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DISCONNECTING IN A CONNECTED WORLD: COMPARATIVE LEGAL APPROACH TO THE RIGHT TO DISCONNECT

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Abstract:

Technology and digital world nowadays have resulted in constant connectivity at the workplace, even outside the working hours making the work boundaries become blurry. This transformation from the traditional 9 to 5 working hours to unlimited 24/7 has raised concerns about work-life balance, mental health, and employee well-being. Owing to this, the emergence of the right to disconnect as a legal and policy issue has taken place in many countries. Starting with France that introduced right to disconnect in her legislation, other European countries seemed to follow the practice and extended beyond Europe continent to countries such as Canada, Ireland and Australia, even though the approaches are diverse. This paper explores comparative legal approaches to the right to disconnect, analyzing how different jurisdictions have addressed this challenge through legislation. By examining legal frameworks in selected countries in the European countries such as France, Spain and Italy, together with Canada and Australia, this study highlights the diversity of regulatory strategies and enforcement challenges. The paper concludes with recommendations as a way forward for Malaysia in balancing business needs and employee rights in an increasingly digital world.

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**Keywords:**

Right To Disconnect, Disconnecting From Work, Legal Approach, Employment, Well-Being, Legislation

Introduction

Today's technological advancements and digital media platforms are available around the clock, expecting employees to entertain their calls even after work hours. Connectivity becomes routine. Employees even find it difficult to escape from work during outside working hours. Smartphones, e-mail, social media, and so on create “endless” work and blurry boundaries between working and rest time. Before the internet was widely utilized, workers were shut off from work as soon as they reached home. Today, it is almost impossible for employees to detach from their jobs when work calls are accessible anywhere and anytime. The traditional 9-to-5 work schedule that has evolved into hybrid work, remote work, telecommuting, digital workplaces, and other modern arrangements—also leading to a trend of 'endless' work. The notion of the workplace and work times have been disrupted by technology, causing a blurring of lines between employees' work and personal lives (Ogunde, 2023). Consequently, workers today find it difficult to enjoy personal life and spend personal time.

This trend is evidenced when a study in France showed that 79 percent of managers were reading their e-mails during the evening or on holidays, and the percentage rose to 96% for the executive managers, while 49 percent of non-managerial employees were working during evenings or while on annual leave (*Observatoire du Capital humain de Deloitte et Cadremploi*, 2015). A JobStreet.com (2021) survey, also found that almost all 54 percent of workers who indicated taking annual leaves responded that they still get emergency texts from their bosses, with only 25 percent indicating they do not get any interruptions from work during the holiday. Moreover, 78 percent leave their handphone contactable by their boss all the time, and nearly 75 percent choose to stay late at the office to complete their heavy workloads.

While the flexible working arrangements are evolving and considered the best choice to boost employee performance (Goddard et al, 2022), the demand of employers requiring employees to complete tasks and projects outside their working hours also become commonplace. This transformation has raised concerns about employees' rights and matters relating to their well-being, mental health and work-life balance. Diksha (2025) considers the RTD as a new legal and social idea that helps set clear boundaries, so employees aren't expected to work or respond to messages outside of working hours. The use of digital communication without limit, even outside the working time resulted in certain countries in the Western Europe regulating laws and policies to protect their employees. Simply said, the law is introduced to acknowledge the right of employees from being interfered by employers outside working hours. Starting with France, the legal approach known as the 'right to disconnect' (RTD) was introduced through legislation and has since spread to other European countries. The concept has even extended beyond Europe, influencing policies in countries such as Canada and Australia. While most agree with this RTD concept and impose certain regulations for its purpose, interestingly, the approaches varied. This paper looks at selected global laws that

address the RTD from the legal perspective thus reviews the regulatory approaches of countries such as France, Italy, Spain, together with Canada and Australia. This paper concludes with recommendations, especially as a way forward for Malaysia.

Literature Review

Mastercard estimates that in 2023, 78 million people work in the global gig economy and relies on the internet platforms (Pellerin, Ollier-Malaterre, Kossek, et al., 2023). This transformation leads to connectivity at any time resulting in potential hazard to employees' health (Eurofound, 2021). The Centre for Future Work reported that overtime is prevalent in Australia, with 71% workers agreed they performed work outside of scheduled working hours for the most common reasons were having too much work (36%), followed by staff shortages (28%), less interruptions working outside normal hours (26%), and managers' or supervisors' expectations (23%) (Littleton & Raynes, 2022). The long-term health risks of not having a work-life balance include burnout, low productivity, absenteeism, anxiety, chronic stress, and depression that leads to increased employee turnover, lower workplace morale, and prove costly to employers in the long run. This practice has a profound detrimental impact on employee privacy and autonomy, safety and health, productivity and compensation, and rest and leisure (Shukullari, 2021). Accordingly, Flintoff (2024) suggests that the RTD engages positively with the right to a reasonable limitation of working hours enshrined in Article 7 of the International Covenant on Economic, Social and Cultural Rights concerning the limitation of working time to eight hours a day and forty-eight hours a week in industrial enterprises.

