

# 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  
Volunteers for Social Justice  
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# CONTENTS

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<b>Executive Summary</b>	<b>2</b>
<b>Introduction</b>	<b>8</b>
<b>Key Findings &amp; Analysis</b>	<b>12</b>
<b>Conclusion and Recommendations</b>	<b>28</b>
<b>Appendix: Full Research Findings</b>	<b>33</b>
<b>A. Who is working at the kilns?</b>	<b>33</b>
<b>B. A new form of bondage: The recruitment and payment system – debt and withholding of wages</b>	<b>37</b>
<b>C. Working hours, overtime, entitlements and leave</b>	<b>49</b>
<b>D. Transfer between kilns</b>	<b>53</b>
<b>E. Employment records and registers</b>	<b>53</b>
<b>F. Access to basic amenities, health and education</b>	<b>57</b>

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# Executive Summary

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The brick-making industry in India is vast. It is estimated that there are upwards of 125,000 functioning brick kilns in India, employing an estimated 10-23 million workers.<sup>1</sup> In our work<sup>2</sup> we have found endemic levels of debt-bondage and the worst forms of child labour, despite both being prohibited in the Constitution of India, numerous domestic laws and international law. This report discusses some of the underlying factors that perpetuate the cycle of slavery in India's brick kilns, in particular **the way brick kiln moulders are recruited and paid in the kilns, which is critical to understanding the system of power relations which keep workers poor and vulnerable to debt-bondage, child labour and under the control of employers.** These common practices – payment of workers as a family unit according to a piece rate, payment of advances, withholding of wages and payment below minimum wage - must be tackled, to address the constant poverty and marginalisation which leads to exploitation and slavery. Anti-Slavery International and Volunteers for Social Justice (VSI) have undertaken this research report to illustrate exactly how these employment systems work to trap people in bondage and/or child labour, in the hope that the various stakeholders – government, unions, brick kiln owners, workers, oversight bodies, non-government organisations and the international community – will agree meaningful reform to the sector.

The report focuses on brick kiln moulders only (*patheras*), who form the majority of the workforce at brick kilns in Punjab, and who mould and dry the bricks from clay. The findings of this report are based on two primary data sources, using a mixture of qualitative and quantitative methods:

1. A research study undertaken by Kaarak Enterprises Ltd in 2016 for Anti-Slavery International, interviewing brick kiln workers from three states – Chhattisgarh, Punjab and Uttar Pradesh. All workers had worked in Punjab kilns in the preceding season. The research involved 383 persons, of which 339 were directly engaged in brick moulding work in kilns.
2. A baseline study conducted in 2015/16 by one of Anti-Slavery's partners in India, Volunteers for Social Justice in Punjab: over 3000 workers were interviewed and 208 brick-kilns were surveyed.

## Key Findings

1. **100% of brick moulders were from a minority group; all were from traditionally marginalised/excluded castes and classes.** In break-down, 53% were Scheduled Caste (Dalits), and 47% were 'Other Backward Classes' (marginalised socio-economic class). Whilst there were no members of the Scheduled Tribes (Adivasi groups) this is likely due to the selection of states (Punjab, Uttar Pradesh and Chhattisgarh). In tackling the cycle of slavery in India, addressing exclusion and social discrimination of these groups which fuels poverty and vulnerability must be at the top of the agenda. In particular, Dalit and Adivasi groups have been found to be poorer than other groups in India; and highly represented in the most exploitative sectors of the informal economy.<sup>3</sup>

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<sup>1</sup>The National Sample Survey Organisation (NSSO) estimated that in 2009-2010, brick kilns employed more than 5 per cent of India's 460 million workers; which would equate to more than 23 million brick kiln workers

<sup>2</sup>Since 2012, Anti-Slavery has worked to address debt-bondage and child labour in the brick kiln industry in Punjab; and has expanded to also work in Chhattisgarh and Uttar Pradesh in both the brick kiln and agricultural sectors.

<sup>3</sup>Shah, Lerche, Axelby, Benbabaali, Donegan, Raj and Thakur, *Ground Down by Growth: Tribe, Caste, Class and Inequality in Twenty-first-century India*, Pluto (London) and Oxford University Press (India), 2017, p.viii

2. **Female workers do not receive wages<sup>4</sup>: workers are hired as a family unit, and wages are exclusively paid to the male head of the household unit.** None of the female brick moulders are formally registered on the employment roll as workers. They are invisible workers and cannot access related employment benefits. The way that the recruitment and payment system works in the kilns to keep women workers invisible is discussed below.
3. **65 to 80% of children between the ages of 5 to 14 that live in the brick kilns, are working between seven and nine hours a day.** One third of the total population in the brick kilns are children. A staggering 65 to 80% of these children between the ages of 5 to 14 were found to be working in the brick kilns. Children reported working an average of 9 hours a day in the summer months and 7 hours a day in the winter months, regardless of whether they worked as a ‘main worker’<sup>5</sup> or ‘support worker’<sup>6</sup>. The children are not attending school when they are working in the kilns, in breach of both Indian and international law.<sup>7</sup>
4. **Most children living at the brick kilns are not going to primary school or early childhood services, despite the government having a compulsory responsibility to ensure this.** 77% of workers reported not having access to primary education for their children between 5-14 years of age whilst 73% of workers reported early childhood services (anganwadi) were not provided or accessible. The average distance of these facilities from the kilns is 1.87 km; under the law the government must ensure classes for grades 1 to 4 are located with a 1km radius.<sup>8</sup>

*“I fear for my children. What if they become like us, without a house, without food, always desperate.”*
5. **100% of children between the ages of 14 to 18 reported working at the kiln, on average 12 hours a day in summer months and 10 hours a day during the winter months.** 77% of this age group reported working as a main worker and 23% as a support worker. Under international law, children under 18 should not be working in slavery or practices similar to slavery, including debt bondage, or in work that is likely to harm health.<sup>9</sup> Indian law also prohibits bondage or withholding of wages of children under 18.<sup>10</sup> Other laws ostensibly prohibit adolescents working in brick kilns (the Mines Act) and regulate their working hours (the Factories Act; brick kilns are classified as factories in Punjab).
6. **96% of adult males interviewed reported taking an advance (loan) before starting work in the kiln.** The provision of an advance/loan is a key part of the bonded labour system, and is used in the kilns, along with withholding of wages and other measures to control workers. The male workers that have taken the loan then usually migrate to work with their family – so all family members work to pay off the debt.
7. **Interstate migrant workers are more vulnerable: they take a higher advance (loan), are hired through a labour contractor and face challenges in accessing support.** Interstate migrant workers make up approximately 60% of the brick moulding workforce in Punjabi brick kilns. The research found that interstate migrant labourers take a higher advance and are therefore more indebted than local Punjabi intrastate workers. Interstate migrant workers are recruited through a labour contractor, who agrees to wage rates and conditions, but these often change by the end of the

<sup>4</sup>In our research, no female brick kiln moulder received wages directly; however we note that in other states some women who are not part of a standard worker unit based around the traditional family do receive wages, particularly those that undertake other work in the brick kiln, such as head loading (carrying bricks to the kiln for firing).

<sup>5</sup>Main worker means a worker that carries out all tasks: from preparing soil/mud, to laying of bricks.

<sup>6</sup>Support worker means workers who cannot carry out physically strenuous tasks and support the main workers by doing tasks like flipping bricks for proper drying, arranging of bricks, etc.

<sup>7</sup>Indian law: Right of Children to Free and Compulsory Education Act 2009; The Child Labour (Prohibition and Regulation) Act 1986; The Factories Act 1948; International law: Worst Forms of Child Labour Convention 1999, Convention on the Rights of the Child 1989

<sup>8</sup>Under s6 of The Right to Free and Compulsory Education Act 2009, the government and local authority must ensure a school for at primary classes 1 to 4 within 1 km radius (a ‘neighbourhood’).

<sup>9</sup>ILO Convention 182, Worst Forms of Child Labour 1999, ratified by India on 13 June 2017 (The Convention will enter into force for India on 13 Jun 2018).

<sup>10</sup>s79 Juvenile Justice (Care and Protection of Children) Act 2015.

season (see below). The contractors are usually not licenced as required under law, or follow legal requirements. Interstate migrant workers also face immense challenges in seeking support: they often speak a different language, face additional discrimination, cannot access some state-based benefits and face difficulty in joining state worker representative structures.

8. **Workers are paid per 1000 bricks made; this piece rate system of payment consistently limits workers ability to attain statutory minimum wages and incentivises child labour and long working hours.** Workers are not paid according to their time, but on a piece rate basis. This means that workers are paid for every 1000 bricks made as a ‘working unit’ which is usually a family. The Kaarak study found that, in comparing the hourly time rate for a skilled worker at the same date (44 INR per hour) to the equivalent piece rate wage per hour (578.89/16.95 equals 34 INR per hour), the piece rate minimum wage is significantly less, with the difference being up to 30% of total wages. This system of low wages and payment based on productivity can incentivise child labour and long working hours – a family struggling to earn more may need more members of the family to work and for longer hours in order to make more bricks.
9. **33% of workers reported being paid less than the minimum piece rate wage for 1000 bricks.** There is a minimum piece rate wage for the brick kilns, however despite other workers stating that they thought they did receive the minimum wage for the piece rate, the research found that the vast majority of workers did not know about prevailing minimum wage rates. Workers and some local unions were also unaware that the minimum wage rate increases during the season (adjusted every 6 months for inflation) and hence they are often agreeing to an out-of-date minimum wage that is not accurate.
10. **100% of workers had their wages withheld until the end of the brick-making season, which is approximately 8-10 months long.** Workers take an advance at the beginning of the season and are then provided a small allowance every week or fortnight to buy food and supplies throughout the season. Wages are withheld and paid at the end of the season according to this calculation: number of bricks x piece rate *minus* the advance, the sustenance allowance and any other deductions. Workers must try and keep track of bricks made and allowances provided throughout the entire season. If the workers’ record of number of bricks made is different to management, there is often limited action that workers can take. The withholding of wages is a key way that they employer controls the workforce. This is illegal – any worker in India is meant to be paid at least monthly, it is illegal to withhold wages until the end of the season.<sup>11</sup>
11. **Workers also have other deductions taken from their wages, many of which are illegal.** 100% of workers surveyed covered the cost for their transport to the kiln, many of which had this deducted from wages; 90% of workers had to pay for electricity at the worksite; and 90% of workers reported having to buy their own equipment for work.
12. **84% of workers were paid a lower rate than what had been agreed/promised at the beginning of the season.** Whilst a wage rate might be agreed before the season starts with a labour contractor or brick kiln owner, in many cases management lowers the wage rate when final wages are paid at the end of the season, despite the prior agreement.
13. **Only 27% of male workers reported being registered as employees.** The register that workers refer to is unlikely to be the official register (muster roll) that is submitted to authorities; rather one used for internal accounting of payments. This means that, for the majority of male workers (and all of the female and child workers), there are no official records of when they started work,

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<sup>11</sup>Payment of Wages Act, 1936; also reflected in draft Labour Code on Wages if this is passed by the Central Government. Even if workers are classified as contract labourers under the Contract Labour (Prohibition and Regulation) Act, it states that contractors must pay the workers within the ‘period prescribed’. Arguably this period prescribed is at least monthly.

<sup>12</sup>Gargi, Balwant, ‘Uranium, metals make Punjab toxic hotspot’ Times of India, 15 June 2010 - <http://timesofindia.indiatimes.com/india/Uranium-metals-make-Punjab-toxic-hotspot/articleshow/6048431.cms?referral=PM>

<sup>13</sup>s45 The Inter State Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1979

the advance provided, how many bricks they are making and what they are being paid. In many cases that our partners work on, the brick kiln owners refuse to pay workers at the end of the season, pointing to the lack of records as evidence that the worker was never employed at the kiln. Having no employment records is illegal under various Indian labour laws and has been found to raise a presumption of forced and bonded labour.

14. **Of the 208 kilns surveyed, 87.72% have access only to untreated ground water as drinking water and 75.8% of toilet facilities had no water provided to them. The average housing dimensions for entire families is 7.6 square meters.** These living and working conditions are harmful and illegal in some cases: much of the ground water in the Punjab is not safe for drinking in many areas<sup>12</sup> and under Indian law, the floor area for a family house is required to be 10 sq. meters.<sup>13</sup>

## The recruitment & payment system fuels slavery

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 minimum wage – as 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, where workers are physically restricted from leaving worksites.

*“I don’t know why but my husband had been working in the kiln for 5 years but didn’t seem to be earning any money. In the kiln the work finishes only when it finishes, it is endless. We do not stop even if we are ill because we fear – what if our debt is increasing? So we don’t dare to stop. We are kept in the dark about how much we owe. Whenever we asked, the debt was still not paid.”*

**Brick kiln worker**

Anti-Slavery International, VSJ and partners have argued for a change in the payment system in the kilns – this would fundamentally change some of the power structures underpinning and perpetuating slavery. If workers were paid in a similar way to other factories in Punjab (and brick kilns are classified as factories in Punjab) – according to a time-based wage, individually, in accordance with minimum wage and overtime requirements and at the end of each month, there would be improved economic security, less need to take an advance and increased ability to change employment. Women would be recorded and recognised officially as workers and paid individually, and there would be less incentive for children to work in order to increase the number of bricks made.

The Government of India has proposed changes to the labour laws, (not passed at time of writing), which consolidate and amend current labour laws. Whilst there are some positive changes put forward, including increasing minimum wages, there are many areas that weaken oversight of employers and accountability, and freedom of association, and which must be strengthened.<sup>1</sup>

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<sup>1</sup>The Central Government has drafted four Codes to consolidate all labour laws. The Labour Code on Wages consolidates the Minimum Wages Act, The Payment of Wages Act, The Payment of Bonus Act and the Equal Remuneration Act. Society for Labour and Development, ‘India’s Labour Law Changes: Toward advancing principles of rights, inclusion and employment security’, 2016.

**A summary of recommendations is provided below; with detailed recommendations set out at the end of the main report:**

To government (either central or state as relevant)

**Regarding payment systems:**

- Adopt a time-based wage system of payment for brick kiln moulders in Punjab.
- Ensure all workers are paid at least at the end of each month, as required under law. Consider requiring compliance with all labour laws by linking the operating licensing of brick kilns, renewed every 5 years in Punjab, to improved payment systems. This could be coupled with requiring complete records of the entire population at the kiln each season, disaggregated into age and those working.
- Ensure that the proposed Labour Code on Wages does not allow for the provision of an advance to workers. If this law is passed by the time of publication, amend the Code to remove this section.
- Ensure a comprehensive labour inspection scheme that is properly resourced so that regular inspections of known exploitative worksites can occur.
- Amend the Labour Code on Wages so that:
  - o Labour inspections are not based on self-reporting only; rather strengthen labour inspections and give inspectors stronger powers to deal with non-compliance.
  - o The ultimate responsibility to pay wages lies with the employer.
  - o Minimum Wages are set in accordance to more defined criteria.
  - o Trade Unions are included in the Central Minimum Wages Advisory Board.
  - o Minimum wages must be revised every five years.
- Exempt brick kilns from the ‘Ease of Doing Business’ central government policy.
- Make standard form employment contracts mandatory. This usually occurs under the Industrial Standing Orders for each industry, however this has not occurred for the brick kiln industry.
- Survey the number of workers that have currently have bank/postal accounts; undertake research to determine whether bank/postal accounts would be accessible and of best use to workers. If found to be of best use, implement to improve transparency of payments.
- Require government officials to be accompanied by state prosecutors, NGO representatives and/or worker representatives (trade union or otherwise) to kiln inspections.

**Regarding implementation of the Bonded Labour System (Abolition) Act:**

- In relation to bonded labour cases, require government officials under a law to comply within a time-bound manner (as per new Standard Operating Procedures) and implement automatic fines and penalties if not complied with.
- State and Union Territory governments ensure that all District Magistrates/Collectors/Sub-Divisional Magistrates are aware of and trained in the new Standard Operating Procedures under the Act and the Central Sector Scheme for Rehabilitation of Bonded Labour, 2016.
- Require relevant officers to report on actions being taken to eradicate such bonded labour.

**Regarding children and migrant workers:**

- Regarding children, central and state governments prepare and implement policies to ensure children attend and progress at school:
  - o Ensure state government primary schools are located sufficiently close to kilns;
  - o Ensure schools openly accept and cater for inter-state migrant children who may speak a different language;
  - o Provide compulsory free transport to schools and anganwadis (this could be paid through an additional or increased tax on brick kilns);
  - o If government schools are not able to cater for migrant children, ensure that schools are provided in brick kilns for children;



- o Consider free, properly regulated residential hostels linked to schools for children of migrant workers.
- Reform to all relevant welfare schemes (including the Integrated Child Development Scheme services and the women’s health schemes) or adopt MoUs between states so that welfare schemes can transfer/operate across state borders for interstate migrant workers.
- Ensure Inter-State Migrant Workmen Act and relevant rules are implemented by contractors and relevant officials.
- Amend the Child Labour (Prohibition and Regulation) Act to re-include brick kilns in the schedule of hazardous work places for children.

To brick kiln owners and associations:

- Adhere to the laws that currently exist; including paying workers minimum wage, fully settling all wages for each month at the end of the month; and ensuring children are not working.
- Maintain all appropriate records required; particularly records of the workers working at the kiln each season, advance paid, sustenance allowance and deductions made and final wages provided.
- Actively support adult only worker units and child school attendance

To Unions and other worker representative structures:

- Ensure unions are non-discriminatory and open to all sections of society. Promote leadership from marginalised castes and classes, as well as female leadership.
- Increase outreach, representation and participation of female brick kiln workers, those from marginalised castes and classes and migrant brick kiln workers.
- Ensure holding government and employers accountable to all relevant laws and policies.
- For construction and brick kiln worker unions/worker representative structures to consider the exploitative aspects of the piece rate payment system in the brick kilns and consider whether collective advocacy and action in relation to this system can be taken to push for change. Undertake advocacy to government and employers in relation to this system.
- Increase efforts to reach out to brick kiln workers and inform them about the wages negotiated by unions, their rights in relation to wages and other workplace rights.
- Ensure that representatives are regularly at kilns to ensure that wages agreed by unions (and at the very least the minimum wage) is paid to workers in practice.
- Consider how to represent migrant workers effectively in the context of an 8-10 month system of work, including affiliation/coordination with similar unions in other states.

To community based organisations/non-government organisations:

- For CBOs and NGOs that work in this sector to consider advocacy around the payment system in the brick kilns, including changing to a time based system, to address exploitation and slavery.
- To advocate to government and brick kiln owners for adherence to current minimum wage and payment of wage laws, particularly at the end of each month, together with other relevant stakeholders such as unions or worker representative bodies.
- Advocate against the changes in the proposed draft Wages Code which reduce powers in relation to labour inspections, allow advances and weaken wage rights.
- To bring cases of bonded labour or trafficking for labour exploitation based on a lack of employment records maintained in the kiln; courts have also held that non-payment of workers also raises a presumption of bonded labour.<sup>14</sup>

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<sup>14</sup>Neeraja Chaudhary v State of Madhya Pradesh, AIR 1984 SC 1099





# Introduction

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Anti-Slavery International works to eliminate all forms of slavery around the world. In tackling slavery, Anti-Slavery and partners seek to address the root causes of slavery, including exclusion from power and opportunity for marginalised groups – which is perpetuated by social discrimination and informal and precarious employment systems and other systemic issues, such as lack of land reform and landlessness. We seek to change the power structures and systems that perpetuate the cycle of slavery.

