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THE MYTH OF FLEXICURITY: ASSESSING THE OVERTIME FRAMEWORK UNDER THE OSHWC CODE, 2020 AGAINST GLOBAL RIGHT TO DISCONNECT STANDARDS

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ABSTRACT

India's four Labour Codes came into force on 21 November 2025, and the Occupational Safety, Health and Working Conditions Code, 2020 is presented as their flexicurity centrepiece, balancing employer flexibility with worker security. This article tests that claim against the concept as Wilthagen and Tros defined it, and finds the bargain one sided. The Code regulates the formal working day with real precision: an eight hour daily limit, a forty eight hour weekly ceiling, mandatory consent and double pay for overtime, and a quarterly cap of one hundred and forty four hours under the 2026 Central Rules. It says nothing about the unpaid digital availability that now extends the working day well past its formal close. Drawing on France's statutory right to disconnect, Norway's bargained equivalent, and Eurofound survey data linking unregulated availability to stress and lower job satisfaction, the article argues the gap is not incidental but structural, and proposes a specific rule under Section 6(1) to correct it.

I. INTRODUCTION

India brought its four Labour Codes into force on 21 November 2025, folding twenty nine statutes into a single system the Ministry of Labour described as balancing employer flexibility with worker welfare.[1] The Occupational Safety, Health and Working Conditions Code, 2020

[1] Ministry of Labour and Employment, Press Release, "Government Makes the Four Labour Codes Effective to Simplify and Streamline Labour Laws" (Nov. 21, 2025); 'Four Labour Codes Come into Force from Today, Reforming 29 Existing Laws,' *DD News* (Nov. 21, 2025), https://ddnews.gov.in/en/centre-implements-four-labour-codes-overhauling-29-existing-laws/ (last visited July 14, 2026).

sits at the centre of that claim. Its provisions on working hours and overtime are presented as a modernisation of the Factories Act, 1948, a reduced daily threshold, mandatory consent for overtime, and double rate compensation. The claim is attractive but its doctrinal footing is not as solid as the presentation suggests.

Flexicurity, the term Wilthagen and Tros gave to a policy strategy that raises labour market flexibility and employment security at the same time, is the right measure to apply here.[2] Its clearest form is the Danish arrangement of easy dismissal, generous unemployment support, and active labour market policy working together. The bargain runs both ways. Employers get room to deploy labour as conditions demand, and workers get security in employment, income, and the passage between jobs. In the OSHWC Code's overtime provisions, the flexibility half of that exchange is written into enforceable law. The security half is not. The missing piece is not a technical gap. It covers the entire stretch of time between when a worker's formal day ends and the next one begins, a stretch increasingly filled with unpaid, unacknowledged labour that the statute does not see.

II. WHAT THE CODE REGULATES AND WHAT IT MISSES

Section 25 sets the formal daily working limit at eight hours, an improvement on the nine hour threshold the Factories Act allowed.[3] The forty eight hour weekly ceiling stays where it was. The spread over of the working day, including rest intervals, can run to twelve hours, up from ten and a half under the earlier statute.[4] Section 27 entitles a worker who exceeds the daily or weekly threshold to double wages, conditional on that worker's consent.[5] The Occupational Safety, Health and Working Conditions (Central) Rules, 2026, notified by the Ministry of Labour and Employment on 8 May 2026 after a consultation period that began with the draft rules of December 2025, fix the quarterly overtime ceiling at one hundred and forty four hours, replacing the fifty hour ceiling the Factories Act permitted and nearly double the seventy five hour figure that circulated during the drafting stage.[6] The final rules also clarify, contrary to