What is the Right to Disconnect?

The term of "right to disconnect" (RTD) has been associated with the transformation and emergence of the technological advancement in our daily life and the world of work. The concept has acknowledged the employees right to disengage from work and be refrained from engaging in work-related electronic communications, such as emails, telephone calls or other messages, outside normal working hours (Eurofound, 2021; Jaworska, 2022). To Jaworska (2022), the RTD is inferred from the employee's right to rest, whenever an employee is entitled to switch off outside of their normal working hours and enjoy their free time away from work without being disturbed, unless there is an emergency or agreement to do so, for example when "on call" (Knowledge, 2021). As such, the employer should not expect the employee to answer calls and emails or communicate with the employer outside of working hours (Keane, 2021).

Furthermore, Castro, Santacruz and Solano (2022, para. 1) defines RTD as "the right of a worker to be able to disconnect from work and refrain from participating in electronic communications related to their employment, such as emails and messages, calls or other forms of communication, for hours non-work". It is to respect employees' time so that they can "log off" outside of their normal working hours and enjoy their free time without being disturbed by employer.

Work-life Balance

The expectation that workers will be available at almost any time for online or mobile communication is considered hazardous to workers' health (Eurofound, 2021). According to JobStreet.com (2021), 63 per cent of Malaysian workers surveyed revealed they had not been spending enough time with family due to long working hours; and about 70 percent spent two

to five hours working beyond their official work hours every day, with the main reason for working overtime was unreasonable deadlines and overloading works. With greater pressures on workers to complete their task, spending time in the office easily goes beyond the 9 to 5 office hours. The expectation of availability may have a substantial impact on the employees' mental health such as feeling burnt out, tired, and stressed out (Von Bergen & Bressler, 2019). A global study conducted jointly by WHO and the International Labour Organization found that 745,000 people died from stroke and heart disease due to long working hours (WHO, 2021). A study covering the years 2000-2016 (Shukullari, 2021) suggests the increase in remote working may have further upped the risks. The long-term health risks of not having a work-life balance include burnout, low productivity, absenteeism, anxiety, chronic stress, and depression that may lead to increased employee turnover, lower workplace morale, and prove costly to employers in the long run. Ogunde (2023) agrees that, in one hand, technological advancements have enhanced flexible work arrangements and employee autonomy, but in the other, workforce are struggling to disconnect from work and sustain a healthy work-life balance.

Health Impacts

Studies show that an 'always on' work culture harms both mental and physical health (Jones & Bano, 2021); responding to work messages after 9 p.m. leads to poorer sleep and lower engagement the next day (Barber & Jenkins, 2014); and even the expectation of constant availability increases stress for employees and their families (Butts, Becker & Boswell, 2015). Continuous work-related communication after office hours disrupts personal lives while promoting digital disconnection is advancing a healthier impact to the employee (Pons, 2023).

The Benefits

The right to disconnect can benefit both individual employees and organisations. The imbalance between work and other aspects of life, the difficulty to disengage from an "always-on" culture, the addictive nature of the digital environment, and the current organisational practices that reinforce the state of connectivity not only affect the wellbeing of employees but also their productivity (Pansu, 2018). Establishing an effective work-life balance for employees is likely to reduce staff burn-out and overload, leading to a more productive workforce during working hours (Dean, 2021). Pellerin, Ollier-Malaterre, Kossek, et al. (2023) suggested the potentials of right to disconnect such as, to provide workers with their work-life balance, offer the freedom to turn down work demands without the fear of reprisal, reduce stress and ensure employees are not penalized, and reduce the burden on the health-care system by sustaining employees' mental health. It is reported that workers in companies with a right to disconnect policy having a better work-life balance than workers in companies with no such policy (92% compared with 80%) (Eurofound, 2023).

Other than the literature mentioned above, Table 1 below simplifies some relevant past findings regarding disconnecting from work.