This report is part of Anti-Slavery International’s work to address systemic issues underpinning practices of forced and child labour in India. The brick making industry in India is vast, employing 10 to 23 million people, and bonded and child labour within the sector is endemic. Whilst criminal justice measures are vital<sup>15</sup>, the limited opportunity for decent work, and the pervasiveness of social discrimination on the basis of caste and class, often means that those rescued or released are highly susceptible to falling back into slavery. As a key part of tackling bonded and child labour in India, the brick kiln sector must be reformed to make this work decent and non-exploitative. Decent work and wages would also improve income security; helping address poverty that makes people vulnerable to slavery. In particular the way workers are recruited and paid in the kilns, which is critical to understanding the system of power relations which keep workers poor and vulnerable to debt-bondage, child labour and under the control of employers, must be tackled.

## The big picture – exclusion, inequality and the economy

The problem of bonded labour and child labour in the brick kiln industry stems from exclusion and gross economic inequalities within India. Inequality is one of the biggest human rights issues of our time. Far from economic inequality being seen as purely a ‘labour rights’ issue, the world is realising that economic and social inequalities are intrinsically linked to human rights.<sup>16</sup> Within India, economic inequality is dramatic. The India Human Development Survey rates India as more unequal than Brazil, China and USA, with the richest 10% of the population owning 76.3% of the country’s wealth, whilst the poorest 50% own just 4.1%. In relation to income inequality, whilst India’s GDP has increased so has wage inequality between the rich and the poor, with the poorest 10% seeing their share of income fall over the past ten years, whilst the wealthiest 10% increased.<sup>17</sup> In particular, the marginalised castes and classes have not been an equal recipient of the benefits of India’s economic growth, with Scheduled Castes (Dalits) and Scheduled Tribes (Adivasis) being most affected by extreme poverty and benefitting less than other groups from increases in income.<sup>18</sup>

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<sup>15</sup>Indian Penal Code; proposed draft Prevention of Trafficking law; Bonded Labour System (Abolition) Act; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act; Child Labour (Prohibition and Regulation) Act; Juvenile Justice (Care and Protection of Children Act) etc.

<sup>16</sup>Report of the United Nations Special Rapporteur on extreme poverty and human rights, Philip Alston, on extreme inequality and human rights, A/HRC/29/31, 2015

<sup>17</sup>Oxfam Briefing, “An economy for the 99%: It’s time to build a human economy that benefits everyone, not just the privileged few”, January 2017, 31

<sup>18</sup>K.P. Kannan in Shah, Lerche, Axelby, Benbabaali, Donegan, Raj and Thakur, Ground Down by Growth: Tribe, Caste, Class and Inequality in Twenty-first-century India, Pluto (London) and Oxford University Press (India), 2017, pp 32-35.

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Bonded labour and child labour is not a new issue in India. Whilst slavery was prohibited before and after Independence, in 1976 bonded labour was specifically prohibited in the Bonded Labour System (Abolition) Act. The implication at the time was that workers would be free to choose an employer and therefore hopefully obtain better wages and conditions.<sup>19</sup> Not long after this, economic liberalisation policies were adopted with the assumption that wealth from a growing economy would trickle down to those at the bottom, and workers would benefit from better and more secure employment. However, secure employment for the many did not occur, with 92% of the population working in the informal economy. New forms of bondage emerged, with labourers exploited by employers for shorter periods of time (a season) in a casual and informal employment relationship which includes providing an advance/loan at the beginning of a season, withholding wages, paying below minimum wage and not maintaining records.

Brick kiln moulders, the vast majority of which are from marginalised castes and classes and a large percentage of which are migrant workers from another state, suffer from extreme economic inequalities, and particularly, as is the theme of this report, from income (wage) inequality. This report analyses the informal employment system used in the brick kilns in Punjab, India, and details how this system underpins the situation of debt-bondage and child labour. The report finds that constant breaches of Indian labour law have resulted in workplaces where no records are maintained, no set wages are guaranteed, wages are withheld, extremely long working hours are the norm and where there is a high percentage of bonded and child labour. The lack of regulation and oversight by the state, and move towards even less checks on employers and protections for workers, ensures that brick kiln owners can control and exploit the workforce; brick kiln work never becomes ‘decent’; and that millions of those working in the sector fall subject to bonded and child labour year after year. Long-standing exclusion and social discrimination against marginalised castes and classes allows for the debt-bondage and child labour to continue - limited education and job opportunities leaves members of this group little choice but to work in such sectors. Added to this is the high use of migrant labour from another state, with these workers (also from marginalised groups) facing further challenges: language barriers, discrimination, lack of political representation, difficulty in joining worker representative structures and difficulty in obtaining state-based welfare benefits. These factors have resulted in a highly vulnerable workforce that can be controlled and exploited easily by management; additionally due to historical discrimination, employers feel more able to exploit these sections of society.<sup>20</sup>

At the other end of the spectrum, brick kiln owners are reported to make good profits, with one academic stating in 2008 that the brick kiln sector “provides the highest net-profit per labourer of any form of bonded labour in South Asia”.<sup>21</sup> Brick kiln owners are from dominant and well-connected castes and classes, and usually influential in local politics in the area, often having a large degree of influence over local police, officials and sometimes parliamentarians.<sup>22</sup> This system is on-going: controlling workers and public officials, in order to exploit workers and make profits; these profits cement their power and influence.

*“Brick kiln workers are perhaps the most callously exploited, physically destroyed and spiritually devastated of all bonded labourers I met”*  
**Siddharth Kara, 2008**

Whilst increased regulation and oversight of the brick kiln sector is required to transform the industry into one where people can work decently, the Government of India appears to be moving

<sup>19</sup>Jan Breman, On bondage, old and new, The Indian Journal of Labour Economics, Vol. 51, No. 1, 2008

<sup>20</sup>Jan Breman, On bondage, old and new, The Indian Journal of Labour Economics, Vol. 51, No. 1, 2008, p85

<sup>21</sup>Sectors considered include: brick making, mining, stone quarrying, glass making, carpet weaving, beedi making, and some forms of agricultural bonded labour - Siddharth Kara, Bonded Labor: Tackling the System of Slavery in South Asia, p93.

<sup>22</sup>Siddharth Kara, Bonded Labor: Tackling the System of Slavery in South Asia, p87



in the opposite direction. Far from acting to address bonded labour and subsequent child labour through regulating known-exploitative sectors such as brick kilns, agriculture and manufacturing, it has previously pursued reforms in the name of economic liberalisation that reduce the reach of government labour regulations and that decrease the collective bargaining position of trade unions.<sup>23</sup> The current proposed Labour Codes (not passed at time of writing), which consolidate current labour laws<sup>24</sup> go even further in reducing protections for workers in some areas; which will only increase the wealth of those that control the workers and increase vulnerability to slavery in informal employment for those at the bottom of the social hierarchy. Changes to how workers are recruited and paid are needed to ensure the benefits of India’s growing economy reaches the most vulnerable workers – and the cycle of slavery is broken.

## Definitions

**Bonded Labour:** Bonded labour is a type of forced labour, which is prohibited under international law.<sup>25</sup> The most common way that a person is bonded to another person is through a debt. This is known as debt-bondage. Debt-bondage is defined in the UN Supplementary Convention on Slavery, the Slave Trade and Practices Similar to Slavery 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 and defined”. ILO Convention 105 Concerning the Abolition of Forced Labour (1957) provides for the “complete abolition of debt bondage and serfdom.”

**Worst Forms of Child Labour:** The 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.

## Acknowledgements

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<sup>23</sup>Society for Labour and Development, ‘India’s Labour Law Changes: Toward advancing principles of rights, inclusion and employment security’, 2016, see in particular pp16-21.

<sup>24</sup>The Central Government has drafted four Codes to consolidate all labour laws. The Labour Code on Wages consolidates the Minimum Wages Act, The Payment of Wages Act, The Payment of Bonus Act and the Equal Remuneration Act. Society for Labour and Development, ‘India’s Labour Law Changes: Toward advancing principles of rights, inclusion and employment security’, 2016, see in particular pp41-55.

<sup>25</sup>ILO Convention (No.29) Forced Labour Convention (1930); ILO Convention (No.105) Concerning the Abolition of Forced Labour (1957); Protocol to the 1930 Forced Labour Convention (2014).

# Key Findings & Analysis

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The first section summarises and analyses the primary data sources, setting out who is working at the kilns and how the payment system works to control workers and facilitate the continual cycle of bonded labour and child labour. The second section sets out possible ways to reform the sector, and improve worker collective action, in order to reduce slavery in this sector.

## Methodology

This report analyses the employment situation of brick-kiln moulders only (*patheras*), who form the majority of the workforce at brick kilns in Punjab, and how this systems underpins bonded labour and child labour. The report is based on two primary data sources, using a mixture of qualitative and quantitative methods:

- A research study undertaken by Kaarak Enterprises Ltd in 2016 for Anti-Slavery International, interviewing brick kiln workers from three states – Chhattisgarh, Punjab and Uttar Pradesh. All workers had worked in Punjab kilns in the preceding season. The research studied 383 persons, of which 339 were directly engaged in brick moulding work in kilns.
- A baseline study conducted in 2015/16 by one of Anti-Slavery’s partners in India, Volunteers for Social Justice in Punjab, whereby over 3000 workers were interviewed in order to determine their understanding of bonded labour, child labour and wages in the brick kilns and 208 brick-kilns were surveyed to assess conditions.

This report also draws from legal research carried out for Anti-Slavery International by Herbert Smith Freehills LLP. An edited version of the Kaarak study, along with graphs and tables can be found in Appendix 1.

## What the research found

### A. Who is working at the kilns?

Brick moulders usually migrate to kilns with their families, including their children or other dependents. Only one member of the family, generally the male head, is registered with the kiln as the employee - either formally or informally. In the case of inter-state migrants<sup>26</sup>, almost all the workers migrated as a family, including children. In case of intra-district migration in Punjab, 50% of the Punjabi workers migrated with their families. It appears that this is done to increase the production capacity of the unit by adding more members from the family to the unit. Overall, the Karaak study found that 89% of the workers had migrated with their families and lived at the kiln site for the duration of their employment; and that 69% of worker units included children.

Most workers carry out all tasks, from preparing soil/mud to laying bricks, and are termed ‘main workers’. However, there are some workers who cannot carry out physically strenuous tasks, especially children, and support the main workers by doing tasks like flipping of bricks for proper drying, arranging of bricks, etc. For this report, these workers are termed ‘helpers’ or ‘support workers’.

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<sup>26</sup>In this study, workers from Chhattisgarh and Uttar Pradesh working in Punjab

## How many primary school age children are working at the kilns?

According to the Kaarak study, 80% of children between the ages of 5 to 14 years<sup>27</sup> reported working at the brick kiln with a very concerning 12% reporting working as a main worker, and 68% as a helper. In the VSJ baseline study, approximately 65% of children reported working (with no distinction as to type of work) giving an overall range of 65-80% of children in the age range of 5 to 14. The Kaarak study also found that children were working an average of 9 hours a day in the summer months and 7 hours a day in the winter months, regardless of whether they worked as a main worker or support worker/helper. In relation to access to schooling and early childhood services, only 23% of the workers reported having access to basic education facilities for children under 14 years of age; 20% were provided this by the government and 3% had arranged for basic schooling for children themselves.

This means that, contrary to the various Indian laws, and the Constitution of India, the vast majority of children between the ages of 5-14 in the brick kilns are not going to school, but working.

Under the newly amended Child Labour (Prohibition and Regulation) Act, 1986, children under the age of 14 are prohibited from working in any occupation, except if the child is working to help “his family or family enterprise...after his school hours or during vacations”.<sup>28</sup> Even if brick kiln work was classified as helping their family or a family enterprise, children are only be allowed to assist outside of schools hours. This conforms with the other main piece of Indian legislation, the Right to Free and Compulsory Education Act 2009, which provides that the government must provide free education to children between the ages of 6 to 14 and that the government (all levels) has an obligation to ensure admission, attendance and completion of education for all children between the ages of 6 to 14.

The baseline data also found that, on average, government primary schools were 1.87 km from the kilns, however under the Right to Education Act<sup>29</sup>, the government and local authority must ensure a school for at primary classes 1 to 4 within 1 km radius (a ‘neighbourhood’).

In breach of many international and domestic laws, including the Indian Constitution, most children living in the brick kilns are working long hours and not attending school.”

## How many adolescent children are working at the kilns?

According to the Kaarak study, 100% of adolescent children between 14 and 18 years of age<sup>30</sup> reported working at the kilns: 77% reported that they had worked as main workers whereas 23% reported to be working as helpers. The average working day was found to be 12 hours. In a few rare cases, parents reported leaving children of this age group at the source village to live with their grandparents or other relatives to finish their education.

Under international law, children under 18 are prohibited from working in hazardous work (as a worst form of child labour). In relation to domestic law, the Juvenile Justice (Care and Protection of Children) Act 2015 prohibits bondage or withholding of wages of children under 18, which is normal practice in the brick kilns. Violations of both laws are occurring on a daily basis in the brick kilns.

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<sup>27</sup>5 to 14 years of age, up to, but not including, 14 years of age.

<sup>28</sup>Clause 5 of the The Child Labour (Prohibition and Regulation) Amendment Act 2016, amending section 3 of The Child Labour (Prohibition and Regulation) Act 1986.

<sup>29</sup>Section 6, Right to Free and Compulsory Education Act 2009

<sup>30</sup>14 to 17 and 11 months (i.e. up to 18).

<sup>31</sup>s79. Notwithstanding anything contained in any law for the time being in force, whoever ostensibly engages a child and keeps him in bondage for the purpose of employment or withholds his earnings or uses such earning for his own purposes shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees.

Under the previous version of the Child Labour (Prohibition and Regulation) Act, brick kiln work was defined as hazardous and therefore all children under 18 were prohibited from working in kilns. The Child Labour Act was amended in 2016, with the list of hazardous industries drastically reduced to ‘mines, inflammable substances or explosives and hazardous processes’ as defined in the Factories Act 1948. The Factories Act does not include brick kiln work as including a hazardous process. However, the Factories Act 1948 does set out that:

- Children between 15-18 years of age are required to hold a certificate of fitness issued by a surgeon to be permitted to be employed in factories.
- Children between 14-18 years of age are not permitted to work for more than four and a half hours a day. They are entitled to overtime wages for hours worked beyond this limit.

In the study, there was no evidence of any certificates being held by any of the children in this age group. As brick kilns are classified as factories in Punjab, gross violations of this law are occurring.

### **Caste composition of workers; migrant status**

According to the Kaarak study over half of the survey respondents (53%) that had worked in Punjab brick kilns belong to the Scheduled Caste category (also known as Dalits), and 47% to the category of ‘Other Backward Classes’ (OBC). In relation to local Punjabi workers, all (100%) belonged to the Scheduled Caste category largely within the Sikh community. In relation to migrant Chhattisgarhi workers, 40% are Satnamis belonging to Scheduled Caste category, followed by members from other Scheduled Caste groups and OBC groups. The migrant workers from Uttar Pradesh were primarily from OBC (93%) communities, mostly from the Sakya community, with 7% from the Dalit caste.

Whilst this is not the main focus of this report<sup>32</sup> it is recognised that exclusion caused by social discrimination on the basis of caste and class fuels many of the challenges facing brick kiln moulders. Within India, particular social groups, specifically Dalits and Adivasis have been systemically discriminated against, entrenching poverty and lack of opportunity. The Indian National Commission for Enterprises in the Unorganised Sector found that Scheduled Castes and Scheduled Tribes, closely followed by Muslim groups, are more economically disadvantaged than any other group and that poverty levels were closely linked to work status – those that worked in the informal sector were more likely to be poor and vulnerable.<sup>33</sup>

In relation to work and income, exclusion and discrimination in employment opportunities and education has led to inability to find work except in known exploitative sectors; children living and working in kilns continue to be excluded from education, limiting their future opportunities; workers can be excluded from or receive limited assistance from unions and are unable to negotiate for at least the minimum wage. Additionally, the majority of workers in the Punjab brick kilns are migrants from another state, who often encounter further political exclusion, discrimination and challenges, including with language. Children from other states encounter discrimination from both other students and also administrators at local schools, due to caste, class and the fact they are from another state.

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<sup>32</sup>Please see Anti-Slavery International's previous report Poverty, Discrimination and Slavery 2008.

<sup>33</sup>K.P Kannan in Shah, Lerche, Axelby, Benbabaali, Donegan, Raj and Thakur, Ground Down by Growth: Tribe, Caste, Class and Inequality in Twenty-first-century India, Pluto (London) and Oxford University Press (India), 2017, pp. 32-35.



These forms of exclusion add to the vulnerability of workers: employers feel able to enslave these social groups, who hold little power and influence in the community, with little or no accountability. 100% of the brick kiln moulders (in our study) are from marginalised and excluded castes and classes, and approximately 60% are interstate migrant workers.

Recent research by Shah and Lerche contends that a combination of factors lead to the continued exploitation of Dalits, Adivasis, and to a lesser extent, those from the Other Backward Classes in the expanding Indian economy and workforce. Firstly, the inherited unequal power relationship between these marginalised groups, the government and dominant groups who usually own or manage worksites. This inherited unequal relationship is based on entrenched social discrimination. Secondly, the ‘super-exploitation’ of casual migrant workers, who are brought in often at lower wages to the local workforce and are less able to organise (due to differences in language, political exclusion in that state etc) and therefore act to ensure labour is both cheap and controllable. Thirdly, a mixture of the outcomes of entrenched social discrimination (stigmatisation and discriminatory practices against Dalits and Adivasis, justifying and entrenching their very limited assets and capital, limited education, and lack of political connections) and class relations results in ‘conjugated oppression’.<sup>34</sup> These factors have meant that, whilst the Indian economy grows and develops, these marginalised groups continue to be exploited and do not obtain any, or very limited, social mobility.

## **B. The Recruitment & Payment System: Debt and Withholding of Wages**

The way that the workers are paid in the kiln is critical to understanding the system of power relations which keep workers poor and vulnerable to debt-bondage, child labour and under the control of employers. The payment system of brick moulders consists of three stages:

1. The advance, (or loan) given to the workers at the beginning of the work cycle/season to the worker family;
2. Sustenance allowance, paid during the work season on a weekly/fortnightly basis for basic food and necessities; and
3. The final settlement of wages paid at the end of the season, where the total earnings of a worker unit are calculated as per the total volume of production and deducting the advance, sustenance allowance and any other expenses.

The brick kiln season in Punjab normally lasts approximately eight to ten months, starting from the months of September to the following June.

### **Taking an advance and withholding wages – keeping the labour force cheap and controllable**

Of the brick moulders – the workers that make the bricks from clay, the majority of the workforce in the kilns – 96% reported taking an advance (loan) before starting work in the kiln. The majority of the respondents from Chhattisgarh and Uttar Pradesh received a payment between 5000 – 20,000+ INR per worker unit (\$77 – \$310 USD). In Punjab 44% of the workers received an advance of less than 5000 INR per unit. In some cases the brick kiln owner also requires the worker to pay interest on the loan/debt owed, but usually this is not made clear until the end of the season when the final settlement of wages occurs.

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<sup>34</sup>Shah, Lerche, Axelby, Benbabaali, Donegan, Raj and Thakur, *Ground Down by Growth: Tribe, Caste, Class and Inequality in Twenty-first-century India*, Pluto (London) and Oxford University Press (India), 2017, pp 12-31

Most of these workers take an advance from a labour contractor who comes to their village, which is often in another state, and offers brick moulding work for a season and an ‘advance’ of wages earned. This is part of the informal system for inter-state migrants: the brick kiln owner gives a lump sum amount to labour contractor to recruit a certain number of workers to ensure continued brick production. The role of the labour contractor is discussed further in the text box below.

### **The role of labour contractors**

Brick kiln workers are often brought to work in brick kilns by labour contractors. These contractors make the offers of work, usually provide the advances and then travel with them to the kiln and oversee the workers they have hired. The Interstate Migrant Workmen Act 1979 applies for workers recruited from other states, whilst some aspects of contract labour laws may apply to local Punjabi workers (intra-state workers) brought to the brick kiln by contractors. Currently both sets of laws place the responsibility on the labour contractor and the principal employer to maintain detailed records, and for the contractor and brick kiln owner to be registered/licensed. However, the vast majority of contractors and owners are not registered, nor provide the appropriate information and rights to the workers. Even where both contractors and kiln owners are licensed to operate under these laws, minimum wage must still be paid by the labour contractor, and wages paid in full at the end of each month – this is not occurring.

