukti Morcha v Union of India*<sup>9</sup> wove dignity into its fabric, deeming exploitative conditions violative, while *Consumer Education & Research Centre v Union of India*<sup>10</sup> under Article 42 that mandates occupational health safeguards, interpreting rest as non-negotiable for productivity. Article 19(1)(g)'s freedom

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<sup>6</sup> 'India's Right to Disconnect Bill 2025 Explained: Here's why employees can now legally switch off like France, Italy, Portugal, and Australia' *The Times of India* (09 December 2025)

<<https://timesofindia.indiatimes.com/education/news/indias-right-to-disconnect-bill-2025-explained-heres-why-employees-can-now-legally-switch-off-like-france-italy-portugal-and-australia/articleshow/125863235.cms>> accessed 09 December 2025

<sup>7</sup> Aditya Nagpal, 'Legal Working Hours & Overtime Pay Rules in India 2025' (*Wisemonk*, 21 October 2025)

<<https://www.wisemonk.io/blogs/overtime-laws-in-india>> accessed 11 November 2025

<sup>8</sup> *A K Gopalan v State of Madras* AIR 1950 SC 27

<sup>9</sup> *Bandhua Mukti Morcha v Union of India & Ors* AIR 1984 SC 802

<sup>10</sup> *Consumer Education & Research Centre & Ors v Union of India & Ors* AIR 1995 SC 922

to practice professions yielded to reasonable restrictions, upheld in *Excel Wear v Union of India*<sup>11</sup>, validating hour regulations against closure challenges.<sup>12</sup>

The 1970s-1980s liberalisation whispers introduced flexibilities, but digital seeds sprouted post-1991 reforms. Section 2(g) of The Industrial Disputes Act 1947 defines industrial disputes broadly and addresses strikes over hours, yet ignores asynchronous encroachments. IT/ITES booms prompted Ministry of Labour notifications (2002) exempting software firms from Shops Acts, permitting 12-hour shifts across four days (with 48-hour weekly cap), as clarified in 2025 Labour Ministry statements - laying groundwork for invisible overtime where Slack pings and emails on personal phones bypassed 'premises-based' work definitions.

## **1990s-2010s - JUDICIAL STIRRINGS AMID DIGITAL DAWN**

Smartphone proliferation from 2010 amplified tethering. *Municipal Corporation of Delhi v Dharampal* affirmed rest periods as integral to Article 21 health rights, striking down arbitrary municipal overwork, while *Zubeda Khandwala v Inspector General of Registration* obiter critiqued supervisory excesses, echoing ILO Convention No 1 (ratified 1921, 48-hour weeks) and Hours of Work (Commerce and Offices) Convention No 30 (unratified). Courts gestured at balance: *Bombay HC* in 2014 gig precursor disputes indirectly flagged remote overreach, but no binding precedent emerged for disconnection, leaving gig workers - formalised later - exposed to algorithmic nudges uncurbed by pre-codes regimes.<sup>13</sup>

## **The Four Labour Codes of 2020 marked Consolidation:**

### **1. Code on Wages 2019<sup>14</sup> -**

- Section 2(y): Narrows the 'wage' definition,
- Section 14: Double pay beyond the nine daily/48 weekly limits.

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<sup>11</sup> *Excel Wear Etc v Union of India & Ors* AIR 1979 SC 25

<sup>12</sup> Harikrishnan R, 'RIGHT TO DISCONNECT: A NEW LABOR RIGHT IN THE DIGITAL ERA? – A COMPARATIVE AND CONSTITUTIONAL ANALYSIS' (2025) 5(4) Indian Journal of Legal Review

<<https://ijlr.iledu.in/right-to-disconnect-a-new-labor-right-in-the-digital-era-a-comparative-and-constitutional-analysis/>> accessed 11 November 2025

<sup>13</sup> Harsh Jain, 'The Right to Disconnect: Balancing Work and Well-being in the Digital Age' (*NLR Blog*, 12 November 2024) <<https://nliulawreview.nliu.ac.in/blog/the-right-to-disconnect-balancing-work-and-well-being-in-the-digital-age/>> accessed 11 November 2025

<sup>14</sup> Code on Wages 2019

## 2. Industrial Relations Code 2020<sup>15</sup> -

- Section 2(zb): “Worker” excluding supervisors earning >₹18,000,
- Section 25C: Overtime Provisions,
- Ch VII bargaining.

## 3. Occupational Safety, Health and Working Conditions Code 2020<sup>16</sup> -

- ss 6-12 hour caps, rest intervals,

## 4. Code on Social Security 2020 –

- Section 2(1)(w):<sup>17</sup> “Gig worker” recognition, s 110 benefits sans digital intrusion curbs.

