

MODULE 8

SAFE MIGRATION

CENTRE FOR EDUCATION AND COMMUNICATION (CEC)



SAFE MIGRATION

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June 2018

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This document is part of a project, 'Empowering CSOs for Decent Work and Green Bricks in India's Brick Kilns', in partnership with Prayas and Terre des Hommes (TdH), funded by European Union (EU)

MIGRATION AND RELATED PROBLEMS

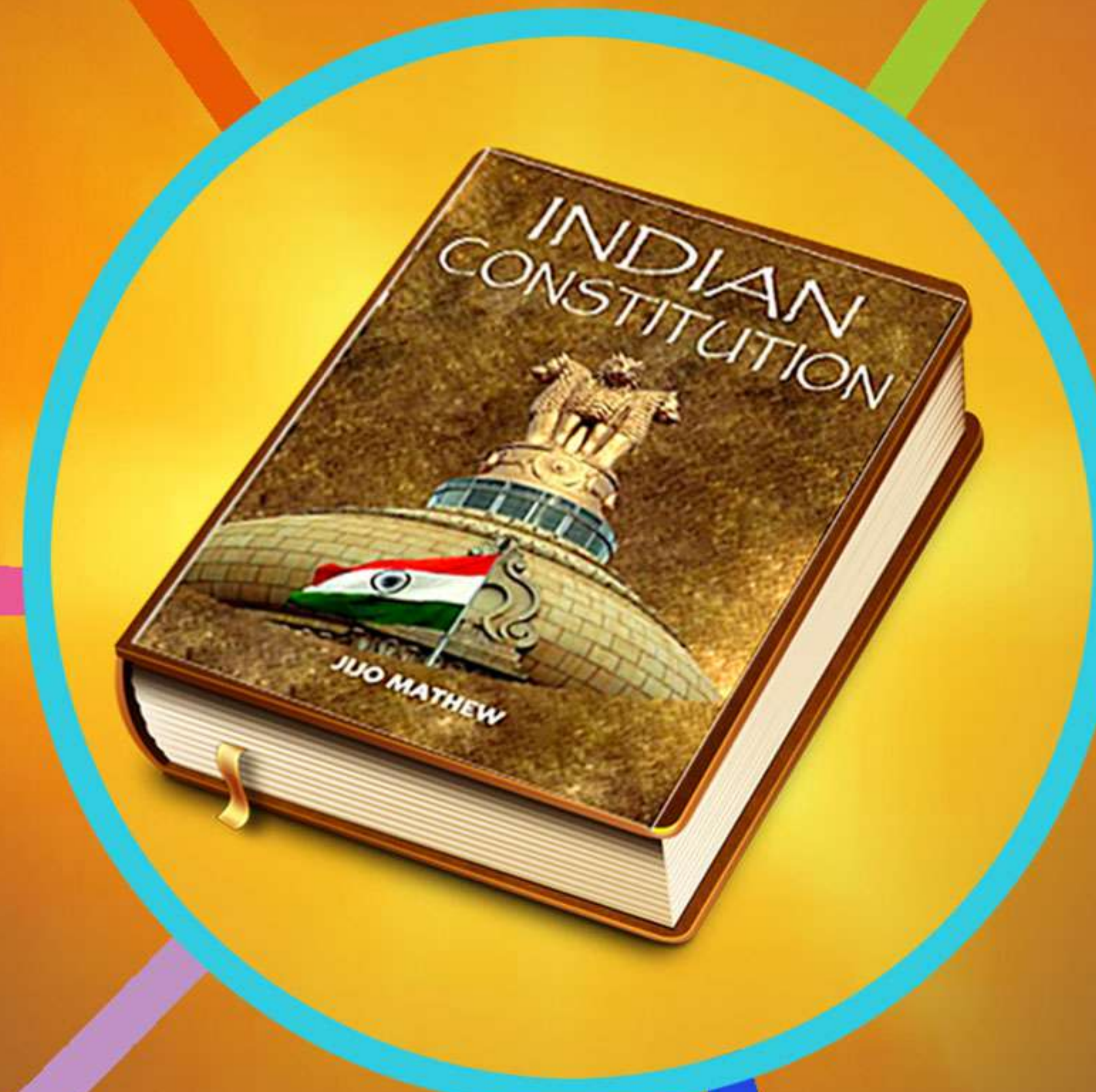


MIGRATION AND RELATED PROBLEMS

At any of the following stages of migration to the brick kilns, have you faced problems

