

# Rules & Regulations Review

## Draft Rules under the Industrial Relations Code, 2020

### Key Features of the Draft Rules

- ◆ Factories, mines, and plantations with 300 or more workers must apply for permission at least 15 days before the intended date of layoff, 60 days before the intended date of retrenchment, and 90 days before the intended date of closure.
- ◆ The Draft Rules require employers to transfer 15 days' wages into an account maintained by the central government within 10 days of retrenchment. These funds will be transferred to workers within 45 days of receiving the amount from the employer.
- ◆ The members of the National Industrial Tribunals will be appointed on the recommendation of a search-cum-selection committee (with four members).
- ◆ Matters on which the negotiation council/union may negotiate with the employer will include working shifts, wages (including wage period and allowances), and policies for promotion and transfer.

### Issues and Analysis

- ◆ The composition of the search-cum-selection committees for appointing an administrative and judicial member of the National Industrial Tribunals, as well as the term of the members in these tribunals, may violate Supreme Court judgements.
- ◆ The Draft Rules do not specify details on various aspects of the Code. The existing Rules which are proposed to be replaced by the Draft Rules contained detailed procedures on such aspects.

The Industrial Relations Code, 2020 was passed by Parliament in September 2020 to replace three labour laws: (i) the Industrial Disputes Act, 1947, (ii) the Trade Unions Act, 1926, and (iii) the Industrial Employment (Standing Orders) Act, 1946.<sup>1</sup>

The Code empowers the appropriate government to make rules on certain matters. These include: (i) resolution of industrial disputes through conciliation, arbitration and adjudication, (ii) establishment of works committees and grievance redressal committees, (iii) procedure for strikes and lockouts, (iv) procedure for layoffs, retrenchment and closure of establishments, and (v) formation and dissolution of trade unions. The Code specifies the central government as the appropriate government for: (i) establishments under the authority of the central government, (ii) certain establishments such as railways, banks and mines, and (iii) corporations, autonomous bodies or public sector undertakings where the central government holds at least 51% of the shares. The state government is the appropriate government for all other establishments. The Draft Industrial Relations (Central) Rules, 2020 were released by the Ministry of Labour and Employment in October 2020 to implement the provisions of the Code.<sup>2</sup>

In May 2021, the Draft Industrial Relations (Central) Recognition of Negotiating Union or Negotiating Council and Adjudication of Disputes of Trade Unions Rules, 2021 were released for comments.<sup>3</sup> These include details on: (i) recognition of a sole trade union as the negotiating union, (ii) matters for negotiation with the employer, and (iii) manner of resolving trade union disputes before the industrial tribunals.<sup>3</sup>

## KEY FEATURES

The Ministry of Labour and Employment released: (i) the Draft Industrial Relations (Central) Rules, 2020, and (ii) the Draft Industrial Relations (Central) Recognition of Negotiating Union or Negotiating Council and Adjudication of Disputes of Trade Unions Rules, 2021, to implement the provisions of the Industrial Relations Code, 2020. Some of the key features of the Draft Rules are:

### The Draft Industrial Relation (Central) Rules, 2020

- **Layoffs, retrenchment and closure:** Factories, mines, and plantations with 300 or more workers need prior permission from the central government before laying off or retrenching workers, or before closing an establishment. The application must be made at least 15 days before the intended date of layoff, 60 days before the intended date of retrenchment, and 90 days before the intended date of closure.
- **National Industrial Tribunals:** The Draft Rules specify the composition of the search-cum-selection committees which will recommend members to the National Industrial Tribunals. The Committees will include: (i) the Chief Justice of India or a Supreme Court judge nominated by him (as Chairperson), (ii) a sitting member of the other National Industrial Tribunal (which will either be a judicial or administrative member), and (iii) Secretaries in the Ministry of Labour and Employment and the Department for Promotion of Industry and Internal Trade.
- **Re-skilling fund:** The Code proposed a re-skilling fund which will consist of contributions from employers, equal to 15 days (or as specified by the central government) of the last drawn wages of every retrenched worker. The Draft Rules provide that within ten days of retrenchment, employers will be required to transfer 15 days' wages into an account maintained by the government. These funds will be transferred to workers within 45 days of receiving the amount from the employer.
- **Constitution of Works Committee:** The Code provides for the constitution of Works Committees in establishments with more than 100 employees to resolve conflicts between workers and employers. The Draft Rules state that the Works Committee will consist of up to 20 members. The Committee must have equal representation of various categories (such as shops, class of workers, and groups) in the establishment. The Committee must include: (i) a Chairman, (ii) a Vice-Chairman, (iii) a Secretary, and (iv) a Joint-Secretary among its office-bearers. The Committee must meet at least once in three months. The term of office for members of the Committee will be two years.

