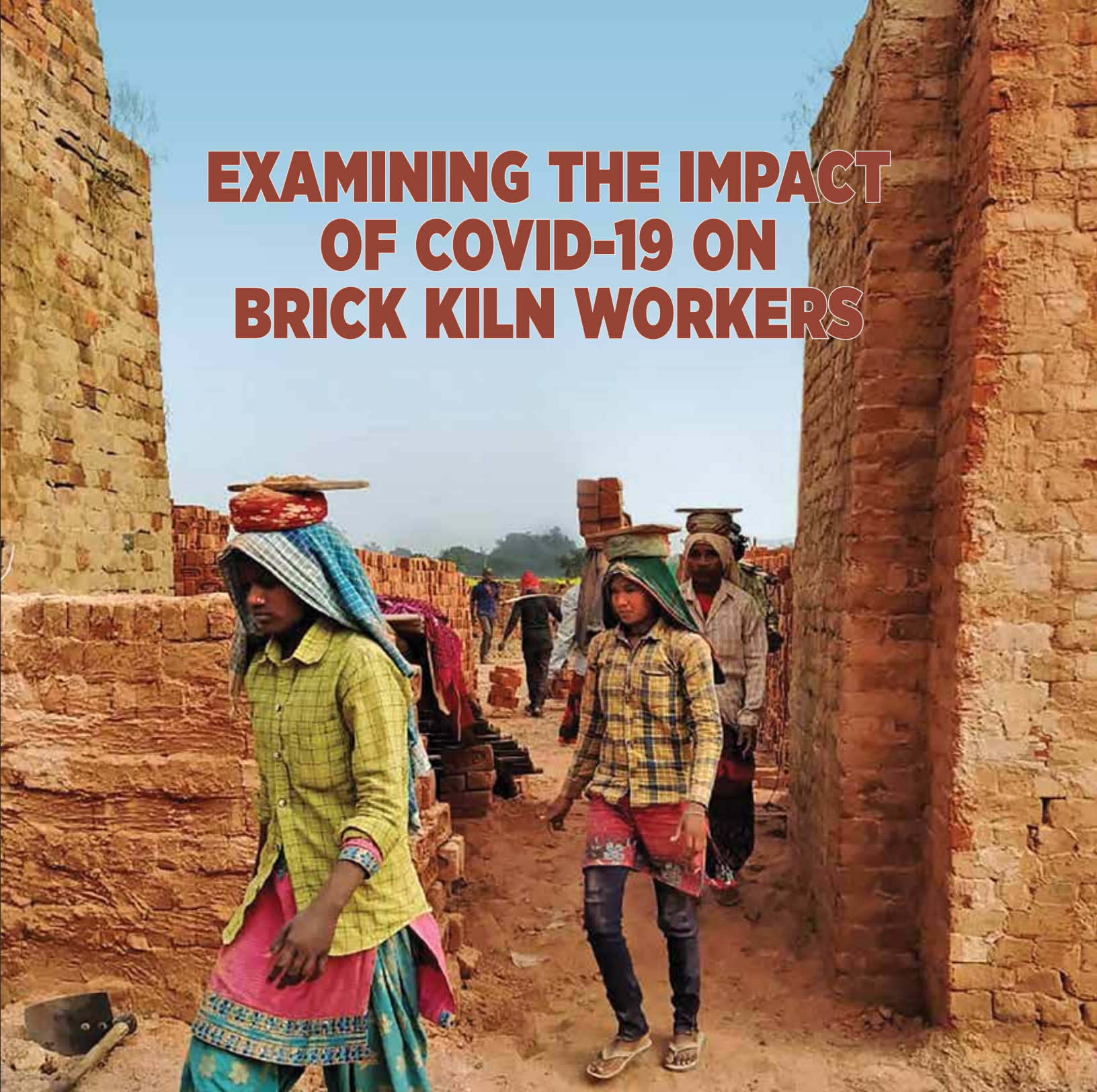


EXAMINING THE IMPACT OF COVID-19 ON BRICK KILN WORKERS



Research Study as part of the Project:

**Empowering CSOs for Decent Work and
Green Bricks in India's Brick Kilns**

ARITRA BHATTACHARYA



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Aritra Bhattacharya



 terre des hommes
Help for Children in Need



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Foreword

This research report is being published as part of a European Union (EU)-funded project—“Empowering CSOs for Decent Work and Green Bricks in India’s Brick Kilns”, which is being implemented by Centre for Education and Communication (CEC), Prayas Centre for Labour Research and Action (PCLRA) and Terre Des Hommes, Germany-India Programme (TDH). The report is significant to the project because it addresses a gap in the current understanding about the multiple ways the COVID-19 pandemic deeply affected the lives and livelihood of brick-kiln workers, and posed significant challenges to the decent work agenda. The report also provides a set of recommendations crucial for civil society organisations, labour collectives and authorities to address such disasters in the future.

I am convinced that the study findings will not only be useful for the project but also for other stakeholders working on the impact of COVID-19 on brick-kiln workers and can be used as a crucial advocacy tool.

I thank Mr. Aritra Bhattacharya for preparing the report. I also congratulate the entire “Empowering CSOs for Decent Work and Green Bricks in India’s Brick Kilns” Project Team for the successful preparation and publication of the report.

Lokesh
Executive Director
Centre for Education and Communication (CEC)

December 2020

Preface

The COVID-19 disrupted the lives and livelihoods of people across the country. The impact of the pandemic on workers in the informal, unorganised sector is severe and evidence of this may be found in numerous news reports. This is a sector where most workers are from subaltern castes and where labour laws protecting workers' interests are routinely flouted. Inside the unorganised sector, as it is one where a large section of workers are from SC and ST communities, and is also one in which bonded and child labour are endemic, the brick-making industry needs special attention.

This study titled “Examining the impact of COVID-19 on Brick Kiln Workers” sought to investigate how the pandemic affected the brick kiln workers, the incidence of bondage and child labour in the brick making industry and opportunities and spaces for collective bargaining and access to relief. The study was conducted as part of the EU-funded project ‘Empowering CSOs for Decent Work and Green Bricks in India’s Brick Kilns’.

I would like to express my gratitude to numerous brick kiln workers who participated in surveys for the study. Most survey interviews ranged between 30 and 45 minutes and in all cases, workers took time off from work to answer the questions. As they are daily wagers, they also probably lost a part of their day’s wages in the process. Special thanks are also due to representatives of labour collectives who shared rich insights and data despite their busy schedules.

I would like to thank CEC and TDH for providing me the opportunity to conduct the research. I would also like to thank my team members Ravi Yadav, Rinku Parihar, Saurabh Kumar and Vaishali Janarathanan for successfully completing the study in the face of many challenges. Some of these challenges included a difficulty in gaining access to workers regardless of the presence of brick kiln owners and managers at work sites, restrictions on movement and public transport due to the pandemic.

Aritra Bhattacharya

December 2020

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CHAPTER 1

Introduction

The Covid-19 pandemic and the strict lockdown imposed after March 24, created an unprecedented economic, social and emotional crisis among millions of people, especially those belonging to the margins, those in the vast informal sector and those who were migrant workers. They had moved from small towns and rural and remote areas into urban peripheries outside the gaze of the affluent mainstream in search of work and livelihood. Consequent to the lockdown – which was initially declared for 21 days and which eventually lasted over two months – there was a mass exodus of millions of these migrant workers from the cities to their homes in small towns and villages, a phenomenon never before witnessed in India.

The sudden and strict lockdown came as a surprise to workers, even as their employers and contractors instantly shut shop and refused to help. Their landlords in the slum clusters on the margins of swanky residential communities told them to leave their one-room homes and the police often did not allow them to make even temporary arrangements for basic survival. Guidelines from the government asking employers to protect their employees were also brushed aside by the employers.

For millions of migrant workers¹ scattered across the slums and ghettos of urban landscapes and concrete structures, the lockdown left no option but to walk long and difficult distances to their rural or small-town homes, with little or no savings and with the pandemic chasing them like death. They walked first across the highways and later inside over-crowded trucks and tempos and trains, with no one wearing masks or washing hands or carrying sanitisers or maintaining social distancing because those were not priorities and the workers had no access to basic safety kits. The crowded Shramik Specials, which often derailed or lost their way, took many more days and hours to reach their final destination. Many workers died on the way, including in road accidents. One of

the most striking images of this migration was of scattered chapatis on a railway track near Aurangabad. Tired workers sleeping on the tracks were crushed by a night train.

Tens of thousands of migrant workers and their families marched on foot holding torn sacks on their heads as their only belongings. Hungry, thirsty and threatened by a deadly pandemic, theirs was a long journey of despair, distress and displacement.

Such a long march on foot was perhaps last witnessed only during and after the Partition of India and in recent times in a war-ravaged Middle-East, where tens of thousands of refugees struggled to reach safer zones in Europe, risking their bodies and lives. The Covid-19 exodus in India was different and it captured global attention – this mass tragedy enacted like an infinite, relentless movie with an unhappy beginning and an unhappy end on highways and streets under a scorching summer sun.

The authorities often refused to acknowledge the incredible tragedy unfolding 24x7 on the highways and streets. There was no transport arranged for the workers in the initial phase, no buses, trains, trucks, no ambulances for the sick, no food and water, no medical relief, not even basic shelter.

For days and weeks this infinite tragedy unfolded on social media and in the bitter realism of summer streets as if for the first time affluent India witnessed the hitherto invisibilised, marginalised and ghettoised ocean of the masses.

Brick Kiln Workers: Deepening Distress

While mainstream media and policy makers woke up to the plight of migrant workers during and after the lockdown and initiated a slew of measures – including chief ministers announcing schemes to register all inter-state migrant

workers in their states so as protect their basic rights – the debilitating circumstances facing brick kiln workers remained largely hidden.

This erasure was not surprising. While the long march of migrant workers was unfolding on national highways just outside large metros, brick kilns, located off major highways, were less easily accessible. With most migrant workers in brick kilns coming from the poorest SC and ST communities, caste bias in the media also likely contributed to their relative absence from public discourse.

Several reports in local newspaper editions and alternative media, however, provided a conflicting picture of the impact of the pandemic on brick kiln workers. Some reports indicated that brick kilns shut operations within days of the first phase of lockdown in the end of March. This was almost three months ahead of the end of the normal brick-making season, which normally lasts for seven months. Many brick kiln workers thus lost a large chunk of their annual earnings.

Some reports also stated that in states such as Uttar Pradesh and Telangana, brick kilns operated as usual despite the complete lockdown in force. Varsha Bhargavi, for instance, documented the desperation to return home of brick kiln labourers from Odisha working in the Sangareddy district of Telangana even as they were running out of rations. When Bhargavi visited a kiln on 5 April, she found workers gripped with a fear of contracting the virus. They had no access to healthcare or pandemic sanitation measures and distancing was not possible in their cramped quarters adjacent to the kilns. Odia worker Hruday Parabhue told her, “It has become difficult to procure food...Police shooed us away when we ventured a bit further into the village looking for shops as we don’t speak their language [Telugu]...If death is inevitable, we would all rather die in our homeland amidst our family members.”²

Reports published by Public Bolti, a citizen journalism and advocacy collective on the other hand, brought to light several cases of workers engaged in kilns in Uttar Pradesh, Haryana and Rajasthan being forced to work and subjected to threats, verbal and physical assaults, forcible confinement and sexual abuse. In many cases, workers also reported that their wages were not settled and that they had no way of knowing how much they had earned for their work. This left open the possibility of owners and managers claiming they had not managed to recover their advances, thus acquiring a negative

balance or ‘*tut*’, effectively increasing their bondage. Reports and workers’ testimonies reviewed by Public Bolti also showed that the full extent of the impact of the pandemic-induced lockdown on brick kiln workers would only become clear in the subsequent season which was due to start in November-December 2020, after Diwali and other festivals.

Background of the Study

India is the world’s second largest producer of bricks in the world after China. While there is a lack of accurate data on the number of brick kilns and the workers employed in them as the sector is highly unregulated and many brick kilns operate without any license or registration, brick kiln employers’ associations claim that 1.5 lakh brick kilns operate in the country and provide direct employment to around 25 lakh workers. The brick-making season in most states stretches six to eight months from November-December to May-June. In some areas, there is also a three-to-four-month summer brick-making season.