Currently, the Payment of Wages Act states that, if the labour contractor is licensed and has responsibility to pay wages, and he/she does not pay, then the final responsibility for paying workers rests with the principal employer. Alarming, the proposed Labour Code on Wages does not include this section, meaning that there would be ambiguity on final responsibility to pay the workers. This will encourage more principal employers to use this law to reduce their responsibilities. For example, brick kiln owners may claim it’s not their responsibility to pay wages, and that the contractor must pay.

The Interstate Migrant Workmen Act however is not being replaced by the Labour Code on Wages, therefore payment of interstate workers should still be the final responsibility of the principal employer. This Act also requires suitable accommodation to be provided at the site and travel costs to be provided, however, in almost all cases documented interstate workers had to pay for their own travel (added to their advance and deducted from wages).

Under current Indian laws, providing an advance is permitted as long as the advance is not more than 50% one month’s wages.<sup>35</sup> Unfortunately, the proposed Draft Labour Code on Wages 2015 (not passed at the time of writing, but if passed would replace the Payment of Wages Act, Minimum Wages Act, Payment of Bonus Act and Equal Remuneration Act) could act to repeal this section but does not take this opportunity.<sup>36</sup> The proposed Code allows for provision of advances and, contrary to the Payment of Wages Act, does not limit the advance to 50% of wages from the first wage period. The Code states that recovery of the advance “shall be made from the first payment of wages to him in respect of a complete wage-period”. A wage period is defined in the Code as not longer than a one-month period, implying that an advance must only be as much as the first month’s wages.

<sup>35</sup>Payment of Wages Act,1936 states that an advance must not be more than 50% of first months wages; draft Labour Code on Wages allows the advance to be a full months’ wages.

<sup>36</sup>The Ministry of Labour and Employment, Draft Labour Code on Wages, supra note 6, Section 24: “Deductions for recovery of advances given to an employee shall be subject to the following conditions namely:-(a) recovery of an advance of money given to an employee before employment began shall be made from the first payment of wages to him in respect of a complete wage-period but no recovery shall be made of such advances given for travelling-expenses; (b) recovery of an advance of money given to an employee after employment began shall be subject to such conditions as the Appropriate Government may impose; (c) recovery of advances of wages to an employee not already earned shall be subject to such conditions as the Appropriate Government may impose.”

However, as workers do not receive their wages until the end of the season, the law is always breached. Furthermore, the Supreme Court has noted that the provision of an advance is highly linked to bonded labour<sup>37</sup> and leads to a presumption of bonded labour.<sup>38</sup>

Once workers start work in the kiln they receive a sustenance allowance for food and living expenses every week or two. Wages are withheld, determined and paid at the end of the season. This is illegal – any worker in India is meant to be paid at least monthly.<sup>39</sup> The final payment of wages is made according to this calculation: number of bricks x piece rate minus the advance, the sustenance allowance and any other deductions. On average, after deducting the advance, sustenance allowance and other costs, a worker unit is able to take back Rs. 46000 (713 USD) at the end of a season. This is approximately Rs. 5750 per month (89 USD) for the entire working unit.

Under the Kaarak study, 100% workers reported that they were paid according to this system at the end of the season. Alarming, 8% stated that some part of their wages were still withheld by the owner, a few months after the end of the season, which will force them to return or consider returning (or else forfeit these wages). The remainder of the workers reporting obtaining their wages, even if it was less than they had originally agreed and it took some time for wages to be paid. Whilst the 8% may seem small, qualitative interviews revealed that a greater percentage of worker units have experienced withholding of wages and delayed payments in the past but either forget such experiences over time or do not reveal them to others unless they have entirely lost hope of recovering the payments.

10% of workers also reported that they had been threatened by the brick kiln owner or contractor with physical violence in the last season; another way to control the labour force.

This system of advance payments and withholding of wages until the end of the season has been in place in the brick kiln sector for a very long time. From the owners' perspective, they justify it as being a system that helps the workers build up some savings before they migrate back to their source locations at the end of the season. Hence it is presented as being beneficial for the workers in the long run and a choice of the workers. The reality however, is that this system of withholding wages allows the owner to control the supply of labour at the brick kiln, so that there are no unexpected breaks or reduction of pace in the production process due to absence of workers. Using migrant labour also has its advantages for owners: they are more vulnerable and less able to seek assistance due to language barriers, lack of political recognition within the state and limited ability and likelihood to join local unions. As migrants often agree to wages before migrating, they are unlikely to know the state minimum wage, and therefore further exploited by brick factory owners, being paid less than the local labour force.

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<sup>37</sup>*Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802, para. 19: "It is now statistically established that most of bonded labourers are members of Scheduled Castes and Scheduled Tribes or other backward classes and ordinary course of human affairs would show, indeed judicial notice can be taken of it, that there would be no occasion for a labourer to be placed in a situation where he is required to supply forced labour for no wage or for nominal wage, unless he has received some advance of other economic consideration from the employer [emphasis supplied] and under the consideration from the employer and under the pretext of not having returned such advance or other economic consideration, he is required to render service to the employer or is deprived of his freedom of employment or of the right to move freely wherever he wants. Therefore, whenever it is shown that a labourer is made to provide forced labour, the Court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is therefore a bonded labourer. This presumption may be rebutted by the employer and also by the State Government if it so chooses but unless and until satisfactory material is produced for rebutting this presumption, the Court must proceed on the basis that the labourer is a bonded labourer entitled to the benefit of the provisions of the Act."<sup>45</sup><https://www.theguardian.com/business/2017/feb/10/pimlico-loses-appeal-against-plumbers-worker-status-in-gig-economy-case>

<sup>38</sup>*Neeraja Chaudhary v. State of Madhya Pradesh*, SC1099(1984)

<sup>39</sup>*Payment of Wages Act, 1936*; also reflected in draft Labour Code on Wages if this is passed by the Central Government. Even if workers are classified as contract labourers under the Contract Labour (Prohibition and Regulation) Act, it states that contractors must pay the workers within the 'period prescribed'. Arguably this period prescribed is at least monthly.

## **Paying workers per 1000 bricks made and paying as a family unit**

Workers are not paid according to their time, but on a piece rate basis. This means that workers are paid for every 1000 bricks made as a ‘working unit’, which is usually a family unit. Because payment is based on productivity, many children also help make more bricks. This system incentivises the worst forms of child labour. As outlined above, the research shows that 65-80% of children living in kilns are working 7-9 hours a day, and not attending school or early childhood services (anganwadi), depriving children of opportunities in future, and perpetuating a cycle of bondage and exploitation. Women are also invisible as wages are only paid to the male head of the working unit, despite working the same hours as men. Women are not included in any of the official records that brick kiln owners maintain – they are officially not employees and excluded from some employment rights. This is illegal, under Indian law women should not be discriminated against in relation to payment on the grounds of gender.<sup>40</sup>

## **The minimum wage is not applied**

There is a minimum piece rate wage per 1000 bricks in Punjab, however this is often not applied. 33% of workers reported being paid less than the minimum piece rate wage for 1000 bricks. However, despite other workers stating in an interview that they thought they did get the minimum wage for the piece rate, the research found that the vast majority of workers did not know about prevailing minimum wage rates. Workers and local unions were also unaware that the minimum wage rate increases during the season (it is adjusted every 6 months for inflation) and hence they are often agreeing to an out-of-date minimum wage that is not accurate. The baseline survey of 208 kilns found that, in breach of the Punjab Minimum Wage Rules, only 17.76% of the kilns have boards displayed with the name of the kiln, whilst only 19.67% display the minimum wage. None of the kilns surveyed display the name of the relevant Labour Inspector. Furthermore, to comply with minimum wage laws, overtime must be paid where applicable – as none of the workers are paid overtime, yet they all work overtime (discussed more below), the minimum wage laws are breached for all workers.

Whilst a wage rate might be agreed on before the season starts with a labour contractor or brick kiln owner, in many cases the brick kiln management changes the final rate despite the agreement at the start of the season. 84% of workers reported being paid a lower rate to what had been agreed/promised at the beginning of the season.

## **The piece rate system of payment is keeping workers poor and vulnerable to slavery**

As stated, there are minimum wages for this piece rate system, however these wages are meant to be based on time, so a ‘time-motion study’ is required. This determines the time it takes to make a certain number of bricks in a normal working day, and hence what the minimum wage per brick should be. However, no government time-motion study could be found to demonstrate how the piece rate minimum wage in Punjab had been arrived at. Based on a previous study undertaken by Indian Institute of Technology (IIT) in Mumbai,<sup>41</sup> the Kaarak study calculated that brick kiln moulders make

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<sup>40</sup>Equal Remuneration Act, 1976; draft Labour Code on Wages (although it is noted that the draft Code appears to remove the ability for Labour Officials to hear discrimination cases on the basis of gender).

<sup>41</sup>Gaur G. Ray, “Ergonomics Study in a Brick Kiln: A report on Time requirement and Energy Expenditure for different operations in brick making”, Industrial Design Centre Indian Institute of Technology Bombay, 2014



59 bricks per hour per person.<sup>42</sup> This means it would take 16.95 hours to make 1000 bricks. In Punjab brick kiln moulders are classified as ‘skilled workers’, and were paid 578.89 INR per 1000 bricks as of 1 September 2016. In comparing the hourly time rate for a skilled worker at the same date (44 INR per hour) to the equivalent piece rate wage per hour (578.89/16.95 equals 34 INR per hour) it is clear that the piece rate minimum wage is significantly less than the time based rates. This difference is almost 30% of total wages.

To put this another way: it takes one worker 2 long days (or 17 hours) to make 578.90 INR; if on a time based wage, the same worker would earn 748 INR over two days. As employment benefits (bonus, employees’ provident fund (pension)) usually provided to factory workers under the law, are calculated on the basis of the minimum wage, the difference increases even further.

Workers are consistently restricted from earning minimum wages, keeping them poor and vulnerable to further exploitation and slavery like practices.

### **Long working hours and no payment of overtime**

Even if workers were paid a higher piece rate for bricks, other problems remain with the piece rate system. Paying by productivity encourages people to work longer hours to make more bricks and to theoretically earn more. Adults reported their average working day is 14 hours in the summer months and 11 hours in the winter. Children between the ages of 14-18 reported working 12 hours per day in summer and 10 in winter whilst those between the ages of 5-14 reported working 9 and 7 hours a day respectively.

According to the law in Punjab, any work over 9 hours a day in a factory (and brick kilns are classified as factories)<sup>43</sup> qualifies as overtime – yet brick kiln workers are routinely working 5 additional hours daily (up to 14 hours). These workers never are paid overtime. As the minimum wage law requires overtime to be paid where applicable, then none of the workers are being paid the minimum wage.

Furthermore, Indian law also states that the maximum working hours per week, including overtime, should not exceed 60. In summer, workers reported working 84-98 hours per week; in winter, 66-77 hours per week.

If paid overtime for only the legal amount of additional hours (not the current 5 hours addition), at the current minimum piece rate worked (not the time rate) workers would be earning an additional 1700 INR per month, which is 13,600 INR per season – a significant amount of money for workers. If they were paid for the actual overtime hours worked (5 hours per day), they would be paid an additional 5,984 to 12,104 INR per month; or approximately 72,352 INR over the season. This represents 156% more that would be added to the average final payment of 46,000 INR.

However, despite being classified as factories in Punjab, where work over 9 hours a day must be paid, overtime for brick moulders is routinely not paid. If workers were on a time rate instead, it is possible that overtime would be more likely to be paid. Of course, factory workers also work long hours, however on a time-based system there may be a slightly higher chance of being paid overtime.

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<sup>42</sup>The above report states productivity of a couple (male and female worker) to be 1300 bricks per day (750 produced by male worker; 550 produced by female worker). Based on an average number of hours in the day as 11, this is 1300 divided by 11 hours, divided by 2 workers. 59 bricks per hour. For each worker to make 1000 bricks, this is  $1000/59 = 16.95$  hours

<sup>43</sup>Brick kilns are classified as factories under the Factories Act in Punjab. This Act provides for overtime to be paid when a worker works over 9 hours a day within a 48 hour period in any week. Section 59 (3) Where any workers in a factory are paid on a piece-rate basis, the time rate shall be deemed to be equivalent to the daily average of their full-time earnings for the days on which they actually worked on the same or identical job during the month immediately preceding the calendar month during which the overtime work was done, and such time rates shall be deemed to be the ordinary rates of wages of those workers

The proposed new Labour Code on Wages consolidates the various wage related legislation but is silent on the matter of overtime for piece rate, despite large amounts of the working population being paid in this way. The Code also removes the section in the Minimum Wages Act which states that the overtime sections of the Factories Act still apply; this should be included in the Code.

## **Deductions from wages and other payments**

Other costs are also pushed onto workers, many of which are illegal: 100% workers covered the cost for their transport to the kiln, many of which had this deducted from wages; and 90% of workers reported having to buy their own equipment. Additionally, workers did not obtain any paid leave: no worker reported obtaining paid sick leave, whilst the average amount of sick leave taken over the season was 10 days.

## **No official records are maintained; it is the workers word against the management**

### *No contracts*

Workers do not obtain any written contract or ID cards from the owners. As set out above, in many cases, owners hire workers from a labour contractor and claim that it is not necessary to have any written agreement directly with the workers. However, labour contractors usually do not hold the required license to contract workers and as the fine for recruiting without a license is so low, there is little attention paid to this requirement. The brick kiln management also does not have any written agreements with labour contractors, hence the system of recruitment and employment is not recorded and continues informally.

### *No written confirmation of advance taken or wages rate to be paid*

The workers do not get any documentation related to advance amounts or sustenance provided throughout the season. In relation to wages, there is often an oral commitment between the contractor and worker regarding the wage rate and working period at the beginning of the season; however as outlined earlier in many cases this rate is not honoured. It is very difficult for workers to raise a complaint about being paid a different wage rate to that agreed verbally.

The Punjab Rules on Minimum Wages 1950 state that employers are required to issue wage slips to all workers mentioning the wage period, payment in each wage period, date of payment, amount of deduction, number days where overtime was worked etc. None of the workers reported receiving a wage slip stating these facts. No documentation or wage slips were given to workers at the final settlement of wages.

### *No record of each worker at the kiln or amount of bricks made*

Every enterprise which employs wage earners is required to maintain a muster roll which registers the names of all workers.<sup>44</sup> The register is also used to maintain accounts of production of each worker unit by the manager/munshi of the kiln (i.e. how many bricks made by each working unit). Most of the workers were unaware of the records and registers maintained by the kilns and depend upon the labour contractor to inform them of number of bricks made and other relevant information. Only 27%

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<sup>44</sup>Punjab Minimum Wages Rules, 1950

of male workers reported being registered in the muster roll of employees kept by the accountant/manager. However, this may not be the official muster roll that is submitted to authorities; there was evidence that this is used for just internal accounting and that different records are submitted to authorities. Hence, for the majority of male workers (and all of the female and child workers), they are not officially registered as workers/employees. This means that these workers are invisible and unable to claim particular rights. For example, the Maternity Benefit Act, 1961 requires a muster roll to be maintained at each kiln site; the absence of women from the muster roll excludes them from maternity benefits available under the Act.

Final wages are paid in accordance with the informal record the brick kiln management maintain. Whilst some workers may keep informal records of the number of bricks made by their family unit for the entire season, not all do. For the worker, maintaining his/her own record of bricks made over such a long period can be a difficult task, and even if recorded, will not necessarily be honoured by the brick kiln management. In the Kaarak study, workers that had stayed for an entire season reported an average of 11 additional non-paid days spent at the kiln due to disagreement over wages. In some cases, the brick kiln owners refuse to pay workers at the end of the season, pointing to the lack of records as evidence that the worker never was employed at the kiln.

Having no employment records is illegal under various Indian labour laws and different judicial bodies have also found that a lack of employment records at the kilns raises a presumption of forced and bonded labour. The National Human Rights Commission (NHRC), which is mandated to oversee the implementation of the Bonded Labour System (Abolition) Act, has held in numerous cases that, where there is a lack of statutory records required to be maintained by the employer, the concerned authority is duty bound to raise a presumption that the labourers engaged were bonded labourers.<sup>45</sup> A 2013 judgment of the Punjab and Haryana High Court in the case of *Shiv Bhatta Company and anr v National Human Rights Commission*<sup>46</sup> has reaffirmed the position of the NHRC, stating that *“The fact of non-maintenance of records was a serious offence and the NHRC found that it raised presumption that the allegations made in the complaint with regard to forced labour or confining the labourers against their wishes were correct. No such satisfactory material was produced that the concerned labourers were not bonded labourers inasmuch as no documents were produced to show payments to them...We find nothing wrong in drawing of such presumption.”* In Uttar Pradesh, the Allahabad High Court upheld an NHRC order which found that the absence of employment records in a brick kiln and insufficient evidence to the contrary was sufficient to establish a situation of bonded labour.<sup>47</sup>

Because wages are not settled until the end of the season, and because they are indebted to the brick kiln owners, workers lose control over their conditions of employment and movement. The withholding of wages until the end of the season allows the brick kiln owner to control the workforce, so that there are no breaks in productivity – the workers cannot leave the 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 minimum wage – as the worker will not leave in search of a higher wage because he must wait until the end of the season for full payment. This new type of bondage is replacing the ‘traditional’ type of bondage, where workers are physically restricted from leaving.

<sup>45</sup>NHRC file number: 685/19/13/2014-BLrs

<sup>46</sup>Mordhwaj @ Mohan Chauhan v. National Human Rights Commission and Others Cit: (2012) 4 LLJ 681 P&H. Decided on 19 August 2013, CWP-17927-2013

<sup>47</sup>Shiva Ent Udyog v. National Human Rights Commissions and Ors Cit: 2011 (3) ADJ 189

# What changes can be made to move towards decent work and eradication of slavery in the brick kiln sector?

Anti-Slavery International, VSJ and partners have argued for a change in the payment system in the kilns – this would fundamentally change some of the power structures underpinning and perpetuating slavery. Possibilities for change are set out below, with a full list of recommendations to key stakeholders set out in the Conclusion & Recommendations section. Recommendations should be discussed between stakeholders, to determine the best way to forward to change the structures that keep millions of adults and children in slavery.

## 1. Advances must not be provided and wages must be paid at the end of each month, in accordance with the law

The Government of India must take this opportunity to ensure in the proposed new Labour Code on Wages that advances are not allowed.<sup>48</sup> This will ensure that one method of control over workers is removed, and that the incidence of debt-bondage would be reduced. It would also result in conformity with the Bonded Labour System (Abolition) Act. Secondly, wages must be paid at the end of the month at the latest. Currently, wages of brick kiln moulders are withheld until the end of the season, meaning that workers are controlled by the employer until the end of the season. This is illegal, but no action is taken by authorities to rectify this common practice.

Whilst, our position is that no advance should be provided at all and that the Payment of Wages Act and draft Labour Code on Wages should be amended to reflect this; if workers were only provided an advance that was 50% of their first month of wages, and paid wages every month, workers would feel financially empowered and able to leave the kiln at any point during the season if conditions were not satisfactory.

The Kaarak study found that, if workers were paid at the end of each month, as required under law, 81% of the workers would be able to earn enough to pay back the advance taken in the first wage period, and 97% would be able to pay back the loan at the end of the second month. If the sustenance allowance is incorporated into the debt, 38% of the workers would be able to pay back the amount taken as sustenance allowance and advance in the first wage period, 65% would be able to pay back by the end of the second wage period, 85% by the third and 91% by the fourth. It is important to note that those workers who would be able to pay back the loan and sustenance allowance in the first month are those who take a smaller advance - an average of 5352 INR per unit.