### The Draft Industrial Relations (Central) Recognition of Negotiating Union or Negotiating Council and Adjudication of Disputes of Trade Unions Rules, 2021

- **Recognition of the single trade union as the sole negotiating union:** The Code provides for the single trade union in an establishment to be the sole negotiating union. The Draft Rules specify that, to be recognised as the sole negotiating union, the trade union must have at least 30% membership of total workers.
- **Matters to be negotiated by a negotiation union/council:** The Code provides for a negotiating union/council in industrial establishments to negotiate matters related to workers with the employer. The Draft Rules specify that the matters for negotiation by the negotiating union/council will include: (i) working shifts, (ii) wages (includes bonus, increment, and allowances), (iii) policies for promotion and transfer, and (iv) working conditions and standards.

## KEY ISSUES AND ANALYSIS

### Certain provisions for National Tribunals may violate Supreme Court judgements

The Code provides for National Industrial Tribunals (consisting of a judicial and an administrative member) to settle disputes which: (i) involve questions of national importance, or (ii) could impact establishments situated in more than one state. The composition of the search-cum-selection committees for appointing administrative and judicial members of the National Industrial Tribunals, as well as the term of the members in these tribunals, may violate Supreme Court judgements.<sup>4,5,6,7</sup>

### Lack of judicial dominance in the appointment process of administrative members

Under the Draft Rules, the selection committee for National Industrial Tribunals will consist of: (i) two judicial members and two government appointees for appointment of the judicial member (with no provision for resolving a tie), and (ii) one judicial member and three executive members for appointment of the administrative member.

The Supreme Court has stated that the total insulation of the judiciary from all forms of interference by the Executive is an essential feature of the Constitution.<sup>4,5</sup> The Court specified that lack of judicial dominance (number of executive members equal to or exceeding the number of judicial members) in the selection committees of tribunals violates the doctrine of separation of powers and is an encroachment on the judicial domain.<sup>4</sup> Further, it clarified that the Executive is often a party in litigations and hence, should not be allowed to be a dominant party in judicial appointments.<sup>6</sup>

Further, the Tribunals Reforms Act, 2021 specifies that the search-cum-selection committee of a national level tribunal must consist of: (i) the Chief Justice of India, or a Supreme Court judge nominated by him, as the Chairperson (with casting vote), (ii) two Secretaries nominated by the central government, (iii) the sitting or outgoing Chairperson, or a retired Supreme Court Judge, or a retired Chief Justice of a High Court, and (iv) the Secretary of the Ministry under which the Tribunal is constituted (with no voting right).<sup>8</sup>

The composition of the selection committees for appointment of judicial and administrative members of National Industrial Tribunals does not meet these conditions.<sup>4,5</sup>

### Term of office for the members of the National Industrial Tribunals

The Draft Rules provide for a four-year term of office for judicial and administrative members, subject to the upper age limit of 65 years. The Supreme Court has specified that members of tribunals must have a five-year term of office, subject to the upper age limit of 70 years for the Chairperson, and 67 years for other members.<sup>7</sup> Thus, the term of office for members specified by the Draft Rules may violate the Court judgement.