Most migrant workers in brick kilns, especially in brick-moulding work, are Dalits and Adivasis and more than 40 percent are women. They work for labour contractors, taking advance loans of paltry sums, living with their entire family in abysmally subhuman conditions, with inadequate health or education facilities, thoroughly exploited, oppressed and marginalised.

Some of the workers have been organised by local voluntary groups or trade unions but they are largely outside the fundamental structure of all legal or constitutional rights; outside even the larger dynamics of the market system, their workplace often resembling an isolated and primitive sweat shop while they live in run-down and temporary tenements and shacks exposed to sun, cold, storms and rain. Their wages are often so low that even the most meagre minimum wage laws are openly flouted. Often an entire family earns barely ₹200 in a day even while work hours can stretch long beyond 16 hours. There are no holidays or leaves.

In many cases, workers are caught in a debt trap and a kind of camouflaged bonded labour is put in place by contractors and employers. Often, food is given instead of cash. There is no safety or health guarantee, no basic medical infrastructure, no sick wages, no social security and not an iota of freedom or dignity of labour. Mobility is all but zero during this contract period of daily toil, even while some

workers shift to new contractors in the next season or new brick kilns, looking for alternative sources of income. This is hard labour in the most dehumanised and difficult of work conditions, almost like the labour camps of the past where slave labour was legitimised.

Migrant workers in brick kilns are a part of a numerically large but dispersed workforce that has no representation in politics or rights. Even as voters they are amorphous and scattered and those outside their home areas on work do not even vote. They exist as invisible and marginal cogs in a massive decentralised and unregulated machine. Their daily wages are often much lower than that stipulated by the government and they operate as free and bonded labour, exploited and at the mercy of labour contractors.

Most of these workers are not enrolled in the database of labour departments and as migrants, face difficulties in accessing the public distribution system or free ration schemes started by various state governments. Almost half are women, who are even more exploited than the male workers. In addition to work at the kilns, they take on the additional duty of childcare and domestic work. They are usually paid much lower than male workers. Women workers also face the risk of physical assault, sexual harassment and stalking.

The prolonged contraction in the economy, bordering on widespread economic collapse and the loss of jobs to millions is likely to affect brick kiln workers severely. GDP numbers for the April-June 2020 quarter showed that growth slipped to an abysmal -23.9 percent before recovering to -7.5 percent in the July-September quarter.

Construction and real estate activity, which had already shrunk more than 50 percent in the April-June quarter and was on the decline since 2019 is likely to remain sluggish in 2021. This will definitely lead to lower demand for bricks, sharply decreasing the earnings of brick kiln owners and the employment potential of the industry. This is bound to be bad news for brick kiln workers.

High rates of unemployment and labour oversupply in source states, where lakhs of migrant workers returned in the weeks after lockdown, is likely to depress wages further and lead to more unfree labour relations and exploitative work conditions. Several cases of 'reverse migration' under unjust contracts accepted by vulnerable and helpless workers have also been reported.

It is in this context that this study on the impact of COVID-19 on brick kiln workers needs to be seen. The key objectives of the study are:

1. Examining the impact of Covid-19 on patterns and regularity of wage payment to different categories of brick kiln workers.
2. Investigating the role of gender and caste among brick kiln workers vis-a-vis the impact of the pandemic.
3. Taking stock of protective measures, if any, provided by brick kiln owners, local authorities and others to brick kiln workers and their adequacy.
4. Examining distress migration induced by Covid-19 and its effects on brick kiln workers.
5. Examining the impact of Covid-19 on the sourcing and deployment of labour and labour relations in source and destination states.
6. Taking stock of the changing policy frameworks and legal regimes on the brick kiln workers.

Methodology

The findings of this report are based on two primary data sources and a mixture of quantitative and qualitative methods:

- **Survey Interviews:** 49 questionnaire-based in-person interviews in UP and Rajasthan with brick kiln workers from five states (Chhattisgarh, Uttar Pradesh, Rajasthan, Bihar and Madhya Pradesh) conducted in the post-lockdown season between 18-30 November, 2020. The survey schedule included six interviews from CEC's project area in Fatehpur district of Uttar Pradesh, where there is a functional labour collective of brick kiln workers. The 21 respondents from brick kilns in UP's Sant Kabir Nagar district who were interviewed for the survey schedule included several workers who had been rescued from brick kilns by the field researcher or people known to them, whereas several others were interviewed at random kilns. Respondents for the 23 interviews from Udaipur district in Rajasthan included several workers whom the field researcher knew from her trips to brick kiln sites during the lockdown while delivering rations or their acquaintances. Some respondents were also chosen

from kilns where there had been cases of bonded labour in the past few years. In this way the survey schedule covered workers who were organised and connected with activists and civil society groups as well as those who were not connected to any labour collectives.

- **In-depth Interviews:** Twenty in-depth interviews between 25 November and 10 December 2020 with various stakeholders including representatives of labour collectives at the national level and in seven states, from both source and destination states. Those interviewed also included independent activists, managers or *munshis*, security guards at brick kilns and administrative officials.

The subsequent chapter provides an overview of the following topics: first, the brick-kiln industry and the bonded labour and child labour endemic to the sector; second, the preponderance of Dalits and Adivasis among the lowest paid and most vulnerable workers at the kilns; and finally, the payment system that fuels bondage. The lax regulation and inconsistent classification of brick kilns, the organisational structure of a kiln, the conditions and legal frameworks to determine bondage and the various laws and international

covenants that apply to brick kilns are also discussed briefly in this chapter.

The third chapter discusses the survey findings, which, among other things, shows that 90 percent of the workers who travelled to work in brick kilns in the new season starting November-December 2020, were not registered, thus remaining invisible and outside the reach of social security measures and thus more economically distressed.

The fourth chapter discusses the vitally important and positive role of labour collectives in coming to the aid of brick kiln workers during the lockdown and in the post-lockdown season. It shows that enforced labour, beatings, sexual abuse and debt bondage during the lockdown were regular affairs. While common every year, their scale and extent increased sharply in the wake of the pandemic, necessitating urgent measures for the relief of workers from the poorest, most vulnerable communities, including women and children.

The fifth and final chapter lists key recommendations for the government, brick kiln owners and owners' associations, NGOs, CSOs and labour collectives.

¹ While there is no official data for the inter-state migrants in the country, estimates for 2020 have been made by Professor Amitabh Kundu of Research and Information System for Developing countries. His estimates, which are based on the 2011 Census, NSSO surveys and economic survey, show that there are a total of about 6.5 crore inter-state migrants and 33 percent of these migrants are workers. By conservative estimates, 30 percent of them are casual workers and another 30 percent work on a regular basis but in the informal sector. If street vendors are added to this data, it would mean that there are 1.2 to 1.8 crore people in the country who are reside in states other than that of their origin, who risked losing their income and accommodation in the pandemic. The Economic Survey of India pegged the size of the migrant workforce at roughly 20 percent of the overall workforce or over 10 crore in 2016.

² <https://ruralindiaonline.org/articles/locked-into-the-kilns-brick-by-brick/>

Overview of the Brick-Making Industry in India

1. Unregulated and Informal Nature of the Industry

Brick-making is an old industry in India and can be traced as far back as the Indus Valley Civilisation.¹

The industry today is highly unorganised and fragmented. Kilns often operate in a grey zone outside the purview of regulation, blatantly violating labour laws and perpetuating exploitative labour relations.

There are serious inconsistencies in the categorisation of brick kilns – generally considered as an artisanal industry. The National Industrial Classification (NCO 2008) Codes categorise brick kilns under the ‘manufacture of intermediate and final products from mined or quarried non-metallic minerals, such as sand, gravel, stone or clay.’ However, the Annual Survey of Industries (ASI) and other statistical sources such as the NSSO do not seem to categorise these industries.

As a result, there are no official figures from the NSSO or the ASI on the exact number of brick kilns in India, the technologies they use and the number of workers they support.

Most governmental and institutional documents quote figures provided by the All-India Brick Manufacturers Association. Their latest estimates state that there are 1.5 lakh brick kilns in the country which employ as many as 2.5 crore workers and produce over 25,000 crore tonnes of bricks annually.² However, there is a high probability that these figures are gross underestimations as many brick kilns, particularly small ones or ones where owners enjoy political clout, are not registered. Many brick kiln owners, especially in states such as Uttar Pradesh, where the implementation of laws is lax, operate multiple kilns with the licenses and regulatory clearances for only one.³

The brick industry is a major source of livelihood for people in Assam, Bihar, Jharkhand, Haryana, Punjab, Uttar Pradesh and West Bengal. Despite the huge number of workers and industrial demand, there have been very little reforms made to benefit workers or bring the industry under formal regulation. Trade unions have been also largely absent from the scheme of things.

2. Archaic Technology, Hierarchical Relations, Debt Bondage

Types of Kiln

The most common type of kiln used for brick-manufacturing in India is the Fixed Chimney Bull Trench Kiln (FCBTK), believed to have been introduced by W. Bull, a British engineer, in 1876. FCBTKs account for nearly 75 percent of the 25,000 crore bricks produced in the country and dominate the northern and eastern stretches of the country, including Punjab, Himachal Pradesh, Uttarakhand, Uttar Pradesh, Bihar, Jharkhand, West Bengal and Assam. In Western and Southern states, Movable Chimney Bull Trench Kilns (MCBTKs) are present and account for 20 percent of India’s total brick production. They are a traditional method of brick-making discarded in most countries outside South Asia.⁴

In many areas such as Punjab and parts of UP, zigzag kilns, where bricks are stacked high in alternating columns during the firing process are becoming popular as they are reportedly more fuel-efficient, environment-friendly and profitable in the long run, although the initial investment is higher.

The ILO classifies FC/MCBTKs and clamp kilns as ‘traditional continuous kilns’ that require very low investment, do not need electricity or water and can be set up in remote locations when compared to ‘advanced continuous kilns’ such as Hoffman kilns. FCBTKs and MCBTKs consume more coal

and are environmentally hazardous. While Hoffman kilns are found in southern states such as Kerala and Karnataka, they make up less than 5 percent of India's overall brick production.⁵

Besides being ecologically disastrous, technically inefficient and the cause of multiple occupational hazards, traditional kilns are also scenes of the worst forms of employment practices often akin to slave labour. Even while the kilns seem unorganised and unregulated, the slave labour and the entrenched system of exploitation is well-organised and methodical.

Brick-making Process

Despite variations and differences in FCBTKs and clamp kilns, the brick-making process in traditional kilns presents a relatively consistent picture.

Stages in brick production:

- **Digging/ Excavation:** Topsoil is first excavated or collected from patches of land and agricultural fields adjacent to brick kilns. Although workers manually dig out the topsoil in many places, heavy machinery such as earthmovers is increasingly being used in most places.
- **Preparation of Clay:** Minor additives and water are manually mixed with the topsoil and left to weather for a few days to get the right consistency.
- **Moulding:** Wet clay is inserted in brick moulds by hand using wooden casks.
- **Drying:** Moulded bricks are dried out in the sun or in a shed.
- **Loading:** Dry moulded bricks are carried by people or on animal backs or animal carts and transported to the firing area.
- **Stacking:** Bricks are layered in a pattern suitable for the firing technology in use.
- **Firing:** Bricks are fired at a temperature of 800-1100 degrees Celsius.
- **Unstacking and Loading of Finished Bricks:** Fired bricks are unstacked and loaded for transportation to warehouses or their final destination.

Organisational Structure of Kilns

The number of workers required to operate a brick kiln is determined not only by the firing technology in use but also factors such as the location of the kiln, its proximity to urban agglomerations, the developmental profile of the region and

transport linkages with other areas. On average, however, a FCBTK typically supports between 140 to 150 livelihoods, whereas a clamp kiln provides employment to around 20-30 workers. The latter are mostly located in rural and underdeveloped areas and regions.

Overall, brick kilns in India and the rest of South Asia are highly hierarchical with little or no interaction between the top and bottom rungs.⁶ They also involve a large number of roles with clear tasks and responsibilities corresponding with the brick-making process and caste and gender hierarchies.