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[2] Ton Wilthagen & Frank Tros, *The Concept of 'Flexicurity': A New Approach to Regulating Employment and Labour Markets*, 10 TRANSFER: EUR. REV. LAB. & RES. 166, 167 (2004).
[3] Occupational Safety, Health and Working Conditions Code, 2020, § 25(1), No. 37 of 2020 (India) [hereinafter OSHWC Code]; Factories Act, 1948, §§ 51, 54, No. 63 of 1948 (India).
[4] OSHWC Code § 25; Factories Act, 1948, § 56.
[5] OSHWC Code § 27.
[6] Occupational Safety, Health and Working Conditions (Central) Rules, 2026, notified May 8, 2026, Ministry of Labour and Employment; 'India: Government of India Notifies Final Rules on Four Labour Codes,' *KPMG GMS Flash Alert 2026-127* (May 10, 2026), https://kpmg.com/xx/en/our-insights/gms-flash-alert/2026/flash-

what many employers assumed from the draft text, that working more than eight hours on a single day does not by itself trigger overtime so long as the weekly total stays under forty eight hours, which gives employers considerable latitude to compress a week's labour into fewer, longer days without paying anything extra for it.[7] The Code also widens its reach past factories into offices, IT establishments, and commercial enterprises, a real extension of coverage compared to the sector bound statute it replaces.

These provisions measure formal working time with genuine care. What they do not measure is the interval between the end of the formal day and the resumption of the next one. That interval is where a great deal of contemporary work actually happens. A message from a supervisor at ten at night, an expectation that email will be answered during sanctioned leave, the general condition of being reachable at all times that now defines employment across India's IT, finance, logistics, and media sectors: none of this appears anywhere in the Code's text, is compensated by it, or is even named by it. The extension of the spread over to twelve hours makes the underlying problem worse rather than better, because a longer formal day widens the window during which informal availability can be expected without technically breaching any statutory limit. Managerial and supervisory employees, along with workers earning above the threshold the 2026 Rules set for supervisory exclusion, fall outside Chapter VII's working hours provisions altogether.[8] These are exactly the employees whose digital availability is demanded most consistently and protected least.

The ILO's Hours of Work (Industry) Convention, 1919, which British India ratified on 14 July 1921, fixes the eight hour day and forty eight hour week as the baseline for industrial labour.[9] Its underlying assumption is that a day divides cleanly into eight hours of work, eight of rest, and eight that belong to the worker alone. Unregulated digital availability erodes exactly that assumption. India has not ratified ILO Convention No. 87 on freedom of association or No. 98 on the right to organise and bargain collectively, a posture of selective engagement that leaves workers with a thinner collective apparatus through which such protections might otherwise be

alert-2026-127.html (last visited July 14, 2026); 'OSH Code Rules 2026,' *JSA* (2026), https://www.jsalaw.com/tag/osh-code-rules-2026/ (last visited July 14, 2026).

[7] 'Final OSH Rules: Key Changes Every Employer Must Know,' *Corporate Professionals* (May 16, 2026), https://www.corporateprofessionals.com/articles/final-osh-rules-key-changes-employers-should-note/ (last visited July 14, 2026).

[8] OSHWC Code § 25(5); 'Forced Late Nights? Your Legal Right to "No" to Overtime Under India's New Labour Codes,' *key4comply* (May 28, 2026), https://www.key4comply.com/blogposts/forced-late-nights-your-legal-right-to-no-to-overtime-under-indias-new-labour-codes/ (last visited July 14, 2026).

[9] Hours of Work (Industry) Convention, 1919 (No. 1), ILO, art. 2; India ratified as British India on July 14, 1921, ILO NORMLEX database, https://normlex.ilo.org (last visited July 14, 2026).

negotiated.[10] Where collective bargaining carries little institutional weight, a statutory right to disconnect stops being a supplement to negotiated protection. It becomes the only protection available.

III. WHAT OTHER JURISDICTIONS HAVE BUILT

The right to disconnect is now an ordinary feature of labour regulation across much of the industrialised world. France legislated the clearest version of it. Article L2242-17(7) of the *Code du Travail*, inserted by the statute of 8 August 2016 and in force from 1 January 2017, requires every employer with fifty or more employees to negotiate annually with union representatives on how employees may exercise a right to disconnect from digital tools, with the stated purpose of protecting rest periods and personal and family life.[11] If no agreement follows, the employer must draft a charter, after consulting the works council, setting out the practical terms of the right and providing training for management on reasonable digital tool use. The *Cour de cassation* had already, before the statute existed, held employers liable for requiring employees to stay reachable outside working hours without compensation, treating permanent availability itself as compensable working time.[12] The statute gave formal shape to something the courts had already started building.

