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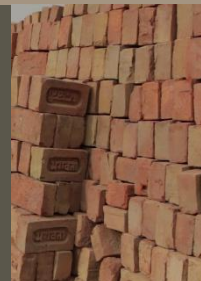
#### Ask the Experts: Interview with Mr. Sudhir Katiyar on ONORC and Social Security for Brick Kiln Workers

December, 2021

Issue  
**ONE**



# brickwalled



## Facts and Figures...

- # India is the second-biggest brick producer in the world after China, accounting for about 10% of the global brick production and 81% of production in South Asia.
- # The annual brick production is reported to be around 250 to 300 billion bricks per annum from 1,50,000 to 2,00,000 brick kilns. The demand is expected to multiply by 3-4 times in next 20 years, reaching 750-1000 billion bricks per annum.
- # Traditional, seasonal and unorganised, many units or kilns are not registered formally.
- # The industry is labour intensive, employing 10 to 15 million workers, the second largest workforce after agriculture.
- # While it is profitable for the brick kiln owners, for the workers and the environment it has remained exploitative.



## From the Editor's Desk...

*There is not a soul in the country who cannot testify to the desperate movement of migrant workers back to their villages during the lockdown that followed the outbreak of the COVID pandemic. It took a Supreme Court petition and media drive to draw attention to their situation, but at last a beginning is made!*

*The three trillion dollar economy thrives on the efforts of the migrant workers – their toil in obscurity! And the construction industry, that is expected to register a growth of 13% in real terms in 2021 cannot survive without the brick and tile workers besides those who labour at the construction sites. Much has been documented about the nature of employment and slavery like working conditions of brick and tile workers, yet much remains the same in their lives.*

*In 2020, HAQ: Centre for Child Rights in collaboration with the Centre for Labour Research and Action (CLRA) and the Centre for Education and Communication (CEC) initiated a project towards securing food security and sovereignty with dignity for brick kiln workers and their families. The project is supported by the German Federal Ministry for Economic Cooperation and Development (BMZ) and terre des hommes (Germany) and is operational in the 10 kilns each in Ajmer and Bhilwara districts of Rajasthan and 10 kilns at Surin in Mathura district of Uttar Pradesh.. Most workers in these kilns come from the states of Uttar Pradesh (Chitrakoot, Banda, Mahoba), Chhattisgarh (Mahasamund and Baloda Bazar) and Bihar (Gaya, Nawada, Jamui and Banka).*

*Amidst various activities being carried out at the kilns to connect women and children with the health and child development services, an attempt is being made to build evidence that can inform the key policy asks, explore the barriers in their access to rights and entitlements, suggest the shifts that need to be made and immediate and long-term measures required to protect the human rights of the brick workers and their families. Generating awareness among the workers as well as those who are meant to represent them as workers' unions and associations, brick kiln owners and other duty bearers is another element of the project. This newsletter too is part of the initiative, aimed at sharing both developments in the project activities and capturing the recent discourse on the situation of brick workers and their rights.*

Bharti Ali

## Making out a case for Dignity!

The advances paid by the contractors to allure the workers paves the way for debt bondage for brick kiln workers. Work at the kilns is seasonal, employment is for the family as a unit and wages are piece rate for the number of bricks made by a family. It is the men who are recognised as the heads of the family unit and get paid for the family labour. Except for jalai/ firing of bricks, all other work is performed as family labour, involving both men and women. Yet, women workers remain invisible in the records. Besides, women and adolescent girls also perform all the household tasks of cooking and caring for the young.

A case in the Supreme Court during the 2020 COVID pandemic (**ZAHID HUSSAIN VERSUS THE STATE OF UTTAR PRADESH & ORS. [WP (C) No. 503/2020]**) highlighted the plight of pregnant women in three brick kilns of Uttar Pradesh and Bihar. They were made to do hard labour without any medical assistance and care. But such stories are not new. The pandemic only exposed some more.

It is well established that brick production is a manufacturing process and the kilns would fall under the definition of “factories” as laid down in the Factories Act – premises where manufacturing process is carried out with the aid of power by 10 or more workers at any time in the preceding 12



**Informal nature of employment and private profits at the cost of human rights and dignity of labour is characteristic of the brick kiln industry**

months or without the aid of power by 20 or more workers at any time in the preceding 12 months.