Owners

Brick kiln owners are typically men from dominant castes who enjoy political clout in their area and are well-connected with the local administration and police. Many owners also have a reputation of being *dabang* (strongmen) and employ musclemen and armed goons to guard brick kiln sites and prevent the entry of outsiders.⁷ A majority of the brick kiln owners are usually not present at the kilns and rely on a manager or a *munshi* to oversee operations.⁸

Contractors

Contractors and middlemen play a vital role in sourcing and retaining workers for brick kilns and in many cases, several middlemen are involved in recruiting workers. Based on the requirements of brick kiln owners, contractors and middlemen – called *jamadar*, *sardar* and so on – source workers, often from underdeveloped areas in other districts and states, arrange for their transport to the worksite and are generally the only point-of-contact for migrant workers at the kilns. They are known to have strong connections with local police, administration and law enforcement agencies, charge a commission fee for their services from kiln owners and in some cases, also take a percentage of the worker's earnings.⁹

Manager/ Munshi

Managers or *munshis* are typically from twice-born castes, including Brahmins and Baniyas,¹⁰ who represent the owner and play a critical role in brick kilns. They monitor brick production, maintain accounts, record the daily production in notebooks, calculate wages, make payments, resolve disputes and liaise with contractors who source workers for the kilns.

Pathera/ Paatla

Patheras/ Paatlas are workers engaged in the moulding of bricks and comprise 60 to 65 percent of the workforce in

a kiln. Usually, interstate migrants from underdeveloped areas in Bihar, Jharkhand, Chhattisgarh, Odisha and Uttar Pradesh, they are mostly from SC or ST communities. Most often the entire family, including minors, travels and works along with adult family members at brick kilns. A majority of these inter-state migrant workers take an advance payment at source from the kiln owners via contractors against a guarantee of work for the full season. Their wages are calculated on a piece-rate basis and accounts are settled at the end of the season.¹¹

Loading and Unloading

Around 25 to 30 percent of workers in a kiln are engaged in transporting and loading green bricks into the furnace and fired bricks out of the furnace.¹² They are known by different names in different areas depending on the task they perform.

Typically, in the northern states, those who carry green bricks to the chimney are called *bharai* or *charai* workers; in some areas, they are also called *kumhaar*. Those who load bricks for firing are called *beldaars*. Those who take fired bricks out of the furnace and load them onto vehicles are known as *nikasi* and *laadna* workers. These workers are sourced locally, often from the same or neighbouring districts and are generally from subaltern communities such as SCs, STs and OBCs. Although they generally do not take an advance like *patheras* or *paatlas* do, they too are paid on a piece-rate basis with accounts settled at the end of the season.

Jalai

A kiln typically has 2 to 3 firemen who are from middle castes and are paid monthly wages. They feed solid fuels like coal, firewood, and agriculture residue into the kiln through feed holes and keep the fire burning steadily.

Payment System and Tut

A 'migration mapping' of 200 brick kilns in the districts of Ajmer and Bhilwara in Rajasthan in the 2016–17 season revealed that 67 percent of the workers were inter-state migrants from UP, Chhattisgarh, Bihar, Odisha and Jharkhand. They had joined brick kilns against an advance payment averaging ₹ 30,000 at source from the kiln owners via contractors and middlemen. Most were engaged in brick moulding. They were paid on a piece-rate basis at the end of the season and payments for a family unit were made to the male head of the family.

The study found that 93 percent of workers were from backward castes and were paid wages that were almost 30 percent lower than the minimum wage (₹ 200). In almost all cases, workers reported being paid less than what was owed to them, with payment losses of up to 26 percent.

Sixteen percent families reported defaulting on advances – the number of bricks they had produced during the season was not enough to cover the advance they had taken prior to joining work, thus acquiring '*tut*' or negative balance. The average amount of *tut* was about ₹ 23,000. On average, a family reported *tut* twice every 6.5 years.¹³

Tut, in fact, is the most important factor leading to bondage at the kilns for it forces the worker to return to the same kiln the following season to repay the debt. While the migration mapping study revealed the predominance of *tut* in the lives of brick kiln workers from the poor and oppressed communities, a report published by Anti-Slavery International in 2017 stated that the recruitment and payment system fuels rampant slavery and child labour in India's brick kilns.¹⁴

The report stated: "The way the workers are recruited and paid in the kiln is critical to understanding the system of power relations which keep workers poor and vulnerable to debt-bondage, the worst forms of child labour and under the control of employers. Because workers are indebted to the kiln owners and wages are only settled at the end of the season, workers lose control over their conditions of employment and movement. This allows the kiln owner to control the workforce, so that there are no breaks in productivity – the workers cannot leave the brick kiln until they are paid and until they know they have paid off their loan..."

...It also allows the employer to reduce the agreed wage rate at the end of the season and pay below the legal minimum wage, since the worker cannot leave until he receives full payment. As there are no proper records maintained, there is limited accountability.

...Payment via a piece rate system and as a family unit also encourages child labour – children may work to help their family make more bricks and earn more. This new type of bondage is replacing the 'traditional' type of bondage, whereby workers are physically restricted from leaving worksites."

3. Policy and Legal Framework

International Frameworks

India is party to a number of international covenants to abolish the slavery, forced labour and child labour that are rampant in the brick kiln sector. Key among these are the UN Supplementary Convention on the Abolition of Slavery and the ILO's Forced Labour Convention, which defined debt bondage and forced labour respectively.

Article 1(a) of the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956) defines debt bondage as “the status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited or defined.”

ILO's Forced Labour Convention, 1930 (No. 29) defines forced labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.

ILO's standards for ‘decent work’ clearly delineate that workers must have opportunities for work that is productive and delivers a fair income; security in the workplace and social protection for families; better prospects for personal development and social integration; freedom for people to express their concerns, organise and participate in the decisions that affect their lives; and equality of opportunity and treatment for all women and men.

‘Decent work’ has become a universal objective and has been included in major human rights declarations, UN Resolutions and outcome documents from major conferences.

Under international law, children under 18 years are prohibited from work in the category ‘Worst Forms of Child Labour’, which includes all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour and work, which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.¹⁵ Thus, work carried out by children in the brick kilns fits into the Convention's prohibited occupations.

National Frameworks

Although local circumstances, including the nature of the brick kiln industry, differ from state to state, various laws including the Factories Act, 1948, the Building and Other Construction Workers Act, 1996, the Inter State Migrant Workmen Act, 1979, the Minimum Wages Act, 1948, the Payment of Wages Act, 1936, the Equal Remuneration Act, 1976, the Bonded Labour System (Abolition) Act, 1976, the SC/ST (Prevention of Atrocities) Act, 1989, the Child Labour (Prohibition and Regulation) Act, 1986, and the Juvenile Justice (Care and Protection of Children) Act, 2015 are applicable to brick kilns depending on the circumstances in each case.

Brick Kilns are Factories, but Only in Some States

The law, including case law, clearly classifies the brick manufacturing process within the Factories Act framework. The Factories Act designates that any premises where 10 or more workers are engaged in a manufacturing process with the aid of power, or 20 or more workers are engaged in a manufacturing process without the aid of power, shall be deemed to be a factory. The workers in these factories are entitled to regular payment of wages, safeguards against debt bondage and social security measures including health, safety, children's education and their essential freedom and fundamental rights as enshrined in the Indian Constitution.

The Supreme Court in *PUCL vs State of Tamil Nadu* (2012) observed that brick kilns are one of the industries in India where bonded labour has become integral and a judgement of the Orissa High Court in 1965 held that a brick kiln is indeed a factory as defined under Section 2(m) of the Factories Act, 1948.¹⁶

The High Court of Orissa considered two issues in this case:

1. Whether a brick kiln is a factory within the meaning in Section 2(m) of Factories Act, 1948
 - It was held that the brick kiln in question is a factory as it fulfils the conditions under Section 2(m), namely;
 - a. There was a manufacturing process, i.e., manufacturing of bricks.
 - b. There was a use of power as a 5hp diesel engine was used to supply water to the moulding section. In any case, there were over 20 workers working at the time of inspection.

2. Whether workers hired by contractors/ jamadars to mould bricks at the brick kiln are also factory workers

- a. A worker is a factory worker, even if employed through an agent, as clearly defined under Section 2(l) of the Factories Act, 1948. Also, once a worker is found on the premises of the factory within the working hours of the factory, a presumption of employment is drawn as per Section 103 of the Factories Act.

Despite the clear categorisation of brick kilns as factories, brick kilns are registered under the Factories Act only in a few states such as Punjab and Rajasthan, leaving a major portion of the workforce in the brick-making industry in other states outside the purview of the Factories Act.

Brick Kilns as Part of Construction Sector

Although brick kiln workers aren't directly engaged in construction work, the bricks they produce are integral to construction. Given the lack of registration of brick kilns as factories and the precarious situation of brick kiln workers, in 2013 the Directorate General of Labour Welfare issued an advisory to states specifying that schemes for building and other construction workers could be extended to brick kiln workers as well.

Anil Swarup, who was then the Director General of Labour Welfare, recalled, "When the issue was debated in the Directorate General Labour Welfare where I was posted as the Director-General, there were those who believed that these workers cannot be treated as construction workers as they were not directly contributing to the construction of buildings.

...Extremely concerned about the plight of brick kiln workers, I asked the office to move a note for consideration. When the file came to me after going through various stages of the bureaucratic hierarchy, I found that some of the officers had taken a conservative view quoting the legislation...The explanation that I gave while over-ruling those who had written against it was based on logic rather than emotions. In my view, earthen bricks were an intrinsic part of construction work. Hence, those engaged in making such bricks could not but be deemed as construction workers. After all, the quality of a brick and most of the value added to it was a direct result of the efforts put in by these labourers.

...My view was subsequently accepted by all and the brick kiln workers started benefitting under the legislation," noted Swarup.¹⁷

Two principal legislations concerning building and other construction workers that became applicable to brick kiln workers thereafter are: The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and the Building and Other Construction Workers Welfare Cess Act, 1996. As per these laws, building and other construction workers such as brick-kiln workers are required to be registered with state-level Construction Workers Welfare Boards. Minimum safety standards and conditions of employment for construction workers have also been prescribed.

These laws entitle brick kiln workers to medical assistance and accident cover, pension, maternity benefits, educational assistance for children of workers, assistance to family members in case of death (by accident, at worksite or even in case of natural death), funeral assistance and in some states, marriage assistance for children of workers.

Payment of Wages

The Minimum Wages Act, 1948 that applies to all brick kilns clearly designates that workers must be paid the minimum wage as notified by the state government from time to time, whether on a piece-rate or time-rate basis. It stipulates that workers must be provided a day's rest every seven day, must be paid overtime wages for work done beyond eight hours in a day and that the wage period cannot exceed one month. It states that wages must be paid within seven days of the expiry of the wage period in full, without any deductions, except those authorised under the Minimum Wages Act and the Payment of Wages Act.

The Minimum Wages Act also designates that wages are to be paid to each individual worker, including women workers, not to a group of workers or family, whereas the Equal Remuneration Act, 1976 clearly specifies that it is illegal to pay the wages of all members of the family to the head of the family or a woman's wages to her husband.

Payment of wages below minimum wages also constitutes 'forced labour', which is a violation of Article 23 of the Constitution that prohibits forced labour.

Bonded Labour

The Bonded Labour System (Abolition) Act, 1976 specifies a number of conditions that must be investigated to determine the presence of bonded labour at any worksite. Section 2(g) of the Act states that where there is an employer-employee relationship, any one of the causes leading to any one of the consequences listed below constitutes bonded labour. In addition, any one of the consequences alone is also ‘bonded labour system’ within the meaning of the Act.