Norway reaches a comparable result through collective bargaining instead of legislation. Chapter 10 of the Working Environment Act sets mandatory rest period floors that individual contracts cannot override, though sector level collective agreements may adjust them within tightly defined limits.[13] The right to disconnect operates through those sector agreements, which cover roughly two thirds of the Norwegian workforce and treat digital availability as a term of employment subject to negotiation rather than employer discretion.[14] France's legislative route and Norway's bargained route differ in mechanism but converge on the same underlying premise: that the formal working day and the actual working day are not the same thing, and that a legal system has to say so.

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[10] Oxford Human Rights Hub, *Balancing Progress and Rights: India's Struggle with Working Hour Norms Amid ILO Conventions* (Mar. 7, 2025), https://ohrh.law.ox.ac.uk/balancing-progress-and-rights-indias-struggle-with-working-hour-norms-amid-ilo-conventions/ (last visited July 14, 2026).
[11] Code du Travail [Labour Code] art. L2242-17(7) (Fr.) (as inserted by Loi No. 2016-1088 du 8 août 2016, art. 55, JORF No. 0184 (Aug. 9, 2016), effective Jan. 1, 2017).
[12] Cour de cassation [Cass.] [Supreme Court for Judicial Matters] soc., July 12, 2018, No. 17-13.029 (Fr.).
[13] Arbeidsmiljøloven [Working Environment Act] Ch. 10, §§ 10-1 to 10-12 (Nor.).
[14] CIPD HR-Inform, *Employment Law in Norway* (2026), https://www.hr-inform.co.uk/employment_law/employment-law-in-norway (last visited July 14, 2026).

Eurofound's 2023 survey across Belgium, France, Italy, and Spain gives that premise empirical weight. Eight in ten employees, whether or not their employer had a disconnection policy, regularly received work related messages outside contracted hours. Workers without a policy in place reported markedly higher rates of stress, anxiety, and headaches. Workers covered by a policy reported very high job satisfaction at twice the rate of those without one, and better work life balance by a margin of ninety two per cent against eighty per cent.[15] Close to a fifth of respondents said they worked additional unpaid hours specifically because they had been contacted outside their working hours. These are not marginal inconveniences. They describe a systematic extension of working time that goes uncompensated and largely unacknowledged wherever the regulatory architecture fails to name it.

The European Parliament's resolution of January 2021, passed 472 votes to 126, called for binding minimum standards guaranteeing that workers can disconnect from digital tools outside working time without facing adverse consequences, and identified the absence of such standards as a threat to fair working conditions and occupational health.[16] The European Commission opened a second stage social partner consultation on the question in July 2025. As of the middle of 2026 that consultation has not yet produced a draft directive, and current tracking places formal adoption in the 2026 to 2027 window with member state transposition following by 2027 or 2028, a slower path than trade unions had hoped for but still a clearer legislative trajectory than anything the OSHWC Code currently offers.[17]

IV. WHY THE GAP IS NOT INCIDENTAL

The OSHWC Code's silence on digital availability reflects a choice about what working time regulation is for. The purpose stated in the legislative history behind the ILO's 1919 Convention, and repeated across a century of comparative labour scholarship since, is to protect a worker's time outside the employment relationship from employer intrusion. Davidov's purposive approach to labour law holds that individual statutory provisions must be tested

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[15] Dragoș Adăscăliței et al., *Right to Disconnect: Implementation and Impact at Company Level* 1, 28-31 (Eurofound, Publications Office of the European Union 2023), https://www.eurofound.europa.eu/en/publications/2023/right-disconnect-implementation-and-impact-company-level (last visited July 14, 2026).

[16] European Parliament Resolution of Jan. 21, 2021, with Recommendations to the Commission on the Right to Disconnect, 2019/2181(INL).

[17] 'Right to Disconnect Directive One Step Closer,' *ETUC* (July 25, 2025), https://www.etuc.org/en/pressrelease/right-disconnect-directive-one-step-closer (last visited July 14, 2026); 'Right to Disconnect 2026: 15 Countries, 4 Frameworks, 1 Plan,' *Employsome* (May 10, 2026), https://employsome.com/blog/right-to-disconnect/ (last visited July 14, 2026).

against the goals they exist to serve, and that provisions producing technical compliance while failing those goals are the clearest instance of regulatory mismatch.[18] The OSHWC Code achieves formal compliance with working time standards while leaving untouched the primary way those standards are now broken in Indian workplaces.

