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Forced labour in the brick kiln sector in India

Bonded labour remains widespread throughout India, in a variety of sectors including brick kilns, agriculture, quarries, mining, textile and garment factories, cotton production, the silk industry, and domestic work. While estimates vary immensely, it is certain that millions of people are affected.

Bonded labour in India is the product of poverty, discrimination, social exclusion and the failure of the government to implement laws prohibiting the practice. Bonded labourers are chronically poor, and most are also landless or near-landless. The vast majority are initially trapped in debt bondage because they have no other way of subsisting apart from taking a loan from a landlord or employer. Once taken, they lose control over their conditions of employment, and what, if anything, they are paid. The debt is often inflated through exorbitant charges, making it impossible to repay and trapping the worker in a cycle of debt. Bonded labour does not affect the population of India equally. The vast majority of people who are in debt bondage are Dalits, of low caste status, or indigenous people – also referred to as members of the Scheduled Castes and Scheduled Tribes. The risk of bondage is massively exacerbated when the chronically poor are simultaneously subjected to extensive social discrimination arising from their membership of a particular caste, ethnic group or religious minority.

The brick kiln sector is particularly vulnerable to forced and bonded labour due to the employment of a workforce that has predominantly migrated internally, the majority whom are from socially excluded and economically marginalised communities, the widespread use of large advances and loans to secure and control workers, exploitative recruitment practices, and a piece rate wage system which treats the entire family as the wage unit rather than each individual worker therefore resulting in extremely low wages. This is combined with a failure by the Government to implement relevant laws and prosecute offenders, a lack of sustained action targeting the root causes of bonded labour, proposed changes to laws which would heighten vulnerability, and an environment in which workers experience threats and violence when seeking to organise and act collectively. Research points to the ongoing and widespread abuse and exploitation of brick kiln workers, including children, and situations of forced labour, with many trafficked into situations of bonded labour.

1. Bonded labour of brick kiln workers

It is estimated that there are at least 100,000 functioning brick kilns in India. 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. Several sources believe the actual number employed in brick kilns to be significantly higher. Many of India's brick kiln workers have migrated internally from the poorer states in India, and are predominantly from

groups that are commonly discriminated against such as Dalits, other low castes and indigenous groups, making them easier to exploit. Bonded labour is endemic among brick kiln workers.

Each year, labour contractors (or brokers) secure the employment of workers through the use of the payment of an advance or loan. In the brick kiln, the worker will labour against the advance that he has taken. While the verbal agreement is made with the male head of household, and it is the male head of the household who receives the advance payment and a weekly or fortnightly payment for expenses, the whole family are considered part of the agreement. Women and children therefore work long hours in the kilns against the loan or advance, but are not recognised as workers in their own right and do not receive any payment directly.

The remuneration for most activities in a brick kiln is on a piece rate basis (paid per brick). Brick kiln workers do not receive a regular wage, since their earnings service the debt. Instead, they receive a weekly or fortnightly payment for food and other necessities which is added to their debt. At the end of the brick making season, their earnings are calculated and adjusted against the amount of advance taken and total received for expenses. Workers usually have no idea until the end of the season how much they are entitled to receive, or if they still owe the brick kiln owner. Although required under the law, there is often no employment records maintained and there is no transparent and verifiable process of wage determination and wage settlement against advances. If the advance payment is not considered by the employer to have been cleared, the worker will be tied to return to the same brick kiln the following season. As they often take new loans to clear past debts, many workers remain in perpetual bondage.

Subhash* from Kanut village in Orissa has one acre of land on which he and his family work. During the rainy season, they are unable to cultivate anything. He had seen people from his village going out to different states looking for jobs, therefore he too decided to migrate. An agent from a nearby village facilitated his migration to work in a brick kiln in Andhra Pradesh. Brick kiln employers prefer family labour therefore he, his wife and a relative went as a unit. The agent gave him an advance of Rs40,000 (approximately US\$625). “We left our house and children behind and migrated to a new place where we neither knew anybody nor understood the region’s language. We toiled for more than 14 hours a day. When we fell sick, we could not avail of any medical facilities.” Every week they were given Rs500 (approximately US\$8) calculated on a per-day basis, for their food and other expenses. At the end of the season (which can range from 7 to 9 months), the employer gave them Rs1500 (approximately US\$23) each for their travel to their villages, and said there was nothing more to pay since everything else went towards paying off the advance and weekly expenses. “Thus, we came back home, empty-handed.”¹ (*Name changed to protect identity)