Causes	Consequences
a) Advance obtained	1) No wages or payment of nominal wages
b) Customary or social obligation	2) Forfeiture of freedom of employment
c) Obligation devolving by succession	3) Forfeiture of freedom of movement
d) For any economic consideration	4) Forfeiture of the right to sell any products of their labour at market value
e) Birth in any particular caste	

Several Supreme Court judgements have widened the scope of Section 2(g), which clearly states that:

- Advance is not a necessary component to constitute bonded labour
- ‘Force’ in forced labour includes payment of wages below minimum wages even where there are none of the causes of bonded labour under Section 2(g)

Complaints under the Bonded Labour Act can be lodged either with the District Magistrate (DM) or a subordinate officer designated by the DM or the National Human Rights Commission (NHRC). The DM or the specified subordinate officer to the DM is empowered and duty bound under chapter 4 of the Bonded Labour System (Abolition) Act, 1976 to release bonded labourers or to delegate this power to an officer subordinate to the DM, such as the Sub Divisional Magistrate (SDM). The Supreme Court has also authorised the NHRC to implement the Bonded Labour System (Abolition) Act, 1976.¹⁸

Child Labour

The Child Labour (Prohibition and Regulation) Act, 1986 prohibits children under the age of 14 from working in any occupation, except if working to help “his family or family enterprise...after his school hours or during vacations.”¹⁹

The Act clearly specifies that a child can assist the family only outside of school hours, which conforms with the Right to Free and Compulsory Education Act 2009 (RTE). The RTE Act states that the government must provide free education to children between the ages of 6 and 14 and that the government has an obligation to ensure admission, attendance and completion of education for all children between the ages of 6 and 14 years.

The government and local authority must also ensure a school for primary classes 1-4 within 1 km radius of a neighbourhood. Since most brick kilns are located along highways and far away from human settlements except those located within villages, by law a kiln or a cluster of kilns must have a worksite school.

¹ Archaic Technology, Social Relations and Innovations in Brick Kilns, CEC, March 2018. https://www.cec-india.org/libpdf/1547115775ArchaicTechnology_SocialRelationsandInnovationsinBrickKilns.pdf. Last accessed on 28 December 2020.

² <https://www.civilsocietyonline.com/special-focus/pay-brick-kiln-workers-online/#:~:text=Sidika%20Sehgal%2C%20New%20Delhi&text=Brick%20kiln%20workers%20have%20finally,floated%20in%20October%20last%20year>. Last accessed on 28 December 2020.

³ Representatives of labour collectives in UP and Rajasthan we spoke to between 25 November and 10 December 2020 said the actual number of brick kilns in their states was much larger than the number of registered establishments.

⁴ Brick Kilns in India, JS Kamyotra – Director, Central Pollution Control Board, 2015. <https://cdn.cseindia.org/docs/aad2015/11.03.2015%20Brick%20Presentation.pdf> Last accessed on 28 December 2020.

⁵ Brick by Brick – Environment, Human Labour and Animal Welfare: Unveiling the full picture of South Asia’s brick kiln industry and building

the blocks for change, ILO, 2017. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_542925.pdf. Last accessed on 28 December 2020.

⁶ Buried in bricks: A rapid assessment of bonded labour in brick kilns in Afghanistan, ILO, 2011. https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_172671.pdf. Last accessed on 28 December 2020.

⁷ Interviews with union leaders and workers from five states.

⁸ Brick by Brick – Environment, Human Labour and Animal Welfare: Unveiling the full picture of South Asia’s brick kiln industry and building the blocks for change, ILO, 2017. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_542925.pdf. Last accessed on 28 December 2020.

⁹ Understanding Migration Patterns and the Socio-economic Profile of Workers in the Brick Kilns of Rajasthan – Part I, CEC, 2018. https://www.cec-india.org/libpdf/1547116406_UnderstandingMigrationPatternsandtheSocio-economicProfileofWorkersintheBrickKilnsofRajasthan-PartI.pdf. Last accessed on 28 December 2020.

¹⁰ Field observations in study areas.

¹¹ Understanding Migration Patterns and the Socio-economic Profile of Workers in the Brick Kilns of Rajasthan – Part I, CEC, 2018. <https://www.cec-india.org/libpdf/1547116406UnderstandingMigrationPatternsandtheSocio-economicProfileofWorkersintheBrickKilnsofRajasthan-PartI.pdf>. Last accessed on 28 December 2020.

¹² Field observations, corroborated by representatives of labour collectives.

¹³ Understanding Migration Patterns and the Socio-economic Profile of Workers in the Brick Kilns of Rajasthan – Part I, CEC, 2018. <https://www.cec-india.org/libpdf/1547116406UnderstandingMigrationPatternsandtheSocio-economicProfileofWorkersintheBrickKilnsofRajasthan-PartI.pdf>. Last accessed on 28 December 2020.

¹⁴ Slavery in India's Brick Kilns & the Payment System: Way forward in the fight for fair wages, decent work and eradication of slavery, Anti-Slavery International, 2017. <https://www.antislavery.org/wp-content/uploads/2017/09/Slavery-In-Indias-Brick-Kilns-The-Payment-System.pdf>. Last accessed on 28 December 2020.

¹⁵ Worst Forms of Child Labour Convention 1999 defines the worst forms of child labour as: "(a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment

of children for use in armed conflict; (b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children."

Brick kiln work is generally considered hazardous for children. <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chic.htm>. Last accessed on 28 December 2020.

¹⁶ Prabhulal Patodia vs State [1966 CriLJ 228 | Date of Judgement 3 August 1965 | Orissa High Court]

¹⁷ <http://www.millenniumpost.in/editorial/interpreting-the-law-414096>. Last accessed on 28 December 2020.

¹⁸ Public Union for Civil Liberties Vs. State Of Tamil Nadu. Date of Judgement: 5 May 2004; Public Union for Civil Liberties vs. State of Tamil Nadu. Date of Judgement: 15 October 2012.

¹⁹ Clause 5 of The Child Labour (Prohibition and Regulation) Amendment Act 2016, amending section 3 of The Child Labour (Prohibition and Regulation) Act 1986.

CHAPTER 3

Plundered by the Pandemic

A questionnaire-based survey was conducted in the states of Uttar Pradesh and Rajasthan between 8-30 November, 2020 to assess the impact of the pandemic on brick kiln workers' lives and livelihoods. Most kilns in the survey area resumed operations in the post-Diwali weeks of 2020 as workers from neighbouring districts and states began arriving at worksites amidst fears of a fresh surge in COVID-19 cases.

A total of 49 workers from 18 different kilns in three districts of the two states were interviewed in-person for the survey round, while adhering to distancing and health protocols.

Brick Kiln	Block/Vill.	District	No.
Best bricks	Girwa	Udaipur	2
Bhairav		Udaipur	4
HP Bricks	Gogunda	Udaipur	1
Hariprasad	Girwa	Udaipur	2
Hiralal		Udaipur	1
P.S. Brick	Girwa	Udaipur	1
Pratap	Badgaon	Udaipur	5
S.B Bricks	Badgavli	Udaipur	2
SBI	Girwa	Udaipur	1
SK Bricks		Udaipur	1
Vinayak		Udaipur	3
			23

Brick Kiln	Block/Vill.	District	No.
Azad Bricks		Santkabirnagar	4
Chodhary		Santkabirnagar	3
Jai Mahakal		Fatehpur	2
Jain	Faraniya	Santkabirnagar	2
Kaka Ith	Ghangata	Santkabirnagar	1
Ma Baishno	Ghitni	Santkabirnagar	4
Menu Surkhi Lime Works		Santkabirnagar	5
Sakhambari	Barhatta	Santkabirnagar	1
Sri Krishna		Fatehpur	2
Vaishnavi		Fatehpur	2
			26

Survey Conditions and Limitations

Field researchers in all three districts were locals who had prior experience of working in the development sector, including in assisting and rescuing brick kiln workers. They comprised of two men and one woman. Surveyed kilns were chosen on the basis of snowball or chain-referral sampling. In all cases, researchers knew some respondent(s) living and working in the kiln beforehand, or were referred to them by other workers.

This was crucial because brick kilns in general are heavily guarded spaces and access to outsiders is severely restricted.

Apart from the overbearing presence of managers and, in many cases, contractors and security guards, kiln owners, especially in Uttar Pradesh, are known to employ armed guards to secure worksites.

While prior familiarity allowed researchers easy access to respondents in most cases, in Sant Kabir Nagar, two kiln owners present on the premises refused to allow any interviews with workers, whereas in Udaipur, a kiln owner insisted on sitting through one of the interviews. In some cases, managers, *munshis* or security guards turned up during the interviews.

Given the hierarchical power relations in brick kilns, the presence of owners and managers during interviews would likely have restricted workers from answering questions in a manner critical of employers, contractors or work conditions.

Workers were asked a range of questions on a number of areas. These included demographic and residential details, the experience and number of family members in the brick-making industry, including women and minors, the reasons for working in the industry, the roles they were currently engaged in and their associated wages and whether they had taken any advances or debts. Since the lockdown was announced on 24 March 2020 just after the middle of the previous brick-making season and since all industries and business establishments across the country other than those classified as essential services were ordered shut during the complete lockdown that lasted till 31 May 2020, workers were specifically asked about the impact of the lockdown on their period of employment and the settlement of wages. They were also asked about difficulties encountered during the lockdown during travel back home and the reasons they had returned to worksites in the current season.

Despite limitations including the small sample size and limited geographical coverage, the survey revealed that the pandemic had dealt a heavy blow to brick kiln workers, especially those engaged in brick moulding (*pather/ pathai/ paatla*) work who are known to take advances, work in families and have been identified by the ILO as especially susceptible to bondage and forced labour.¹

While the lockdown during the previous season wiped away several months' earnings for many workers, including those whose wages were not settled during the termination of employment, several respondents reported defaulting on advances despite working throughout the previous season

until June. Most respondents also attributed their return to the brick kiln industry this year to not having any other option for employment, while some also took on fresh advances, which indicate a spike in situations of bondage as defined in the Bonded Labour Act due to the pandemic.

Key Findings

Key findings from the survey pertaining to the impact of the pandemic on brick kiln workers are presented below. The findings are supplemented with insights from leaders and activists of labour collectives in five states (Uttar Pradesh, Rajasthan, Punjab, Odisha, Maharashtra) and the archives of citizen journalism and advocacy collective Public Bolti.

Who were the Workers?

Family Members in Brick-Making Industry

Among the 49 respondents who participated in the survey, only six worked alone, whereas 43 others had family members working in the same kiln, taking the total number of workers covered in the survey to 213, including women and minors. The average number of family members per respondent was 4.34.

In all cases where respondents had other family members working in the kiln, wages were computed and paid together for the entire family.

Age

While all respondents who participated in the survey were adults, those aged above 35 years comprised the largest share, followed by those in the 25 to 35 year and 18-to-25-year age groups.

Age		%
18 to 25	7	14.3
25 to 35	12	24.5
Above 35	30	61.2
	49	100.0

Experience

A majority of respondents had been working in the brick-making industry for 6-10 years (36.7 percent), followed by those with 0-10 years (22.4 percent) and 11-15 years (16.3 percent) of experience.

No. of years		%
0 to 5	11	22.4
6 to 10	18	36.7
11 to 15	8	16.3
Above 15	12	24.5
Total	49	100.00

Gender

While field observations showed females comprised almost half of the workforce, the over-representation of men in the sample (79.6 percent) was most likely an indicator of gendered relations and patriarchal values within the family and social milieu of brick kiln workers.

Gender		%
Male	39	79.6
Female	10	20.4
	49	

None of the surveyed kilns had toilets, forcing women to defecate in the open and leaving them susceptible to assaults and molestation. While representatives of labour collectives in the brick-making industry – all males – from five states corroborated this threat, some said they had heard of instances of sexual abuse from neighbouring areas during the previous, lockdown-afflicted season.

Two women respondents who participated in the survey confided in the field researcher, a woman, that the owner routinely forced them to prepare and serve him liquor.

Literacy

More than half of the respondents did not have any formal education, indicating that poverty and illiteracy together played a key role in compelling workers to take up work in the brick-making industry and accept conditions of bondage without protest.

The presence of several workers who had completed their higher secondary education, on the other hand shows that literacy and education do not open up access to 'decent work'.

Education		%
Non literate	25	51.0
Primary	12	24.5
Secondary	7	14.3
Higher Secondary	5	10.2
Total	49	100.00

Source State

While the brick kilns covered in the survey were located in Uttar Pradesh and Rajasthan, most of the respondents were from Uttar Pradesh (38.8 percent), followed by Chhattisgarh (34.7 percent), Rajasthan (14.3 percent), Bihar (8.2 percent) and Madhya Pradesh (4.1 percent).

