



**MIGRANT LABOUR AT BRICK KILN IN
ANDHRA PRADESH**
A HUMAN RIGHT PERSPECTIVE



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This is not a new story, nor is it being told for the first time. Migration has increased since it first started around 50 years ago. This increase is a good index of independent India's progress. It was the harijans who first started to leave; they could get no work once harvest was over. Now some of them have become prosperous labour contractors or sardars themselves. The money involved is enormous. It is no wonder that the migrant's story has continued through the years.

Historical backdrop to existing scenario.

There are 50,000 brick kilns all over India employing on an average 100 workers i.e., male workers are counted only who are on the muster rolls of the employers. The brick kiln industry, which involves the molding and firing of bricks from clay, is a significant employer of women and children as well. Brick kilns are located in small scale manufacturing units on the outskirts of urban areas. The work, which is seasonal, attracts migrant labourers from surrounding rural areas and forms a large bulk of inter-state as well as inter district migratory labour force.

No precise information is available about the total number of kilns and the number of workers in the industry. According to a statement of the All India Brick and Tiles Manufacturers Federation, New Delhi, it appears that there are 22,000 brick kilns with a work force of nearly 30 lakhs (3million). The state governments were requested to carry out intensive surveys of all brick kilns in their respective areas and furnish detailed information about the total workforce employed in the industry. The results are awaited it is not clear whether such a survey has been carried out till date.

Workers in the brick kilns constitute one of the poorest and weakest sections of the rural society. Of the total of 51 brick kiln workers interviewed, 60.8 per cent were landless although they depended on the agricultural sector for 6 months a year and 37.3 per cent did own land but would fall in the category of small farmers who combine self-cultivation with income from wage labour. Both the categories are net buyers of food and dependent on wage labour for the major share of their yearly income.

The season of migration depends on the agro-climatic features of the area of origin of migration and fits into the October to June cycle when the kilns operate all over India. The kilns shut down during the monsoon. The workers are recruited through *jamadars* (labour agents/contractors) of the kiln owners and such recruitment is accompanied by payment of advances to the workers for a specified period of employment. The entire family (excluding old, disabled dependent person) comprising husband wife and children move to the brick kilns and work as one unit for the full season of the operating kiln. Only the male heads or rather only the adult males are registered as workers in the muster

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rolls of the employers and the rest of the vast labour force remains invisible to social production and therefore for all practical purposes to the social accounting within the economy. The women accompanying the men could be the wives, sisters or widowed mothers. The children in the family could also include younger brothers of the workers apart from the children of the workers.

In most of the brick kilns of Andhra Pradesh the rate of payment is Rs 80 for 1,000 bricks made, that is, Rs 20 each for a group of four. The pathurias work for 12 to 15, sometimes 18, hours a day, usually from November to May. The groups are usually able to make 1,000 bricks in one day, although occasionally they may not make more than 500. The minimum wage for daily labour in Orissa, however, is a little more than Rs 50, and in Andhra Pradesh around Rs 70. Once made, 1,000 bricks will be sold at Rs 1,200 or thereabouts.

The owner pays for the tickets to and from the kiln. Full payment is made only when it is time for the migrants to return, and a weekly allowance, sometimes to be deducted from the final payment, is given for food. Even when they are in the market to buy provisions, they are strictly guarded. They must build the homes they live in with the bricks they make. So for the first two or three days they live in the open, till the tiny rooms, into which they have to crawl, come up. The owner provides the thatch or polythene for the roof. Water for drinking, and for every other purpose, is the same as that in which the clay for the bricks is soaked. Rice is unaffordable within the limits of the weekly allowance; hence chickenfeed as staple is normal.

These human beings lack the basic condition of life: they need to eat. After the harvest, they leave in thousands, most often for the brick-kilns of Andhra Pradesh. They are herded together by labour contractors, and organized into little groups of three to five called pathurias. There are other destinations too. Some go to the brick kilns within Orissa, where even without middlemen conditions of work are little better than in Andhra Pradesh. Some become agricultural labourers in the areas irrigated by the Hirakud canal; others go to big cities such as Mumbai, Surat, Varanasi, Raipur, to work in construction, in weaving, in hotels or as rickshaw and cart-pullers.

Since 1965, their numbers have multiplied. They migrate seasonally from the districts of Koraput, Gajapati, Kalahandi and Bolangir, the greatest numbers leaving from the Junagarh, Bhawanipatna, Dharamgarh and Narla blocks of Kalahandi, and Turekela, Bongomunda, Muribahal, Belpara, Khaprakhole, Saintala, and Titlagarh blocks of Bolangir. The total number has been put at two million. From Bolangir alone, one-and-a-half to two lakh people leave every year.