- While choosing from the existing channels of migration- contractor, direct, labour exchange
- Deciding on the destination
- While preparing to leave- essential things to carry and tasks to do, essential things to leave behind
- During the journey to and from destination
- Keeping your earnings safe and bringing it home at the end of season
- Not knowing whom to approach in case of a problem
- Whether as migrant workers you have been denied your rights
- Felt vulnerable to practices of exclusion and discrimination at the destination and looked at as outsiders

This manual on safe migration will address some of these issues



KNOW YOUR FUNDAMENTAL RIGHTS

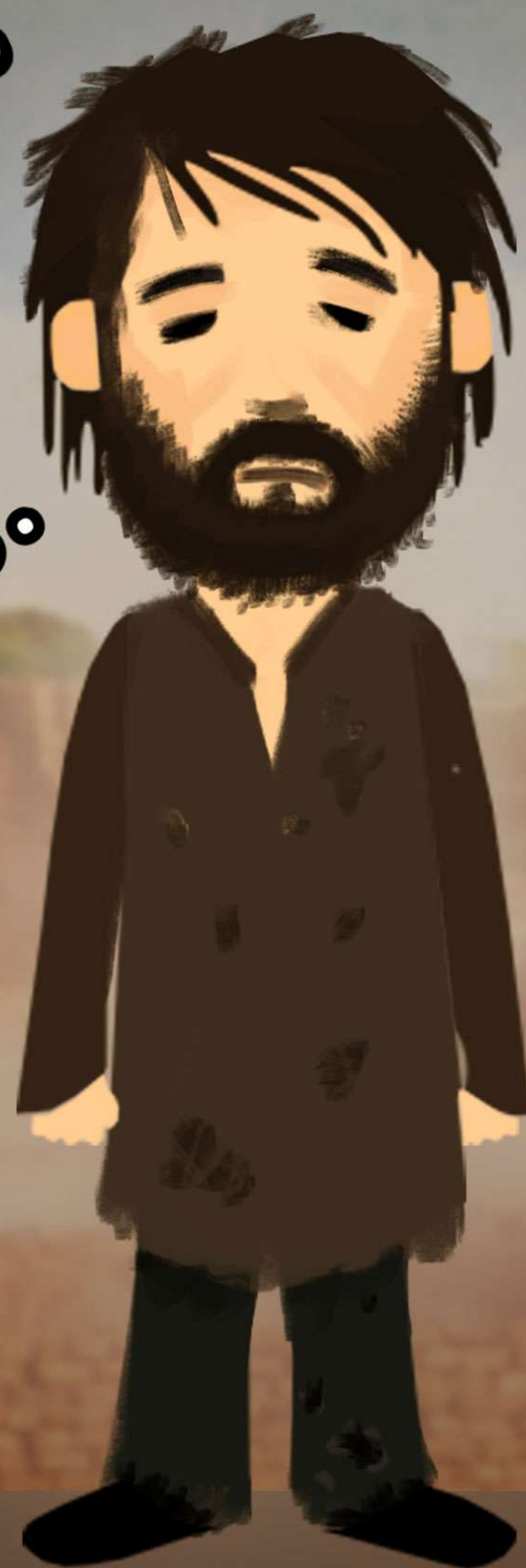
Article 19 in Part III, the Fundamental Rights in the Constitution of India, 1950 guarantees to its citizens rights to:

- (a) Freedom of Speech and Expression
- (b) Freedom to assemble peaceably and without arms
- (c) Form associations or unions
- (d) Move freely within the territory of India
- (e) Reside and settle in any part of the territory of India
- (g) Practice any profession, or to carry on any occupation, trade or business

Being a migrant worker does not diminish your legal status as a citizen of the country nor the rights you are entitled to.

Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. This right includes the right to live with human dignity free from exploitation, right against sexual harassment at work place, right to livelihood, right to shelter, right to food, right to privacy.

Article 21A- Right to Education- Your child has a fundamental right to free and compulsory education from the age of six to fourteen years.



UNDERSTANDING SAFE MIGRATION

We choose to move to a location, which could be another village or district within the same state or to another state altogether either temporarily or permanently with the intention to work or settle. We refer to this movement as migration.