## 2. Adopt a time-based system of payment

If workers were paid in the same way as other factory workers in Punjab, according to a time-based system, workers would be paid individually for their work and more likely to be paid wages regularly at the end of the month. Women would be recognised officially as workers and paid individually – a huge step forward for economic and social empowerment of women. According to the calculations in the Kaarak study, time-based minimum wages would result in higher wages for workers, particularly when other employment benefits are factored in. This would hopefully result in greater income security and less vulnerability to poverty and exploitative working conditions. It may also result in less dependency on government welfare schemes, which cannot be relied upon to function well, and often act as a subsidy to low wages.

<sup>48</sup>Consolidates and replaces Minimum Wages Act 1948, Payment of Wages Act 1936, Payment of Bonus Act 1965, Equal Remuneration Act 1976.



A time-based wage may change other exploitative working conditions as well, such as child labour and long working hours. This is because, even if workers were paid a higher minimum piece rate wage for bricks, other problems remain with the piece rate system. Paying per 1000 bricks made encourages workers to work longer hours and to obtain help from family members in order to make more bricks. Changing to a time-based system where adults are paid individually for their work, and assured minimum wages, may mean that there is less incentive for children to work.

Additionally, there would be less incentive for adult workers to work long hours – as they would not be striving to make more and more bricks, but making the amount that is reasonable within a normal working day and be earning the same amount or more. Of course, workers may still wish to work overtime, particularly if they are paid for it properly.

**3. Minimum wages must be based on defined, relevant criteria and revised periodically**

The overall process for setting minimum wages must be improved. The proposed Labour Code on Wages states that state governments have the power to set the minimum wage, in accordance with the following criteria: “skill required, the arduousness of the work assigned to the worker, the cost of living of the worker, geographical location of the place of work and other factors which the State Government considers appropriate”. However, the Supreme Court has held, building on recommendations from the Indian Labour Conference, that minimum wages should be based on more defined living costs criteria, which includes specific requirements for food (defined in calories), clothing, housing and education.<sup>49</sup> Wage laws should be amended to make clear that living costs include the above criteria, and these must be factored into the minimum wage.

Under the Minimum Wages Act, it is clear that the minimum wage should be revised at least every five years. However, the proposed Labour Code on Wages is not specific on this matter, stating that the minimum wage only needs to be revised “from time to time”. This should be amended to reinsert the five year specific period. Furthermore, in the Minimum Wages Act, trade unions are part of the tripartite structure of the Central Minimum Wages Advisory Board but they have been excluded in the proposed Labour Code on Wages. It is important that trade unions are included in setting minimum wage rates.

**4. Consider payments directly into bank accounts – promoting transparency and accountability**

This could be implemented gradually after further research is undertaken on the number of workers that currently have bank/postal accounts and whether bank/postal accounts would be accessible and of best use to workers. If the research found that this is the case, assistance must be provided to ensure workers have bank/postal accounts that would be accessible and of best use to them.

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<sup>49</sup>Society for Labour and Development, ‘India’s Labour Law Changes: Toward advancing principles of rights, inclusion and employment security’, 2016; see Working Peoples’ Charter submission on the Draft Labour Code on Wages. The Indian Labour Conference held that the minimum wage is set at a level that can provide for the basic needs for a small working class family. This includes a minimum of 2700 calories per adult, 18 yards of cloth per person, up to 72 yards for a family of four per year, minimum house rent as charged by government subsidized industrial housing scheme for low income groups, fuel and lighting and other expenses (20%). In 1991, the Supreme Court of India in the case of Raptakos Brett and Co. gave the judgment that ‘it is necessary to add the following additional component as a guide for fixing the minimum wage in the industry’: (vi) children’s education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriages etc. should further constitute 25 per cent of the total minimum wage.”

Use of such banking would enable a paper trail to be created, and workers would be able to clearly see the wage that they earned. Such payments also reduce the corruption from the employer or the person doing the accounts, as there would be evidence of wages earned and days worked. This is something that others are promoting in sectors that are already time-based<sup>50</sup> and has been recognised as having benefits for women workers in particular. The proposed central government Labour Code on Wages provides for all payments to be made into bank accounts or as a cheque.

## **5. Government must ensure that proper employment records are maintained in the kilns; civil society can also take action**

As stated above, 73% of male adult workers were not registered in the muster roll of employees kept by the accountant/manager; none of the female workers were registered. No worker had a proper contract with an agreed wage rate specified and there were no proper records provided to workers of the advances taken, sustenance allowances provided, and final wage settlements received. This lack of both employment and payment records is illegal under various Indian labour laws.

Governments must act to ensure brick making factories are maintaining the proper records. Due to the magnitude of the industry, size of each factory and known high levels of bonded labour and labour exploitation, this should be a priority of government. To ensure this, a body with sufficient powers to oversee labour laws and ensure that employers are following the law and workers' rights are being respected needs to be in place (see next section).

Additionally, civil society bodies should be aware that they can undertake bonded labour cases against employers that do not maintain proper records. The National Human Rights Commission (NHRC), which is mandated to oversee the implementation of the Bonded Labour System (Abolition) Act, has held in numerous cases that, where there is a lack of statutory records required to be maintained by the employer, the concerned authority is duty bound to raise a presumption that the labourers engaged were bonded labourers.<sup>51</sup>

## **6. A comprehensive labour inspection scheme is needed to ensure employers follow the law**

A comprehensive labour inspection system is required to ensure that labour laws are implemented and respected. Unfortunately new developments further weaken the labour inspection system in some areas:

- The Ease of Doing Business Policy: Under this policy, the central government have reduced labour department inspections of certain factories, and instead require factories to self-report.
- The proposed central government Labour Code on Wages also follows a similar pattern of self-certification – setting out that state governments can introduce an inspection scheme based on employers self-reporting.<sup>52</sup> The proposed law also introduces the role of a 'facilitator', appearing to replace inspectors, with facilitators having reduced powers in some areas to those of inspectors.

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<sup>50</sup>See for example: "One simple way to empower women making H&M clothes in Bangladesh: Stop paying them in cash", 9 March 2017 at <https://qz.com/928174/hm-has-joined-the-better-than-cash-alliance-which-argues-that-digital-payments-empower-workers-especially-women/>

<sup>51</sup>NHRC file number: 685/19/13/2014-BL

<sup>52</sup>S47(2) Draft Labour Code on Wages 2015: (2) The appropriate Government may lay down an inspection scheme which shall provide for generation of a web-based inspection schedule, based on self-certification, utilizing services of technical experts or agencies and complaint received and list of defaulters.

- Whilst the penalties for lack of payment of minimum wage or breach of the proposed Labour Code on Wages are much higher than the Payment of Wages/Minimum Wages Acts which is a positive change, the proposed law also removes the power of labour officials to resolve claims with respect to payment of wages.
- The penalty for not immediately cooperating with an inspection that exists in the current labour laws<sup>53</sup> is not included in the draft Labour Code on Wages – rather the facilitator first must request the employer to comply.

It is vital that a labour inspection scheme is maintained that is properly resourced to comprehensively monitor known exploitative worksites such as brick kilns.

## **7. Social groups must continue to tackle power dynamics that fuel inequality**

Some key measures can be taken now to address discrimination in employment, such as express prohibition of discrimination on the basis of caste, religion or social origin in the draft Labour Code on Wages. However it is recognised that changes in law and policy may not result in change on the ground when employers, officials, police and others have more power in society than kiln workers. This can be seen from the history of the Bonded Labour System (Abolition) Act 1976, which consistently fails to be implemented in many parts of India. District officials and police regularly refuse to recognise bonded labour and trafficking cases, take appropriate action and prosecute offenders. Despite extreme violence against brick kiln workers at times, it is a constant struggle to have criminal cases lodged. In many cases this is due to pressure from local employers, who hold power within the community. In parallel to efforts by government, collective action must be organised and undertaken by social groups affected to tackle power relations – at the community level and at the workplace; along with oversight and accountability measures by national and state human rights bodies and civil society. This is discussed further below.

## **8. Worker representative structures to represent brick kiln workers must be established**

In addressing power imbalances Anti-Slavery International and partners recognise the vital importance of freedom of association and organisation – workers must have the right to organise and claim these legal rights. Power systems and imbalances between workers and employers cannot be rectified without ensuring laws and policies are implemented and respected by the state.

In this context trade unions (or other worker representative structures) and civil society organisations are key in holding the state accountable to implement laws and respect rights. Unfortunately the wage law reforms proposed by the central government reduce some powers of trade unions:

- Trade unions have not been included as a member of the Central Minimum Wages Advisory Board (this is part of the Minimum Wages Act); and
- Under the Payment of Bonus Act, access to audited accounts of employers by trade unions has not been included in the Labour Code.<sup>54</sup>

Other changes to trade union laws have also been proposed as part of the wider labour law reforms (Draft Labour Code of Industrial Relations 2015 which consolidates industrial relations laws). Whilst there are some improvements, with recognition of the right to association for the informal/unorganised sector, there are areas that weaken freedom of association and organisation including placing

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<sup>53</sup>Section 20 of the Payment of Wages Act 1936

<sup>54</sup>Section 23(2) of the Payment of Bonus Act, 1965

creating further barriers in relation to registering trade unions. Importantly, in the case of interstate migrant workers, it is unclear whether unions that operate across state boundaries require multiple registrations. With such high levels of interstate migration, it is important that worker representative structures can easily operate in multiple states and at the national level. There are other areas of concern raised as well, which other organisations have prepared submissions on and suggested amendments (e.g. Working Peoples' Charter).

Whilst not the subject of primary data collection for this report, within our project, our partners have noted the following regarding trade unions:

- National industry level brick kiln and construction workers unions are needed. These could be affiliated with a central trade union if required. Inter-state migrant workers often do not join a local state based union, as they will return to their home state at the end of the season. They also may migrate to a different state in the following year.
- Information provision on wages and outreach by unions needs to improve. Workers need clear, accurate information about what wage rates are, how they should be paid and help to ensure these are applied. Whilst in some areas trade unions may negotiate better wages for brick kiln workers, our research shows that most workers do not know about these wages, and 84% reported not receiving the wage that they had previously agreed with management. As noted, workers do not receive wages at the end of the month as required by law but at the end of the season.
- Unions need to represent workers without discrimination on the basis of caste, class, gender or home-state of workers, and to not be affiliated with owners. Within our project, some workers have reported scepticism of the benefits of unions, and stated that unions are not actively helping them. In Punjab, in some cases workers join a union when they arrive at the kiln – the brick kiln owner deducts the membership fee from wages. However often workers are not aware of this membership, and have largely reported not obtaining any help from these particular unions. It appears these unions are connected to owners.
- Relevant trade unions (brick kilns and construction) do not have coverage in all parts of India.
- For sustainable outcomes, long-term collective protection of rights is necessary, either through organised worker representative structures or unions, the latter of which has the benefit of being more recognised in terms of negotiating with employers/government. Workers can also participate in collective action outside of a trade union structure when a trade union doesn't exist – this has happened many times in our project and there are cases of workers collectivising in other sectors when the relevant unions do not adequately represent them.<sup>55</sup>

**9. Community groups work to improve worker awareness and take collective action**

Community groups in home villages where workers are from can be powerful forums for advocating for change – together these groups can advocate or negotiate collectively for reform to systems and practices. For example, change can be negotiated at the village level with local officials or group advocacy to contractors might be possible. Leaders of these groups can also provide awareness and information to others.

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<sup>55</sup>J.Raj in Shah, Lerche, Axelby, Benbabaali, Donegan, Raj and Thakur, *Ground Down by Growth: Tribe, Caste, Class and Inequality in Twenty-first-century India*, Pluto (London) and Oxford University Press (India), 2017, pp 77-81.





# Conclusion & Recommendations

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The system of recruitment and payment in the brick kilns creates an industry where those traditionally excluded and marginalised are subject to exploitative working conditions and high levels of debt-bondage. As workers are indebted to brick kiln owners and consistently denied minimum wages, children work long hours alongside their parents to improve family income. The cycle of exclusion continues: these children are not going to school, grossly limiting future opportunities.

The payment and recruitment system must be changed to tackle bonded labour and the worst forms of child labour in the brick kilns. To do this a range of key stakeholders must take action: the government; brick kiln owners and associations; unions or worker representative bodies; and non-government and community organisations. Stakeholders must remember that, whilst changes to laws and processes are required, the real battle lies in ensuring implementation. Recommendations to key stakeholders are set out below.

## To Government:

### A. Payment systems:

1. In consultation with workers, relevant unions and NGOs, adopt a time-based system of payment in the brick kiln sector in Punjab.<sup>56</sup> This would mean that women and men are paid individually for their work and are likely to earn higher wages. There would therefore be less need for children to work to help families make more bricks. Undertake thorough dialogue with brick kiln and construction unions that represent workers (not affiliated to owners), workers and NGOs in implementing change.
2. Ensure all workers are paid at least at the end of each month, as required under law. One way to encourage compliance with this law is linking the operating licensing of brick kilns, renewed every 5 years in Punjab, to improved payment systems. This could be coupled with requiring complete records of the entire population at the kiln each season, disaggregated into age and those working.
3. Whilst the Central Government is considering reform to the wages laws in India, ensure that the proposed Labour Code on Wages does not allow for the provision of an advance to workers. Remove this section from the Labour Code on Wages, so that provision of an advance is illegal. If this law is passed by the time of publication, amend the Code to remove this section.
4. In relation to other sectors that use the piece rate payment system, the Central Government should amend the Labour Code on Wages so that it is clear how piece rate minimum wages are deduced from time rates (pieces per 8 hours of work), and to include overtime for piece rate work.
5. Amend the Labour Code on Wages so that labour inspections are not based on self-reporting only; rather strengthen labour inspections (even if called a different name) and give inspectors strong powers to undertake checks and take immediate action against non-compliant employers. Increase the number of officials at the state level and ensure they are adequately resourced to undertake inspections.

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<sup>56</sup>Currently determining which industry is piece rate or time rate is a state government power.

6. Amend the Labour Code on Wages to ensure that:
  - 6.1 The ultimate responsibility to pay wages lies with the employer (as per current Payment of Wages Act);
  - 6.2 Minimum Wages are set in accordance to more defined criteria, including ensuring that ‘living costs’ factor in calories required, shelter, clothing, healthcare and education as recommended by the Indian Labour Conference and Supreme Court;
  - 6.3 Trade Unions are included in the Central Minimum Wages Advisory Board; and
  - 6.4 Minimum wages must be revised every five years.
7. Ensure employers register themselves online and send employment records to the designated government body as required. Non-compliance must lead to a presumption that no such records exist and potential sanctions; similar to the registration-based system in Delhi for placement agencies.
8. Create much better transparency at the government level on brick kilns by providing access to information on-line:
  - 8.1 Set out a prescriptive list of documents that is compulsory for an employer to hold, rather than simply requiring employers to hold some form of documentation with no requirements of content or form. Increase the penalty for breaching these provisions; whilst labour records are already required to an extent, there is no sufficient penalty for lack of compliance and little enforcement.
  - 8.2 Require government officials to file their periodic inspection reports and to record actions taken online (and made publicly available); referring to the above prescriptive list of documents.
  - 8.3 State government undertake a regular survey of all brick kilns and file details on-line.
9. Consider making standard form employment contracts mandatory. This usually occurs under the Industrial Standing Orders for each industry, however standing orders for the brick kiln industry have never been framed. There is a need to do this, or otherwise ensure mandatory standard form contracts are used.
10. Central government oversee survey on the number of workers that have currently have bank/postal accounts; and undertake research to determine whether bank/postal accounts would be accessible and of best use to workers. If the research found that this is the case, assistance must be provided to ensure workers have bank/postal accounts that would be accessible and of best use to them. If passed, the central government Labour Code on Wages will require all payments into bank account or by cheque. If this Code does become law, ensure planning and implementation of measures that will ensure all informal sector workers have a bank/postal account.
11. Exempt brick kilns from the ‘Ease of Doing Business’ central government policy, so that brick kilns are workplaces that continue to be inspected under labour law. This exemption should be based on the fact that it is well-known that brick kilns have a high level of bonded labour.<sup>57</sup>

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<sup>57</sup>*Public Union for Civil Liberties v State of Tamil Nadu & Ors*, Supreme Court of India, 2012

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## **B. Bonded labour:**

1. State and Union Territories must ensure that all district officers are aware and trained in the new Standard Operating Procedures under the Bonded Labour System (Abolition) Act and Central Sector Scheme for Rehabilitation of Bonded Labour. It is vital that these procedures are implemented, particularly time-bound inquiries and issuance of release certificates and time-bound prosecution processes.
2. Increase Central and State Government efforts to address corruption at the local government level, particularly for officials with power to address bonded and child labour at the brick kilns. Require government officials to comply with new Standard Operating Procedures and implement automatic fines and penalties if not complied with, such as those imposed for police investigations in certain states.<sup>58</sup>
3. 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.
4. Require Government officials to be accompanied by state prosecutors, NGO representatives and/or worker representatives (trade union or otherwise) to kiln inspections.

## **C. Children:**

1. Central and state governments prepare and implement policies to ensure children attend and progress at school:
  - 1.1. Ensure state government primary schools are located sufficiently close to kilns;
  - 1.2. Ensure all state government primary schools openly accept and cater for all children, including inter-state migrant children who may speak a different language;
  - 1.3. Provide compulsory free transport to schools and anganwadis (this could be paid through an additional or increased tax on brick kilns);
  - 1.4. If government schools are not able to cater for migrant children, ensure that schools are provided in brick kilns for children;
  - 1.5. States should consider free, properly regulated residential hostels linked to schools for migrant children, so they do not need to migrate for work with parents, but can continue education in the home state of parents when parents migrate for work. Consideration should be given to the model used in Odisha.
2. Amend the Child Labour (Prohibition and Regulation) Act to re-include brick kilns in the schedule of hazardous work places for children.
3. Reform to all relevant welfare schemes (including the Integrated Child Development Scheme services and the women's health schemes) or adopt MoUs between states so that welfare schemes can transfer/operate across state borders for interstate migrant workers.
4. Ensure Inter-State Migrant Workmen Act and relevant rules are implemented by contractors and relevant officials.

## **To Brick Kiln Owners and Brick Kiln Owner Associations:**

1. Adhere to the laws that currently exist; including paying workers minimum wage, fully settling all wages for each month at the end of the month; and ensuring children are not working at the kiln but going to school.

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<sup>58</sup>In Bihar, police officers must complete an investigation with a 90 period or else face penalties.



2. Maintain all appropriate records required; particularly records of the workers working at the kiln each season, advance paid, sustenance allowance and deductions made and final wages provided.
3. Actively support adult only worker units and child school attendance; and promote awareness among workers of the comparable productivity of adult only worker units.

## **To Unions and other worker representative structures:**

1. Recognise that all brick kiln moulders are from the marginalised/excluded sections of society and ensure that unions are non-discriminatory and open to all sections of society. Promote leadership from these sections of society, as well as female leadership.
2. Increase outreach, representation and participation of female brick kiln workers, those from marginalised castes and classes and migrant brick kiln workers.
3. Recognise that, even if laws are changed/policies are changed, that different levels of government may not apply these laws and policies comprehensively. Unions and worker representative structures must ensure that they are holding government and employers accountable to all relevant laws and policies.
4. For construction and brick kiln worker unions/worker representative structures to consider the exploitative aspects of the piece rate payment system in the brick kilns and consider whether collective advocacy and action in relation to this system can be taken to push for a change. Undertake advocacy to government and employers in relation to this system.
5. Increase efforts to reach out to brick kiln workers and inform them about the wages negotiated by unions, their rights in relation to wages and other workplace rights.
6. Ensure that representatives are regularly at kilns to ensure that wages agreed by unions (and at the very least the minimum wage) is paid to workers in practice.
7. Consider how to represent migrant workers effectively in the context of an 8-10 month system of work. Approximately 60% of the workforce are inter-state migrant workers, who leave one state and travel and work in another for a period of the year. State worker representative structures must strive to affiliate/coordinate with similar unions in other states, so that workers have a body that represents them whether they are in their home state or working in another state.