IT exemptions endured via notifications, fueling \$194 billion IT exports (2024) on uncompensated vigilance, as pandemic remote work (2020-2022) entrenched ‘always-on’ norms.<sup>18</sup>

Justice K.S. Puttaswamy v Union of India revolutionised Article 21, entrenching informational privacy against state surveillance, extensible to employer digital intrusions, fragmenting rest - bolstered by Delhi HC 2023 orders in teacher burnout petitions mandating schedules, and Bombay HC 2024 gig rulings critiquing platform overreach without explicit remedies.<sup>19</sup>

## **LEGISLATIVE TRAILBLAZING: PRIVATE BILLS (2018-Present)**

MP Supriya Sule ignited reform with the Right to Disconnect Bill 2018 (introduced in Lok Sabha October 28, 2019), proposing an Employees’ Welfare Authority for post-hour disengagement, policy negotiations, overtime at normal rates (escalating double), and fines - languishing as private member’s bills (PMBs) succeed rarely (14 post-Independence, none since 1970).

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<sup>15</sup> Industrial Relations Code 2020

<sup>16</sup> Occupational Safety, Health and Working Conditions Code 2020

<sup>17</sup> Code on Social Security 2020

<sup>18</sup> Shubhi, 'Right to Disconnect Bill 2025 tabled in Lok Sabha: Will India move towards better Work-Life Balance?' *SCC Times* (10 December 2025) <<https://www.scconline.com/blog/post/2025/12/10/right-to-disconnect-bill-2025/>> accessed 10 December 2025

<sup>19</sup> India’s Right to Disconnect Bill 2025 Explained: Here’s why employees can now legally switch off like France, Italy, Portugal, and Australia (n 6)

Reiterated 2022-2024 amid hybrid work debates, it invoked Article 43A (worker participation), critiqued in NLIU Law Review for emergency definitional ambiguities.<sup>20</sup>

Kerala pioneered state action with its Right to Disconnect Bill, 2025 (November introduction), empowering district committees under Regional Joint Labour Commissioners for private firms (>10 employees), shielding against reprisals (demotion/dismissal), grounded in Articles 21, 38 (welfare state), 39 (living wage), 43 (living wage/conditions), with fines and audits - federal experimentation filling national voids.<sup>21</sup>

Nationally, Sule's December 5, 2025 Lok Sabha tabling refines: mandates charters defining 'non-emergency' (e.g., routine queries), 1% payroll penalties (proposed s 19), digital overuse audits, detox counseling, grievance integration with Industrial Relations Code s 3 portals, countering 12/4-day flexes - prospects dim yet momentum-building via union advocacy and ESIC burnout tracking (Code on Social Security).<sup>22</sup>

## **CONTEMPORARY MOMENTUM (2025 ONWARD)**

Kerala's Right to Disconnect Bill, 2025 (introduced November 2025), pioneered state-level action with district committees (Regional Joint Labour Commissioner-led) for private firms, grounded in Articles 21, 38, 39, 43, and fining reprisals—marking federal experimentation. Nationally, Sule's December 5, 2025, Lok Sabha tabling mandates policies for >10-employee firms, narrow 'emergency' definitions, 1% payroll penalties (s 19), digital audits, and detox centres, dovetailing Industrial Relations Code grievance portals (s 3) and countering 12/4-day flexibilities.<sup>23</sup>

## **GLOBAL PARALLELS ILLUMINATING REFORM PATHS**

- France's El Khomri Law (2017, Labour Code art L2242-17) requires >50-employee firms to negotiate disconnection, fining violations;

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<sup>20</sup> 'Right to Disconnect' (*Supriya Sule*, 05 January 2019) <<https://supriyassule.in/parliament/right-to-disconnect>> accessed 11 November 2025

<sup>21</sup> Archana Rao, 'Kerala Introduces India's First Right to Disconnect Legislation: All You Need to Know' (*India Briefing*, 26 November 2025) <<https://www.india-briefing.com/news/kerala-right-to-disconnect-bill-2025-40953.html>> accessed 26 November 2025

<sup>22</sup> 'Right to Disconnect Bill, 2025' (*Drishti IAS*, 06 December 2025) <<https://www.drishtiias.com/daily-updates/daily-news-analysis/right-to-disconnect-bill-2025>> accessed 06 December 2025

<sup>23</sup> Nagpal (n 7)