In our case, most of us seasonally migrate to work in the brick kilns whether to another state (Rajasthan, Gujarat, Punjab, Haryana, Uttar Pradesh, West Bengal, Tamil Nadu, Telangana, Tripura to name a few) or to another district or village in our state.

We migrate for work for the various opportunities we foresee:

- For better remuneration
- For skill development – honing existing skills and acquiring new ones
- For better access to education, healthcare services at the destination as some of these locations may be closer to urban clusters
- To save enough to tide over financial distress and adverse conditions

Migrating safely will imply that rights as a migrant worker is safeguarded, there is an awareness of the risks that are inherent at all stages and that we have practical information. Some of these risks may include- being trapped into work with poor wages and working conditions, using children as labour, verbal/physical or sexual abuse, forced labour.

If the migration is safe it will deliver benefits and help in realising the opportunities for us and our families

At every stage of migration process access to authentic information is a precondition to safe migration and it starts at the pre-migration/decision making stage.



THE DECISION-MAKING STEP

Once you have decided in consultation with your family, neighbors and peers that you will take up work in the brick kiln, the most crucial step is to identify a safe channel of migration.

Consider the following:

- What are the channels of migration available
- How should you choose the channel of migration

Channels of migration

In your village, there may be common practices/channels through which the community migrates to brick kilns. Usually it is the contractor. Your choice of the contractor should be guided by:

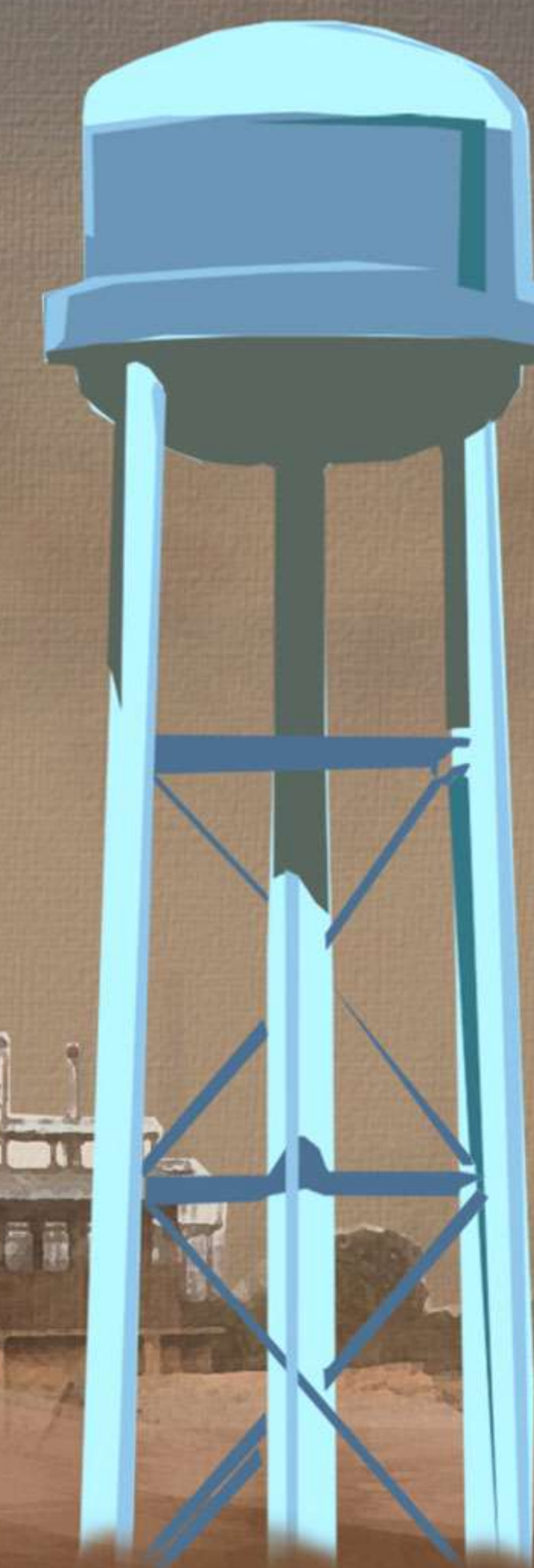
- Experience of other workers with the contractor.
- Number of years the contractor is in this business
- Is the contractor a registered/licensed contractor?