Source state of workers		%
Uttar Pradesh	19	38.8
Chhattisgarh	17	34.7
Rajasthan	7	14.3
Bihar	4	8.2
Madhya Pradesh	2	4.1
Total	49	100.00

Migration Status

Of the 49 respondents, only 11 (22.4 percent) were locals from neighbouring villages in the same district, whereas 38 others (77.5 percent) were migrant workers. Among the latter, nine respondents (23.6 percent) were inter-district migrants whereas 30 others (78.9 percent) were inter-state migrants. Most inter-state migrants were from Chhattisgarh, followed by UP, Bihar and MP.

Inter-state Migrants:

Home state	No. of workers	Destination state	Proportion among inter-state migrant workers (in percent)	Share in overall sample
Bihar	4	Rajasthan (3), UP (1)	13.3	8.2
Chhattisgarh	17	UP (13), Rajasthan (4)	56.7	34.7
MP	2	Rajasthan	6.7	4.1
UP	7	Rajasthan	23.3	14.3
Total	30		100.00	61.2

Caste-class

Most of the surveyed workers across occupational categories in brick kilns were categorised as SCs (20), followed by OBCs (14), Muslims (8) and STs (6) in their source states, whereas one family's caste status could not be ascertained. The demographic distribution of workers tallies with other studies from surveyed states and the absence of even a single general category worker from privileged castes in the sample shows that despite the existence of several affirmative action and social justice schemes and programmes at the Central and state levels, subaltern groups remain heavily over-represented in the brick-making industry, engaged in the most dehumanising work, bereft of basic freedom and dignity.

Caste		%
ST	6	12.2
SC	20	40.8
OBC	14	28.6
Muslim	8	16.3
Not sure	1	2.0
General	0	0
Total	49	100.00

A majority of those (34) surveyed were brick-moulders, among whom a large proportion were SCs, followed by OBCs, Muslims and STs. Respondents also included workers engaged in stacking, unstacking, loading and unloading bricks, one fireman (*jalai*) and mixed category workers.²

Type of work		%	ST	SC	OBC	Muslim	Not sure
Pathai	34	69.4	1	9	11	8	1
Nikaasi	3	6.1	0	2	1	0	0
Laadna	2	4.1	1	0	1	0	0
Jalai	1	2.0	1	0	0	0	0
Beldaar	5	10.2	3	2	0	0	0
Kumhaar	1	2.0	0	1	0	0	0
Mixed	3	6.1	0	2	2	0	0
Total	49	100.00	6	16	15	8	1

In most occupational categories, SCs were predominant, with OBCs being a close second. The presence of a large number OBCs among brick kiln workers, including among brick moulders, is significant because most of them are from communities that have a fuzzy boundary, a sizeable middle class and visibility and representation in the political sphere.

A case in point is the Nishad community from the northern reaches of Chhattisgarh bordering Uttar Pradesh and Jharkhand, from which there were six respondents. A number of groups engaged in fishing and other river-based occupations in the region identify as Nishad and several members of the community are influential in local politics and emphasise the Nishad identity to gain traction. Despite being classified as an OBC in the state, as well as in UP, Bihar and Jharkhand, the

socio-economic status of most Nishads resembles or is worse than other marginalised communities.

The preponderance of subaltern groups in the sample resonates strongly with recent academic literature on the inseparability of caste-class in social life, including in workspaces perceived to be free of caste.³ It shows that economic status *and* social status play a key role in rendering members of subaltern communities susceptible to bondage.

Child Labour

A juxtaposition of the current age of respondents and their experience in the industry revealed that five workers – or 10 percent of the respondents – began working as child labourers, who most likely followed their parents into the occupation.

Child Labour Evidence			
Education	Age	No. of yrs in kilns	Age of starting work
Primary	23	10	13
8th	25	11	14
10th	40	25	15
10th	24	7	17
2nd	28	20	8
Non literate	35	20	15

Among the 213 workers currently working in brick kilns whom the survey covered, there were 83 minors – 44 were boys (53 percent) and the remaining 39, girls (47 percent). Child labourers, in other words, comprised a whopping 38.9 percent of the surveyed workforce.

Despite the presence of such a large number of children in the kilns, field researchers noticed no *anganwadis*, creches, or worksite schools and most families stated their children worked alongside them in the kiln.

Reasons for Working in the Kiln

Most respondents attributed their choice of working in the brick-making industry to ‘poverty’ and having ‘no other alternative’. Some workers reported taking up brick kin work on account of advances paid to them, which allowed them access to a lump sum that would otherwise not be available to

them, whereas a few said they were compelled to take up kiln work to repay earlier debts.

All of these instances qualify as causes and conditions listed under the Bonded Labour Act and reaffirm the presence of bondage and slavery in brick kiln work.

Who Recruited Them?

Nearly half (46.9 percent) of the respondents found work in brick kilns through a contractor or sub-contractor, known locally as *jamadars* or *sardars*.

The presence of multiple levels of contractors operating in the brick industry was evidenced in the presence of a contractor among the respondents who was also a *kumhaar*. A native of Bilaspur district in Chhattisgarh, Shankar Derat worked in Prajakta Bricks⁴ as a *kumhaar*, and his work primarily involved transporting dried bricks to the kiln. But he was also responsible for a few workers at his kiln, and reported to a higher-up contractor.

Came through whom		%
Contractor	23	46.9
Kiln owner	6	12.2
Self	15	30.6
Other	5	10.2
Total	49	100.00

Were They registered?

Although the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 or ISMW Act, which applies to all brick kilns and contractors operating in Rajasthan and Uttar Pradesh, does not provide for the registration of brick kiln workers *per se*, it prohibits principal employers from employing five or more unregistered inter-state migrants in their establishment(s). It also mandates that every contractor with five or more inter-state workers under his employment must furnish details about such workers to designated local authorities in source and destination states within 15 days of the date of recruitment or the commencement of employment, or any changes thereof. Contractors must also issue a pass book to every inter-state

migrant worker bearing their photograph and specifying the name, place and period of employment and the rate and mode of payment of wages.

Implementation of this Act, however, is extremely lax and the disastrous consequence of this laxity was evidenced during the lockdown, when the Central government submitted in the Supreme Court that it had no data on inter-state migrant workers and consequently could not come to the aid of migrant workers pushed to the brink and left without work, food and shelter and forced to undertake the arduous journey back home on foot, with many dying along the way. While several political leaders and ministers vouched that migrant workers would be registered on a priority basis to avert the possibility of a similar crisis in future, some states such as Jharkhand, West Bengal and Uttar Pradesh kick-started programmes to register inter-state migrant workers, or made announcements to this effect in the early weeks of the lockdown.

Despite this, none of the 30 inter-state migrants who were interviewed during the survey round, including 14 workers from UP, were registered as per provisions of the ISMW Act. Although six workers said they were registered with the local gram panchayat in the source state (five from Chhattisgarh and one from UP), none of them reported being registered with concerned authorities in destination states. This exposed a glaring gap in implementation of the ISMW Act despite pleas and promises to the contrary and left workers susceptible to numerous violations in the current season, discussed later.

In addition to the ISMW Act, brick kilns in UP were also covered under the Building and Other Construction Workers (BOCW) Act, which holds that any worker engaged in building and construction work for 90 or more days in the preceding year is eligible for registration as a beneficiary. Despite this, only five out of 19 respondents who worked in UP reported being registered as beneficiaries of the BOCW Fund, whereas some workers said earlier attempts to register themselves under the BOCW Act were stonewalled by the contractor or the *sarpanch*, who also doubled up as a contractor in some instances.

Since the BOCW Act stipulates fixed hours of work, minimum wages and social security benefits for registered workers including compensation, the laxity in implementing the BOCW Act left workers vulnerable to distress and bondage, discussed in subsequent sections.

Registration		%
Yes	7	14.3
No	42	85.7
Total	49	100.0

Documents		%
Voter	30	65.2
Aadhar	39	84.8
Ration	21	45.7
BOCW	5	10.9
All	3	6.52

Did They Work after Lockdown?

While some kilns in both states suspended operations for 15-30 days following the announcement of lockdown on 24 March, others continued operations regardless of lockdown rules and the spreading infection.

One respondent who was working in UP said operations at the kiln were halted during police visits. “The kiln was open throughout the lockdown period although everything else that was around, including shops and doctors’ clinics were shut. We worked every day during the season, but when the police came for inspection – which they did several times – the kiln owner and manager suspended operations and resumed soon after police left,” said (Survey no. 39)

Overall, a majority of those surveyed (57.1%) continued living and working in brick kilns till May-June (end of season), including during weeks of lockdown; of the 29 respondents who continued working, 16 were interstate migrant workers.

Twenty-one respondents (42.9 percent), on the other hand, said they did not work after the commencement of the lockdown on 24 March. While some of them, especially interstate migrants, stayed on in brick kilns for several weeks until transport became available, many returned home within days. Some said their wages were not settled when they left the brick kiln premises at the end of the previous season.

Did you work in lockdown?			
	No.	%	Comment
No	21	42.9	Of these many had left right after the lockdown announcement
Yes	28	57.1	Some stated that the kiln was shut for 15 days to 1 month as well after which they worked. Many stayed until June or at least one month after lockdown was announced
Total	49		100.00

Absence of Pandemic-Related Measures

Despite numerous rules and orders pertaining to physical distancing and sanitisation on account of the pandemic, none of the respondents reported any such measures being taken at their worksites. While physical distancing is virtually impossible in traditional brick kilns, none of the workers were provided with masks or sanitisers.

Some respondents said medical workers or doctors routinely visited their kilns, whereas others said they normally consulted clinics in nearby areas. However, both these services became unavailable after the lockdown, which severely inconvenienced workers and led to at least one death – that of a worker’s wife who was pregnant and working in the brick kiln last season.

Mohd. Arif⁵ and his wife – natives of Bilaspur district in Chhattisgarh – were working together in Azad Bricks in Sant Kabir Nagar district of UP when the lockdown commenced in the previous season. While his wife was pregnant and approaching delivery in the ensuing weeks, Arif tried hard to look for a doctor, but to no avail. He also struggled to arrange for transport to the nearest government hospital as his wife went into labour but the unborn baby and the mother were both dead by the time they reached the hospital.

“I tried hard to look for a doctor in the final weeks of my wife’s pregnancy, when we were working at the kiln. But all clinics around the workplace were shut because of the lockdown. I took her to a local hospital during this time as well, but the staff there refused to see her on some pretext or the other. Eventually, when she went into labour and I managed to

find transport to the nearest government hospital after much struggle, the doctors said both the mother and child had died,” said Arif.

Although the plight of other respondents was not as acute as that of Arif, they reported being inconvenienced by the lockdown and the absence of doctors. “All nearby clinics and doctors’ chambers were closed during the last season because of the lockdown. This made it very difficult for us to seek medical opinion when someone fell ill and we were left to deal with illnesses all by ourselves,” said Rama from Raigarh district of Chhattisgarh who was working in Best Bricks in Rajasthan’s Udaipur district.

These findings resonated with the views of representatives of labour collective from these states, who said brick kiln owners did not undertake any measures to curb the spread of the virus. In some places, even routine vaccinations such as Pulse Polio were not available in brick kilns.

“Normally, *anganwadi* workers and health department personnel visit brick kilns during vaccination programmes, including for Pulse Polio immunisation. But during the lockdown, no *anganwadi* workers or health department officials visited the kilns. As a result, not only were workers left to themselves to deal with medical emergencies, their children could not even access routine vaccination programmes,” said Madan Pal from Bhatta Kamgar Evam Nirman Shramik Union, Fatehpur.

Other Lockdown Troubles

Some workers shared that they were beaten up by the police when they tried to go out for groceries or medicines, or when they tried leaving for their homes amidst the lockdown.

“I tried going to the local medical store, which I heard was open even during the lockdown. But the police rained lathi blows on me when they spotted me on the road without giving me a chance to explain my situation. I faced the same problem when I ventured out to buy groceries on one occasion,” said Harpal Singh from Badayun district of UP working in Vinayak Bricks in Udaipur district of Rajasthan.

“We tried to leave for home during lockdown but we got beaten up by the police on the way. Although we were desperate to go home, we had no option but to return to the kiln,” said Mohanlal, who lived and worked in Udaipur district.

Impact on Earnings

Brick kiln workers' earnings during the previous, lockdown-afflicted season were affected in several ways. Those who stopped working after the lockdown lost a major chunk of their annual income whereas some who continued working found the regular *kharchi* or sustenance money was not enough and had to borrow money to get by.

