



## From Off-time to Offline: Recognising Right to Disconnect under the Sri Lankan Labour Law System

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### ABSTRACT

This study aims to interrogate the possibility of acknowledging the Right to Disconnect (RTD) under the labour laws of Sri Lanka. RTD which emerged as a response to the increasing demand for online and hybrid work, recognises employees' right to remain disconnected or disengaged from any work-related activities such as answering phone calls or responding to emails after working hours. Research on RTD has focused on its practical implications for building a healthy and sustainable work force, but less has been said about its incorporation to domestic legal environments, especially in developing countries. The present study therefore critically reviews the Sri Lankan labour laws and the labour laws in other jurisdictions that have acknowledged RTD, to understand the potential of acknowledging this right in Sri Lanka. Through its data analysis this study revealed that, despite the existence of legal measures that ensure employees' Right to relax and leisure (RRL), a little to no focus has been given to the new working environments such as online and hybrid work, and the rights that would emerge from them. While highlighting the best practices relating to RTD from other jurisdictions, this study also examines the legal dilemmas that may thwart such attempts of recognising this right in Sri Lanka. Thus, it highlights the need

to update Sri Lankan labour laws to match the contemporary labour market while strengthening labour tribunals to play an active role which will be essential to acknowledge novel rights such as RTD under Sri Lankan labour laws.

## 1. INTRODUCTION

The line between personal and professional lives of employees is increasingly blurring due to the drastic developments in the information and communication technology and the acute shift towards online working, demanded by the COVID-19 pandemic. As of 2023, “12.7% of full-time employees work from home, while 28.2% work a hybrid model, illustrating the rapid normalisation of remote work environments”.<sup>1</sup> As a result, many employers routinely contact employees by e-mail or by phone after work, at the weekend and during holidays which in most instances is an expressed obligation undertaken by employees in their contracts of employment. Unlike regular employees who enjoy the liberty of leaving for their homes and families after regular working hours, the “online employees are constantly remained ‘on-call’ all day which has become the new norm of online sphere”.<sup>2</sup> Thus, this growing demand for online work environments and the longer work hours that it entails have spurred conversations on re-interpreting existing laws on employees’ RRL to include a right to remain disconnected, ensuring that the “employees are not beholden to their employers outside of work time to check or respond to emails, take phone calls, or do any other kind of work-related activity”.<sup>3</sup> Viewed in this light, the present study is an attempt to interrogate the possibility of acknowledging RTD within Sri Lankan legal frameworks while discussing remedial measures that can be adapted to overcome any challenges that may impede such attempts.

1 Kathy Haan, ‘Remote Work Statistics And Trends In 2023’ (2023).

2 European Parliament, ‘The right to disconnect’ (2021).

3 Nadine Malek, ‘Right to Disconnect Laws: Are They Coming to the US?’ (2022).

Arguing for the importance of RTD, critics highlight its importance in reshaping the existing labour laws to match the demands of the contemporary world of work. They argue that, most of the developing countries such as Sri Lanka have laws that have largely not been amended to reflect the new trends in the labour market, rendering them ineffective when protecting the employees from the mishaps caused by the rapidly changing work conditions. On the other hand, critics contend for the practical significance of RTD when curbing the negative impact of online working on the employees’ physical and mental well-being, as well as on the sustainable economic development of a country at large. For instance, employees have become the victims of serious health conditions like long-term health issues, worsening of eyesight, migraine, stress, depression, fatigue and musculoskeletal disorders<sup>4</sup> due to their sedentary life styles. On the other hand, the lack of social interactions and unhealthy digital dependency have resulted in the breakdown of domestic and immediate relationships and rise of crime and delinquency rates both online and offline.<sup>5</sup> Furthermore, misconstruing longer work hours as more output which in reality decreases employee productivity and damages the economy has worsened this situation, reinstating the importance of RTD. As critics argue, such a right therefore may benefit both online and regular employees, as the limited digital disturbances once an employee gets home will essentially ensure their RRL, an economic, social and cultural right recognised in many legal instruments on human rights such as Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child, as well as in the regional texts such as the African Charter on the Rights and Welfare of the Child.

4 Jodi Oakman and others, ‘A rapid review of mental and physical health effects of working at home: how do we optimise health?’ (2020).