Section 48 of the Act requires every factory with 30 or more women workforce to set up a crèche for their children. None of this however, helps women brick kiln workers and their children.

Being migrant workers, their access to government schemes and programmes gets affected adversely. Even if they have identity documents like the Aadhar Card, the BPL Card, etc., lack of portability of schemes disturbs the continuity in access to benefits, which can be availed only at one place – either the place of origin or the destination. Besides, the computerised systems have made things worse as once a name is entered in the system with certain identification data, it cannot be entered again from another location – the system will just not allow till the name and related data is deleted completely.

### ZAHID HUSSAIN vs. STATE OF UTTAR PRADESH & ORS. [WP (C) No. 503/2020]

Three complaints were filed with the National Human Rights Commission (NHRC) regarding torture of brick kiln workers and their families in three kilns in the state of Uttar Pradesh and Bihar. Non-compliance of NHRC’s directions to the concerned District Magistrates to conduct a spot inquiry in 15 days when the country was in the grips of the COVID health pandemic, and pregnant women and children were desperate to return to their homes where they had some hope of receiving medical care if nothing else, led to the PIL.

NHRC Complaint No.	Location	Affected Families and Persons	Caste	Violations
NHRC Case no. 8281/24/75/2020-BL	Rithali Village, Sambhal District, UP.	17 families - 62 victims including 5 pregnant women and 14 dependent children	Musahar (SC)	Restricted freedom of movement, denial of statutory minimum wages, barely one meal a day, physical and verbal abuse, long shifts of over 12 working hours for women and children, 5 pregnant women forced to do hard labour with no access to maternal health care.
NHRC Case no. 1080/4/28/2020-BL	Bharkol Village, Rohtas District, Bihar	10 Families - 41 victims, including 14 children	Musahar /Bhuiyan (SC)	Restricted freedom of movement, denial of statutory minimum wages, pregnant women being forced to work in extreme conditions. Denial of minimal ration to a family for failure to meet the brick production quota due to a hand injury suffered by a male member.
NHRC Case no. 1079/4/28/2020- BL	Dhaudarh Village, Rohtas District, Bihar	18 Families - 84 victims, including 3 pregnant women and 27 dependent children	Musahar /Bhuiyan (SC)	Held against their will in violation of their dignity, forced to work without payment of minimum wages, physical and mental torture, no medical assistance for 3 pregnant women labourers one of whom delivered at the kiln without medical assistance or monetary help.

## Children of Brick Workers: Right to Health, Food & Nutrition

More than half the population in the brick kilns are women and children. It is estimated that on an average there are 8 to 12 pregnant women and 6 to 8 new borns in a brick kiln every season. Most are not connected to any central or state government schemes meant to secure their right to health and nutrition.

List of Schemes (Central)	State Schemes - Rajasthan	State Schemes – UP
1. ICDS	1. Rajasthan Indira Gandhi Matritva Poshan Yojana / Indira Gandhi Maternity Nutrition Scheme, 2021	1. Chikitsa Suvridha Yojna for pregnant women labourers in construction work / pregnant wives of construction work labourers
2. PMJAY Scheme	2. Rajasthan Navjaat Suraksha Yojna 2021	2. Matritava Shishu Evam Balika Madad Yojna 2021 for medical assistance to registered workers
3. Mid day meal scheme	3. Rajasthan Janani Shishu Suraksha Yojna	3. Residential scheme for children of registered construction workers
4. Janani Suraksha Yojna	4. Rajasthan Mukhyamantri Chiranjeevi Yojna	
5. Pradhan Mantri Matru Vandana Yojna		
6. National Food Security Act, 2013		

Data from families of workers living in Chhattisgarh and working in the kilns in Ajmer and Bhilwara...