Illness is normal too, and this expense is at first borne by the kiln owner. Very ill people are sent home, but death is a problem. While the migration out occurs over one to two months, the kilns are cleared within eight days when the monsoons come. A large number of deaths occur on the return journey in inhumanly crowded trains, out of suffocation, dehydration and sheer exhaustion. Trying to hide the fact that the man they

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had been travelling with, had turned into a corpse in a general compartment, his wife and brother left his body on the train when they got off. This is obviously not the only case.

Like all forms of slavery and bonded labour in history, this is a meticulously worked out system. Central to it is the debt trap. The old people left behind by their families simply starve. For the poorest landless or marginal farmer, the short spell up to harvest time is the only period that he can eat at home.

The local sardar appears as a blessing. He offers a loan, at a vulnerable time, of anything from Rs 5,000 to 20,000, which will be paid back by labour when the time comes. That is how the cycle begins. The pathurias actually make all the bricks necessary to pay off the loan within a few months of their arrival at the kiln. But at going-home time, the calculation shows a shortfall, which they must pay back next season. They do bring back some money, most of which goes in treating illnesses, or just to eat. It might also work as an incentive whereby a new loan to tide over a marriage perhaps. Dowry is just a decade-old acquisition among many tribal communities. The cash required may go up to Rs 8,000, and the wedding, in some places, might not take place without a bicycle, a watch and a radio.

The question which arises in our mind is “Why do they keep going”? Their first answer is that they have to eat. Besides, there is no way out. The brick kiln owner has his own sardars. These men fix agents at the local levels, from the blocks down to the panchayats. The gram panchayats again have their own informers in and around the vulnerable villages. These men not only identify potential targets for loans, but they also find out if any labourer is trying to escape the cycle. In the worst cases, goons descend on such families, beating up the men and threatening the women with rape.

The present and only law, the Interstate Migrant Workman Act, 1979, formulated with particular attention to western Orissa, applies only to people who cross state boundaries. Movements within the state do not fall within its purview. Its emphasis is on regulation of movement, not on welfare and security. The license to move, paid by the sardars, and acquired without the danger of any inquiry, is Rs 100 per worker. In effect, the migrants are punished by the conditions of work, lack of insurance, and deprivation of benefits for their desperate search for food. And it is almost impossible to apply the law in favour of individuals because there is yet no state machinery to follow up on names and addresses, even if a worker is able to report them. The point is that such a skewed law goes against the fundamental right of the Indian citizen to move freely. But for a law protecting displaced labourers, within and outside the state, the state must first acknowledge that these are human beings.

But some things are changing, if only because of the persistent efforts of social workers and NGOs. They feel that the media, both local and national, have been a great help. The state government has, at last, acknowledged the problem, and has started registering the migrants. The number may seem ridiculously small, but it will be more difficult now to torture these 10,000 or throw their dead bodies away.

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Perhaps happier circumstances can be created, so that people are not forced to live miserably away from home. The state's food-for-work programme is still badly timed, beginning only when work on the fields has started. For communities who have no concept of savings, this is useless. Work on government projects in the hard months is never enough. But social workers are still trying.

It is not easy to say who suffer the most, but perhaps it is the children. Schooling is impossible; they travel and work with their parents. They are the fodder for the future. But last year, the state began a residential care centre programme, with more than one hundred centres in which some labourers can leave their children behind for schooling, shelter and food. Each of these houses 20 to 40 children as long as their parents are away, and is run on aid from the district administration and the district primary education programme.

The legal framework within which the brick kilns operate at present

A Tripartite Committee was constituted by the Government of India vide its resolution on 1 May, 1984 to go into the question of having a separate self-contained legislation for the brick-kiln industry considering the special features of the working of the industry and the difficulties in implementing the labour laws applicable to them. The terms of reference of the committee were:

1. To consider and formulate, if so considered necessary, the details of having a separate self-contained legislation for the brick-kiln industry considering its special features; and,
2. To work out what type of special social security schemes should be formulated for the workers in the industry, like the Provident Fund Scheme etc.

The tripartite committee was basically constituted to review the following Labor Laws that have been made applicable to the brick kiln industry and its workings.

The different Labour Laws applicable to the brick kilns.