5 Smriti Agrawal, ‘SOCIAL MEDIA AND CRIMES: AN ENTANGLED RELATIONSHIP’ (2021).

Hence, today attempts are being taken to reduce online working hours and eliminate online disturbances in non-work hours and holidays. Emerging in this context, the 'right to disconnect', which essentially stands for "worker's right to be able to disengage from work and refrain from engaging in work-related electronic communications such as emails or other messages during non-work hours" can be considered as one of the latest developments in the conversations that surround RRL.<sup>6</sup>

Research on RTD proves that many jurisdictions have already taken steps to recognise the right in their domestic legal frameworks, despite it being in the embryonic stage in the larger human rights literature. Unfortunately, Sri Lanka's interest towards such a legal recognition is quite lacking. Even though current research has focused on nourishing the existing labour standards and laws in the country, less has been researched on the recognition of this rather novel concept: RTD. Therefore, this study intends ,

- To understand the existing legal provisions that safeguard employees' RRL under the Sri Lankan labour law system
- To analyse RTD as recognised in other jurisdictions in order to set up a legal premise to incorporate it into the Sri Lankan labour law system

## 2. MATERIALS AND METHODS

When achieving the above research objectives, this study uses literature reviewing as its main research method. A wide variety of sources are therefore reviewed, including journal articles, web articles, news reports and websites. Furthermore, the researcher has analysed Sri Lanka's existing labour laws and labour standards, as well as her obligations to international treaties on labour

policies. Moreover, the international legislature was also reviewed to better understand the international developments in the arena and to suggest measures that could be adopted to overcome the challenges faced by the present domestic legal framework.

## 3. RESULTS AND DISCUSSION

### 3.1. Present Sri Lankan Legal Framework

Wages Boards Ordinance No.27 of 1941 and the Shop and Office Employees Act No. 19 of 1954 remain the main legal instruments that explain the working hours, holidays, maternity benefits, facilities, remuneration and overtime payments, as well as other connected matters related to employees in Sri Lanka. A close examination of these statutes show that they contain expressed legal provisions for securing an employees' RRL.

On one hand, separate legal provisions are dedicated to providing employees with weekly holidays, statutory holidays and Poya holidays in Sri Lanka. Furthermore, regulations are in place to remunerate the employees who opt to work on these allotted holidays. For instance, according to Section 5 (1) of the Shop and Office Employees Act No. 19 of 1954, such employees are provided with one and a half days of paid holidays per week. Wages board ordinance Section 24 (1) (c) provides that an employer shall allow his employees to enjoy a day in each week as a holiday and what remuneration, if any, shall be paid to workers in respect of such holiday, and the conditions, if any, subject to which such holiday shall be allowed to such employees be decided by the same. However, a Shop and Office employee will be entitled for such weekly holiday only when they have worked for a total period of not less than twenty-eight hours, exclusive of any period of overtime work, as required by Section 5 (1) of the Act. Similarly, these employees are entitled for overtime payments (O.T.) on behalf of the work done on these weekly

<sup>6</sup> European Observatory of Working Life, 'Right to Disconnect' (2021).

holidays. In addition to the overtime payments, Shop and Office employees are also entitled to half day leave for work on Saturday and one day lieu leave for work on Sundays.

Similar provisions can be observed when granting statutory and Poya holidays to the employees. Statutory holidays, or the holidays declared by the Minister of public administration by a gazette notification, can entitle a Shop and Office worker eight days as such holidays. It is interesting to note that, when a statutory holiday falls on a half day or a full day of a weekly holiday, the employees are entitled for an equivalent holiday on the previous or the following working day for the respective holiday. If such an employee works on a statutory holiday, he or she is either entitled for two days wages for an eight-hour work period or another working day before 31<sup>st</sup> December to be declared as a holiday. Similar to that are the Poya days which are considered holidays for the employees under both statutes. If Poya falls on a Saturday or a Sunday, no additional holiday will be granted to the employees. If an employee works on a Poya day, they will be entitled for a wage equal to one and a half times the normal wage of the employee, irrespective of number of hours worked. However, no O.T. payment will be made on such days. If employees work on a Sunday that is also a Poya day, such payments will be based on the basis of such an employee working on a Sunday.

However, it could be observed that none of the provisions in the present legal framework of Sri Lanka explicitly address RTD. Despite that, it could be argued that the interpretation sections of major legal instruments impliedly stand for the recognition of the right. For instance, Shop and Office Employee Act describes terms like “whole holiday” as to mean “a day on which a person usually employed in or about the business of a shop or office is not so employed during any period whatsoever”. Hence, one could argue that, ‘not so employed during any period whatsoever’,

impliedly recognizes the employee’s right not to be interrupted even by digital means on ‘whole holidays’. Nevertheless, the restriction of terms such as ‘whole holiday’ to the special holidays, along with the obscurity in defining terms such as ‘employed’ which may or may not include online work can constrain the effective application of such legal provisions.