Availability of Documents	Yes	No	
Aadhar Card	15	10	Non-availability of documents is the first barrier to access to schemes
Birth Certificate	15	10	
Proof of Residence	4	21	Lack of awareness about the schemes and services is another challenge
Voter ID	24	01	
PAN Card	08	17	Those who have a BPL card can use it only in the source area and are thus dependent on their wages for food requirements while in the destination
			Generally, the brick kilns are on the outskirts and far from the nearest village / town making access to services difficult

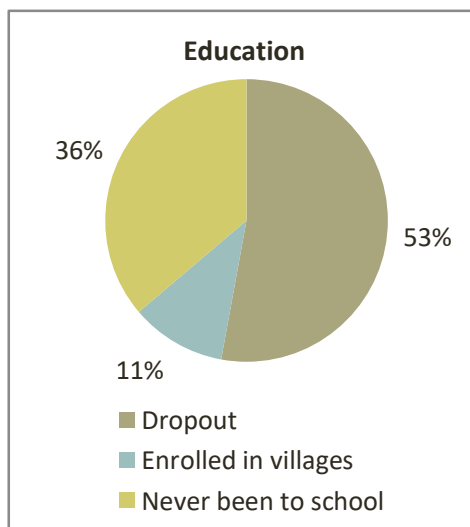
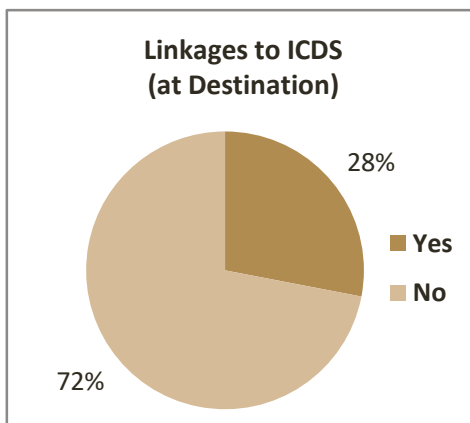
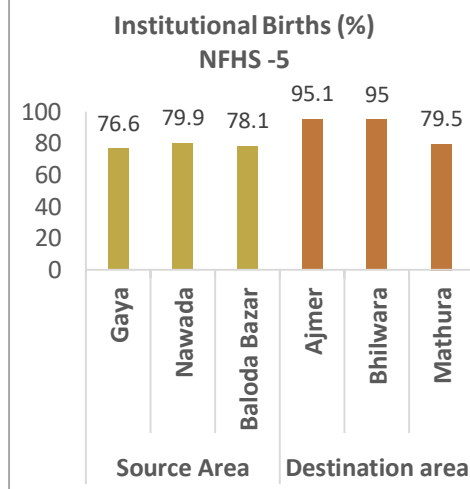
- 60% families have their children and pregnant women enrolled in Anganwadis
- Only 45% of them confirmed regular growth monitoring
- More than 80% are able to procure the sanctioned materials from the Anganwadi
- There is ZERO enrollment of adolescent girls in the five villages surveyed in Baloda Bazar and Mahasamund in Chhattisgarh
- 56% women did not have a MCP Card (also known as the Mamta Card/Jaccha Baccha Card) during their pregnancy
- 63% of deliveries are done at home / kiln site
- 80% families reported that their children are immunized but could not validate with any document
- Less than 25% families surveyed have registered for Ayushman Bharat
- In the destinations, workers reported dependency on the brick kiln owner for health services and any other assistance
- More than 75% children are staying out of school as a result of migration with their families
- Numbers for ICDS too reduce to half in the destinations

### Janani Suraksha Yojana:

Promoting institutional delivery among poor pregnant women to reduce maternal and neo-natal mortality

#### Special Focus Areas:

[Low Performing States (LPS) - Uttar Pradesh, Uttarakhand, Bihar, Jharkhand, Madhya Pradesh, Chhattisgarh, Assam, Rajasthan, Orissa, and Jammu and Kashmir.





**National Consultation: Towards Securing the Right to Health and Nutrition for Women and Children in the Brick Kilns**  
**21-22 December, 2021, New Delhi**