## **To community based organisations/non-government organisations:**

1. For CBOs and NGOs that work in this sector to consider advocacy around the payment system in the brick kilns, including changing to a time based system of payment for moulders, as one of the ways to address factors perpetuating exploitation and slavery.
2. To advocate to government and brick kiln owners for adherence to current labour laws regarding minimum wage and payment of wages, particularly at the end of each month, together with other relevant stakeholders such as unions or worker representative bodies.
3. Advocate against the changes in the proposed draft Wages Code which reduce powers in relation to labour inspections, allow advances and weaken wage rights.
4. To bring cases of bonded labour or trafficking for labour exploitation based on a lack of employment records maintained in the kiln; combined with evidence provided from workers, these cases are likely to be successful. Courts have also held that non-payment of workers also raises a presumption of bonded labour.<sup>59</sup>

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<sup>59</sup>*Neeraja Chaudhary v State of Madhya Pradesh*, AIR 1984 SC 1099







# Appendix A: Full Research Findings

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This section sets out the full research findings into the brick kiln sector in the state of Punjab, India. The research data and consequent analysis set out below is based on two data sources:

- Research and analysis undertaken by Kaarak Enterprises Ltd, for Anti-Slavery International, interviewing brick kiln workers from three states – Chhattisgarh, Punjab and Uttar Pradesh. All workers had worked in Punjab kilns in the preceding season. The research studied 383 persons, of which 339 were directly engaged in the brick moulding work in kilns.
- A baseline study conducted by Volunteers for Social Justice, during which over 3000 workers were interviewed to determine their understanding of bonded labour, child labour and wages and 208 brick-kilns were surveyed to assess conditions.

Some of the legal analysis draws from research undertaken for Anti-Slavery International by Herbert Smith Freehills LLP.

## A. Who is working at the kilns?

Brick kiln moulders usually migrate to the kilns with their families, including their children or other dependents. Only one member of the family, generally the male head, is registered with the kiln as the employee - either formally or informally. For payment purposes, this family unit is paid as a single entity, however all members of the family contribute to the production of bricks for the working family unit.

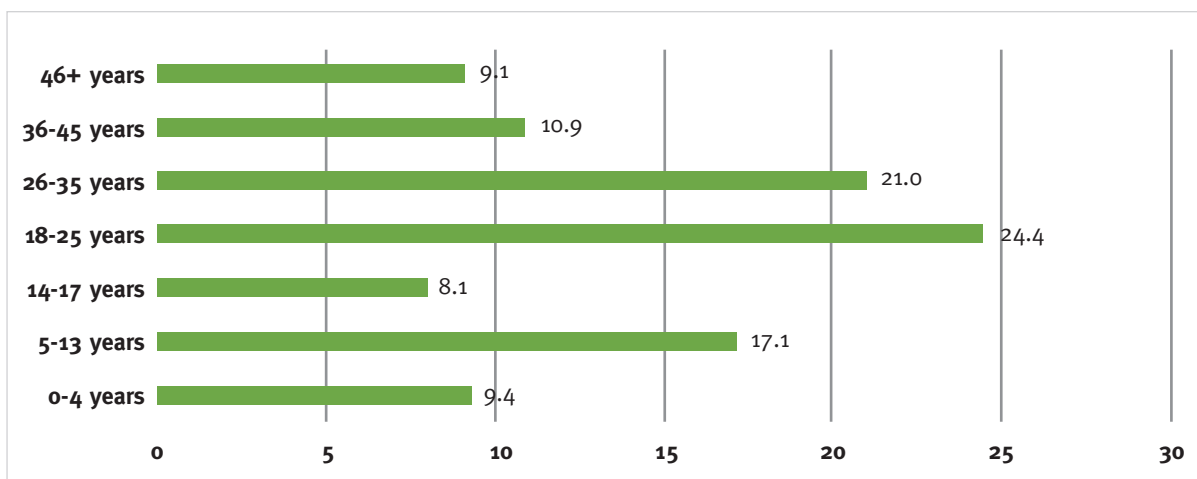
In case of inter-state migrants<sup>60</sup>, almost all the workers are migrating as a family, including children. In case of intra-district migration in Punjab, 50% of the Punjabi workers migrate with their family. It appears that this is done to increase the production capacity of the unit by adding more members from the family to the unit. The majority of the workers (76%) migrate in units of two to five members. 87% of the persons who migrate to the kilns, including children, work at the kiln.

Of the brick kiln population, the largest number are in the age group of 18-25 years, followed by a significant percentage in 26-35 years of age. 8% of the population are adolescents (14-18 years) while 26% are pre-adolescents, toddlers and infants.

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<sup>60</sup>Workers from Chhattisgarh and Uttar Pradesh in this study

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Graph 1: Age profile of workers

## Type of work done by unit members

Most of the workers carry out all tasks: from preparing soil/mud, to laying of bricks and are termed here as ‘main’ workers. However, there are some workers who cannot carry out physically strenuous tasks, especially children, and support the main workers by doing tasks like flipping of bricks for proper drying, arranging of bricks, etc. For this report, these workers are termed as ‘helpers’.

## How many primary school age children are working at the kilns?

An age breakup of the analysis shows, of the children between 5 to 14<sup>61</sup> years of age (this includes up to, but not including, 14 years old), 12% reported working as main workers at the kiln and 68% as helpers on a daily basis. Only 20% of the children in this age group reported that they did not work at all while living at the kiln site.

Age group	5-14 years	14-18 years	18+ years
Main worker	12%	77%	99%
Helpers	68%	23%	1%
Did not work	20%		

Table 1: Age-wise analysis of type of work

Hence, according to the Kaarak study, 80% of children between the ages of 5-14 years reported working at the brick kiln; with a very concerning 12% reporting working as a main worker, and 68% as a helper. In the VSJ baseline study, approximately 65% of children reported working, giving an overall range of 65-80% of children in the age range of 5 to 14 are working in the brick kilns in Punjab.

Under the United Nations Worst Forms of Child Labour Convention, brick kiln would be classified as hazardous work, which children under 18 are prohibited from working in. Brick kiln work for children would therefore be classified as a ‘worst form of child labour’.

Under the newly amended Child Labour (Prohibition and Regulation) Act, 1986, children under the age of 14 are prohibited from working in any occupation, except if the child is working to help “his

<sup>61</sup>5 to 14 years of age, including up to, but not including, 14 years of age



family or family enterprise...after his school hours or during vacations”.<sup>62</sup> Even if brick kiln work was classified as helping their family or a family enterprise, children are only be allowed to assist outside of schools hours. This conforms with the other main piece of Indian legislation, the Right to Free and Compulsory Education Act 2009, which provides that the government must provide free education to children between the ages of 6 to 14 and that the government (all levels) has an obligation to ensure admission, attendance and completion of education for all children between the ages of 6 to 14. However, the study found that children were working an average of 9 hours a day in the summer months and 7 hours a day in the winter months, regardless of whether they worked as a main worker or support worker/helper. Additionally, under the Kaarak study only 23% of the workers reported having access to basic education facilities for children under 14 years of age; 20% were provided this by the government and 3% had arranged for basic schooling for children themselves.

This means that, contrary to the various Indian laws, and the Constitution of India, the vast majority of children between the ages of 6-14 in the brick kilns are not going to school, but working.

The baseline data also found that, on average, government primary schools were 1.87 km from the kilns, however under the Right to Education Act<sup>63</sup>, the government and local authority must ensure a school for at primary classes 1 to 4 within 1 km radius (a ‘neighbourhood’). If government schools are not established within the neighbourhood radius required, then the local government should provide free transport to enable children living in isolated brick kilns to attend school; or ensure schools are provided at kilns for the duration of the season.

**How many adolescent children are working at the kilns?**

77% of the adolescents i.e. minors between 14 and 17<sup>64</sup> years of age reported that they had worked as main workers, whereas 23% reported to be working as helpers; hence 100% of adolescent children reporting working at the kilns. In a few rare cases, parents reported leaving children of this age group at the source village to live with their grandparents or other relatives to finish their education.

As stated above, under international law, children under 18 are prohibited from working in hazardous work (as a worst form of child labour), and it is highly likely that brick kiln work would be considered as hazardous. Additionally children working with their family units are also working to pay off the bonded debt, so are also subject to bonded labour.

Under Indian domestic law, the Juvenile Justice (Care and Protection of Children) Act 2015 prohibits bondage or withholding of wages of children under 18.<sup>65</sup> As children in this age group usually work as part of family units that are indebted, and do not receive their wages until the end of the season, this law is routinely being breached.

Under the previous version of the Child Labour (Prohibition and Regulation) Act, brick kiln work was defined as hazardous and therefore all children under 18 were prohibited from working in kilns. The Child Labour Act was amended in 2016, with the list of hazardous industries drastically reduced to ‘mines, inflammable substances or explosives and hazardous processes’ as defined in the Factories Act 1948. Brick kilns may well be considered as mines. The Factories Act 1948 also sets out that:

.....  
<sup>62</sup>Clause 5 of the The Child Labour (Prohibition and Regulation) Amendment Act 2016, amending section 3 of the The Child Labour (Prohibition and Regulation) Act 1986.

<sup>63</sup>Section 6, Right to Free and Compulsory Education Act 2009

<sup>64</sup>14 to 17 and 11 months (i.e. up to 18).

<sup>65</sup>s79. Notwithstanding anything contained in any law for the time being in force, whoever ostensibly engages a child and keeps him in bondage for the purpose of employment or withholds his earnings or uses such earning for his own purposes shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees.

- Children between 15-18 years of age are required to hold a certificate of fitness issued by a surgeon to be permitted to be employed in factories.
- Children between 14-18 years of age are not permitted to work for more than four and a half hours a day. They are entitled to overtime wages for hours worked beyond this limit.

In the study, there was no evidence of any certificates being held by any of the children in this age group, and the average working day was reported to be 12 hours. As brick kilns are classified as factories in Punjab, gross violations of this law is occurring.

	5 – 14 Year		14 – 18 Years		18+ Years	
	Female	Male	Female	Male	Female	Male
Main worker (%)	14	7	76	79	100	98
Helper (%)	76	86	24	21		2
Do not work (%)	10	7				

**Table 2: Gender and age analysis of type of work**

	Age Group		
	0-5 years	5-14 years	14-18 years
% of total migrant population	12.2%	16.1%	16.4%
% of support workers	-	14%	8%
% of main workers	-	79%	92%
Average hours of work	-	9 hours	12 hours

**Table 3: Age, migrant status and type of work analysis**

## Caste composition

All respondents were from minority groups: nearly half of the survey respondents (53%) belong to the Scheduled Caste category, and 47% to the category of ‘Other Backward Classes’ (OBC). No brick moulder interviewed was from a ‘general’ caste. In Punjab, all of the workers belonged to the Scheduled Caste category largely within the Sikh community. In Chhattisgarh, 40% of the workers are *Satnamis* belonging to Scheduled Caste category, followed by members from other groups of Scheduled Caste and OBC groups.

	Chhattishgarh (%)	Uttar Pradesh (%)	Punjab (%)	Total (%)
Scheduled Caste (SC)	50	7	100	53
Scheduled Tribe (ST)	0	0	0	0
Other Backward Classes (OBC)	50	93	0	47

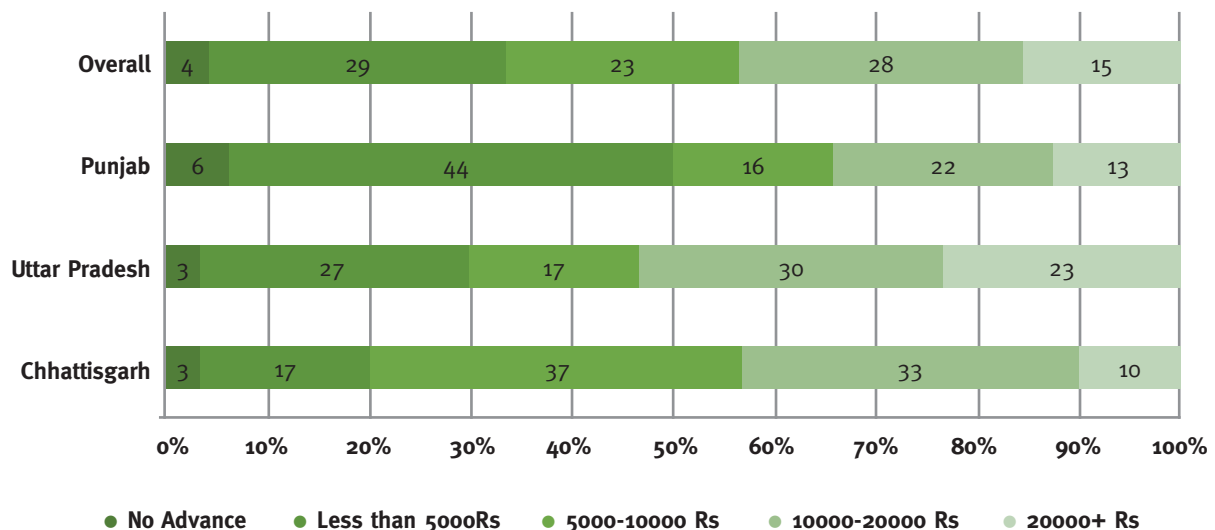
**Table 4: Caste and Class composition of respondents**

## B. A New Form of Bondage: The Recruitment and Payment System – Debt and Withholding of Wages

### Taking of an advance/loan, resulting in the worker & family being in debt

96% of the respondents in the study reported to have received an advance in the last season they worked at the kiln. This pattern is consistent through all the three states covered in the study.

97% of the workers had received the advance less than a month before leaving for the kiln. The remaining 3% reported to have received the money more than a month but less than three months before work for the season started. All those who received the advance, were paid as a one-time payment. The amount of money received as an advance varies across the three source states. The majority of the respondents from Chhattisgarh (70%) received a payment between Rs.5000 - 20,000 per worker unit (\$77 – \$310 USD). In Uttar Pradesh, the respondents reported that advances tended to be spread out equally between the different categories represented in the table below. In Punjab 44% of the workers received an advance of less than Rs. 5000 per unit. Overall, the advance amount given to Punjabi brick kiln workers mostly ranges from Rs.1000 to Rs.5000.



Graph 2: Advance amount received by workers

### Is this legal in any way? If so, should these laws be amended?

The Payment of Wages Act allows for deductions, including for recovery of an advance, from wages provided they do not exceed 50% of the wages for one month.<sup>66</sup> 96% of the workers received advance; and each of these worker units reported the advance was deducted from the final settlement and not from the first payment, contrary to the Payment of Wages Act. 52% of the workers were given an advance which was more than 50% of their average monthly earning.

<sup>66</sup>57(3)(ii) Payment of Wages Act 1936

Unfortunately, the proposed Draft Labour Code on Wages 2015 (not passed at the time of writing, but if passed would replace the Payment of Wages Act, Minimum Wages Act, Payment of Bonus Act and Equal Remuneration Act) – which could act to repeal this section – does not take this opportunity.<sup>67</sup> The proposed Code allows for provision of advances and, contrary to the previous law, does limit the advance to 50% of wages from the first wage period. The Code states that recovery of the advance “shall be made from the first payment of wages to him in respect of a complete wage-period”. A wage period is defined in the Code as not longer than a one-month period, implying that an advance must only be as much as the first months’ wages. This is still weaker than the Payment of Wages Act that only allows a maximum advance of 50% of the first months’ wage.

### **Who decides the amount of advance?**

72% claimed that it was the contractor who decided the amount of the advance, 14% of the respondents reported that they themselves decided the amount of money to be taken as advance from the contractor and 5% of the workers reported that the amount was decided after a negotiation between the workers and the contractor. Only 9% of the migrant worker units responded by saying that it was the brick kiln owner that decided the amount for them.

As part of the informal system for inter-state migrants, the brick kiln owner gives a lump-sum amount to labour contractor to recruit a certain number of workers to ensure continued brick production. That amount is registered in the name of the labour contractor for the purpose of book keeping and is settled at the time of final settlement of wages by the owner. The role of the labour contractor is discussed further below.

This trend is a little different in case of Punjab intrastate workers. Here, 40% of the respondents reported that the contractor had decided the amount of advance to be paid. 37% of the respondents stated the owner decided the amount of the advance. The remaining 23% claimed that they themselves decided the amount of advance that would be paid to them.

### **Is interest added to the loan?**

In some cases the brick kiln owner also requires the worker to pay interest on the loan/debt owed, but usually this is not made clear until the end of the season when the final settlement of wages occurs (see below).

### **Sustenance allowance**

Workers receive a sustenance allowance, also known as ‘kharchi’, during the employment period. This is paid on a weekly or fortnightly basis to cover the basic expenses of the worker units – just enough is provided to purchase food and basic necessities for the family. 100% of the respondents claimed to have received this allowance. 33% of the total claim to receive it on a weekly basis, while 67% fortnightly. 40% of the workers reported asking for additional money apart from the allowance. 95% of them were able to get this from the owner or the contractor. 70% were able to get the amount

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<sup>67</sup>The Ministry of Labour and Employment, Draft Labour Code on Wages, supra note 6, Section 24: “Deductions for recovery of advances: Deductions for recovery of advances given to an employee shall be subject to the following conditions namely:-(a) recovery of an advance of money given to an employee before employment began shall be made from the first payment of wages to him in respect of a complete wage-period but no recovery shall be made of such advances given for travelling-expenses; (b) recovery of an advance of money given to an employee after employment began shall be subject to such conditions as the Appropriate Government may impose; (c) recovery of advances of wages to an employee not already earned shall be subject to such conditions as the Appropriate Government may impose.”



they had requested for, while the remaining 25% received amount less than requested. This additional amount is also added to the sustenance allowance taken by a worker and settled at the end of the employment period.

Like other financial norms in the informal sector, this feature of payment is a grey area and the amount can vary depending upon the will and capacity of owner as well as labour contractor. This payment is generally not the wage earned by the workers but an allowance given by the owners for basic sustenance of the workers. Many workers believe that the sustenance allowance is an addition to the advance taken (and therefore their debt has increased) and not a partial payment of wages. The workers have a strong sense of having the onus to pay back the amount of money taken as sustenance allowance to the owner at the end of the season.

### **Final Settlement of wages**

The final calculation of wages and debt repayment takes place at the time of final settlement – this is where the total amount of wages earned is paid, with the debt, sustenance allowance and other deductions removed. The wages are paid at the end of the season, not monthly. The total wage to be paid is thus calculated as:

**Final Settlement = Wage rate x Total production - (Advance + Total sustenance allowance + Other Deductions)**

These final wages are paid in accordance with the record the brick kiln management maintain, recording the number of bricks made by each worker unit throughout the entire season. Whilst some workers may keep informal records of the number of bricks made by their family unit for the entire season, not all do, and at any rate, the records kept and calculations made by the Manager are final. This informal system often leads to disagreements and disputes between worker and employer. For the worker, maintaining his/her own record of bricks made over such a long period can be a difficult task, and even if recorded, will not necessarily be honoured by the brick kiln management. This is discussed further later in the report, as accountability and transparency in this system is very low.

According to the VSJ baseline survey, 92% of the workers reported their wages for the latest season had been fully settled by the owner, at the time of the survey. However, there was a high incidence of workers whose wages did not get paid at the kiln location but back at the source location via the contractor, sometimes taking place months after the worker returned to his home village. Alarming, 8% of the respondents reported that some part of their wages were still withheld by the owner, forcing them to return or consider returning (or else forfeit these wages) in the following season.