Table 1: Past Findings Relevant to RTD

Author(s)	Core Findings
Hopkins (2024)	Identifies four key themes—work-life balance, scope, governance, and health and wellbeing—as critical to implementing the right to disconnect. Highlights the need for sustainable digital wellbeing policies across law, health, and business sectors.
Zlatanović & Škobo (2023)	Explores the conceptual foundations of the RTD, emphasizing psychosocial risks and mental health, especially in education. Argues for adapting labour laws to address digital-era challenges.
Castro (2023)	Smartphone-enabled work interruptions reduce employee engagement.
König & Wöhrmann (2023)	Reviews literature across 15 countries, identifying legal, health, and business perspectives. Emphasizes the importance of organizational culture and leadership in policy success.
Stoilova & Livingstone (2022)	Analyzes how digital rights frameworks in Europe incorporate RTD, with a focus on youth and vulnerable workers.
Piszczek (2021)	Organizational norms around after-hours communication shape employees' ability to disconnect, affecting well-being.
ILO (2021)	Highlights the importance of RTD in remote work to prevent burnout and maintain productivity.
Eurofound (2019)	Case studies show varied implementation across Europe, with leadership and employee involvement being key to success.
Mazmanian (2018)	Organizational culture can support disconnection if leaders' model and support boundaries.
Barley, Meyerson, & Grodal (2018)	Email overload contributes to stress and undermines work-life boundaries.
Wajcman, Rose, Bittman & Brown (2018)	Digital technologies complicate efforts to maintain work-life balance, reinforcing the need for disconnection policies.

Source: The Author.

Methodology

This study adopts a doctrinal legal research method combined with comparative analysis to explore the development and implementation of the right to disconnect across different jurisdictions. The doctrinal approach, a method that is common and relevant to the legal field, involves an examination of primary legal sources such as statutes, case law, and policy documents, as well as secondary sources including academic commentary and legal interpretations. Also known as “typical legal research”, the doctrinal method is a scholarship or an elaborate literature review of primary materials (Hutchinson & Duncan, 2012). In the current study, statutes of different jurisdictions are the sources of data. To enrich the analysis, a comparative perspective is employed, focusing on selected countries, namely France, Italy, Spain, Canada, and Australia, that have legislated their own laws. Relying on the primary source, namely the legislation or legal provisions regarding the RTD that are imposed by these countries, the analysis is made to look at their approaches where a conclusion is derived in proposing for future position and lesson for Malaysia.

Results

Many European countries have taken initiatives by introducing legislation that acknowledge the right to disconnect, with the examples of three below.

France

The French legislator has introduced a provision in the Labour Code that makes it compulsory to include a discussion on the issues of the right to disconnect and work-life balance in the framework of the annual collective bargaining on gender equality and quality of life at work (Law No. 2016-1088 of 8 August 2016). According to Article 6.2 of the agreement, the right to disconnect is intended to ensure compliance with rest and holiday periods as well as to help balance work with personal and family life (Weber, Hurley & Mandi, 2020). This requires companies with 50 employees or more to negotiate with employee representatives to determine the conditions of use of electronic communication tools aiming to ensure that the employees’ non-work hours, vacation time, and personal and family life be respected. Companies that do not follow these rules in theory face a potential €3,750 fine and up to one year in prison for senior management concerned. In 2018, the *Cour de Cassation* (the French highest court) ruled that an employee is entitled to extra pay whenever required to take work-related phone calls outside the regular work hours.

Italy

Italy protects workers' right to disconnect from work outside of regular hours through legislation. Recognised as a fundamental employee right, a draft law has been introduced to the Italian Parliament to separate an employee's time from work-related communications (Strada & Erboli, 2020). A Law Decree (no. 30) issued in March 2021 stated that employees have the right to disconnect from their working devices without having to face negative consequences on their salary or employment relationship; and by the end of 2021, the National protocol on remote working regulated that remote working must be organized in time slots such as to guarantee a disconnection slot (Innangard, 2022). The law focuses on employees’ right to avoid receiving communications from their employer or supervisor outside of regular working hours, ensuring a minimum 12-hour period of uninterrupted rest after the end of a workday. The draft Law defines 'work-related communication' as any form of contact between employers and employees via phone, email, instant messaging services, or any kind of platforms. Any work-related communications sent outside regular working hours

would not require a response unless deemed urgent or necessary. Non-compliance with the right to disconnect would result in fines ranging from EUR500 to EUR3,000 for each affected employee (Strada & Erboli, 2020).