The working and living conditions in brick kilns can be extremely harsh. The average working day consists of 15-16 hours. As workers usually live within the kiln, there are high levels of hazardous substances such as arsenic, burnt plastic and dust. Workers, including children, are frequently injured at work. The accommodation is usually

¹Sindhu Menon, *Brick Kiln Workers in India: Migrating into Bondage*, LABOUR File, Volume 9 No: 1 – 2, January-April 2014, p08

overcrowded, commonly with several families living together in one single room. Access to drinking water can be limited, with extremely limited or non-existent provision of toilet facilities. Violence against the workers, including beatings and abductions of family members, is common, especially when labourers seek help for their situations of abuse, exploitation and forced labour. Women are also particularly vulnerable to abuse and sexual violence.

Sahib Singh* and his family belonging to a Scheduled Caste in Punjab, have been in debt bondage on one brick kiln for 14 years. The brick kiln, located in Tarn Taran in Punjab, is owned by a politically influential and wealthy landlord and brick kiln owner. From the age of 12, Singh first worked against a debt of Rs 5,000 (approximately US\$78). At 17, when he was able to repay this debt, the brick kiln owner told him that he and his wife had to continue working to repay the debt of his family - his parents and his 3 brothers who had been working in the kiln for 14 years. After working for 14 years at the brick kiln and not being paid more than Rs.500 (approximately US\$8) per week for the whole family, the total debt currently owed to the brick kiln owner stands at Rs 200,000 (approximately US\$3,118). As they cannot repay this debt, they cannot leave the brick kiln. They are subjected to verbal abuse and physical violence by the owner and the caretaker of the brick kiln, and have been made to sign blank documents which the owner has threatened to use in case they run away without repaying the bonded debt.

*Name changed to protect identity

Children of all ages work in brick kilns, working long hours and undertaking arduous work. A very young child may mix mud and stack bricks. An older child may work as a loader, transporting bricks and ash to the trucks. Children are subject to abuse by employers and the great majority do not attend school, despite this being compulsory for children 14 years and under according to the Right to Education Act 2006. Although nursery services ('Anganwadi') should be provided by the state government for the young children, Anti-Slavery International's partners have found that these services are usually not provided, and that Anganwadi workers, as well as other relevant welfare officers such as health officers, refuse to come to the brick kilns. It is quite common for children working in brick kilns to suffer from malnutrition and stunted growth as a result of the living and working conditions, to fail to obtain immunisations and for adult women to not receive maternity assistance.

Fifteen year old Vikram from Balangir district of Odisha has spent most of his life in brick kilns in various districts in Andhra Pradesh. His parents migrated when he was two years old. For the last eight years his family has been at the same brick kiln in Ranga Reddy and Vikram has worked as a loader for the last two years. His parents return to their village after the season is over, but because they have not repaid their advance of Rs55,000 (approximately US\$858), Vikram is not allowed to leave. Instead he continues to work, loading bricks and ash, in order to try and repay his fathers' loan. The work is strenuous and physically demanding.²

*Name changed to protect identity

² Sindhu Menon, in Labour File, op.cit, p50

2. Legal and policy framework

India has ratified International Labour Organisation (ILO) Conventions No.29 and No.105 on Forced Labour, but it has not ratified ILO Convention No. 138 on the Minimum Age nor has it ratified ILO Convention No.182 on the Worst Forms of Child Labour.

Article 23 of the Constitution prohibits trafficking, bonded labour and forced labour. The 1976 Bonded Labour System (Abolition) Act and the 1976 Bonded Labour (Abolition) Rules outlawed all debt bondage and were intended to free all bonded labourers, cancel their debts, establish economic rehabilitation measures, and punish (through fines and imprisonment) those who employ bonded labourers.

Implementation of the Act is the responsibility of state governments which are charged with empowering District Magistrates with the means of enforcement. Vigilance Committees were to be established at each district and sub-division level, with a duty to provide for the "economic and social rehabilitation" of bonded labourers. In 1997, the Supreme Court empowered the National Human Rights Commission (NHRC) to monitor implementation of the 1976 Act.

In 1978 the Centrally Sponsored Rehabilitation Scheme was introduced. State Governments are provided central assistance on a matching grant basis for the rehabilitation of bonded labourers. The scheme has since been modified and freed bonded labourers now receive Rs20,000 (approximately US\$312). The scheme also provides Rs200,000 (approximately US\$3120) for identified state districts to conduct surveys of bonded labour, in addition to Rs100,000 (approximately US\$1560) allocated for state-sponsored awareness raising programmes.