### **Is this type of system, where final payment of wages occurs after the season, legal?**

The Payment of Wages Act, 1936 requires employers to fix a wage period for periodic payment of wages. The wage period should not be longer than a month and payment must be made within 10 days of completion of the wage period.<sup>68</sup>

As set out above, the brick kiln sector has no definite wage period as the wages are paid only at the end of the season (an 8-10 month period). Officially many brick kiln owners report the wage period to be a fortnight or a week, when they pay the sustenance allowance. However, this does not qualify

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<sup>68</sup>Section 4 Payment of Wages Act 1936

to be a wage period as it marks the payment of an allowance and not the total wage earning. If the sustenance allowance is to be considered a payment of wages, then it is only a partial payment of wages and there is extensive and unaccounted withholding of wages taking place on the part of the employer.

Some brick kiln owners may justify this partial payment in order to recover the advance paid to the worker. However this argument is invalid as well, as the law only allows for recovery of advance from the first wage period itself, which can only legally be a period of one month.

**This system underpins the system of bondage: it allows the employer to control the employee through a system of keeping the worker in debt and withholding wages.** Despite changes in laws in the past 50 years in India, the system of payment and recruitment of workers in the brick kiln industry has not changed. From the owners' perspective, they justify it as being a system that helps the workers build up some savings before they migrate back to their source locations at the end of the season. Hence it is presented as being beneficial for the workers in the long run and a choice of the workers. The reality however, is that this system of withholding wages allows the owner to control the supply of labour at the production unit, so that there are no unexpected breaks or reduction of pace in the production process due to absence of workers.

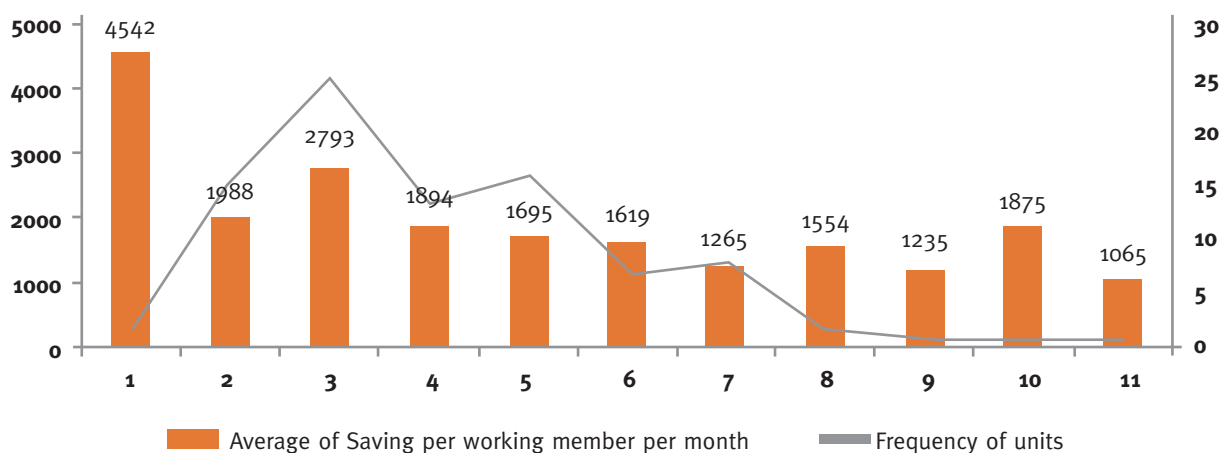
If workers were paid at the end of each month their full wages, as required under law, 81% of the workers would be able to earn enough wages to pay back the advance taken in the first wage period, and 97% would be able to pay back at the end of the second month. If the sustenance allowance is incorporated into the calculation of repayment of debt, 38% of the workers would be able to pay back the amount taken as sustenance allowance and advance in the first wage period, 65% would be able to pay back by the end of the second wage period, 85% by the third and 91% by the fourth.

It is important to mention that those workers who would be able to pay back the advance and sustenance allowance in the first month are those who take smaller amount - an average of Rs. 5352 per unit. Hence the payment of large advances is a serious concern as it is the large sum of advance that results in long periods of debt, as well as it being illegal.

### **What are the average wages that workers take back at the end of the season?**

On an average, after deducting the advance, sustenance allowance and other costs, a worker unit is able to take back Rs. 46000 (713 USD) at the end of a season. This is approximately Rs. 5750 per month (89 USD) for the entire working unit. It is also common for workers to be paid a partial amount of this money by the owner at the time of leaving the kiln and the contractor pays the remaining money after reaching the source village. This occurrence of delayed payment of wages is common in the brick kiln industry.

An analysis of wages per worker (in each unit) per month shows that wages per person are higher in smaller units of one to three working members than larger units. Overall, the effective earning of the workers is not very high.



Graph 3: Saving per worker per month

### Perfect conditions are made for debt-bondage and control of workers

As can be seen from the primary data, it is common practice to give workers advance as debt, either at the time of recruitment by the contractor or on arrival at the kiln, and then the worker is bound to stay for one season to repay that debt. The debt is settled at the end of the employment period, with the ‘final settlement’ of wages.

The brick kiln workers are highly vulnerable to forced labour and bondage due to the informal system of recruitment and payment – taking advances at the beginning of the season and the withholding of wages until the end of the season. In some cases, wages were also withheld/not paid at the end of the season, and the worker is bound to return or else forfeit the seasons’ earnings. Workers that raise issues can be threatened with violence, and in some cases workers can be restricted from leaving the worksite. These incidences are outlined below, however it was noted by the research team that the workers tended to downplay or hide what they perceived to be minor infringements of rights in a system that is normalized, and only highlight extreme incidents.

The percentages set out below appear to be small, however, the number is quite significant if the total number of the workers migrating every year to brick kilns is taken into account.

	Yes, this season (%)	Yes, in previous seasons (%)	Never (%)
Withholding of wages past the end of the season	5	4	91
Identity/entitlement document withheld	0	0	100
Threatened with physical violence	10	1	89
Threatened with verbal abuse	8	1	91
Sexual harassment by the employer or contractor	0	0	100
Restriction of movement premises for any personal work	2	2	96
Restricted to leave the brick kiln work in the middle of the season	2	0	98

Table 5: Vulnerabilities reported by the workers

## **Withholding of wages past the end of the season**

5% of respondents reported to have some part of their wages still unpaid by the kiln owner in the previous season of work 4% reported having unpaid wages from the season before last. For the remaining workers' wages were paid in full or partially, i.e. the majority of the workers claimed that their wages had been settled by the employer by the end of their season of employment, even if not paid the full amount.

Even though the percentages appear to be small, qualitative discussions revealed that a greater percentage of worker units have experienced withholding of wages and delayed payments in the past but either forget such experiences overtime or do not reveal them to others unless they have entirely lost hope of recovering the payments.

## **Threat of physical and sexual abuse/violence**

10% of respondents claimed that they had been threatened by the brick kiln owner or contractor with physical violence in the last season.

## **Restriction on movement**

2% of the respondents reported on being restricted to moving out of the kiln site for some personal work during the working season at the last kiln site, another 2% reported that they had been restricted not in this season, but sometime in the past. 84% of the respondents claimed that they were able to move out of the kiln premises when the need to do so arose.

Similarly, only 2% of the respondents reported to being restricted on leaving the kiln mid-season, while 87% reported never having faced any such issue and the remaining 10% claimed they had not been in a position wherein they had to leave early in the first place.

However, whilst not as many employers physically barricade workers at the worksite - a more 'traditional form of bonded labour' - workers in effect are forced to stay to the end of the season to find out if their debt has been repaid and in order to collect their wages. This new form of bondage is endemic throughout the brick kiln sector.

## **How brick kiln wage rates are currently calculated in Punjab**

Apart from how the system of payment works, how is the wage rate – which is used in the final settlement of wages – determined?

According to the law, the wage rate for brick moulders currently should be comprised of:

- The minimum wage, in accordance with the central government and state government Minimum Wages Act
- Other wage entitlements: bonus, gratuity, employee provident fund payment

## **The Minimum Wage – on a piece rate basis**

In India, Minimum Wages Act, 1948 (MW Act) is applicable in the brick kiln industry as it employs more than 1000 workers in the states where it operates. The state government or industrial tribunals are entitled to regulate the minimum wages. The minimum wage is set at a level that can provide for the basic needs for a small working class family. This includes a minimum of 2700 calories per adult, 18 yards of cloth per person, up to 72 yards for a family of four per year, minimum house rent as charged by government subsidized industrial housing scheme for low income groups, fuel and lighting



and other expenses (20%). In 1991, the Supreme Court of India in the case of Raptakos Brett and Co. gave the judgment that ‘it is necessary to add the following additional component as a guide for fixing the minimum wage in the industry’:<sup>69</sup> (vi) children’s education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriages etc. should further constitute 25 per cent of the total minimum wage.” The proposed draft Labour Code on Wages does not include the above criteria, instead weakening the setting of the minimum wage to: “skill required, the arduousness of the work assigned to the worker, the cost of living of the worker, geographical location of the place of work and other factors which the State Government considers appropriate”. Whilst living costs are included, we believe that it should be specified what living costs mean – in relation to calories, shelter, clothing, education, health and more, in order to not allow room for ambiguity.

Minimum wages are notified on both time-rate as well as on piece rate basis. Under the time-rate basis, the workers are generally categorized as per skill level, i.e. unskilled, semi-skilled, skilled and highly skilled. The fundamental objective of the Minimum Wages Act is to ensure security of labour from economic exploitation by ensuring minimum wages. Failure to pay the prescribed minimum wage makes the employer liable to be penalized, although this may be weakened if the proposed Draft Labour Code on Wages is passed. Whilst the draft Code proposes higher fines, the Minimum Wage Act criminalised failure to pay minimum wages, but the draft Code only applies civil processes and penalties to those not following the law.<sup>69</sup>

Even though protected in law, there are several challenges in ensuring minimum wages, particularly for unorganized workers:

- (i) **Rate of wages:** The parameters on which minimum wages is decided is still open to dispute. The concerned decision makers and other stakeholders and experts are unable to reach a consensus on what standard of living is acceptable for the workers (and their immediate respective families), and therefore, the prescribed wages leads to a lot of dispute. The employers are far more organised and are able to exert pressure on the governments during its revision. Most of the time, the minimum wages are well below the requisite level and in few places even below the market rates making them completely irrelevant.
- (ii) **Awareness:** There is no effective mechanism to promote awareness of the prescribed minimum wages amongst the beneficiaries. Most of them are illiterate and have no access to latest information. Many employers including brick kiln owners are unaware of such wages and are guided by market factors and opportunities.
- (iii) **Monitoring and Compliance:** The implementation of the Act is completely controlled by the labour department of the State government which have few officials and staff for this purpose. Even when there are labour officials, most do not support the workers to get the prescribed wages.<sup>70</sup> In order to promote ‘ease of business’, governments also do not promote labour inspections. Concerningly, the draft Labour Code on Wages appears to weaken the labour inspection system further, proposing self-reporting of compliance by employers and replacing inspectors with facilitators that has reduced powers.
- (iv) **The redressal mechanism:** In the few instances where law is sought to be used to ensure proper payment of minimum wages, there are many challenges: (i) The brick kiln owners do not maintain proper records, so there is no official record that the worker was actually employed at the kiln, and in many cases brick kiln owners refuse to acknowledge that the worker did work there (ii) There are few courts (iii) Courts are inaccessible due to their location, and (iv) the language of the substantive law, the procedure of the court, the several adjournments and expenses required,

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<sup>69</sup>See s20 Minimum Wages Act 1948 and s43 Labour Code on Wages 2015

<sup>70</sup>Ease of Doing Business policy

all make the entire justice dispensation system difficult to understand. Workers often realise this and argue that they would lose much more than what they would claim in any particular case to enforce the minimum wages.

- (v) Delayed or no revision: Though the act calls for a full revision of minimum wage every five years, this is rarely done, as the act also includes a provision for the same rate being implemented in case no revision takes place. The minimum wages are also linked to the consumer price index (CPI) and each state is required to revise minimum wage rates on the basis of CPI every six months. This is to incorporate the inflation rate in the economy.

In reality, these factors have relegated the Minimum Wages Act from the status of law whose violation is penalised to the status of a recommendation that the employers may feel bound to comply.

The State government notification of the minimum wage rates in the brick kiln industry varies significantly between the States. In some States, it remains vague and the language of the notification itself is beyond the comprehension for an average worker in any industry.

In Punjab, though brick moulders are categorised as skilled workers in the Minimum Wage Act, which would indicate a time based manner of payment, their payment is made according to a piece rate system. This means there is a minimum wage set per 1000 pieces of brick made. This piece rate minimum wages is set out in two ways: when a worker is hired directly; or when hired through labour contractor. The latter is higher to include a commission for the contractor; this additional money goes to the contractor and not the worker.

Minimum piece rate wages prescribed by Punjab government							
	1.9.2013	1.3.2014	1.9.2014	1.3.2015	1.9.2015	1.3.2016	1.9.2016
Brick Moulder (with contractor commission)	515.02	532.08	547.02	562	568.4	589.74	614.83
Brick Moulder (without contractor commission)	484.92	501.98	516.92	531.9	538.3	559.64	578.89

**Table 6: Minimum piece rate wages for moulders in Punjab**

Unfortunately the Kaarak team were unable to determine whether the Punjab state government has revised the minimum wages in the last 5 year period, or if the current amount takes care of the Supreme Court's judgment of 1991 to have 25% of amount fixed for health, education, marriage etc. It does appear that the wage is updated in accordance the Consumer Price Index every six months (in March and September). In case the rates are not updated, the Act provides for the same rates to continue in the subsequent period.

### *Other Wage Entitlements*

Due to the magnitude of the industry, brick kilns are recognized as factories in Punjab. VSJ and trade unions in Punjab are demanding implementation of all labour laws applicable to factory workers to the brick kiln industry. In reference to the piece rate system of payment, this implies the inclusion of bonus, gratuity and Employees Provident Fund (EPF, a type of worker pension paid by the employer into the fund).

In Punjab there is an active trade union representing employees of this industry and a collective of the brick kiln owners in the form of a Brick Kiln Owners Association. To cater to these demands of the trade unions, the district administration holds an annual wage negotiation meeting at the level

of the district where the owners association, trade union and the district administration together determine a wage for brick kiln workers. The rates set at this meeting are meant to be accepted by all kiln owners in the district. In some regions of Punjab, the trade unions have succeeded in getting the owners to provide some form minimum bonus (although not in the legal format required) gratuity and EPF amounting to 27% over minimum wage. The table below sets out the negotiated rates which include some of the benefits workers are entitled to and the minimum wages prescribed by the state government:

	Wage rate (INR) applicable from 1.9.2015	Wage rate (INR) applicable from 1.3.2016	District/region where the specific wage rate was reported
Minimum wage for moulders (without contractor commission) as State government’s notification	538.3	559.64	Prevalent in southern region comprising of Mansa, Bhatinda, Muktasar
MW for Moulder (without contractor commission) + Bonus (@8.33%)	583.1	606	Reported in some of the kilns of Southern region like Bhatinda
Moulder (without contractor commission): Wages + Bonus+ Gratuity +PF (MW +@27%)	683	710	Prevalent in northern region comprising of Amritsar, Phagwara

**Table 7: Piece rate wages prevalent in Punjab**

**The Reality – are brick kiln workers actually getting these rates?**

Despite this inclusive process of wage determination, there are many challenges in ensuring workers receive the minimum wage.

*Firstly – are workers aware of the wage rate and payment system?*

The brick kiln season normally lasts from September to June, with workers starting to arrive and work in kilns from September. The revised minimum wage, to adjust for inflation, is usually released in October or April. After the state level notification, further negotiations happen at the district/region levels between the trade unions and the owners.

Many workers are not aware in general of the minimum wage rate, or even if they are, are not paid in accordance with it. Additionally, workers are not aware of the fact that minimum wages are updated bi-annually. Even members of the trade unions are not clear on this matter. The common perception is that there are different rates for the summer and winter; the difference being attributed to the fact that number of hours worked in summer is more than winter, so the rate given in winter is more to compensate workers for the loss in productivity (instead of rates being updated twice a year to reflect inflation). In reality, workers accept the rate given to them by the owner which is usually uniform for their entire period of employment, with 80% of the workers reporting as being paid the same wage rate for both periods.

In terms of even knowing a wage rate before starting work: 54% of the workers in the study were not informed of the wage rates before reaching the kiln. Very concerningly, the data also demonstrates that whilst many workers are told a rate before leaving to work in the kiln, or on arrival, 84% received a different wage rate than what was originally agreed.

Details of wage rate	Chhattisgarh	Uttar Pradesh	Punjab	Total
Was told before Leaving the kiln (%)	47	43	47	46
Was told upon reaching the kiln (%)	53	57	53	54
Wage rate received different from promised	73	80	97	84

**Table 8: Time when workers came to know about piece rate wage for the particular season**

The baseline survey of 208 kilns found that, contrary to the requirements of the Minimum Wage Rules, only 17.76% of the kilns have boards displayed with the name of the kiln on display boards at the kiln, whilst only 19.67% display the minimum wage. None of the kilns surveyed display the name of the relevant Labour Inspector. This is in direct violation of Section 22 of the Minimum Wage Rules.

### *Secondly – do the brick kiln owners pay the legal wage and the negotiated wage?*

The brick kiln owners deviate significantly from the legal prescribed minimum wages or those negotiated by local unions as wage rates, with many paying less than the legal minimum wage. As the settlement of wages occurs at the end of the brick kiln season, owners often change a rate that they stipulate at the end of the season, and workers are not in a position to negotiate on this rate.

The study demonstrates that none of the workers are paid overtime, or for a weekly rest day: as the minimum wage law requires this to be paid where applicable, then none of the workers are being paid the minimum wage. Leaving aside overtime and paid weekly rest, 33% workers were paid less than wage prescribed by the state government; 25% of the workers were paid minimum wage plus minimum bonus rate of 8.33%; another 30% were paid minimum wage with bonus, equivalent of gratuity and EPF.

	Wage rate (INR) applicable from 1.9.2015	Wage rate (INR) applicable from 1.3.2016	District/region where the specific wage rate was reported
Minimum wage for moulders (without contractor commission) as State government's notification	538.3	559.64	Prevalent in southern region comprising of Mansa, Bhatinda, Muktasar
MW for Moulder (without kilns of contractor commission) + Bonus (@8.33%)	583.1	606	Reported in some of the Southern region like Bhatinda
Moulder (without contractor commission): Wages + Bonus+ Gratuity +PF (MW +@27%)	683	710	Prevalent in northern region comprising of Amritsar, Phugwara

**Table 9: Minimum piece rate wage in Punjab (per 1000 bricks)**



	Less than MW	Up to MW+ Minimum Bonus	Up to MW+ Bonus+ Gratuity+ EPF	Wage rate + Bonus+ Gratuity+ EPF	More
Summer (Apr – Sep)	29%	17%	31%	22%	1%
Winter (Oct – Mar)	37%	33%	29%	N.A.	1%

**Table 10: Workers receiving minimum wages**

### What would workers earn if they were on an equivalent time based wage?

In Punjab, moulders are considered as skilled workers and accordingly, a comparison with the time based minimum wage for skilled workers is used. To determine time-based wages a ‘time-motion’ study is normally carried out. It is not clear if the Punjab Labour Department has carried out a time-motion study to assess the productivity of workers and then decide the minimum piece wage rate.

In order to facilitate technically correct comparison, this research is referring to the study titled “Ergonomics Study in a Brick Kiln: A report on Time requirement and Energy Expenditure for different operations in brick making” by Gaur G. Ray Industrial Design Centre Indian Institute of Technology Bombay. The study determined daily productivity of workers. From this, this report establishes the hourly productivity of workers at 59 bricks/hour. This basic calculation is used to compare the time-based rate of a skilled worker and piece rate wage of skilled brick moulder worker in Punjab.