### Central government as the leave sanctioning authority

The Draft Rules specify that the central government will be the sanctioning authority for leaves and foreign travel of the judicial member. This may violate a judgement of the Supreme Court.<sup>5</sup> The Supreme Court has specified that the Executive should not have any administrative involvement (such as transfer of members and extension of tenures) with tribunal members as it may influence their independence.<sup>5</sup> In addition, the Court has observed that the Executive may be a litigant and its involvement in administrative matters of tribunals may influence the fairness of the adjudication process.<sup>5</sup>

### Detailed procedures not specified for several provisions of the Code

The Draft Rules do not specify details for several provisions of the Code. Note that the existing rules which are proposed to be replaced by the Draft Rules contain detailed procedures for such provisions of the Code.<sup>9,10</sup> For example, the Industrial Disputes (Central) Rules, 1957 provide for the election procedure for selecting the representatives of workers in the Works Committee. The Draft Rules do not specify the manner of selecting these representatives. Table 1 compares details in the existing rules and the Draft Rules for key provisions of the Code.

**Table 1: The Draft Rules do not provide details on various aspects of the Code**

	Existing Rules	Draft Rules
<b>Works Committee</b>	The 1947 Act provides for the constitution of the Works Committee with representatives of the employer and workers as members. The 1957 Rules specify the election procedure for workers' representatives in the Committee.	The Code prescribes a similar composition for the Works Committee. The Draft Rules do not specify the election procedure for workers' representatives.
<b>Notice of lay-off</b>	The 1947 Act does not explicitly provide for notice to workers to be laid-off in an establishment with 50-100 workers. However, the 1957 Rules provide for the manner of notice to workers to be laid-off in an establishment with more than 50 workers.	The Code and the Draft Rules do not provide for the manner of lay-off notice to workers in an establishment with 50-300 workers.
<b>Commissioner</b>	The 1947 Act provides that the Labour Court may appoint a Commissioner to determine the dues payable to a worker by the employer. The 1957 Rules specify the qualifications and powers of the Commissioner and details on his functioning such as fees and timeline for submission of his report.	The Code also provides that the Industrial Tribunal may appoint a Commissioner for this purpose. The Draft Rules do not prescribe the qualifications, powers, and details on functioning of the Commissioner.

Clause 3, 7, 29, 49, 59; Chapter 9 and 10 of the Draft Industrial Relations Code, 2020; Chapter 2, 8 and 9 of the Draft Industrial Relation (Central) Rules, 2020; The Industrial Disputes (Central) Rules, 1957; The Central Trade Union Regulations, 1938.

	Existing Rules	Draft Rules
<b>Audit of trade union funds</b>	The 1926 Act provides for an annual audit of funds of trade unions. The 1938 Regulations provide for the manner of conducting the audit and qualifications of auditors.	The Code also provides for an annual audit of funds of trade unions. The Draft Rules do not specify the manner of auditing the funds or auditor's qualifications.
<b>Inspection of registration of trade unions</b>	The 1926 Act requires the Registrar to enter the details of registered trade unions in a register. The 1938 Regulations prescribe the form in which the register is to be maintained. Further, the Regulations provide for the inspection of the register by any person.	The Code contains similar provisions for recording the details of registered trade unions in a register. The Draft Rules do not provide for the manner in which the register will be maintained and its inspection.

Sources: The Industrial Disputes Act, 1947; The Industrial Disputes (Central) Rules, 1957; The Trade Unions Act, 1926; The Central Trade Union Regulations, 1938; The Draft Industrial Relation (Central) Rules, 2020; PRS.

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- <sup>8</sup> The Tribunals Reforms Act, 2021, Ministry of Law and Justice, August 13, 2021, [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2021/The%20Tribunals%20Reforms%20Act,%202021.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2021/The%20Tribunals%20Reforms%20Act,%202021.pdf).
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10. The Central Trade Union Regulations, 1938, [https://upload.indiacode.nic.in/showfile?actid=AC\\_CEN\\_6\\_0\\_00043\\_192616\\_1523349873431&type=regulation&filename=The%20Trade%20Union%20Regulations,1938.pdf](https://upload.indiacode.nic.in/showfile?actid=AC_CEN_6_0_00043_192616_1523349873431&type=regulation&filename=The%20Trade%20Union%20Regulations,1938.pdf).

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