- **Factories Act, 1948**

The question as to whether brick kilns can be registered as factories under the Factories had been examined. It has been established that the process of manufacturing bricks comes within the definition of the manufacturing process as defined under the Factories Act and that the premises where the process is carried on, is covered by the expression "Premises" used in the definition of factory in the Act.

- **Payment of Gratuity Act**

The provisions of this Act apply to all establishments, which are factories within the definition of the factory in the Factories Act. The brick kiln workers come within the purview of the Gratuity Act wherever the brick kilns factories are located and are entitled

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to all benefits under that Act subject to the condition regarding completion of a specified period as stipulated in the Gratuity Act.

- **Payment of Bonus Act**

The provisions of this Act apply to every factory within the definition of the Factories Act and every other establishment in which twenty or more persons are employed on any day during the accompanying year. Brick kiln workers working in such factories or establishments are entitled to the benefits under this act.

- **Employment Provident Fund and Miscellaneous Provisions Act**

Brick kiln was added as a scheduled industry within the purview of the E.P.F and M.P. Act with effect from 27.11.80. As per the provisions of this act the brick kilns that employ 20 persons and above would therefore covered as establishments whom the provisions of the Act and the schemes framed there under would apply. Workmen who are employed in a brick kiln establishment and render 60 days of work within a total employment period of 90 days would be enrolled as members of Provident Fund, family pension fund and employees deposit link insurance fund.

- **Employees State Insurance Act**

The provisions of this Act are extended area-wise and were applicable to 471 areas when the tripartite committee met.

- **Inter-State migrant workmen (Regulation of Employment and Conditions of Service Act), 1979**

The Act applies to every establishment in which 5 per cent or more interstate migrant workmen are employed or were employed on any day of the preceding 12 months. Since most of the brick kiln establishments employ inter-state migrant workers, i.e., workmen who are recruited through agents/sub-agents of the owners numbering 5 and above, they will come within the purview of the Act. The workmen so recruited will be entitled to all the welfare measures and statutory benefits. They are as follows:

- Journey allowance; payment of wages for the period of journey as if such period was on duty;
- Displacement allowance @50 per cent of the monthly wage payable or Rs75/- whichever is higher, (this is a one time payment);
- Residential accommodation as may be prescribed, and
- Medical aid including hospitalization, as may be prescribed, reporting of cases of accident causing injury etc as have been provided under the Act.

- **Contract Labour (Regulation and Abolition) Act, 1970 with Central Rules, 1971**

The brick kilns, which are getting certain jobs, processes or operations in the establishment performed by or through contractors who are employing 20 and above workmen, will come within the purview of the Act. The brick kiln owners will be required to obtain registration certificate U/S 7 of the Act.

The contractors will be required to obtain license U/S 12 of this Act.

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- **Minimum Wages Act**

Employment in brick kilns has been notified as a scheduled employment under the Minimum Wages Act by most of the State Governments and after issue of the notification, minimum rates of wages (both daily and piece rated) have also been notified.

The biggest lacunae in this framework is that the brick kilns themselves have not been considered as factories and as part of the formal sector and therefore its owners are not entitled to any benefits as industrialists.

At the tripartite meeting all the acts were discussed and the different views of the trade union, the state government and the brick kiln owners federation were debated (Report of the Tripartite Committee on Brick Kiln Industry, A committee constituted by the Government of India, Ministry of Labour and Rehabilitation (Department of Labour), New Delhi, 31 July, 1984). However the discussions remained unresolved, as no formal measures have been adopted as yet and there is as yet no law or act that pertains to the brick kiln industry alone. Such a law/act is much awaited both by the trade unions as well as the brick kiln owners.

Legal and administrative framework for women

While women constitute a significant part of the workforce, they lag behind men in terms of level and quality of employment. Work participation rate (WPR) of women in India increased from 14.22 per cent in 1971 to 19.67 percent in 1981 and further to 22.73per cent in 1991. As of 2011, WPR among women stood at 25.51 per cent. The majority of women workers continue to be employed in rural area where 87 per cent are involved in agriculture as labourers and cultivators. Among the women workers in urban areas, about 80 per cent are employed in the unorganised sectors like household industries, petty trade and service and construction.

While number of labour laws that are in the statute book is very large, it is inadequate to confine attention to only a few of them. This is for the reason that quite a large number of labour laws are sex-neutral, as for example, The Industrial Disputes Act 1947, and the Payment of Bonus Act 1965. There are a few laws like the Factories Act 1948, Mines act 1952, and the Plantations Labour Act 1951, where there are special provisions relating to hours of work, restrictions on employment and the like in respect of women workers. Lastly there are two laws, which have been enacted specially with the women workers in view, and these are the Equal Remuneration act 1976 and the Maternity Benefit Act 1961.