Is the contractor able to furnish you with the prerequisite information/briefing:

1. Details of the destination- village, district and state, details of employer
2. The nature of work you will undertake, whether you will expected to do other work in the kiln

THE DECISION-MAKING STEP

3. The nature of payment for the work you undertake- whether piece rated, or time rated
4. The frequency of payment of wages, the method and wage slips
5. Who will make the payment- will the contractor be there to facilitate the payment
6. The kharchi or the weekly allowances- how will it be calculated, frequency of payment , how will it be adjusted with the final payment.
7. What will be an estimated minimum and maximum kharchi the worker can expect every week/month.
8. The work place conditions- access to drinking water, toilets, education.
9. What are the provisions that the employer will provide at destination- firewood, electricity, equipment and tools, material for making shelter, medical emergencies.
10. Are there practices of deductions on the output? If yes, what is the rate of deduction?
Line descriptions against which deductions will be made, along with the anticipated quantitative estimates.
11. What is the contractor's commission (deductions that the contractor may make towards his commission). If it is there, is it one time or recurrent?
12. What are the workplace safety measures.
13. In case of any emergency- accident, illness or death , what role will be the employer and the contractor play.
14. If the employer turns out abusive, then will the contractor help you find alternative workplace?
15. Is the contractor transparent about the costs and expenses that you will have to bear during this period.



OTHER CHANNELS OF MIGRATION

You can explore other channels of migration:

- Direct engagement with employer
- Institution like labour exchange which may be promoted by civil society organizations, trade unions.

Factors to keep in mind while choosing your channel:

- Will the channel ensure you a decent job
- Will the channel ensure a wage rise and improved conditions of work from that of the previous experience
- Will the channel supply you of the necessary information (in a language you understand best), terms and conditions of the work, the work place which should also include:
 - o Freedom of movement
 - o Freedom of association
 - o Workplace equality
 - o Respectful workplace- free from harassment, abuse, intimidation and violence
 - o Grievance procedures
 - o Travel (including return) arrangement
 - o Terms and conditions of employment

OTHER CHANNELS OF MIGRATION

- Discuss and consult with the migrant workers in your village and get acquainted with the problems they faced in brick kilns- if they had experiences of unfair wages, not being allowed to leave the kiln, fell ill, any dispute they raised with the contractor or employer etc.
- Be informed of the number of facilitators/ layers of middlemen in the process
- Be informed of the route and means of reaching the destination
- Taking an advance/debt may put you in a situation where you cannot exercise the freedom to choose your channel and be forced to accept the terms of the creditor. Can you think of a situation where you migrate to brick kiln without taking an advance? Any advance taken should be in your full knowledge and with your consent
- Verify the contractor through other co workers

Remember, nothing stops you from doing your own assessment of how and where you would like to migrate .You cannot be coerced to take up work against your wishes.

Consent to work when full information is shared so that the outcome of your migration is progress and empowerment.



DISCRIMINATION

You shall not be subjected to any discrimination on any aspect (caste, religion, gender, place) in the process of recruitment, compensation, benefits, work.

Fair and equal treatment should be at the workplace

Your terms and conditions of work should not be less favourable than those which are available to the local workers at the destination



PRE-DEPARTURE PREPARATIONS

Now that you will be soon undertaking your journey to the destination and away from your village for 8-9 months, make sure you make the following arrangements:

A. In case of leaving family behind

- Look for availability of seasonal hostels for children.
- See that there is an operational bank account of any of the family members staying behind. They may require remittances.
- Share with your family details of the contractor or that of the agency who is taking you to the kiln, name and complete address of the brick kiln and the employer
- Share with them contact numbers of the fellow workers, in case they need to be contacted in any emergency

B. In case your family is traveling with you

- Inform the village head and relatives of your destination
- Meet the teachers and principal if your child is studying and intends to migrate with you.
- Get yourself and your family registered in the village migration register, if this is practiced by the - panchayat, school, or a civil society organization
- Find out from your channel of migration and fellow workers who have been to your destination
earlier the availability of mobile schools, work site school for children.