“We earned much lesser than what we do in normal years, not only because of lockdown but also because it rained much more last year, because of which many bricks were damaged,” said Anju Kumar from Bilaspur in Chhattisgarh who worked in Jain Bricks in Sant Kabir Nagar district of UP.

Payment of *Kharchi*

Most respondents who continued working in kilns post lockdown said there was no change in payment of *kharchi* or sustenance money before and after the commencement of the lockdown – they received *kharchi* as usual, once a week or fortnight. Several other respondents, however, said the *kharchi* was not enough and at least two respondents reported borrowing money from local shopkeepers to get by.

All respondents, however, said the *kharchi* provided to them during the season was deducted from their overall earnings during the final settlement of wages, in keeping with the practice in non-COVID times.

Final Wage Settlement

Most respondents said their wages were settled amicably when they stopped working at the kiln after lockdown or at the end of the season. Given the survey conditions, this was not surprising; however, despite limitations imposed by the presence of contractors or managerial staff in the interview premises, seven respondents (14.2 percent) said their wages were not settled or they had incurred negative balance or ‘*tul*’ during the previous season.

“Even after working throughout the season last year, I was unable to repay ₹ 15,000, which was nearly half the advance I had taken. That is why I had to return to the kiln this season to work off my debt. It would be good if we had MGNREGS job cards and were we were provided work under the scheme,” said Faizan from Bilaspur in Chhattisgarh who worked in Azad Bricks in Sant Kabir Nagar district of UP.

The vulnerability of those whose wages were not settled, or those who defaulted on advances is best evidenced in the

case of Mohd Arif from Bilaspur. His wife's death during the previous season meant the loss of one adult working member and Arif was unable to repay the advance they had taken at the start of the previous season. He was thus compelled to work in the kiln in the current season with his three minor children.

Ten workers expressed that they did not leave immediately because the owner delayed the settlement of wages. One of them reported receiving verbal threats and not being allowed to move out of the brick kiln.

Savings

Eight respondents (16.3 percent) chose not to answer the question on how their savings during the lockdown-affected season compared with preceding seasons.

Among the 42 who did reply, two respondents (4.7 percent of those who replied) said their savings during the lockdown-affected season were the same as that during preceding years.

One respondent (2.3 percent) reported saving more than preceding years, and attributed this to his and his family's staying on in Udaipur after the end of the previous season. Most respondents (38, or 90.4 percent of those who answered the question), however, reported a significant drop in their savings during the lockdown-affected season.

“We usually manage to make around ₹ 1 lakh every season, but due to the lockdown, we lost a major chunk of our wages. We managed to save only ₹ 10,000-15,000 rupees, which was a huge loss for our family,” said Harpal Singh from Badayun district of UP working in Vinayak Bricks in Udaipur district of Rajasthan. Rama from Raigarh district of Chhattisgarh who worked in Best Bricks in Udaipur also reported a similar drop in savings.

Comparison of lockdown-season savings with previous seasons	Number of workers	Proportion among those who answered the question (in %)
Drop in savings	38	90.4
No impact	2	4.7
Increase in savings	1	2.3
No answer	8	NA
Total	49	100

Promise of a New Season

If the pandemic-induced lockdown pushed brick kiln workers into deeper distress and bondage, including robbing them of several weeks' or months' wages. The months that followed, when they journeyed to their homes and homelands – eager to die there, if not anything else – proved even harder. With coronavirus infections still surging, prices rising, the economy plunging and businesses and corporations using the pandemic as an opportunity to cut costs and jobs, brick kiln labourers found it difficult to find any other work.

This was evidenced in the survey findings, which showed that out of 49 respondents, most found only sporadic employment during the off-season – as daily wagers, farm labour, or under the MGNREGS – even as 14 respondents failed to find any work that brought home money or food. Several workers had to borrow small amounts from local shopkeepers and villagers to get by, whereas one worker borrowed a large amount from the contractor through whom he went to work in the brick kilns every year to meet his family's financial requirements, which deepened his debt bondage.

Three respondents did not go back to their home states at all, but continued living and working in the kiln.

Given these circumstances, most workers looked forward to the new brick-making season starting in the early winter months with immense hope. Notwithstanding the harrowing experiences of the previous season, the survey showed that workers felt compelled to travel back to the kilns – if only because, for most of them, the advance paid to them at the start, in the source state, often by the contractor or his appointee, was their only chance at securing a lump sum needed to meet essential expenses in the family, including for marriages and the treatment of illnesses.

“I continue working in the kilns despite the experience and losses from the previous season because that is the only way I get a lump sum amount, which helps with big expenses at home. No one else, including banks, gives us loans and we don't have other means to raise money,” said Ram Prasad from Baloda Bazar district in UP, who worked in Menu Surkhi Lime Works in UP's Sant Kabir Nagar district.

The journey back to worksites in destination states wasn't easy ; the trains workers normally took to reach brick kilns were no longer running and they were too poor to afford private vehicles on their own. Contractors, with their intricate multi-

layered network, stepped in to organise transport, but this only deepened the woes of workers in due course. Reports emerging from Punjab, Rajasthan and Uttar Pradesh in late November and early December, coinciding with the arrival of inter-state migrant workers in brick kilns in these states, showed they were being asked to pay ₹ 3,000-4,000 for their transportation from home states.

These instances show that the fallout of the pandemic on brick kiln workers' lives and livelihoods is far from over. Macroeconomic trends, meanwhile, indicate a prolonged crisis. Although GDP numbers improved significantly in Q3 of 2020, forecasts for the current fiscal year project a GDP contraction of over 7 percent and construction and real estate activity remains sluggish despite the relaxation of many pandemic-related restrictions.

While these circumstances will undoubtedly affect the market for bricks, kiln owners would also want to cut costs on account of uncertainty in the market, rising costs for transport and essential commodities and the threat of a fresh surge in infections. Representatives of labour collectives in the brick kiln sector also pointed out that some kiln owners are likely to use the pandemic as an excuse to cut, delay or deny wages, while making a quick buck by selling bricks at escalated prices.

Madan Vaishnav, an advocate and convenor of the Rajasthan Pradesh Eet Bhatta Majdoor Union said, “During the previous season, most brick kilns in Rajasthan remained shut for 15 to 20 days, until the state government issued an order at the end of the first phase of lockdown allowing brick kilns to resume operations. We know of many kiln owners who were selling bricks at ₹5 a piece instead of the regular rate of ₹3, but were at the same time denying or delaying payment of *kharchi* to workers, saying the market was down. Many kiln owners also delayed the final settlement of wages at the end of the season and tried to hold back workers from leaving for their homes despite reaping massive profits. We intervened on behalf of workers in numerous instances, from wherever we got reports or wherever our union has a strong presence and ensured workers got their dues – we calculated their wages, confronted kiln owners and threatened to lodge bondage cases against them, which forced them to settle the wages of workers fairly and let them go home.”

Vaishnav's observations point at the important role labour collectives can play in addressing the woes of brick kiln

workers – almost all of whom are from marginalised caste-class backgrounds – amidst the pandemic.

But what role are labour collectives in the brick-making industry playing in other areas and states, especially given the challenges in organising workers in the informal and unorganised sector where seasonal migrants comprise the bulk of the workforce? In what ways did labour collectives come to the aid of kiln workers during the previous lockdown-afflicted season? What challenges

did they encounter and how are they geared for the current season, as the impact of the pandemic on workers' lives and livelihoods continues?

The next chapter discusses these questions and their implications, bringing out the importance of labour collectives in the brick kiln sector and the prospects and possibilities they are opening up towards strengthening collective bargaining and decent work for kiln workers even as the pandemic rages on.

¹ Slavery in India's Brick Kilns & the Payment System: Way forward in the fight for fair wages, decent work and eradication of slavery, Anti-Slavery International, 2017. <https://www.antislavery.org/wp-content/uploads/2017/09/Slavery-In-Indias-Brick-Kilns-The-Payment-System.pdf>. Last accessed on 28 December 2020.

² This included one driver, who received a monthly wage of ₹12,000.

³ Shah, Lerche, Axelby, Benbabaali, Donegan, Raj and Thakur, *Ground Down by Growth: Tribe, Caste, Class and Inequality in Twentyfirst-century India*, Pluto (London) and Oxford University Press (India), 2017, pp 12-31.

⁴ Names of the respondent and the brick kiln have been changed to protect the worker's identity.

⁵ Name changed to protect identity.

Role of Labour Collectives

Labour Collectives and the Brick industry

Organising workers in the informal and unorganised sector, of which brick kilns are an intimate and essential part, remains a challenge. Although over 92 percent of India's workforce is represented in the informal sector,¹ workers from the sector comprise only one-fifth of the 2.5 crore combined membership of 12 central trade unions.²

The seasonal nature of brick kilns and the predominance of inter-state migrants in the workforce who often speak a different language from that spoken in the destination state, stand out as obvious challenges in organising brick kiln workers. The informal nature of employment, with no official records, no registration of contractors and workers in most cases and the existence of numerous illegal, unlicensed brick kilns in most states – is another key challenge confronting collective bargaining in the brick-making industry. Long workdays, stretching to 16-18 hours and the lack of any weekly-offs further curtail the scope of workers participating in labour collectives.

Notwithstanding these difficulties, there are a number of unions of or pertaining to brick kiln workers in different parts of the country, while some central trade unions such as CITU have a strong presence in the brick-making industry in select states.

Since bondage and child labour are endemic to brick kilns in India and the rest of South Asia, the sector has also attracted the attention of international bodies such as the UN and ILO, as well as CSOs and NGOs, who have come out with damning reports exposing rampant slavery and child labour and have entered into strategic coalitions with trade unions to facilitate the rescue and rehabilitation of bonded labourers in the brick-making industry.

The involvement of CSOs, trade unions and transnational bodies such as the European Union also led to the formation of a National Struggle Committee of Brick Kiln Workers (NSCBKW) in October 2018. Envisaged as a national-level platform to discuss and negotiate key concerns of workers, labour collectives and CSOs with influencers, the Committee includes several unions pertaining to brick kiln workers in different parts of the country and facilitates knowledge-sharing and collective bargaining.

We interviewed representatives of five unions associated with NSCBKW from UP, Rajasthan, Punjab, Odisha and Maharashtra between 21 November and 13 December to understand if and how these labour collectives were coming to the aid of distressed kiln workers during the previous and current season. These five unions were Rajasthan Pradesh Eet Bhatta Majdoor Union, Bhilwara, Rajasthan; Bhatta Kamgar Evam Nirman Shramik Union, Fatehpur, UP; Lal Jhanda Punjab Bhatta Labour Union, Pathankot, Punjab; Shramik Adhikar Manch, Bolangir, Odisha; and Bhatta Kamgar Sanagthan, Thane, Maharashtra.

We also spoke to independent activists, researchers and journalists in UP, Rajasthan, Odisha, Maharashtra and Telangana who follow the work of these labour collectives or work with brick kiln workers in their areas to obtain a fuller understanding of the gaps and prospects of collective bargaining for brick kiln workers.

Key trends identified through the course of these interactions, including in documents, social media posts and anecdotes shared by primary informants, are presented here. While recent changes in the labour code are likely to tilt industrial relations in the country – already largely controlled and defined by management's broad interests since the 1991 liberalisation measures³ to be more in favour of owners and employers,⁴ the findings offer hope and ideas for struggles ahead.

They also provide a window into the painstaking work and multiple stakeholders whose effort would be required to realise the possibility of brick kilns free of bondage, child labour and sexual abuse; where all workers are registered, paid at least the stipulated minimum wages and enjoy social security benefits and dignity.

In Aid of Workers

Interactions with representatives of five brick kiln workers' unions in five different states, including leaders and ground activists, showed there were numerous instances during the previous and current brick-making seasons, when unions came to the aid of workers battered by the pandemic, including intervening with owners on their behalf, lodging cases of bondage and approaching government bodies and authorities for rescue and redressal.

Broadly, the interventions by the labour collectives in the wake of the pandemic were of two types:

- Lockdown and travel support
- Wage settlement and/ or rescue of workers

Lockdown and Travel Support

With markets and in many cases brick kilns, shut through the initial weeks of the lockdown and owners suspending the supply of rations and payment of *kharchi* in many places, unions took on a key role in reaching food and rations to besieged workers.