Several other laws contain protections from bonded labour, or protections for vulnerable categories of workers. Amongst others, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, prohibits forced or bonded labour of a scheduled caste or tribe member; the Child Labour (Prohibition and Regulation) Act, 1986, which defines a child as "a person who has not completed their fourteenth year of age", regulates the hours and conditions of work for child labourers, while prohibiting the employment of children in certain listed industries; and the Interstate Migrant Workman Act of 1979. The Indian Penal Code prohibits trafficking of persons for the purpose of exploitation, which includes "physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs" in section 370 as well as prohibiting unlawful compulsory labour in section 374.

India is participating in a second ILO Decent Work Country Programme, 2013-2017. A joint project between the ILO and the Ministry of Labour and Employment to reduce vulnerability to bonded labour through the promotion of decent work is implemented in the brick kiln sector in select districts of Odisha, Andhra Pradesh, Uttar Pradesh, Chhattisgarh, Jharkhand and Bihar.

3. Factors contributing to brick kiln worker's vulnerability to forced labour

3.1 Poor implementation of bonded labour laws

In the late 1970s and early 1980s following the enactment of the 1976 Bonded Labour System (Abolition) Act, thousands of bonded labourers were identified, released and rehabilitated as a result of action by the state and judiciary. However, by the early 1990s, the process of identification, release and rehabilitation had effectively stagnated throughout India.

Although structures to identify bonded labourers are in place, they are simply not functioning effectively. While large numbers of Vigilance Committees were formed throughout India, and are powerful under the law, they are generally inactive and ineffective in practice. Some members of these committees already have major responsibilities in other government agencies or departments, and may not be able therefore to give priority to bonded labour.

Corruption has also reduced the effectiveness of identification, release and rehabilitation programmes. District-level authorities often succumb to pressure from local landlords and employers who are, in many cases, powerful local politicians, and refuse to act on cases of bonded labourers.

Released bonded labourers encounter many difficulties in obtaining their rehabilitation package from state governments. There are often delays in the granting of release certificates, without which bonded labourers are not able to access state rehabilitation grants. Even once release certificates have been issued, there are reports of frequent delays in the payment of rehabilitation grants. With limited alternative employment options, this greatly increases the risk of freed bonded labourers falling back into bonded labour. Some bonded labourers have reported that they have not received the full rehabilitation amount, or have been forced to pay large bribes before their rehabilitation package has been released. There have been reports that some lower level government employees have asked for payment of bribes before issuing a release certificate or distributing rehabilitation packages.

Rehabilitation assistance has not always proved very effective. This is usually because it does not offer the individuals affected a sustainable livelihood. Whilst the National Human Rights Commission has undertaken consultations in relation to improving the rehabilitation amount of Rs.20,000(approximately US\$312), which is considered too low, the rehabilitation amount is yet to be increased.³ Some states have implemented rehabilitation packages for bonded labourers in conjunction with other anti-poverty programmes, and these seem to have had better results in securing improved standards of living for those affected and their permanent removal from bonded labour.

Migrant workers, which comprise the majority of brick kiln workers, experience particular difficulties in accessing rehabilitation assistance. Labourers rescued in destination states are often denied their rights to effective rehabilitation in their home state.

Enforcement of the penalty provisions of the 1976 Act has been poor, and few employers of bonded labourers are successfully prosecuted compared to the

³ Chhattisgarh State has reportedly increased the rehabilitation payment amount to Rs.50,000 (approxomately US\$780)

widespread prevalence of bonded labour. In many cases this is because employers belong to powerful local elites. Generally, if employers are prosecuted at all, the charges are not under the 1976 Act, but instead on charges of abuse or non-payment of minimum wages. Where a conviction is obtained, a minor fine is considered adequate in most cases and imprisonment is extremely rare.

3.2 Poor implementation of other relevant national laws

There has also been poor implementation of other national laws which, if implemented, would provide protection to workers who are vulnerable to forced and bonded labour.

Crucially, there is little to no compliance with both the central government Minimum Wages Act and the relevant state legislation governing minimum wages. Low wages are particularly prevalent in sectors like brick kilns where payment is on a piece rate basis (on the number of bricks the family made) without a corresponding time rate wage, and is paid to the male head of the household. As there are usually no records detailing the number of bricks made or the rate paid per brick and corresponding wage earned, workers usually find out what they have earned (or still owe) at the end of the season, without being shown any paperwork.