PRE-DEPARTURE PREPARATIONS

- **Consult the ASHA worker if there are accompanying infants, pregnant mothers. It is advisable to get a health check-up done at the nearest health centre and take with you the prescribed medicines. Ensure the children receive their vaccinations.**
- C. Open a bank account, understand how to make transactions, take help if needed. You have full control and access to your savings at all times. Nobody at the work place can have control on your bank account, passbook or ATM card.**
- D. Keep copies of necessary documents- RSBY card, BOCW card, Aadhaar and leave a few copies of these documents behind**
- E. Keep a hisaab booklet with you (shared with you in module on financial literacy). It helps you to track production and payments received**
- F. Familiarise yourself with CHILDLINE, enquiries at railway stations, labour lines, help lines (details of some of these are explained in other manuals)**
- G. Keep a contact list of civil society organisations, trade unions functioning at both source and destination**



THE JOURNEY

The journey may take 2-3 days and may involve change of train/bus and halts.

- Take complete details of travel from your channel (remember, under the ISMW Act the contractor pays for the tickets and a travel allowance including meals). Check with your channel how will you be reimbursed the cost of various transits incurred in the to and fro travel
- Ensure, you have the directions for reaching the kiln, contact of the person who will be reaching you. The channel should provide you with details much before the start of the journey
- Do not get tricked by unknown persons at railway stations or bus stops
- Keep your mobile phones and batteries charged

Orientation on Arrival

- Check on the accommodation arrangements by the employer. If you are expected to build yours, what are the provisions that will be provided by the employer
- You should have access to potable and sufficient drinking water at worksites and living place, toilets and bathing space
- Check for arrangements for medical care. You should know whom to contact if there is any safety or health concern
- Ask for relevant instruction and information on organization of work
- Are there provisions for personal protection equipment

THE JOURNEY

- What are the tools and equipment you will be provided to work. Seek clarification on the use and maintenance of these equipment.
- If there is a language barrier, consider how will you convey information
- There may be a literacy difficulty. Can you think of anyone who can help you with maintaining and updating your record.
- The channel or the employer should brief you on disciplinary procedures, if any. These should be non-discriminatory, progressive (verbal warning etc.), specify the ground for action and will not include abusive and inhumane disciplinary measures (deductions, compulsory labour or coercion)
- You should be briefed on the record of wages and production, (the employer keeps this for a period of 5 years). Records must be accurate and transparent
- Since at the brick kilns, most often the workplace and place of stay is the same. There should be no restriction on the freedom to move between workspace and living space.
- You cannot be confined to the geographical territory of the kiln/workplace. You have the right to access the town/village at your will
- You cannot be denied the freedom to association
- You must have an understanding of accessing the grievance redressal mechanisms at workplace.

THE JOURNEY

Termination

- Seek clarification on provision for voluntary early termination of contract with reasonable notice. There should not be any withholding of payment, allowances.
- Seek clarification on the grounds for involuntary termination
- The channel of migration should arrange your return in case of a completion of the work, or in case of voluntary termination, or in the event your rights are violated by the employer.



GRIEVANCE REDRESSAL

- With Union and other worker representative bodies: Join a union or body that represents construction workers or brick kiln workers at the destination or at the source. Unions hold contractors, employers and governments accountable for relevant laws. Unions address exploitative practices at the workplace. Through collective action they are able to push for change.
- Civil Society Organisations (CSOs) and Non-Governmental Organisations (NGOs) : there are a number of CSOs and NGOs which intervene for the workers' cause. Visit their offices at the source and destination.
- Do not hesitate to go to the nearest police station when there is growing fear of abuse and violence.

Make use of the information you receive through awareness camps, trainings. Using any of this information will help you in mitigating risk during migration.

The Parliament of India has enacted the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act in 1979 to protect the interest of workers who work outside their source States. This Act checks the malpractices that the employer, contractor or sub-contractor may indulge into and provides for facilities/provisions that should be made available to the worker in the given period of work.

The Inter-State Migrant Workmen

(Regulation of Employment and Conditions of Service)
Act, 1979



THE INTER STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT , 1979

The Act regulates the employment of inter-state migrant workers and provides for their conditions of services

This Act applies to every establishment in which 5 or more inter-state migrant workmen are employed or were employed on any day of the preceding twelve months. No principal employer of an establishment to which this Act applies, shall employ inter-state migrant workers unless the establishment is registered under this Act.

This Act also applies to every contractor who employs or employed 5 or more inter-state migrant workmen on any day of the preceding twelve months. Contractor shall recruit a person only in accordance with the license issued under the Act

The license will contain among other things:

- Terms and conditions of the agreement or arrangement under which the workmen will be recruited
- Remuneration payable
- Hours of work
- Fixation of wages
- Essential amenities in respect of the inter-state migrant workers

THE INTER STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT , 1979

Chapter IV of the Act specifies the duties and obligations of contractors under the Act

1. The contractor will furnish particulars for every inter-state migrant worker (from the date of recruitment or within 15 days of recruitment), in the prescribed format to authorities in both the source and destination states.