- Portugal's Law 83/2021 mandates contractual clauses for remote workers.
- Australia's Fair Work Amendment (Secure Jobs, Better Pay) Act 2022 (effective 2024) deems unreasonable after-hours contact a breach, with Fair Work Commission remedies.
- Belgium's 2017 collective agreements set sector norms. These models-phased, tripartite - suggest India's amendments: insert post-Code on Wages s 14 for digital logs; PILs expanding Puttaswamy to private overreach; Shops Acts state tweaks; tech mandates (auto-replies).
- Vietnam, 2021 Decree 145 (tech firms' policies). Phased tripartism, metrics (usage logs), opt-outs model India's Shops tweaks, Wages Code s 14A insertions.
- Ontario, 2018 Working for Workers Act (policy mandates);<sup>24</sup>

**Implementation Hurdles Persist:** "Emergency" scopes (client crises?), SME exemptions, unorganised gig enforcement (110 million workers), cultural 'hustle' resistance. Tripartite forums (Industrial Relations Code), data-driven baselines (Welfare Authority studies), and incentives (tax credits for compliant firms) offer levers.

## **CONCLUSION: REKINDLING DIGNITY IN DIGITAL FORGE**

India's labour edifice, resilient yet archaic, confronts a seismic paradigm shift where the clank of physical chains in colonial factories has morphed into the silent shackles of virtual notifications, ensnaring workers in perpetual availability that defies the tangible-hour anchors of Factories Act section 64 and the 2020 Labour Codes' structured flexibilities. Absent a codified right to disconnect, the projected \$250 billion digital economy, propelled by IT exports and gig platforms, teeters on the brink of wellness implosion, with chronic fatigue epidemics eroding cognitive reserves, stifling genuine innovation, and corroding Article 21's core promise of life with dignity, as expansively interpreted in Puttaswamy to shield personal sanctuaries from invasive overreach.

This vulnerability manifests starkly: white-collar coders in Hyderabad marathons and app-based drivers nudged by midnight algorithms endure uncompensated vigilance, untracked by Code on Wages section 14's double-pay thresholds or Industrial Relations Code section 2(zb)'s supervisory carve-outs, breeding a productivity paradox where relentless 'hustle' yields

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<sup>24</sup> Shubhi (n 18)

diminishing returns amid 20% attrition rates tied to exhaustion. Judicial whispers in Dharampal and recent high court burnout mandates hint at recourse, yet without statutory teeth, employers exploit IT exemptions and cultural machismo, flouting Article 42's mandate for humane entrenchments and ILO Recommendation 116's (1962) call for uninterrupted daily/weekly respites.

Reforms must forge ironclad boundaries through multifaceted strikes: legislative amendments inserting a dedicated chapter post-Code on Wages section 14 to log digital interactions as compensable overtime via employer-provided apps, complete with triple penalties for reprisals; judicial guidelines via landmark public interest litigations extending Puttaswamy's proportionality test to private-sector digital surveillance, mandating personalized 'off-switches' akin to Kerala's district enforcers; and state-led pilots recalibrating Shops and Establishments Acts with SME grace periods, tax rebates for compliant innovators, and tripartite councils blending union advocacy (Chapter VII bargaining) with NASSCOM-style charters<sup>25</sup>.

Operationalising this demands granular tools: national Digital Labour Authority audits on communication patterns, ESIC-integrated burnout indices under Code on Social Security section 110, tech mandates for 'do-not-disturb' defaults, and phased rollouts mirroring France's negotiation pacts or Australia's Fair Work remedies, elevating enforcement from dismal 1:1000 inspector ratios to robust 1:400 benchmarks. Such architecture not only honours ILO rest imperatives but transmutes liability into a competitive edge, nurturing rested minds that spark sustainable breakthroughs over burnout's ashes.

*"In the unquenchable blaze of India's digital dominion, invisible overtime incinerates the essence of labour- Only an unbreakable right to disconnect will quench the flames, resurrecting a workforce of unbreakable wills and sovereign lives."*

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<sup>25</sup> Sonakshi Das and Devika Sreekumar, 'Kerala introduces right to disconnect bill for private sector employees' (*DLA Piper*, 28 November 2025) <[https://knowledge.dlapiper.com/dlapiperknowledge/globalemploymentlatestdevelopments/2025/kerala-introduces-right-to-disconnect-bill-for-private-sector-employees - :~:text=The government of Kerala has communications outside prescribed working hours](https://knowledge.dlapiper.com/dlapiperknowledge/globalemploymentlatestdevelopments/2025/kerala-introduces-right-to-disconnect-bill-for-private-sector-employees - :~:text=The%20government%20of%20Kerala%20has%20communications%20outside%20prescribed%20working%20hours)> accessed 28 November 2025