Spain

The foundation of this right is found in Organic Law 3/2018, of 5 December, which addresses Personal Data Protection and guarantees digital rights. Additionally, Article 20 of Royal Legislative Decree 2/2015, part of the Revised Text of the Workers' Statute, specifically grants workers the right to privacy in their use of digital devices provided by employers (Delaguia & Luzon, 2023). Article 88 of Organic Law 3/2018 establishes that "Public workers and employees shall have the right to switch off devices in order to guarantee that, outside of legal or conventionally established working hours, their time off, leave and holidays are respected, in addition to their personal and family privacy". This right to switch off devices covers holidays, days off, maternity or paternity leave, etc. It begins from the moment the employee finishes the working day until the time the next one starts. Companies shall have to create internal policies regarding this right in addition to training and awareness actions (Arintass, n.d.). Non-compliance with digital disconnection policies can result in significant penalties.

Canada

In Canada, Ontario led the way in introducing the RTD legislation. Essentially, the provisions were incorporated in the Employment Standards Act, 2000 at the end of 2021. Currently (Ontario, 2024), the legislation requires employers with 25 and more employees, regardless their status of full or part time, to develop a written policy on RTD at their workplace. Here, the "disconnecting from work" is defined as not engaging in work-related communications, including emails, telephone calls, video calls or sending or reviewing other messages, to be free from the performance of work. Hence, the written policy on RTD must apply to all of the employer's employees in Ontario that include management, executives, and shareholders if they are employees under the ESA. Notably, the legislation does not limit the policies by the employer. By practice, the employer may have several different policies that apply to different categories of staff. While the written policy does not bind the employers to follow it, there is also no sanction provided.

Australia

The RTD in Australia has been introduced by the Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024, with effect from 26 August 2024 (or 26 August 2025 for small business employers). Hence, this right is outlined in the Fair Work Act 2009 whenever the act "grants employees an enforceable workplace right to refuse to monitor, read or respond to contact (or attempted contact) from an employer or a third party outside of their ordinary working hours, unless such refusal is unreasonable" (Flintoff, 2024). Unlike France, that bars employer for reaching out, or Spain that makes it illegal to contact employees outside working hours, Australian law does not prohibit but gives employee the right not to reply or respond outside the working hours, unless their refusal is deemed unreasonable. The basic understanding through this indication is that employer cannot always expect an employee to read the message or respond to communications (Maher, Michalandos, Georgiadis & Kelly, 2024).

Discussion

The right to disconnect has been increasingly recognized as a fundamental labor right in many European countries, including France, Italy, and Spain. The idea has since, especially the aftermath of the Covid pandemic, when many other countries have followed the steps when acknowledging this disconnecting right through legislation. These nations have enacted laws that establish clear guidelines and protections for employees, ensuring that their work-life balance is maintained by regulating work-related communications beyond working hours. France mandates that companies negotiate terms of digital disconnection and, if no agreement is reached, implement a company-specific charter. Italy enforces a minimum 12-hour rest period and imposes fines for non-compliance. Spain extends the right to disconnect to all forms of leave and requires organizations to develop internal policies. In Australia, while the government has also taken similar steps when introducing the RTD law, the employer is not banned from contacting the employee outside working hours, instead giving the right to the employee not to respond to it.

This indicates that although many countries have acknowledged this right to employees, not all jurisdictions have chosen similar pathways. The approaches are different with some imposing it through the law, while some through the implementation of the policy, also self-regulations. The countries also have dissimilar scope of coverage, where all employees could be covered in some countries, or certain number of employers only subject to the law, and only teleworkers or employees of companies of a minimum size could be covered in other countries. Finally, some jurisdictions impose specific enforcement measures and penalties, and some do not impose any sanction. Below is the table showing comparison of the legislations of RTD in different jurisdictions.

Table 2: Comparison of RTD Legislations

COUNTRY	LEGISLATION	MAIN PRINCIPLE	REMEDIES
France	Law No. 2016-1088 of 8 August 2016 (Labour Code)	Companies with 50 employees or more to negotiate with employee representatives to determine the conditions of use of electronic communication tools aiming to ensure that the employees' non-work hours, vacation time, and personal and family life be respected	€3,750 fine and up to one year imprisonment for senior management of employer company
Italy	Law Decree (no. 30) issued in March 2021	Employees' right to avoid receiving communications from their employer or supervisor outside of regular working hours, ensuring a minimum 12-hour period of uninterrupted rest	Fines ranging from EUR500 to EUR3,000 for each affected employee
Spain	Royal Legislative Decree 2/2015 Organic Law 3/2018	Public workers and employees shall have the right to switch off devices to guarantee that, outside of legal or conventionally established working hours, their time off, leave, and holidays are respected, in addition to	Non-compliance with digital disconnection policies can result in