As evident from the above discussion, current Sri Lankan labour laws and standards exhibit an adequate effort in ensuring the employees’ RRL by providing them with a wide range of holidays including weekly holidays, statutory holidays, Poya holidays etc. Not only do these provisions provide enough room for the employees to exercise their RRL but acknowledge their right to receive remuneration if they work on such special holidays. In the meantime, some critics argue that Sri Lankan labour laws provide too many holidays for employees compared to other countries. However, a close examination of the legal provisions that are explained above reveals that none of those provisions expressly or impliedly recognise an employee’s RTD during the time period provided to them as holidays. Such an oversight may curtail the employees’ right to enjoy their RRL in an effective and productive manner. In a similar vein, it is possible to observe a lack of special provisions that are dedicated to discerning the working hours and relaxing hours of the employees who are working online. As both of the above discussed pieces of legislature are years old, it is not surprising that they lack the capacity to address the changing faces of the contemporary world of work where online or hybrid work has become the new normal.

### **3.2. Lessons from other Jurisdictions**

Viewed in this light, there is a potent necessity to establish a solid legal premise that would help Sri Lanka to acknowledge the right to disconnect. A starting point in such attempts would be to identify

best practices from other jurisdictions where RTD has gained substantive legal attention.

France in this regard becomes exemplary, as it is the EU pioneer in legally recognising RTD. Through a national cross-sectorial agreement in 2013, she defined specific periods when employees could keep their electronic communication devices switched off, a provision which, after three years from its introduction achieved legal recognition through the Article L.2242-17 of the French Labour Code. Thus, it requires employers who employ 50 or more employees to encourage dialogues and annual negotiations on matters related to the use of digital tools beyond working hours. Insights can also be drawn from the developments in German companies such as Volkswagen, BMW and Puma all of which contain voluntarily imposed restrictions on when managers can e-mail employees outside working hours. Despite the absence of RTD as a separate labour right, German Labour Ministry has adopted policies that ban any communication with staff outside working hours, except for emergencies.

Following the COVID-19 outbreak, a long thread of legislative enactments and forward momentum on RTD can be observed, especially in the countries like Spain, Ireland and Italy. For instance, Ontario's right to disconnect laws which came into effect as part of the Working for Workers Act in Canada may become an exemplary set of guidelines for the new legislators. Overall, these legal instruments show a tendency to bring out the nuances of right to disconnect while reshaping it to match the peculiarities of their nations, thereby serving as a fertile ground of legal resources for Sri Lanka in any attempt of incorporating 'right to disconnect' into their labour laws.

### **3.3. Challenges in Recognising Right to Disconnect**

This discussion has also identified some substantive and procedural challenges that would impede Sri Lanka's attempts of recognising right to disconnect in their labour laws. On one hand, right to disconnect in its inherent form remains a right that is vague as its contours still remain elusive. Similarly, Sri Lankan laws on labour rights remain dated which makes it challenging to acknowledge the new developments in the world of work and the rights associated. Moreover, as freedom of contract remains the bedrock principle that governs employer-employee relationships, entrusting the government to impose a right like RTD has been observed by critics as a violation of this fundamental principle. They demand such terms to be self-regulated by the employers and employees which may pose the risk of employers creating rules favourable for them. Hence, updating the labour laws in Sri Lanka to reflect contemporary changes in the world may help Sri Lanka to overcome such challenges and to ensure more favourable work environments for its citizens. In achieving this objective, a vital role could be played by the Department of Labour as it could act as the executive hand behind monitoring the penetration of these proposed national laws into contract of/for employment and collective agreements at the domestic level.

### **4. CONCLUSIONS**

In light of the above discussion it becomes clear that, RRL has been recognised to a greater extent in the present Sri Lankan labour law architecture. However, it is apparent that no legal premise has explicitly been provided for the recognition of RTD under these laws. Although RTD remains a novel concept to this date in many jurisdictions including Sri Lanka, it appears from the above discussion that it continues to gain importance due to the rapid changes in the contemporary world of work. Some

substantive and procedural challenges associated with the recognition of RTD in Sri Lanka were also highlighted in the study. Despite such challenges, it is contended that recognising RTD would play a significant role in achieving transformational development in the work environment as it would provide means to overcome obstacles that prevent employees from living life to all its fullness.

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