An important feature of the various labour laws, relating to social security, welfare, safety and working conditions, employment or dispute resolution, is the existence of employer employee relation and the consequent need to define an employer and an employee. This is for the reason that for the purpose of employment or provisions of benefits, the law places the responsibility on the employer, who for that reason has to be identified precisely. But in respect of the large mass of women workers in the unorganized sector,

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either the employer keeps on changing frequently as in construction work, where assured employment for a minimum number of days in the year is itself in doubt, or there is no direct relationship with the ultimate employer as in the case of occupations where the only point of contact for the workmen is only of a low level intermediary.

The basis criticism, validly labeled against the labour legislation in the country is that while there may be scope or need for improving the contents of law, these laws are ineffective in so far as there is inadequate or in more than ten no enforcement of these laws takes place. The enforcement machinery is inadequate and a worker is expected to find redress independently through other agencies namely the unions who if they take up the matter resorts to the legal procedure. Few individual workers can even dream of affording such an elaborate procedural channel deterrents are duration, expense, harassment, lack of knowledge about the procedure, the legal jargon, and all the other disadvantages that go with being poor and illiterate. The provisions of the law are not clear and precise, making it a battleground for legal interpretation in the hierarchy of tribunals and courts. Penalties are inadequate and participation of the workers in the enforcement of the law is totally absent. The adjudicating machinery and the magistrate are quite often indifferent if not hostile to the aspirations of the working people.

- **The Minimum Wages Act 1948**

This is by far the most relevant and important piece of legislation for the unorganized sector, as the whole scheme of the Act is designed to give a modicum of protection to workers in the unorganized sector industries. The Act, as it stands now, merely provides, inter alia, a mechanism for fixing and revising minimum rates of wages but does not give any guidelines as to the basis on which the minimum wages are to be fixed or revised. This has been the subject matter of considerable criticism and discussion over the years. At present, minimum rates of wages fixed in respect of jobs that are included in the schedule. Section 27 of the Minimum Wages Act, 1948, empowers the appropriate government to add employment to the schedule by notification after prior publication. Notwithstanding the fact that each government has been periodically adding employments to the schedule, there may still remain certain employments that are not added to the schedule.

Even where the employment is added to the schedule, there may be time lags in the fixation of minimum wages for that employment and under the scheme of the Act other benefits of the Act will also not accrue to the workers by mere scheduling but only after minimum rates of wages have been fixed. So to ensure that wages at an irreducible minimum level is payable to anyone who works, a national or at least a regional minimum rate of wages should be fixed which will have to be periodically revised and made widely known through the media. The medium that can reach out to the widest audience especially the working class is the radio and some thought may be given to developing community radio stations.

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- **Maternity Benefit Act 1961**

One of the points often urged as the reason for the decrease in employment of women is the incidence of Maternity benefits and the consequent reluctance of the employer to hire women workers. It is not as though the average expenditure incurred as maternity benefits is very large; one report as quoted in Shram Shakti Report pointed out indicates that in 1977-78 the average expenditure per woman worker in factories ranged from Rs1.31 to Rs 4.54 per year an absurdly low sum- but even so, one can visualize a psychological, if not financial barrier in the minds of the employer in recruiting women as employees.

- **Equal Remuneration Act 1976**

Despite the Act being in the Statute book for decades, it is seen that the practice of paying lower rates of wages for the same or similar work still persists. The provisions of the Act are still not widely known and the women interviewed almost accepted their lower wages for the same work as custom and have not questioned it even though they were aware of their lower wages for the same or similar work. In some cases the employers confuse this Act with the provision of Minimum Wages. The main purpose of the Equal Remuneration Act has been to ensure payment of equal remuneration to men and women workers in an establishment doing same or similar work.

There have been suggestions that equal remuneration must be payable for doing work of equal value. While this seems an attractive proposition, measuring value of work and equating them is a far more difficult task than identifying same work or work of similar nature. While this expression has been defined in Sec2 (h) of the Act, even then no one notices a tendency to categorize tasks generally done by women as being of a slightly inferior nature, warranting lower rates of wages. One notices this even in fixation of minimum rates of wages, where in notifying wages under the Minimum Wages Act 1948, in some notifications work is classified as “light work usually done by women” and “heavy work usually done by men”.