Similarly, on return or if a worker ceases to be employed, furnish information and a declaration that all the wages and other dues payable to the worker and fare for the return journey back to his source state have been paid.

2. The contractor will maintain a pass book, keep it updated and will issue it to the worker. The passbook will be in Hindi/English or in a language of the worker. The pass book will contain:

- A passport size photograph of the worker
- Name and place of establishment where the worker is employed
- Period of employment
- Proposed rates and mode of payment of wages
- Displacement allowance payable
- Return fare to the worker- which can either be at the end of the contract period or in contingencies as specified in the employment contract
- Deductions made
- Other particulars as may be prescribed

THE INTER STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT , 1979

Chapter V of the Act specifies the wages, welfare and other facilities that is to be provided to the migrant worker

The wage rates, holidays, hour of work and other conditions of service will be in accordance to that prescribed by the appropriate government and it will be the same as that of another worker who performs the same or similar kind of work. In no case a migrant worker will be paid less than the wages fixed under Minimum Wages Act, 1948.

A displacement allowance will be paid to be the worker in addition to the wages. This displacement allowance will be fifty per cent of the monthly wages payable.

A journey allowance of a sum not less than the fare from the place of residence in the source up to the place of work at the destination will be paid by the contractor for onward and return journey. Such workers will also be entitled to payment of wages during the period of such journey.

Under the Act the contractor is to ensure to the workers;

- Regular payment of wages
- Equal pay for equal work irrespective of gender
- Suitable conditions of work

THE INTER STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT , 1979

- Free of charge the prescribed medical facilities to the workers
- Protective clothing
- Report to the specified authorities in both states (source and destination) and next of kin of workers in case of fatal accidents or serious bodily injuries



RESPONSIBILITY OF PAYMENT OF WAGES

The contractor will be responsible for payment of wages to each worker employed by him and payment will be made before the expiry of periods as prescribed. A representative of the principal employer (duly authorized) will be present at the time of disbursement of wages and will certify the amount paid as wage.

In case the contractor fails to make payment of wages(within the prescribed period or makes short payment), allowances required to be paid or any of the facilities mentioned, then the principal employer will be liable to make payments and provide for facilities.



POLICE STATION



NGO
services



TRADE UNION

PROVISIONS REGARDING INDUSTRIAL DISPUTES

Inspectors will see that the provisions of the Act are complied with. Inspectors from the source state can also be appointed to visit the establishment to see whether there is compliance to the Act.

The worker can raise a dispute either at the destination or at the source after his return after completion of the contract of employment. The application to the specified authority must be made within 6 months from the date of return to the Source state after completing the employment.

- Every principal employer and every contractor are mandated to maintain registers and records of the particulars of each inter-state migrant worker employed, the nature of work performed, the rates of wages paid and other particulars as specified. However, the Ministry of Labour and Employment, Government of India, notified the Ease of Compliance Rules, 2017 to maintain registers under various labour laws. The ISMW Act, is also one such Act that has been covered under the Rules. Under Forms A, B,C and D the employer can maintain employee register, wage register, register of loans, attendance register respectively.
- Notices (in the prescribed form) containing particulars about the hours of work, nature of duty and such other information will have to be prominently displayed in the work place by the principal employer and every contractor.