Minimum wage particulars in Punjab	Wage rates
Minimum wage (hourly rate) of skilled worker in Punjab as on 1-Sep-2016	Rs. 44.00 per hour
Minimum wage (piece rate) of Moulders in Punjab as on 1-Sep-2016	Rs.578.89 per 1000 bricks
Minimum wage (equivalent time rate) of Moulders considering productivity of 59 bricks/hour	Rs. 34.00 per hour
Minimum Wage (piece rate) of moulders equivalent to Minimum Wage (time based) of skilled workers should be	Rs.745.76 per 1000 bricks

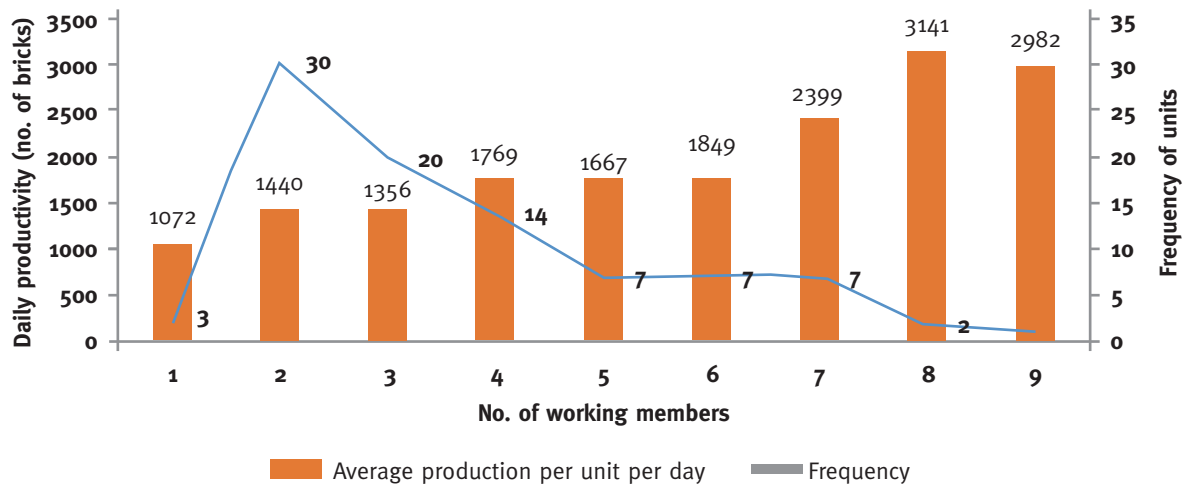
**Table 11: Comparison of time-based and piece rate based minimum wages**

From the comparisons it is clear that the piece-rate minimum wage rate of brick moulders is significantly less than the time-based rates, i.e. a difference of Rs.10 per hour and Rs.166.87 per 1000 bricks, which is almost 30% of their total wages. Since bonus, EPF and gratuity is calculated on the minimum wage earned, the difference further increases.

### In reality: how many bricks do working units produce per day in Punjab?

50% of the respondents work in two (30%) and three (20%) working member units, producing on an average 1398 bricks per unit in a day (466 to 699 bricks per person per day). This is approximately 815.5 bricks per day, but, as set out above, this is over an extremely long average working day of 12.5 hours. Whilst this averages at 65.24 bricks per hour, we have based our equivalent time rate earnings on the findings of the more extensive IIT study that found 59 bricks per hour is the average acceptable (considering all minimum wage criteria) number of bricks that can be made.

The chart below represents the average production per unit on a daily basis in reference to the number of working members in the unit.



**Graph 4: Productivity details**

A unit’s productivity varies on the basis of different factors: the number of working members in a unit, the age and physical capability of unit members, the quality of earth, the tools used, and proximity to source of water and more. Contrary to popular perception in the brick kiln sector, the analysis of data shows the volume of production is not directly proportional to the number of working members in a unit; rather productivity per person is higher in smaller sized worker units. This is because, even though young children and older people are part of the workforce, working full day work shifts, their work does not necessarily increase the productivity of the overall unit a significant amount. Hence, the perception of workers/family members that children will increase productivity is questionable.

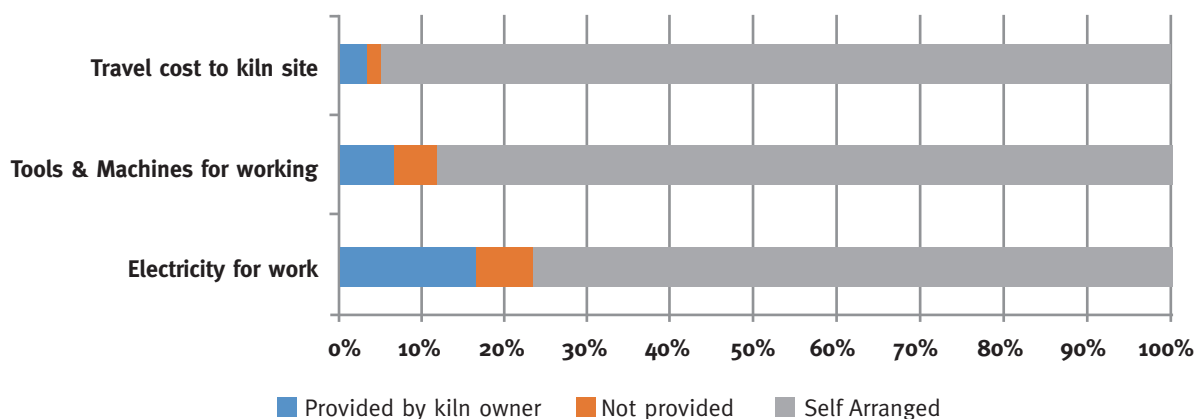
Smaller worker units or 1-2 members report a much higher productivity. A significantly higher production of one working member units is imperative in breaking the perception of greater productivity in group work.

### What other things do workers’ pay for related to their job?

**Tools:** Apart from their personal expenses, brick kiln workers also spend money on tools and machines to be used in the production process themselves. Around 90% of the workers reported paying for all the tools to be used for production.

**Electricity:** The working hours of brick kilns are such that workers have to carry on with the production process at night time as well. For this purpose, only 17% of the workers were provided with electricity by the owners. 77% of the workers had to arrange for it themselves. Only 4% of the workers were provided with electricity at the work site free of charge, 90% of the workers had to pay for it. In case it was provided by the owner, it was chargeable and the value was deducted at the end of the season at the time of final settlement.

**Travel cost:** Only 3% of the migrant workers surveyed had travel arrangements to the work site and back to the source location done by the kiln owner; while 95% of the migrant workers had to arrange for their own transportation. Additionally, 100% respondents had had to pay the travel costs themselves. They either have to pay the cost of travel to the kiln site themselves (generally from the money taken as advance from the labour contractor) or the labour contractor arranges for transportation of all the worker units recruited by him and deducts the cost per unit from their earning at the time of final settlement.



Graph 5: Additional expenses for work

## C. Working hours, overtime entitlements and leave

Of the brick kiln moulders interviewed, most start their work in the late hours of the night and continue until the early morning. At approximately 1 am, the moulders start with digging the earth and mixing it with water to prepare the dough with which to make bricks. Then they shape the dough into bricks with the help of moulds. Workers finish this process by early hours of the morning and then spread them in the sun to dry from all sides. Once they spread them out to dry most workers would take a break from work. After a few hours, the helpers or main workers start turning the bricks from time to time to ensure even drying from all sides. This process gets completed till 7-8 pm at night. After which they start with work again at 1 am and repeat the process on a daily basis.

### Working hours

As outlined above, brick moulding is a very intensive job and has long working hours. On an average, workers reported working 13 hours a day in summer (March-June and September to December) and 10 hours a day in winter (December – February).

The age break-up of the analysis shows that children between 5 to 13 years of age work on an average for 9 hours a day in summer months, whether in the capacity of main workers or helpers and 7 hours in winters.

	5 – 13 Year	14 – 17 Years	18+ Years	Overall
Effective working hours per day, Summer <sup>71</sup>	9	12	14	13
Effective working hours per day, Winter	7	10	11	10

Table 12: Average number of hours worked

Children over the age of 14 work, on average, 12 hours a day in summer months and 10 hours in winter. On average, adult workers work for 14 hours in summer months and 11 hours in winter months.

In addition to this, women also carry a double burden of performing household chores for the family. Hence, after working extremely long working hours in the production process, they have to prepare food, clean clothes and utensils and care for children, leaving little time for rest on a daily basis.

<sup>71</sup>Effective working hours is the total number of hours worked in a day after subtracting the period of rest.

## *Number of hours worked in a day and week*

According to Factories Act, the rules regarding number of working hours are as follows:

- A worker will not be required to work more than 48 hours a week under normal circumstances.
- A worker should not be required to work more than 9 hours a day, spread over 10.5 hours due to rest periods. With permission of the state department and the chief inspector, the total spread over period may increase till a maximum of thirteen hours.
- Workers working more than 48 hours a week or nine hours a day are entitled to be paid an overtime wage, which has been discussed above.
- The Act further states that a worker should not be allowed to work more than 10 consecutive days without a rest day. For the ease of implementation, the act mandates that workers must not be required to work on the first day of the week, i.e. Sunday.

Based on the primary research findings, the brick kilns in Punjab are not following the law. An average worker works 70 to 90 hours in a week, with the number of working hours of an average of 10 to 13 hours spread over an 18 hour period. In many of the cases, the workers work for 15 days at a stretch without taking any rest on the first day of the week.

## **Calculation of overtime entitlements**

Section 59 of the Factories Act states:

- If a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, the worker is entitled to extra wage for overtime work.
- The Act further clarifies that “ordinary rate of wages” means the basic wages plus any allowances.
- In case of workers are being paid on a piece-rate basis and working overtime/extra hours, the law states that workers need to be paid for these extra hours at the rate of double the minimum piece rate wage fixed by the government.

Further, the Factories Act clearly limits the number of extra hours that a worker can work as overtime. According to the Act, there are two limits set in this regard:

- The total number of hours of work in a week including overtime, shall not exceed sixty and the total number of hours of overtime shall not exceed fifty for any one quarter (section 65).
- The total number of hours of work in any week, including overtime, shall not exceed sixty and the total number of hours of overtime work in any quarter shall not exceed seventy-five (section 66).

In practice, there is no concept of overtime as all working hours are considered to be regular. This is claimed under the pretext that the workers are free to work at their own pace and chosen time.

From the primary research it is found that:

- Practically, there is no distinction between normal and overtime working hours as all working hours are considered normal and workers are not getting paid any overtime wages.
- Moulders are working for seventy to ninety hours in a week. The overtime hours in a quarter ranges from two hundred sixty four (264) to five hundred thirty four (534) hours.

Clearly, the brick kiln workers are working far more overtime than what the Act mandates, i.e. against 50 – 75 hours overtime it is 264 – 534 overtime hours. This can certainly be linked to piece rate wage system, which removes the onus of this violation from the owner to worker. On top of that, they are



not being paid any extra wages. Due to low piece rate wage system, the workers are forced to work these long and extra working hours in order to repay the debt (in form of advance) and make a living. An estimation of loss of brick kiln worker is in the table below:

	Monetary loss of a brick kiln worker due to absence of overtime wages	
	Per Quarter	Per Month
As per the 75 hours of overtime in a quarter (permissible under law) & at the current minimum piece wage rate, i.e. Rs.578.89/1000 bricks	Rs.5,100	Rs. 1,700
As per the actual 262 - 534 hours of overtime in a quarter & at the current minimum piece wage rate, i.e. Rs.578.89/1000 bricks	Rs. 17,952 to Rs. 36, 312	Rs. 5,984 to Rs. 12,104

**Table 13: Loss to a worker due to non-payment of overtime wages**

The above losses due to no payment of overtime wages can increase significantly if one considers the wage rate to be equivalent to time-based minimum wages of skilled worker and further if the allowances like bonus, EPF (pension) and Gratuity is included.

*Timing of work*

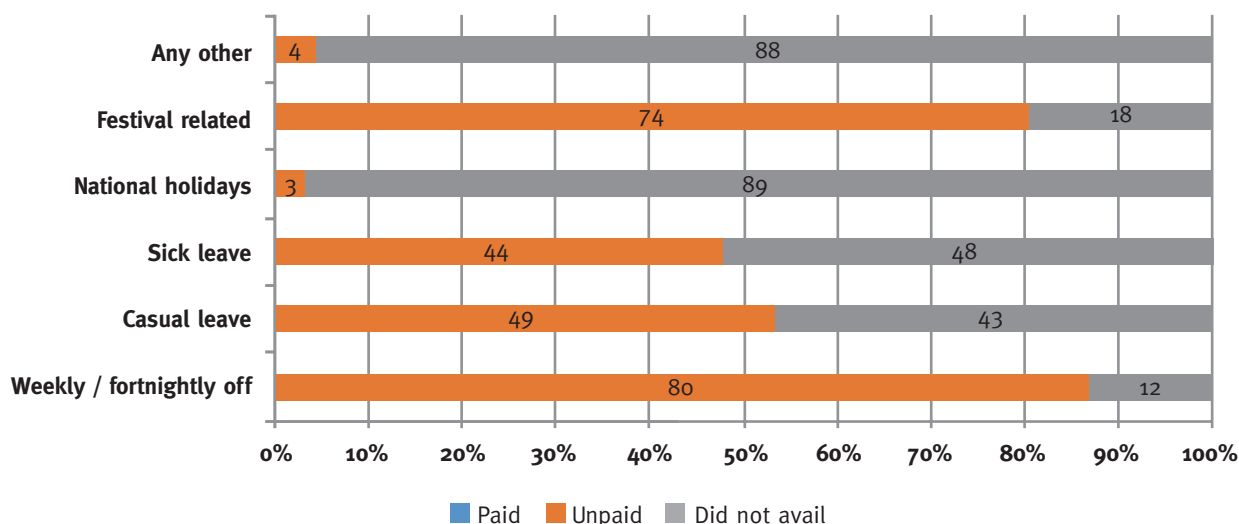
According to the Factories Act, women are not permitted to be employed in factories between 7 pm and 6 am. Further, male children are not permitted to be employed in factories between 10 pm and 6 am, whereas, female children are not permitted to work between 7 pm and 8 am, however, this law is not implemented in any of the kilns in Punjab.

As most migrant workers live at the kiln site itself and due to piece rate system of payment and lack of recognition of workers, they work even during nighttime. Workers reported their work day starts in the late hours of the night and goes on till early morning. Women and children are equally involved in this process as men. This suits the workers as well as they can mould the bricks overnight and leave them to sun dry during the day.

*Leave entitlements*

Due to the piece rate informal payment system there is no system for holidays or paid leave. In some cases workers are able to take leave during the year, however since production is affected by it, the worker has to bear the brunt of lost productivity/wages.

None of the workers reported a paid sick leave, casual leave, weekly leave, for national holidays or festivals by the employers. Since piece rate wage system directly links the wage with productivity, workers normally do not take leave in the same way as formal employment. 89% of the workers did not take a day off on any of the three national holidays in India, i.e. Independence day (15 August), Republic day (26 January), Gandhi Jayanti (2 October) that are mandatory holidays as per the National and Festival Holiday Act. Companies required to work on these days are required to take special permission from the concerned authorities and need to pay the employees working on this day double the daily wages. Overall, 74% of workers reported taking an unpaid leave to celebrate at least one festival, 80% of workers also reported taking weekly or fortnightly rest day. 44% reported taking unpaid sick leave and 49% reported casual leave. The average number of leave taken is mentioned in the table below.



**Graph 6: Unpaid leaves or non-productive days**

### *Unproductive or unpaid-working days at the kiln site*

In addition to leaves, workers often have to spend a number of unproductive days at the kiln site. This may be due to various reasons but the cost of it is borne by the workers themselves. The reasons and the average number of days spent are mentioned below. As can be seen from the table, a worker loses around one quarter of the total employment period due to multiple factors.

Duration migration	Preparation of work site and shelter	Raw of material / water not available	Rain	Festival / off days	Medical leave	Dispute with owner	Shopping	Any other
2-4 months 31	5	5	16	6	6	0	10	8
5-7 months 58	7	11	26	10	7	0	16	13
8-10 months 77	5	14	30	13	10	11	18	25

**Table 14: Unpaid leaves or Inability to Work due to Weather**

- Preparation of work site or shelter: on reaching the kiln site, the workers are required to prepare the area for work by clearing some space where the soil will be made into a dough used to mould the bricks and subsequently lined for sun drying. Additionally, workers also need to prepare shelter in the form of a room or a tent for the stay of the family at the kiln site.
- Non-availability of raw material or water: Soil and water are the main raw materials used in the brick moulding process. Soil may be sourced by the kiln owner a large distance from the kiln site, or moulders may be given access to land where soil can be dug by the moulders themselves. Similarly, it is the responsibility of the kiln management to provide access to water to be used in the production process. Non-availability of either of these two materials often leads to loss of working days of the workers.
- Rain: Brick kiln sites are all situated in open spaces with large surface area to allow sun drying the bricks and an open chimney for further baking the bricks. Hence, rain is a major hindrance to

the production process. This can mean that the production process stops in the monsoon season (July to September). In addition there is rainfall and hail storms in the post monsoon and post winter transitional season, during which workers have no choice but to stop production and wait for the weather to clear. This is responsible for nearly half the number of non-productive days workers spend at the kiln site.

- Dispute with owners: Workers employed for longer periods of 8 to 10 months reported having non-productive days due to disputes with owners.
- Shopping: Workers on an average spend 2 days a month on buying food and other basic necessities for living at the kiln site. These days generally occur right after the workers' receive the sustenance allowance from the labour contractor. It generally coincides with the weekly or fortnightly rest day taken by workers.

From the primary research, it is found that workers spent 31 non-productive days at the kiln site during the second to fourth month of their employment, 58 days during month 5-7 and 77 days during month 8-10. The wage loss of the brick kiln workers due to this is presented below in the table:

Employment period	Average	Non-productive	Approximate wage loss @ days/weeks of minimum wage rate of Punjab government, i.e. Rs.579/1000 bricks as per 48 hours a week.
2 – 4 months	31/4 weeks		Rs.6,500
5-7 months	58/8 weeks		Rs. 13,000
8-10 months	77/11 weeks		Rs. 18,000

**Table 15: Wage loss due to non-payment of leaves or unproductive days**

## D. Transfer between kilns

58% of all the workers reported to have worked a new kiln in the last season. This is more prominent in the case of interstate migration than for workers from Punjab. In Chhattisgarh and Uttar Pradesh, 77% and 63% of the respondents respectively found employment at a new brick kiln in the last season whereas in Punjab 66% were employed at the same brick kiln as the previous year. Workers did not specify any reason for changing to a new kiln, except that they followed the decision of labour contractors in this regard.

	Chhattisgarh (%)	Uttar Pradesh (%)	Punjab(%)	Total (%)
New brick kiln	77	63	34	58
Same kiln as previous season	23	37	66	42

**Table 16: % of workers reporting change of kiln**

## E. Employment Records & Registers

The analysis in this section presents workers perception and awareness of the records and registers maintained by the brick kilns with regard to their employment. Every brick kiln is required to function like a formal enterprise and is expected to comply with a variety of labour laws: records detailing the particulars of the workers employed, work done by workers, minimum wages payable to workers, wages paid to workers, deductions made from wages, receipts against which deductions are made are required to be maintained as per the Payment of Wages Act, Minimum Wages Act, Factories Act and Payment of Bonus Act.

The first part of this section focuses on workers' understanding of the different components of record keeping, as the research team was unable to gain access to verify what records were maintained by the kiln management. It is not known which specific records are maintained by the kilns however, as brick moulders are hired on contractual basis by the labour contractor, with the brick kiln owners using this to avoid maintaining complete records of the employees claiming that workers are not directly employed by the kilns.

The second part of the section refers to recent decisions of the National Human Rights Commission, and state High Courts, have found that a lack of employment records in the kilns raises a presumption of bonded labour – this is important for civil society organisations to know and utilize where possible.