To avoid this, it will be perhaps advantageous if a group of activities in any industrial occupation are broad banded into one category, on the basis of enquiries and study, so that the present situation is remedied. As pointed out by the Supreme Court, the term does not mean work which is identical in all respects, but work which can broadly be considered to be the same or similar in nature to other work. The broad guidelines contained in Sec2 (h) of the Act should be spelt out in more precise terms in respect of each category of notified establishments and the result made widely known to all employees and workers.

Another purpose of this Act (and in this respect the Act is a great advance on the ILO Convention No.100 on Equal Remuneration), relates to avoidance of discrimination on ground of sex against women in the matter of employment. This will include, not merely initial recruitment but also stages of one’s employment including promotions.

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In order to enable adequate number of qualified women to fill up jobs from which they are usually discouraged because of lack of formal skill development, there is a need to extend reservation of seats for women in training institutions like Industrial Training Institute and in programmes like apprenticeship training under the Apprentice Act 1961. Under the SPDD project one of the emphasis has been to train women working in the non-traditional sectors especially in the construction industry.

Women want training and it is necessary to develop training modules in multi media packages to overcome the hurdle of illiteracy among the women workers, and slowly develop methods of making them literate with training material in their own field of experience. While training the women, it should also be kept in mind that they should be able to apply it in their work. There has to be coordination at the macro policy level to ensure that technological development take into consideration the existing skill level among the women workers and open up channels in the direction of their experience and sharpen those.

Therefore the introduction of improved technology to eradicate the drudgery and the hazardous condition of work for women in the construction sector or in any sector for that matter should be carefully planned to ensure that such concern should not result in reduction in employment opportunities for women. The choice of technology cannot be made purely in terms of productive efficiency but will have to be an optimum mix of efficiency and employment.

- **Workmen's Compensation Act 1923**

While this particular Act is gender neutral Section 2(1)(n) of the act defines the term 'workmen' excluding from its ambit a person whose employment is of a casual nature. Given the nature of women's employment in the unorganized sector, it is not difficult for the employer to argue that their employment is of a casual nature. Schedule II to the Act lists out persons who subject to Sec2 (1)(n) are included in the definition of the term workmen.

In this list there are three entries as for examples (xviii) (iii) and (xxvi), in which the applicability depends on the number of persons employed; entry (xvii) in fact is not even dependent on the number of workmen employed but in the number of persons a ferry boat is capable of carrying. These restrictions on numbers have no place in social security legislation like the Workmen Compensation Act. These should be removed.

One of the recommendations that have been made repeatedly by workers organizations is that all employees be compelled by law to take out accident insurance policies or that the payment of Workmen's Compensation be out of a Central Fund to which all employers pay monthly contribution calculated at a certain percentage of the wages. It has been a longstanding demand that the Act must also be amended suitably to place the burden of proof squarely on the employer to establish that the accident did not arise out of and in the course of the employment, instead of the workmen having to prove otherwise.

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Likewise, where the question relates to the nature of injury and extent of disablement, the expert's certificate must be admitted in evidence, leaving it to the employer, if he chooses, to summon the medical expert at his cost for purpose of cross-examination. One of the root problems in the unorganized sector of pinpointing the responsibility of the employer is the lacuna in legally establishing the concept of principal employer. Of the 75 women interviewed, 100 per cent work under a contractor and those who are picked up from the labour *chowks*, work for different contractors every few days or every other day and there is no way that they can even be identified as workers leave alone identifying who their employers are.

Conclusion

The effect of trade liberalization on women's employment can be either negative or positive depending on pre-existing patterns of labour market participation and labour market segmentation levels, right over resources and other socio-cultural factors.

The impact of increasing international trade, especially on developing countries, is likely to favour female employment. Where the developing country's comparative advantage is based essentially on a ready supply of cheap labour, women tend to benefit more than men in terms of access to employment, particularly in the short run. Since trade operates on a comparative cost advantage, the relationship between trade expansion and female employment can be seen as a causal one, since the employment of women seems universally possible at a lower cost than that of male labourer.

Trade liberalization opens the labour market for women but there is a catch; they are relegated to low-skill, low-pay jobs. Not only are women trapped in positions with no upward mobility, during cut backs they are the first to lose their jobs. Wage and working conditions for women will worsen as governments scramble to attract investment by lowering the labour standards, especially wages.

On the whole therefore it's necessary that though the activity taken in these brick kilns are illegal, steps ought to be taken so that their human rights are not being violated and how violations have taken place and are being taken place have been clearly explained above as well as in the placement diary.