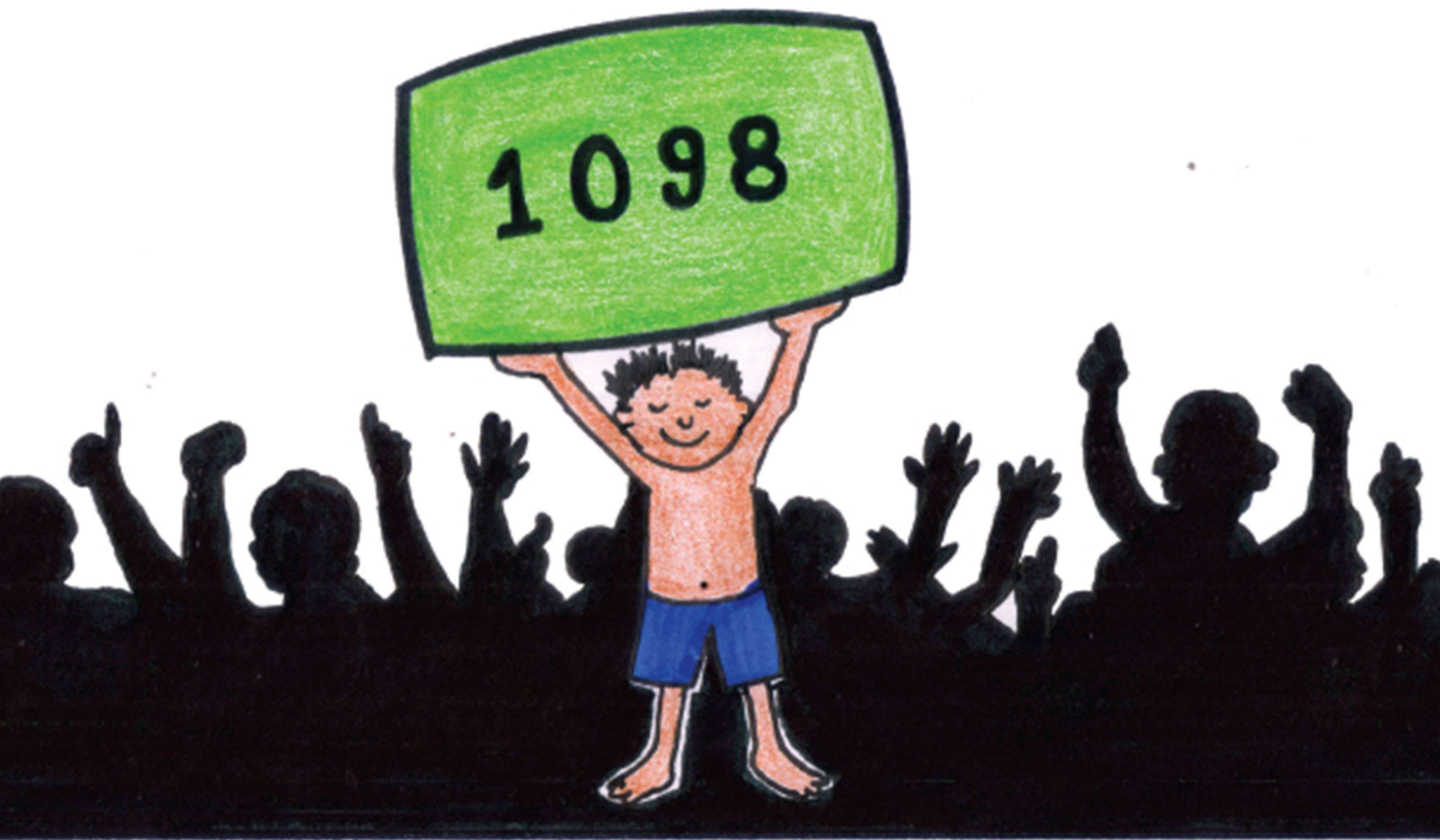


FINE



PUNISHMENT

Contravening any provision under the Act or the rules under the act will be punishable with imprisonment extending to one year or a fine of up to rupees one thousand or both. In case of continuing contravention there will be an additional fine of rupees one hundred for every day during which the contravention continues after conviction of the first contravention.



CHILDREN

When migrating with families to the brick kilns, children are the most vulnerable group. Access to basic entitlement of health and education are compromised in the process of transition from source to destination and back. This has an irreversible impact on their physical, psychological and intellectual well-being.

Right of Children to Free and Compulsory Education Act, 2009

This Act provides for free and compulsory education for all children of the age of six to fourteen years in a neighborhood school till completion of elementary education.

- No child is liable to pay any kind of fee or charges
- If a child above six years has not been admitted in any school or even if admitted, could not complete the elementary education, then the child will be admitted in a class appropriate to his/her age. In such a case, in order to be at par with other children, the child has a right to receive special training (remedial classes) within the prescribed time limit.
- A child will be entitled to free education till completion of elementary education even after fourteen years.
 - o If the school has no provision for completion of elementary education, a child has the right to seek transfer to any other school for completing elementary education (except to school belonging to a specified category like (Kendriya Vidyalaya/Sainik School or those specified by notification by Government) and unaided school not receiving any Government aid or grant)