## **Employment related records**

Workers do not obtain any written contract or ID cards from the owners. In many cases, owners hire workers from a labour contractor, and therefore claim that it is not necessary to have any written agreement directly with the workers. Labour contractors usually do not hold the required license to contract workers. The fine for recruiting without a license is so low for contractors, that in most cases, there is no attention paid to this requirement. The brick kiln management also does not have any written agreements with labour contractors, hence the system of recruitment and employment is not recorded and continues informally.

In relation to wages, there is often an oral commitment between the contractor and worker regarding the wage rate and working period; however as outlined earlier in many cases this rate is not honoured, and as there is no written confirmation, it is very difficult for workers to raise a complaint about being paid a different wage rate. The informal employment terms and conditions are designed in such a way that the workers are made to commit to work at a kiln for the entire season.

### *Muster roll*

Every enterprise which employs wage earners is required to maintain a muster roll which registers the names of all workers according to the Punjab Minimum Wages Rules, 1950. The register is also used to maintain accounts of production of each worker unit by the munshi or manager of the kiln (i.e. how many bricks made by each family/working unit). Most of the workers were unaware of the records and registers maintained by the kilns and depend upon the labour contractor to inform them of number of bricks made and other relevant information.

Only 27% of workers reported being registered in the muster roll at the brick kiln. However what the workers understood as the muster roll – a register kept by the accountant - is not necessarily the official muster roll prepared by the kiln to be used for reporting purposes and submitted to government authorities. It has not been verified if this is the same muster roll that is submitted to government authorities or is just maintained for internal accounting purpose. Discussions with some of the labour contractors and managers reveal that owners do not necessarily use the same muster roll for reporting purposes.

Essentially, one member per worker unit is enrolled in the muster roll. This individual is usually the male head of the unit and is the same person who receives all payments from the labour contractor on behalf of the worker unit. Even if one were to assume that the owners are using the muster roll correctly, 73% of the workforce is not part of the muster roll. 100% of the workers enrolled in the muster roll are male, despite presence of large number of women at the worksite, working as main workers. Even though 47% of the main workers are women, not one of them is registered in the muster roll, leaving no official record of women working at brick kiln. The Maternity Benefit Act, 1961 requires a muster roll to be maintained at each kiln site as well; hence the absence of women from the muster roll excludes them from maternity benefits available under the Act. Due to lack of inspection and poor implementation of law, brick kilns are violating laws on this front as a norm.



Additionally all forms of 'payment' (advance/loan, subsistence funds, wage settlement) are made to the male head or some male adult belonging to the group. The female members of the working unit, even though they work the same hours as men, do not get any cash in hand from the employer, be it in the form of advance, sustenance allowance or earning at the time of final settlement. Not a single female worker reported receiving wages from the contractors or owners.

## **Record of work done; bricks made**

Indian labour law requires employers to maintain records of the work done by their employees. However, it appears that it is not common practice for brick kilns to maintain even mandatory records on a real time basis. Most of the records are prepared to submit annual returns to different departments such as the Factories Department and Labour Department, although the study could not verify whether even this level of compliance was being met.

In reality, the records of accounting and production are limited to an informal register maintained by the manager (munshi) of the kiln. The manager records the amount of money given as advance, sustenance allowance and the daily production (number of bricks made) of each worker unit. The manager counts the sun-dried moulded bricks that are brought to the chimney to be fired. At this stage, the damaged or low quality bricks are discarded and are not counted.

In relation to a record of the number of bricks made, in some kilns the manager also shares a receipt of the quantity of production with the head of the worker unit. The labour contractor also sometimes keeps a record and, in some kilns, workers are also given a pocket notebook at the start of their employment to maintain their own personal records of production and accounting. These pocket notebooks, however, are taken back and destroyed by the manager at the time of final settlement. The details of production in the worker notebook are highly informal as it has no signature of either the munshi or labour contractor.

### *What about records of the advance taken; or records of wages paid?*

Only 28% of workers reported receiving documentary evidence of the advance that they took, while 67% reported that though they did not receive any receipt, it was noted in the labour contractor's register. Only 6% responded with no evidence being kept by either party. This being said, the 28% who reported receiving evidence are referring to a small note provided to them by the labour contractor. This note is not of any legal significance. Similarly, the contractor's register is not of any legal validity either. It is merely a register maintained for record keeping for the contractor himself. This register is not used for any accounting purposes. It is destroyed on the completion of each season. In summary, there is little, if any, legal documentation and receipts for advances provided.

The Punjab Rules on Minimum Wages enforced from 1950 state that employers are required to issue wage slips to all workers mentioning the wage period, payment in each wage period, date of payment, amount of deduction, number of days worked over time etc. None of the workers reported receiving a wage slip stating these facts. Currently, wages are paid in their entirety (with deductions for sustenance allowance, advance and other matters) are paid at the end of the period of employment. During the final settlement of wages, there is no documentation or wage slips given to the workers. The workers do not get any payment slips/documentation related to advance amount or sustenance amount provided.

In the absence of any wage slips and a fixed wage period, the process of payment is largely informal.

At the time of final settlement, the accountant calculates the total earning of all labour contractors according to the total production of the worker units recruited by them. A representative from the worker unit, usually the male head is present for this meeting. As set out above, the worker might

keep track of bricks made by the worker unit in his own worker notebook. At this point in time, in case the worker finds a discrepancy in his personal records and those maintained by others, he may raise the issue with this labour contractor or the owner. However, in most cases, the owner relies on the records of the manager (munshi) over the personal records of the worker.

After the account of the worker is settled, the accountant takes any record kept by the worker regarding the production or wages paid. Some of the workers even reported managers destroying their informal notebooks once the final settlement is done. The payment made to workers is done in cash, with no receipt/documentation provided, hence there is no record that the workers hold at the end of the employment of their work at the kiln.

### *Did workers ever see the informal accounting records?*

As outlined above, most respondents reported that basic records were maintained by owner or manager or contractor in relation to the sustenance allowance taken and wages due based on the number of bricks made. However, when asked if they had ever asked to see these records, 49% reported affirmatively and 51% negatively.

## **Why a time-based system would address some of these issues**

In Punjab, brick kilns are classified as factories. The Factories Act states that all workers found at the site of the factory while the production process is in progress are to be considered as employees of the factory, until proven otherwise. Therefore, in Punjab, all workers present in the worker/family unit of brick kiln workers are meant to be lawfully considered employees and deserve to be paid individually.

As explained earlier, 97% of the workers work in groups, and only the head or representative of the group is registered in the muster roll of the factory (if even this occurs). There are a large number of workers who remain invisible. According to the data, brick kiln owners are reporting a maximum average of 27% of workers, with an average of 73% of workers not being recorded. This is illegal.

This phenomenon can be linked to piece rate system, which encourages workers to migrate with their family members to enhance their production capacity. 89% of the workers had migrated with their families and lived at the kiln site for the duration of their employment; 69% of the worker units include children. Under a time-based system, productivity is measured at an individual level and not a group level, and workers are registered individually. This is likely to discourage children working; whilst the onus would also shift to the employer who will be made directly responsible for violation of any law in this regard.

## **A lack of records raises a presumption of bonded labour**

It is important to note that the National Human Rights Commission (NHRC), which is mandated to oversee the implementation of the Bonded Labour System (Abolition) Act, has held in numerous cases that, where there is a lack of statutory records required to be maintained by the employer, the concerned authority is duty bound to raise a presumption that the labourers engaged were bonded labourers.<sup>72</sup>

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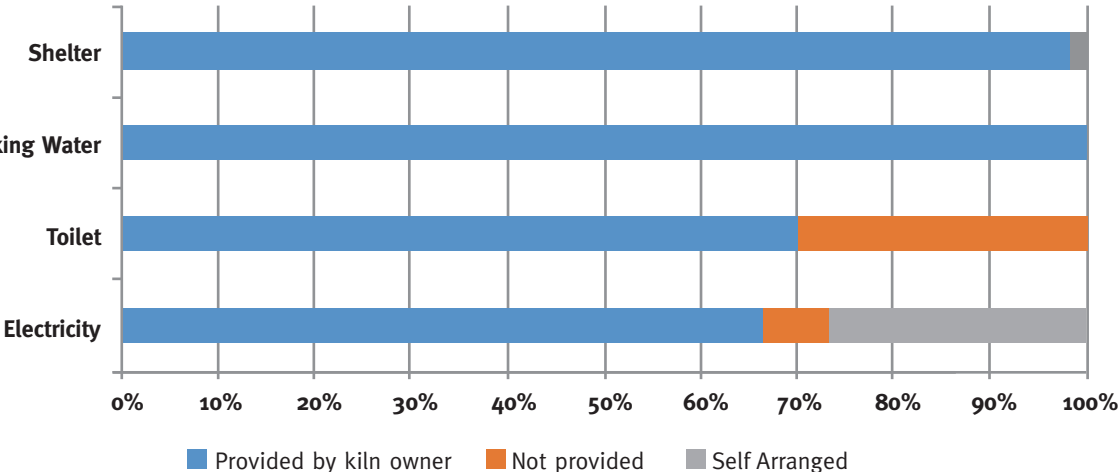
<sup>72</sup>NHRC file number: 685/19/13/2014-BL

A 2013 judgment of the Punjab and Haryana High Court in the case of *Shiv Bhatta Company and anr v National Human Rights Commission*<sup>73</sup> has reaffirmed the position of the NHRC, stating that “*The fact of non-maintenance of records was a serious offence and the NHRC found that it raised presumption that the allegations made in the complaint with regard to forced labour or confining the labourers against their wishes were correct. No such satisfactory material was produced that the concerned labourers were not bonded labourers inasmuch as no documents were produced to show payments to them...We find nothing wrong in drawing of such presumption.*” In Uttar Pradesh, the Allahabad High Court upheld an NHRC order which found that the absence of employment records in a brick kiln and insufficient evidence to the contrary was sufficient to establish a situation of bonded labour.<sup>74</sup>

## F. Access to basic amenities, health and education

### Housing facilities

This analysis includes responses from inter-state migrant workers only i.e. respondents from Chhattisgarh and Uttar Pradesh. The obligation of the employer to provide basic amenities and facilities for migrant workers is different to the obligations for local employees.<sup>75</sup>



Graph 7: Basic amenities and facilities available at the kiln

#### Shelter

98% migrant workers reported that shelter was provided to them by the kiln owner free of cost. Only 2% of the respondents had to arrange for their own accommodation at their own expense. However, shelter provided by the owner was essentially a room that was built by the workers themselves. It is a common practice for the kiln owner to provide workers with land and unbaked discarded or damaged bricks and the workers would construct a room using that.

<sup>73</sup>Mordhwaj @ Mohan Chauhan v. National Human Rights Commission and Others Cit: (2012) 4 LLJ 681 P&H. Decided on 19 August 2013, CWP-17927-2013

<sup>74</sup>Shiva Ent Udyog v. National Human Rights Commissions and Ors Cit: 2011 (3) ADJ 189

<sup>75</sup>The Inter State Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1979, s16(d) stipulates that it is the duty of the contractor to provide and maintain suitable residential accommodation for the workers during their employment.

The baseline report found that, from 208 kilns surveyed, on average the housing dimensions for entire families was 2.69 x 2.83 x 3.01 meters (HxWxL); 7.6 square meters. According to the law, the floor area of each quarter housing a family is required to be 10 sq. meters.<sup>76</sup>

### *Drinking water*

Under the Kaarak study, all respondents reported that drinking water was provided by the kiln owners, however, many also complained about its quality. Instead of having access to clean drinking water, most respondents reported using the same water for all purposes.

The baseline assessment of 208 kilns analysed access to the 5 main sources of water at the kilns: hand pumps, tube wells, Sub canals, water works and tankers. According to the report of the Chandigarh Ground Water Bureau, the ground water in the Punjab districts of Mukhtsar, Bhatinda and Mansa is saline and not fit for consumption. This means that water available from sources such as hand pumps and tube wells are not considered safe for consumption. Ground water at few places has high concentrations of heavy metals such as Lead, Chromium, Cadmium, Copper, Cyanide, Nickel; usually around the industrial hubs like Ludhiana, Amritsar, Mandi, Gobindgarh, Kapurthala. In these circumstances, the consumption of such water can cause serious health problems. The district of Hoshiarpur has shown high levels of Selenium, Arsenic and Aluminium.

The baseline data found that the water source at the kilns is mainly derived from hand pumps and tube wells. Two kilns in the district of Bhatinda and 1 kiln in the district of Hoshiarpur access water from sub canals that are open sources with high likelihood of pollutants. The district of Jalandhar only has access to hand pump and tube wells, despite the CGWB finding that Jalandhar is one of the many districts which has shown presence of micro-organisms and increased reports of gastroenteritis and other water borne diseases in the ground water. Of the 208 kilns surveyed, 86.72% do not provide filtered water to the workers. Only 14.27% kilns have water sources at the kilns. 8.7% of the kilns have water sources that are at a distance greater than 1 km and 46.55% are less than 1 km.

### *Sanitation*

70% of the workers reported to presence of toilets at the kilns whereas the remaining 30% reported that there were no toilets at the kiln.

Though, the toilets are present at the kiln site, they are in limited numbers which are not enough for all workers at the kiln site. Additionally there was often a lack of water for the toilets. These factors pushed a lot of workers to open defecation in the early morning hours, in areas around the kiln site instead of using the toilets. However, this was not a viable option during the day, especially for women, so they would have to use to the toilets provided even when they were mostly in poor working condition. According to the VSJ baseline data, 13.3% of the kilns had Indian toilets, 3.8% had western-style toilets whilst 72.3% of the kilns had boar facilities. A boar toilet mainly consists of a 4-8-inch-wide pipe buried in the ground. Due to an infrequent water supply and lack of drainage, this causes severe odour problems and lack of proper drainage causes clogging leading to particularly unsanitary conditions. The toilet is considered difficult to use as the pipe is quite narrow.

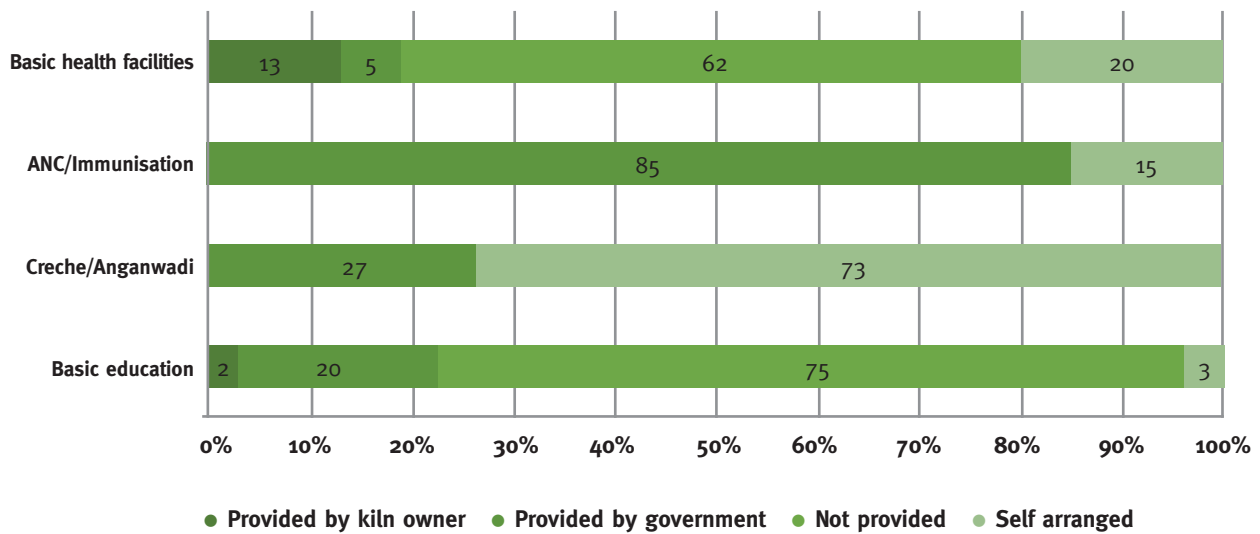
For bathing, women construct four walls to use as a bathroom using the same bricks provided by the owner to build rooms.

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<sup>73</sup>Ibid, s45.



## Health and education for migrant workers



Graph 8: Health and education facilities available at the kiln

### Healthcare

18% of workers reported having some sort of basic health care and first aid facility at the kiln site, provided by either the owner (13%) or the government (5%). The remaining 82% of the workers reported having no assistance. 70% of workers reported having to pay themselves for healthcare, whereas 30% were able to get free treatment. However, cases where monetary assistance was provided by the kiln owner for medical treatment of workers or their families, this amount was then deducted from their final wage earnings at the end of the season.

The baseline study found that the average distance from the nearest health sub centre is 3.69 km and the nearest primary health centre is 7.04 km from kilns. As kilns are located on the outskirts of towns and villages, in cases of emergencies, immediate health care facilities can often be inaccessible.

### Anganwadis and Schools

With regard to the children, 27% of the workers reported Creche or Anganwadi services were provided to them by the government at the kiln site whereas 73% reported not having access to any of these facilities. 23% of the workers reported having access to basic education facilities for children under 14 years of age; 20% were provided this by the government and 3% had arranged for basic schooling for children themselves. The baseline data also found that, on average, government primary schools were 1.87km from the kilns, whilst under the Right to Education Act<sup>73</sup>, the government and local authority should ensure a school for at primary classes 1 to 4 within 1 km radius (a ‘neighbourhood’).

### ANC and immunization services

85% workers reported having access to anti-natal care and immunization services provided by the government for pregnant women and young children.

<sup>73</sup>Section 6, Right to Free and Compulsory Education Act 2009

## G. Access to Welfare Schemes

### Access to Identity cards and Public Distribution System (welfare) cards

Access to government welfare schemes, is vital in addressing income insecurity and poverty. If brick kiln families can access health schemes, below poverty line schemes and rural employment schemes, then income security is increased and levels of poverty and vulnerability reduced.

All of the respondents had access to at least one of the identity cards issued by the Government of India. Almost all the workers had Voter ID and Aadhar in the study area. In UP, 20% of the workers did not have ration cards, 90% did not have access to MGNREGA job cards. Overall, only 30% has RSBY cards for health insurance. Overall, the situation of workers having access to cards and entitlements was worst in UP.

	Chhattisgarh (%)	Uttar Pradesh (%)	Punjab (%)	Total (%)
Voter ID Card	100	90	97	96
Ration Card	100	80	84	88
MGNREGA Job Card	63	10	56	44
RSBY Health Card	30	3	50	28
AADHAR (UID)	100	93	100	98
Caste certificate	3	3	72	27

**Table 17: Workers access to ID and PDS cards**

Additionally, 31% of the survey respondents had access to Below Poverty Line (BPL) cards, 49% had APL cards and 15% had no ration card at all. 13% of the workers from Chhattisgarh had access to the Antyodaya card (providing subsidized food to the 'poorest of the poor' below the poverty line) whereas 65% of the workers from Punjab had access to the Blue card (new Atta Dal Scheme of the Punjab government) where they are eligible to get wheat delivered at the rate of Rs. 2 per kg and health insurance of up to R30, 000 per family.

	Chhattisgarh	Uttar Pradesh	Punjab	Total
BPL	60%	30%	3%	31%
APL	27%	47%	74%	49%
Antyodaya	13%	0%	0%	4%
No card	0%	23%	23%	15%
Blue card (for Punjab)	NA	NA	65%	NA

**Table 18: Workers access to PDS cards**



Anti-Slavery International, founded in 1839, is committed to eliminating all forms of slavery throughout the world. Slavery, servitude and forced labour are violations of individual freedoms, which deny millions of people their basic dignity and fundamental human rights. Anti-Slavery International works to end these abuses by exposing current cases of slavery, campaigning for its eradication, supporting the initiatives of local organisations to release people, and pressing for more effective implementation of international laws against slavery. For further information see: [www.antislavery.org](http://www.antislavery.org).

Registered charity: 1049160

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