		their personal and family privacy	significant penalties
Canada	Employment Standards Act, 2000 (Ontario)	Employers with 25 and more employees, regardless of their status of full or part-time, to develop a written policy on RTD at their workplace.	No sanction
Australia	Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024 Fair Work Act 2009	Grants employees an enforceable workplace right to refuse to monitor, read, or respond to contact (or attempted contact) from an employer or a third party outside of their ordinary working hours, unless such refusal is unreasonable 333m Employee right to disconnect (1) An employee may refuse to monitor, read, or respond to contact, or attempted contact from an employer outside of the employee's working hours unless the refusal is unreasonable. (2) An employee may refuse to monitor, read, or respond to contact, or attempted contact, from a third party if the contact or attempted contact relates to their work and is outside of the employee's working hours unless the refusal is unreasonable. (3) Without limiting the matters that may be taken into account in determining whether a refusal is unreasonable for subsections (1) and (2), the following must be taken into account: (a) the reason for the contact or attempted contact. (b) how the contact or attempted contact is made and the level of disruption of the contact or attempted contact causes the employee; (c) The extent to which the employee is compensated: (i) to remain available to perform work during the period in which the contact or attempted contact is made; or (ii) for working additional hours outside of the employee's ordinary	The Fair Work Commissioner may deal with disputes between an employer and an employee about the right to disconnect, including by making orders to stop an employee from refusing contact or to stop an employer from taking certain actions

		hours of work. (d) the nature of the employee's role and the employee's level of responsibility. (e) the employee's personal circumstances (including family or caring responsibilities).	
Malaysia	Employment Act 1955	Some protection for working hours, but it lacks explicit provisions regarding the right to disconnect.	

Source: The Author.

With the current trend shows that most countries are moving towards accepting and introducing the RTD law, its success still depend on the implementation that requires considerable effort. Legislation alone is not sufficient. This includes raising awareness, providing training and implementing practical measures that respect employees' right to disconnect, tailored to the specific needs of different sectors and roles. Joserand and Boersma (2024) suggest both employers and employees to have clear communication and mutual trust besides the creation of workplace cultures that respect personal time, as well as practical challenges, for example the case of business operating across multiple time zones.

Malaysia, like many other developing economies, faces challenges in ensuring work-life balance, especially in an era of digitalization and remote working. While Malaysia's Employment Act 1955 provides some protection for working hours, it lacks explicit provisions regarding the right to disconnect. The absence of such legal frameworks may potentially lead to burnout, decreased productivity, and adverse mental health outcomes. To address this gap, Malaysia may introduce the right to disconnect, drawing inspiration from Australia, Canada, France, Italy, and Spain. These reforms should clearly define work-related communication boundaries. Employer and employee can always negotiate to establish work-life balance policies. Other than this, there can also be workplace training programs that educate employers and employees on the importance of digital disconnection, emphasizing long-term productivity and well-being. By adopting these measures, Malaysia can align with global best practices and safeguard employees' rights while fostering a sustainable and healthy work environment.

Conclusion

This article makes significant contributions by deepening academic understanding of the right to disconnect through a doctrinal and comparative legal analysis, offering a nuanced perspective on how different legal systems conceptualize and implement this emerging right. For industry, it provides practical insights into how organizations can foster healthier work environments by adopting disconnection policies that enhance employee well-being, reduce burnout, and improve productivity. At the national level, the study informs policymakers by highlighting best practices and legislative models from various countries, supporting the development of the regulations that balance technological advancement with labour rights in the digital age.

In conclusion, this paper has effectively fulfilled its objective through an analysis of the concept and legal implementation of RTD across various jurisdictions, revealing both strong institutional responses and areas where further development is also expected. In the case of Malaysia, as digitalization continues to blur the lines between work and personal life, Malaysia must take proactive steps to protect employees from the risks of constant connectivity. Learning from the legal frameworks of the above-mentioned countries, Malaysia should introduce legislative reforms and enforce policies that uphold employees' right to disconnect. By implementing clear work-related communication boundaries, fostering collective bargaining agreements, and raising awareness, Malaysia can create a healthier and more productive workforce. Embracing these changes will not only benefit employees' well-being but also contribute to long-term economic and social sustainability. On a different note, although the RTD can enhance work-life balance, well-being, and productivity, its implementation necessitates careful attention to industry-specific factors, well-defined policies, and cultural changes in the workplace.

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