CHILDREN

- If a child moves from one school to the other, either within a state or to another state, the child has a right to seek transfer to any other school. The transfer certificate will have to be immediately issued from the school of last admission. The delay in producing the transfer certificate will not be a ground to delay or deny admission in other schools. The school in-charge delaying issuance of transfer certificate is liable for disciplinary action.
- The appropriate Government and the local authority can establish a school within the neighborhood, if it is not there.
- Compulsory education means an obligation of the appropriate Government to:
 - a) Ensure, compulsory admission, attendance and completion of elementary education by every child of six to fourteen years of age.
 - b) Ensure availability of neighborhood school
 - c) Ensure child belonging to weaker and disadvantaged group is not discriminated against and prevented from pursuing and completing elementary education
 - d) Provide infrastructure- school building, teaching staff and learning equipment
- In addition to these, the local authorities are also required to:
 - a) Maintain records of children up to the age of fourteen years residing within its jurisdiction
 - b) Ensure admission of children of migrant families
 - c) Monitor the functioning of schools within its jurisdiction
 - d) Decide the academic calendar

CHILDREN

- **It is the duty of every parent or guardian to admit his/her child for elementary education to a neighborhood school**
- **The appropriate government will make necessary arrangement for providing free pre-school education for children above the age of three to prepare them for elementary education and to provide early childhood care and education.**
- **For admission to elementary education, the age of the child will be determined on the basis of the birth certificate issued under the Births, Deaths and Marriages Registration Act or other such documents as prescribed. The Model Rules under the Act (Part 1-Preliminary) specifies the following documents as proof in case of unavailability of Birth Certificate:**
 - o **Hospital/ANM (Auxiliary Nurse and Mid wife) register record**
 - o **Anganwadi record**
 - o **Declaration through an affidavit of the age of child by the parent or guardian**
- **But no child shall be denied admission for lack of age proof.**
- **A child will be admitted to school at the beginning of the academic year or within such extended period as may be prescribed. The Model Rules under the Act (Part 1-Preliminary) has specified the extension period as six months.**

But no child will be denied admission if it is sought after the extended period.

- **No child admitted in a school will be held back in any class or expelled from the school till the completion of elementary education**
- **No child will be subjected to physical punishment or mental harassment**



MONITORING OF CHILD RIGHTS TO EDUCATION

The National Commission for Protection of Child Rights or the State Commission for Protection of Child Rights will:

- Examine and review the safeguards for rights provided under this Act and recommend measures for effective implementation
- Inquire into complaints relating to child's rights to free and compulsory education

Where the State Commission for Protection of Child Rights has not been constituted, the appropriate government will constitute such authority.

Grievance Redressal

Any person having any grievance relating to the rights of a child under this Act may make a written complaint to the local authority having jurisdiction.

The local authority will decide the matter within three months after hearing the parties concerned.

Any person aggrieved by the decision of the local authority can appeal to the State Commission for Protection of Child Rights.

POINTS TO REMEMBER

- Being a migrant worker does not diminish your legal status as a citizen of the country nor the rights you are entitled to.
- At every stage of migration process access to authentic information is a precondition to safe migration and it starts at the pre-migration/decision making stage.
- If the migration is safe it will deliver benefits and help in realising the opportunities for us and our families.
- Your terms and conditions of work should not be less favourable than those which are available to the local workers at the destination.
- Join a union or body that represents construction workers or brick kiln workers at the destination or at the source. Unions hold contractors, employers and governments accountable for relevant laws. Unions address exploitative practices at the workplace. Through collective action they are able to push for change.
- The contractor will be responsible for payment of wages to each worker employed by him and payment will be made before the expiry of periods as prescribed.

POINTS TO REMEMBER

- Principal employers and contractors are mandated to maintain registers and records of the particulars of each inter-state migrant worker employed, the nature of work performed, the rates of wages paid and other particulars as specified.
- Migrant worker shall not be subjected to any discrimination on any aspect (caste, religion, gender, place) in the process of recruitment, compensation, benefits, work.
- Fair and equal treatment should be at the workplace.
- Your terms and conditions of work should not be less favourable than those which are available to the local workers at the destination.
- The wage rates, holidays, hour of work and other conditions of service will be in accordance to that prescribed by the appropriate government and it will be the same as that of another worker who performs the same or similar kind of work.
- In no case a migrant worker will be paid less than the wages fixed under Minimum Wages Act, 1948.

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