In Punjab, representatives of the Lal Bhatta Majdoor Union began consultations with workers about the best way forward once the lockdown was declared on 24 March and most brick kilns in Pathankot and surrounding districts, where the union has strong presence, suspended operations.

Brick kiln owners stopped paying the weekly wage and supplying ration to workers once the kilns shut, recalled the Union's General Secretary Shiv Kumar.

“For one entire week when brick kilns were closed, neither owners nor the government took any efforts to supply rations or pay workers. Workers were in favour of resuming operations, as they were losing a part of their annual income for every day of closure, so we gave a deputation to the authorities to restart brick kilns and reached out to other

unions and stakeholders, including through the media.

...Within a week, all brick kilns in the state resumed operations. Kiln owners did not face problems in arranging rations for workers as district collectors issued advisories regarding online orders and delivery of rations and medicines. We also ensured that all workers received rations support from the government, including 10 kg wheat flour, 2 kg sugar and one packet salt,” Kumar said.

Many workers, however, were despairing and eager to go home with the onset of the lockdown even if it meant losing a big chunk of their annual income. In Maharashtra, all brick kilns closed down once the lockdown was declared, recalled Baliram Chaudhury, General Secretary of the Thane Zilla Eet Utpadak Majdoor Sambandhit Vyabsayik Sangathan, which is operative in the Thane district of Maharashtra.

“All workers in brick kilns here are locals who come from neighbouring villages and districts. Once the lockdown was declared and kilns suspended operations, most of them walked back home, whereas we asked kiln owners to provide regular rations for those that stayed on in kiln premises. We also received some reports of workers being stopped and turned back by police while on their way home, but after we intervened, police and the administration made arrangements to have them dropped to their villages by vehicles,” said Chaudhury.

In the Bhilwara and Ajmer districts of Rajasthan, recalled Madan Vaishnav from the Rajasthan Pradesh Eet Bhatta Kamgar Union, workers were very restive.

“Most workers in brick kilns in our area are from Chhattisgarh. With the lockdown, they were desperate to go home, even when brick kilns resumed operations after the first phase of lockdown. So we approached the labour department and the district collectorate and asked them to conduct a survey of workers who wanted to return home.

...In Bhilwara and Ajmer at least, the government did conduct a survey to identify workers who wanted to return to their home state and arranged for their transport by train (in case of long distances, such as for those returning to Chhattisgarh), buses and other vehicles. But the survey process was severely compromised. In areas where we did not wield influence, kiln owners coaxed and convinced workers to stay back despite their desperation. I myself saw some of the survey forms

where the owners or their men had marked a cross against the names of workers and there were no signatures or thumb impressions,” said Vaishnav.

The Rajasthan Pradesh Eet Bhatta Kamgar Union also received several calls on their helplines from workers, saying they had run out of food. “In one instance, we arranged for food for 512 migrant families in Ajmer with help from other organisations and civil society groups,” said Vaishnav, drawing attention to how the provision of food and ration to besieged workers under lockdown often involved working with other collectives and organisations.

Rajendra Sahu from the Nehru Yuva Sangathan in Fatehpur district of UP, which works in around 400 brick kilns in the district, said representatives of the union travelled to villages of workers and assisted them in various ways.

“We made arrangements for grazing material for *ghoda-wallahs* and *buggi-wallahs* (those drawing horse carts) after the lockdown and also asked the local *mandis* to employ them, as kilns were shut. We linked kiln workers with MGNREGS, provided small loans to start their own businesses and helped them through self-help groups,” he said.

Wage Settlement and/ or Rescue of Workers

Several reports from different parts of the country, especially in the closing weeks of the previous brick-making season, spoke about brick kiln workers being subjected to enforced labour, beatings, confinement and physical abuse. Such instances, labour collective representatives said, were common and typical of end-of--season dynamics, when owners delayed the final settlement of wages and tried to hold back workers claiming they had not yet repaid their advances. But they also said there was a sharp spike in such cases last season, mainly on account of the lockdown.

“Most workers in our area are from Chhattisgarh and the start of the Shramik trains set forth utter chaos among them. When they somehow secured a place in these trains, they did not bother to wait for the final settlement of wages, which owners were delaying on some pretext or the other. They just left,” said Vaishnav. He said that the incidence of *tut* defaults on advances among workers last season was also significantly higher than in normal years.

“According to our understanding based on conversations with workers, around 30-40 percent of brick kiln workers in Ajmer, mostly those engaged in moulding work, incurred *tut* last season,” he said; representatives of labour collectives in other states⁵ concurred with him about the spike in incidence of *tut* and unsettled wages last season and said this deepened the bondage of workers.

Vaishnav pointed at the importance of labour collectives having a strong network among workers while talking about instances in which the union was able to intervene and rescue workers. “Over the last few years, we have built a strong base in Ajmer and Bhilwara and several workers in the kilns are members of the union, which is crucial, for word about delay in wage settlement or confinement rarely travels outside the kiln. During the lockdown, we learnt of this group of 32 workers from Chhattisgarh, which included several children and workers who had defaulted on advances. The kiln owner was not allowing the group to leave and they approached us for help. We filed an urgent appeal in the NHRC and the NCPCR issued a statement saying all workers must be released without any conditions. Fearing trial in a bondage case, the owner allowed the workers to leave without much trouble,” said Vaishnav.

In Punjab, on the other hand, where the Leftist trade unions have a stronger presence, there were fewer instances of owners holding back workers, said Shiv Kumar from the Lal Jhanda Punjab Bhatta Majdoor Union.

“As the season-end was nearing, we anticipated that owners would try to delay the final settlement of wages in their bid to hold on to workers and continue with production. So we set a date for kilns to release all workers by 20 June and submitted a deputation to the labour department to the same effect. In Pathankot, Gurdaspur and Hoshiyarpur, kiln owners did not create much trouble with wage settlement as we have a strong presence and they released all workers before the last date,” he said.

Gaps and Challenges

Even as labour collectives came to the aid of workers amidst the vagaries of the pandemic, they were hindered by many challenges. These included their limited reach and resources, problems with language differences between and source and destination states, the deep and thriving nexus between kiln owners, contractors, politicians, bureaucracy and the police

and the lack of awareness among various stakeholders. These challenges contributed to workers being kept in bondage.

Limited Reach

All labour collectives covered in the study had a yearly membership model, with annual membership fees ranging from ₹50 to ₹100. Labour collective representatives said their membership numbers increased over the past few years but also conceded that this was only a small proportion of the total number of brick kiln workers in their district or state.

“There are around 50,000 brick kiln workers in Fatehpur district, our estimates show. But we have been able to register only around 2,200 workers under the BOCW Fund and our yearly membership number hovers around 1,500,” said Madan Pal from Bhatta Kamgar Evam Nirman Shramik Union, Fatehpur. He said that a resource crunch and the lack of governmental efforts in the registration of establishments posed immense difficulties in organising brick kiln workers.

Shiv Kumar from the Laal Jhanda Punjab Bhatta Majdoor Union said, “Our yearly membership is around 10,000 and almost half of the members are women. But this is only a small proportion of the nearly 3 lakh brick kiln workers in the state, most of whom are inter-state migrants. Although Punjab does not have unregistered kilns, contractors are rarely registered and, in most cases, owners wield immense power in local politics and prevent attempts to organise workers tooth and nail in areas where our influence is weak. And we rarely have the resources to reach out to workers in their home states from where they are sourced.”

Source-Destination State Problems

Since a majority of workers in the brick kiln sector are inter-state migrants who often work in a brick kiln for some years before shifting to another kiln in the same or other district/state, representatives of labour collectives pointed to the immense problems in organising workers, particularly because few unions had presence in source and destination states.

Language was one of the key challenges facing labour collectives in this regard, said Trilochan Punji from Shramik Adhikar Manch in Odisha. “Thousands of workers from Odisha travel to brick kilns in South India every year during the brick-making season. Although we organise workers

in Odisha, the source state, we are unable to do much in destination states due to differences in language. Seen as outsiders, our members have very little scope of doing any organisational work or talking to other stakeholders such as contractors and kiln owners. In fact, given the nexus between owners, politicians and the administration, we have faced numerous threats in our attempts to organise workers,” said Punji.

Madan Vaishnav from the Rajasthan Pradesh Eet Bhatta Majdoor Union also alluded to the same problem, but said the union was able to circumvent the problem by enrolling workers as members and maintaining contact with them throughout the off-season, including by organising them in source states.

“We give a list of tasks to every worker when they become members while working in brick kilns in Ajmer and Bhilwara. This enables regular communication with worker-members such that we are aware of the problems they face throughout the year, including during the off-season. We also travel to source states and organise workers through existing members with help from research and advocacy groups such as Prayas Centre for Labour Research and Action, so that we can intervene during the sourcing and deployment of labour. In a lot of cases, workers continue being members and help in organisational work even when they travel to another state in subsequent years, which helps in promoting collective bargaining in areas where unions did not have any presence earlier,” said Vaishnav.

Nexus between Kiln Owners, Union Leaders and Local Administration

The nature and extent of threats and challenges facing labour collectives in the brick kiln sector due to the deep nexus between kiln owners, local politicians and government officials, including police, are best evidenced in a case study by the NSCBKW on organising kiln workers in Telangana. The case study reveals the massive hurdles facing labour collectives in the sector on account of some union leaders also being kiln owners.

“In the year 2011, an activist group with extensive experience in organising brick kiln workers in Gujarat started work with brick kiln workers around Hyderabad. The group had prior experience with the workers in its source area of Western Odisha. The group set up base in Dundigal village in Ranga

Reddy district, the largest hub of brick kilns with around 100 kilns and almost 10,000 Odisha migrant workers in nearby areas.

Telengana has been a historical stronghold of the left. All the major left groupings are present in Hyderabad. The Dundigal village has significant CPM presence. A major CITU leader, who was also a dora (landed gentry) lived in the village. The party has a flag post along with Congress and Telugu Desam Party at the village square. The organisers met the dora who promised support to the workers movement. However, the local CPM unit was led by a brick kiln owner, who was naturally not well disposed towards a brick kiln workers movement. At the city level, a Solidarity Committee was formed under the leadership of a human rights group. It had representation from NGOs, academicians and sections of Left. Among the Left, Indian Federation of Trade Unions (IFTU) played a lead role. An IFTU functionary was nominated as the Working President of the proposed union of brick kiln workers.

The modus operandi of organisational work in brick kilns revolves around stoppage of work in the middle of the season to demand fixation of wages for the season. While this was the first attempt to mobilize workers, the workers responded very well to the demand. There was a big meeting in March following which the workers stopped work. However, by the evening, owners from all over the district gathered in large number at the local police station. The organizers were called to the police station and told in no uncertain terms to leave the area immediately. The group had to shut the office in Dundigal and team members were evacuated with police escort. The workers stopped work the next day as well. However, there was no leadership and the strike was over.

The group has continued to be active in the area. Subsequently many more meetings have been organised. The wages have shown an upward swing. The group has, however, struggled with finding a local support base in the rural areas where kilns are located. The organized left, both CPM and IFTU, have a strong local presence and could have provided this local support, but have not done so. The national level CITU leader who lives in the village has not attended any of the meetings he has been invited to. Mention has been made of the fact that a prominent village CPM leader is a kiln owner and openly opposes workers.

Another fact of sociological significance is that most of the kiln owners in Telengana are *Kammas* from coastal Andhra,

who also happen to be strongly represented in the CPM. The organizers also met the top CITU leadership to seek support, but that did not prove useful. IFTU's role has been equally perplexing. While it has been offered a leadership role in the proposed Union, its representative, the Working President designate, is totally opposed to the release of workers under the Bonded Labour Act. In fact, this was also a point of contention within the Solidarity Committee, where prominent members opposed the release of workers on the ground that it would ruin the owners."

Lack of Awareness

In the last week of June 2020, Rakesh,⁶ an independent activist who played a key role in several bonded labour rescue cases in Uttar Pradesh in the preceding three years, received word about a case of bonded labour in Azamgarh district: A family of five adults and three children, comprising Sarfuddin, his first wife and their son, his second wife and their three minor children, was being held captive at the kiln by the owner despite the season ending over two weeks earlier.