The World Health Organisation classified burnout as an occupational phenomenon in ICD-11 in 2019, describing it as a syndrome arising from chronic workplace stress that has not been successfully managed, marked by exhaustion, mental distance from one's job, and reduced professional effectiveness.[19] Burnout produced by permanent digital availability sits comfortably within that definition. Section 6(1) of the OSHWC Code places a duty on every employer to provide, so far as reasonably practicable, a working environment safe and free of risk to health.[20] Psychosocial harm caused by employer driven digital availability after working hours is a health risk under any reading of that section consistent with the WHO's classification. That reading has not surfaced in any reported proceeding under the Code, not because it is wrong, but because the Code supplies no mechanism that would let a worker or an inspector act on it. The general duty exists. The specific machinery that would give it teeth does not.

Aloisi and De Stefano's account of algorithmic management describes the mechanism precisely. Digital tools, on their analysis, are more likely to intensify how organisations extend managerial reach into non-working time than to remove workers from employment altogether. What they call working that is out of hours and out of place has become the ordinary condition of employment in digitally connected workplaces, and regulatory categories built around the formal working day as the unit of analysis are structurally unable to reach it.[21] The OSHWC Code is exactly that kind of category.

V. CORRECTING THE ASYMMETRY

A flexicurity bargain only functions if the gains from flexibility are shared between the parties who create them. Under the OSHWC Code, employers gain a formal working day that is

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[18] Guy Davidov, *A Purposive Approach to Labour Law* 1, 6 (Oxford Univ. Press 2016).
[19] World Health Organization, *Burn-out an "Occupational Phenomenon": International Classification of Diseases*, ICD-11 (May 28, 2019), https://www.who.int/news/item/28-05-2019-burn-out-an-occupational-phenomenon-international-classification-of-diseases (last visited July 14, 2026).
[20] OSHWC Code § 6(1).
[21] Antonio Aloisi & Valerio De Stefano, *Your Boss Is an Algorithm: Artificial Intelligence, Platform Work and Labour* 55, 98 (Hart Publishing 2022).

capped and paid for, and they also gain informal access to a worker's time outside that day which is neither capped nor paid for. Workers gain double pay for formal overtime and the right to decline it. They gain nothing for the informal overtime that digital availability enables and employer practice has normalised.

Fixing this asymmetry does not require a new Act of Parliament. Section 6(1) already supplies the occupational health basis for subordinate rules treating employer induced digital availability as a health risk. The Industrial Relations Code, 2020 supplies the collective bargaining machinery through which enterprise level protocols on digital availability could be negotiated and enforced wherever union density makes that realistic.[22] What is missing is a specific rule under the OSHWC Code, developed through the same consultative process that produced the 2026 Central Rules, establishing that employer induced availability outside the formal working day becomes compensable working time once it crosses a defined threshold of regularity and responsiveness, and that a worker cannot suffer adverse consequences for declining contact during rest periods.

France's model is not the only template available. Norway shows that collective bargaining can reach the same destination where the institutional conditions support it. India's conditions resemble neither closely. The bargaining coverage that makes the Norwegian approach work does not exist across most of India's organised sector. France's fifty employee threshold, by contrast, would capture most of India's formal sector employers as they currently stand. A rule modelled on Article L2242-17(7), requiring annual negotiation on digital availability in establishments above a defined size and a fallback charter obligation where negotiation fails, would slot into the existing structure of Chapter VII without disturbing it.

The OSHWC Code is the first working time statute in India's history to apply uniformly across sectors, and its Central Rules of 2026 are the most detailed working time regulation the country has produced. Whether that regulation addresses the dominant form working time violation now takes in the Indian economy is a matter of political will rather than legislative capacity. At present the will is absent. What results is a statute that modernises the factory gate at precisely the moment the factory gate stopped being the boundary that determines when a worker's day actually ends.

[22] Industrial Relations Code, 2020, §§ 3-8, No. 35 of 2020 (India).