Low wages, and consequent low income, are a major cause of bonded labour. The low wages paid force workers to take loans or advances to cover relatively basic subsistence needs, and leave workers vulnerable to 'economic shocks', because they lack safety nets and savings when the need for emergency expenditure arises. Once an advance has been taken, low wages make it virtually impossible for a worker to repay the initial loan or advance, and increases susceptibility to a cycle of bondage as the worker will be more likely to require additional loans to meet daily needs. Additionally, the piece rate system allows for the payment of the male head of the household only, meaning that other members of the family are not officially recognised as workers or earn their own income, disempowering women workers and children that are legally able to work.

In order to ensure minimum wages are paid, the Labour Department must inspect worksites. Although India has ratified ILO Convention 81 on labour inspections and there is domestic law in place regarding this, in practice, Anti-Slavery International and its partners have found that very few brick kilns are inspected. Almost all brick kilns fail to keep employment records, meaning that it is impossible to determine what workers are being paid.

The Interstate Migrant Workman Act of 1979, which is particularly relevant to the situation of brick kiln workers given that the majority are inter-state migrants, has failed to regulate and facilitate safe and protected migration. The Act has yet to see the development of a system to register labour contractors and labourers, who are recruited at the source area. The provision in the law for registration of migrant workers at their place of work is often not implemented.

3.3 Changes to laws

The lack of effective action against bonded labour has been exacerbated by a failure to protect workers' rights. In recent years, India has amended labour laws to the detriment of the rights of workers and bonded labourers, and has proposed further changes to law that would increase the vulnerability of children and adults alike to forced labour.

In 2005, the government relaxed labour laws in areas such as Special Economic Zones (SEZ), where traditional worker's rights and labour standards do not apply. More directly pertaining to the informal economy, where the vast majority of abuses occur, in late 2007 the government approved another labour law exempting employers with less than 40 workers from maintaining registers and submitting returns under various laws.

An Amendment to the Child Labour (Prohibition and Regulation) Act, which was approved by the Cabinet in May 2015 but has not been passed by Parliament, purports to prohibit children under 14 years of age from working, but yet exempts children who are working in "family enterprises", a euphemism for industries such as carpet-weaving, *beedi* (cigarette) rolling and gem polishing, from this protection. India's Minister of Labour and Employment has argued that the exemption for children working in "family enterprises" will help impoverished families earn a living and give children an "entrepreneurial spirit". Yet there is no proof that allowing children to work will alleviate poverty. Instead, it removes protections from vulnerable children, damaging their chances of obtaining an education and increasing their likelihood of entry into poorly paid work.

The Union government has announced that it is initiating major reform to labour laws, and is proposing four new bills; on wages, industrial relations, social security, and working conditions and safety of workers. At the time of writing, the draft text of the Wages Code and the Industrial Relations Code had been published.

The proposed draft Wages Code is not sufficient to address the current widespread violations of minimum wage legislation. It does not adequately specify what is meant by 'normal working hours' and 'maximum overtime'. There are no provisions to regulate advance payments, which are a major factor by which workers become trapped in bonded labour. It lacks a robust and meaningful inspection mechanism, which is essential to ensure compliance. The definition of employee excludes some categories of workers including agricultural labourers, domestic workers, plantation workers, horticulture workers, and sharecroppers. While it provides minimum wages for piece rate work and minimum wages for 'time work', the risk remains that the piece rate value does not take into account the time required, thereby maintaining the current problem of low wages in piece rate professions causing a vulnerability to bonded labour. Additionally, the Wages Bill does not set out which sectors should be allowed to use the piece rate wage system or a formula for determining the rate per piece in these sectors, and there is no provision to ensure that all workers in a family are recognised and paid individually for their work.

The draft Industrial Relations bill is also of concern. It mandates that all the office-bearers of a registered trade union be persons actually engaged or employed in the establishment or industry with which the trade union is concerned. This limits the ability of workers to choose the persons that they consider best to be their leaders. The code does not contain any provisions aimed at promoting collective bargaining.

In addition to the major labour reforms planned, the Union government has also announced a plan to change the labour inspection scheme so that employers self-report on compliance, and that inspections are determined arbitrarily through a computerised system. Such a change is likely to mean that an even smaller number of brick kilns are inspected per year, and that failures to keep employment records, pay

the minimum wage and meet working condition requirements (safe drinking water, proper sanitation) will not be addressed.