"Since you can't just enter a brick kiln and talk to workers, I pretended to be a census worker and said I had to meet them to take down some details. Luckily the kiln owner believed me, which allowed me access to Sarfuddin and his family. I discovered they were being held at kiln forcibly without any wage payment for the entire eight months barring the ₹ 500 weekly sustenance allowance. Each one of them had taken an advance of ₹ 22,000 which they said they had paid off, but they were being constantly monitored and not allowed to leave the kiln," said Rakesh.

He shot videos of the workers' plight and shared them with Public Bolti. On 26 June, he sent a letter to the DM of Azamgarh, the designated authority to deal with bonded labour cases under the Bonded Labour Act, regarding the Sarfuddin family's bondage. Although the DM is supposed to act within 24 hours of receipt of such complaint, no action was taken by the DM or the SDM in the case until 7 July.

"The DM merely asked me to meet the SDM after my letter. The SDM said no one is bonded in these days, please don't waste my time and sent me away. I went back to the DM's office, where the Public Relations Officer said the same thing – this is a small matter, you also don't bother about it," Said Rakesh.

On 6 July, Public Bolti shared a video of Sarfuddin narrating the family's plight on its Twitter account. Sanjeev Gupta, Secretary, Inter State Council Secretariat, Ministry of Home Affairs, took cognizance of the matter on 7 July and asked the Azamgarh DM to take necessary action.

"I have told the District Magistrate about it and he is sending ADM to the spot along with directions to take video of the whole thing. Please send me mobile numbers of some of the workers who have been made to leave without making payment," he tweeted on 7 July in response to Public Bolti's tweet on the matter.

As a result of this Twitter activity, the DM initiated a rescue. He sent the BDO to the site for an inspection. "When the rescue team reached the site, the owners were trying to send the workers off in a truck without settling their wages. The rescue lasted over 24 hours. The inspection and paperwork began at around 9 am the next day and went on till 3 pm the following day," said Rakesh.

The Azamgarh case, though a 'success' story, exposed several fallacies. The inaction during the first ten days after Rakesh's letter to the DM, when he met both he DM and SDM, shows how even well-qualified civil servants had no understanding

of what constitutes bonded labour in law. In fact, the SDM told Public Bolti members that workers were lazy and spent all their money on alcohol. In addition, the rescued workers did not receive their pending wages even after five months of the incident, let alone the immediate compensation of ₹20,000 as mandated in the Central Sector Scheme for Rehabilitation of Bonded Labourers, 2016.

The incident showed that mobile phones were an important tool of communication. However, in other similar cases reported by Public Bolti, members of the advocacy group noticed that kiln owners tried to cut off workers' access to phones.

Cases from Rajasthan, UP and Haryana that were reported by Public Bolti also showed that the kind of coordination that ensured the release of workers in Azamgarh was more an exception than the norm. No FIRs were registered against kiln owners and managers in most cases despite clear statements from the victims and media vigil. There were multiple attempts at circumventing due processes and civil society had to step in to ensure safe travel and food for workers despite rescues initiated by officials. Women workers from Rajasthan and Haryana also described the sexual assault and threats they had to contend with regularly.

¹ NCEUS 2008

² India's Liberalisation Project and the Future of Trade Unions, Pindiga Ambedkar and Vijay Prashad

³ India Wage Report: Wage policies for decent work and inclusive growth, ILO, 2018. https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_638305.pdf. Last accessed on 28 December 2020.

⁴ Rahul Sapkal on labour code changes.

⁵ Union leaders and activists from UP, Telangana and Punjab said the incidence of tut was much higher in the previous season than other years.

⁶ Name changed to protect identity.

Conclusion and Recommendations

The COVID-9 pandemic has already had a debilitating impact on brick kiln workers. Not only did workers not receive the necessary assistance from government and kiln owners as regards health and safety measures, leaving them susceptible to infection, they also did not have access to doctors and clinics during medical emergencies.

A large number of workers lost a major chunk of their annual income because of the premature closure of kilns due to the lockdown or delays in wage settlement at the end of the season, whereas many others incurred *tut* or negative balance. Some workers had to contend with increased debt bondage and brought their minor children to brick kilns this season to repay their debts, thus increasing the incidence of child labour in the industry. Many workers who returned to brick kilns in the current season, in fact, did not know if they had repaid their advances in the previous season, as their wages were not settled when they left for their home state.

The woes of brick kiln workers on account of the pandemic have continued into the current season, with many being asked to pay up exorbitant amounts for their travel to worksites. It is extremely difficult, however, to track how the pandemic has deepened distress among workers, due to a lack of accurate official data on the brick-making industry in the country and the absence of comprehensive sets of national and state-level data on employment and wages.

Challenges involved in the registration of workers, contractors and establishments, is another key area of concern. Despite promises of compulsory registration of all inter-state workers by several political leaders and government functionaries, few, if any such measures were taken before the commencement of the current season, leaving workers susceptible to increased levels of bondage.

The lack of awareness about conditions of bondage and SOPs for rescue and rehabilitation of bonded labourers among administrative officials is also a key challenge, as it severely restricts the possibility of workers accessing redressal mechanisms.

While it is extremely important to address these challenges in the context of the pandemic and its impact on brick kiln workers, any attempt to do so must necessarily involve multiple stakeholders actively working together to close gaps in data and the implementation of key laws. Recommendations to key stakeholders are set out below.

To Government:

A. Pandemic Support

- I. Since the impact of the pandemic is likely to continue through the current season, consider providing monthly financial assistance to all workers at brick kilns this season over and above their wages.
- II. Ensure all workers get ration support through the Public Distribution System irrespective of whether they have ration cards in destination states.
- III. Provide immediate compensation to all rescued workers without waiting for court verdicts on bonded labour cases.
- IV. Undertake a rapid study to assess the presence of child labour in brick kilns and ensure all minor children are sent to school; consider extending financial assistance to families whose children are working in brick kilns in the current season to make up for lost income.

B. Data on the Brick-making Industry

The full picture of the brick-making industry in India remains obscured with limited or no official data on the number of brick kilns in country, the technology used and the use of human labour. Collecting reliable and comprehensive sets of national and state-level data across sectors must be a key priority and be led by the government.

Some of the priority areas for data collection should include:

- i. Setting up information systems on the brick kiln industry in India to provide baselines and track progress.
- ii. Large scale studies on the environmental, human and animal health and welfare impact of the traditional brick kiln industry

C. Categorisation of Brick Kilns

Despite the clear categorisation of brick kilns as factories in law and case law, brick kiln workers are not covered under the Factory Act in most states, which choose to extend the BOCW Act to kiln workers instead.

The government must remove discrepancies in the categorisation of brick kilns so as to ensure parity across the country and extend relevant benefits to workers.

D. Registration of Workers, Contractors, Establishments

A key factor behind the lax implementation of laws applicable to the brick-making industry is the lack of registration of establishments, contractors and workers. In this context, ensure:

- i. Registration of all brick kilns through online and offline modes.
- ii. Registration of all contractors as per provisions of the Inter State Migrant Workers Act.
- iii. Registration of all workers in brick kilns through the online mode and through physical camps in and around worksites in destination states and source states.

E. Payment Systems

Thorough dialogue must be undertaken with brick kiln workers, labour collectives that represent workers where the collectives are not themselves affiliated to owners and NGOs in implementing changes in the payment system.

Key interventions must include the following:

- I. Adopt a time-based system of payment in the brick kiln sector, in consultation with workers, labour collectives and NGOs. This would mean that women and men are paid individually for their work leading to higher wages and less need for children to work to help families make more bricks.
- II. Ensure all workers are paid at least at the end of each month, as required under law. This could be achieved by linking the licensing of brick kilns to improved payment systems and making it mandatory for establishments to submit complete records of the entire population at the kiln each season, disaggregated into age and those working.
- III. Ensure that the ultimate responsibility to pay wages lies with the employer (as per current Payment of Wages Act)
- IV. Exempt brick kilns from 'Ease of Doing Business' policies, so that brick kilns are workplaces that continue to be inspected under labour law. This is because multiple studies show that bonded and child labour is endemic to the sector.
- V. Ensure that labour inspections are not based on self-reporting only and kiln owners are not given prior intimation of inspections. Give labour inspectors strong powers to undertake checks and take immediate action against non-compliant employers and increase the number of officials at the state level to undertake inspections.
- VI. Set minimum wages in accordance to more defined criteria, including inflation and restrictions on account of the pandemic. Living costs must also include calories required, shelter, clothing, healthcare and education as recommended by the Indian Labour Conference and the Supreme Court

VII. Explore making standard form employment contracts mandatory in consultation with workers, labour collectives and NGOs. While this is normally covered under the Industrial Standing Orders for each industry, standing orders for the brick kiln industry have never been framed.

VIII. Identify workers who have bank accounts, create accounts where they are not in place and ensure that workers are paid by cheque or by direct deposit into their accounts, as required by law.

F. Bonded Labour

I. Ensure that all officers are trained in the Standard Operating Procedures under the Bonded Labour System (Abolition) Act and Central Sector Scheme for Rehabilitation of Bonded Labour. These procedures, particularly time-bound inquiries, issuance of release certificates and prosecution processes, must be implemented strictly to provide relief to brick kiln workers amidst the pandemic.

II. Require government officials to comply with SOPs and implement automatic fines and penalties if not complied with.

III. Require relevant officers to certify on an annual basis that there are no bonded labourers within their jurisdiction and, to the extent that bonded labourers have been identified, to report on actions being taken to eradicate such bonded labour.

To Brick Kiln Owners and Brick Kiln Owner Associations:

I. Consider raising the sustenance allowance provided to workers such that they are able to manage everyday expenses with ease while at the kiln.

II. Refrain from charging workers for transportation from home states / districts to worksites, particularly because workers' earnings have suffered tremendously.

III. Adhere to all applicable laws, including paying workers minimum wages, paying workers individually on a monthly basis and ensuring children are not working at the kiln.

IV. Maintain all appropriate records, including records of workers at the kiln each season, advances paid, sustenance allowance and deductions and final wages provided.

V. Actively support adult-only worker units and child school attendance.

To Labour Collectives:

I. Hold physical camps in collaboration with the labour department to register workers under applicable laws and assist them in online registration where possible.

II. Assess the needs and challenges of brick kiln workers in the middle and at the end of the current season and assist them in accessing all available relief, including doles and ration from the government.

III. Recognise that all brick moulders are from subaltern groups and promote leadership from these sections of society, as well as female leadership.

IV. Increase outreach, representation and participation of workers in general and female workers in particular, including those from subaltern caste-class groups and migrant brick kiln workers.

V. Acknowledge exploitative aspects of piece-rate wages and consider whether collective advocacy and action in relation to adopting a time-based payment mechanism can be taken to push for a change.

VI. Raise awareness about wage rates negotiated by labour collectives, rights in relation to wages and other workplace rights among workers.

VII. Ensure representatives visit kilns regularly to ensure that wages agreed upon by labour collectives are paid to workers in practice.

VIII. Consider how to represent migrant workers effectively given the seasonal nature of the brick-making industry. Approximately 60 percent of the workforce are inter-state migrant workers, who leave one state and travel and work in another for a period of the year.

- IX.** Include more labour collectives in NSCBKW to promote collective bargaining and ensure coordination among unions in all states, so that workers have a body that represents them at the national level irrespective of whether they are in their home state or working in another state.

**To Community-based Organisations/
Non-Government Organisations:**

- I.** Assess the needs and problems of brick kiln workers in the context of the pandemic by consulting labour collectives and increasing advocacy with the government, owners, and contractors to provide all necessary support to workers
- II.** Collate evidence on the lack of regular wage payments since courts have held that non-payment of workers also raises a presumption of bonded labour.
- III.** Consider advocacy around the payment system in brick kilns, including switching to a time-based system of payment for moulders.
- IV.** Advocate adherence to current labour laws regarding the minimum wage and payment of wages, particularly at the end of each month, with government and brick kiln owners.
- V.** Advocate against changes in labour codes that reduce powers in relation to labour inspections, allow advances and weaken wage rights.
- VI.** Bring cases of bonded labour or trafficking to the notice of relevant authorities, including the lack of employment records at brick kilns.

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