3.4 Difficulties for workers in organising and claiming rights

Brick kiln workers experience significant obstacles in organising and acting collectively to claim their rights, which heightens their vulnerability to abuse, exploitation and forced labour. Some of those who have sought to organise to demand minimum wages, improved working conditions, or to protest against abuse, have reported violence and intimidation from brick kiln owners. In May, brick kiln workers in Ferozepur, Punjab who were assembling peacefully to discuss the newly released minimum wage rates were attacked by brick kiln owners, who shot at, physically assaulted and seriously injured some attendees. Earlier that month, brick kiln workers and an NGO team who had petitioned the district administration for decent work and minimum wages were attacked by brick kiln owners.

Workers lodging complaints of bonded labour and filing for release risk retaliation by employers. In Tarn Taran, Punjab, in December 2013, a brick kiln employer shot at workers who had just lodged a case of bonded labour, petitioning for their release, with the courts.

India has not ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize, or ILO Convention No. 98 on the Promotion of Collective Bargaining. As mentioned previously, the draft industrial relations bill currently under consideration does not promote freedom of association and collective bargaining, and instead contains text that would serve to limit these rights.

4. Recommendations

The Government of India is urged to:

- Conduct a nationwide statistical survey on bonded labour, in cooperation with the ILO, the National Human Rights Commission and with the involvement of the social partners, in line with the repeated recommendation of the ILO Committee of Experts.
- Take immediate action to fully implement bonded labour legislation, ensuring the identification, release and rehabilitation of bonded labourers, and the prosecution of those responsible. The Government should provide detailed information concerning the number of prosecutions and convictions under the 1976 Bonded Labour System (Abolition) Act, as well as the specific penalties imposed on those convicted, as requested by the Committee of Experts.
- Strengthen the ability of the National Human Rights Commission to oversee state mechanisms that are mandated to address bonded labour, ensuring that District officials and Vigilance Committee are discharging their responsibilities under the law effectively, including issuing release certificates and ensuring fulfilment of rehabilitation packages.
- Increase the rehabilitation amount from Rs.20,000 (approximately US\$312) to an amount recommended by the National Human Rights Commission to secure sustainable livelihoods for former bonded labourers and their families.
- Recruit an adequate number of well trained labour inspection staff in conformity with its obligations under ILO Convention No. 81.
- Ensure the labour inspection scheme is not amended to a 'self-reporting' scheme and that regular inspection of brick kilns is carried out – including

discussion with workers, trade unions and non-government organisations operating in the area.

- Amend the current draft Wages Code to: define ‘normal working hours’ and ‘maximum overtime’; amend the definition of employee to include agricultural labourers, domestic workers, plantation workers, horticulture workers, and sharecroppers; regulate advance payments; and include a robust inspection mechanism. The Code should detail which sectors should be allowed to use the piece rate wage system, a formula for determining the rate per piece in these sectors, and include a provision to ensure that all workers in a family are recognised and paid individually for their work.
- Specifically in relation to brick kiln work, ensure that the draft Wages Code guarantees a time based wage for workers instead of the current piece rate payment. This will ensure that all brick kiln workers, including women, are recognised as workers and are paid for the labour that they perform.
- Education (both early childhood and school education) should be recognised as a fundamental strategy to help keep children away from exploitative work including bonded labour. Ensure that the relevant state officials, such as the Integrated Child Development Services officials and Labour Officials, regularly inspect all brick kilns to ensure Anganwadi services are provided and that children are able to attend schools in accordance with the Right to Education Act 2006.
- Improve the condition of labour camps where brick kiln workers live, including the provision of safe drinking water and sanitation facilities.
- Ensure that all workers are safely able to associate freely and become members of trade unions. Investigate and hold accountable employers threatening workers that are trying to peacefully assemble and claim legal rights.
- Put in place programmes targeted to tackle social exclusion and caste discrimination. The Government must also ensure that programmes targeted to poor and marginalised communities reach them.
- Ratify and implement ILO Convention No. 182 on the Worst Forms of Child Labour. The Government should also consider the ratification of ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize, and ILO Convention No. 98 on the Promotion of Collective Bargaining, given the fundamental role that the ability to organise and act collectively has in reducing workers’ vulnerability to abuse, exploitation and forced labour.