There is almost no data or studies on the nutritional status of children of brick kiln workers, sexual and reproductive health of women and adolescent girls who work at the kilns or accompany their family, immunization and early childhood care for the 0-6 year olds, children's access to schools, etc. Some micro and macro research does exist on child labour in the brick kilns, but most such research is outdated. The families of brick workers live in precarious conditions at the kilns without sanitary facilities, clean drinking water, kindergartens and schools for children. The daily food (only one vegetable/pulses and chapati/rice) has no nutritional value and is prepared, stored and eaten under unhygienic conditions. The migratory nature of work combined with lack of information and knowledge among the families and the worker's unions/associations about the programmes and schemes for women and children make access to services more challenging. Most services remain on paper and out of reach. Even the Right to Food, which is now a Fundamental Right remains an illusion for the migrating populations, despite efforts made at making the PDS cards portable. In this context, HAQ: Centre for Child Rights in collaboration with Centre for Labour Research and Action (CLRA) and Centre for Education and Communication (CEC) organised a National Consultation on Securing the Right to Health and Nutrition for Women and Children in the Brick Kilns, on 21-22 December, 2021 at the Indian Social Institute in New Delhi. The consultation led to enriching participation of all key stakeholders such as the health service providers and members of VHSNCs, Aanganwadi workers, village and district level education officers and SMC members, gram panchayat leaders, trade unions/workers' collectives, brick kiln owners, male and female brick workers, adolescent girls and boys working in the kilns and representatives of national campaigns and networks on the right to food, right to health, right to education and early childhood care and development.



*We want to improve our image and impression. We provide water tanks and facilities, we treat workers as our own family and want to provide them a better living standard. We are open to working with NGOs and government.*

*Mr. Omvir Singh Bhati, General Secretary, All India Brick and Tile Manufacturers Federation*



*I belong to a poor family...my mother and father both work at the site. I have been making bricks for the last 10 years. There are no toilets and bathing facilities for us at the site. I want to study, but cannot.*

*17 year old girl from Chhattisgarh, who works at a kiln in Ajmer*

*Why expect children to reach school? Why shouldn't schools reach children where they are? As amendments to the RTE Act are going to take place in the near future, this is the time to push for inclusion of provisions for children of migrant workers, with a focus on those at the kilns and such other work sites.*

*Ms. Anubhuti Patra, Country Manager, Malala Fund*

*District Health Plans are not being compiled. These should include bhatta specific plans – a special line item in the plans for brick kilns. One Asha worker should be attached to each brick kiln, who will roll out immunization programme at the kilns. Nutrition Rehabilitation Centres should also be started at the brick kilns. Something on the lines of Apna Seva Kendras (ASKs) under the Udaan Initiative by Tata Trust in Rajasthan should be looked into. Convergence meetings should be organised, with proper representation from the bhattas. Residential proof should not be mandatory to access services. Registration however, is mandatory and should be ensured.*

*Dr. Vandana Prasad, Joint Convener of People's Health Movement- India, Member Right to Food Campaign & Former Member, NCPDR*

*Crèche for small children at the worksites is mandated in law. Crèches need to be more than a tent with a bamboo shed. Basic infrastructure is non-negotiable. The teacher needs to be permanent, even if workers are seasonal, and this can be ensured if someone from the community is identified and trained. We should not be putting too much pressure on the workers regarding the responsibility of awareness; they are struggling for survival. For this population, the rights of the children are intertwined with the parent's right to work, security and survival. Therefore, facilitation centres should be set up to help them with necessary documentation and registration on the e-Shram portal.*

*Sumitra Mishra, Executive Director, Mobile Creches and Member, FORCES*

## Ground Report: Improving Access to Services

### *Towards creating a Model for Child Centred Food Sovereignty and Dignity for Brick Kiln Workers and Their Families ...*

The Project focuses on families arriving at the selected brick kilns in Ajmer and Bhilwara in Rajasthan and Surir in Mathura district of Uttar Pradesh in every season. The idea is to track health and nutrition of women and children at the kilns and connect them to the existing government programmes in both, destination and source areas. The project also aims at raising awareness about rights and entitlements among the workers and their associations and unions in order to make health, food and nutrition a priority. To encourage responsibility and accountability among the brick kiln owners, an attempt is being made to enlist their participation and contribution in setting up health and nutrition centres at the kilns, organising food festivals, making provisions for toilets and safe drinking water, etc. In order to build collective thinking and action, the project seeks to align with the existing networks and campaigns on the issue of food, nutrition, health, early childhood care and development, education and protection of women and children. The need of the hour is to amplify the challenges faced by migrant workers and their families in the brick kilns and promote feasible solutions. Investing in research and documentation to build evidence for determining the key policy asks and action is important. Such evidence will be shared with the Parliamentarians and other key duty bearers through research publications, handouts, newsletters and other IEC materials.

#### No. of Brick Kilns, Villages and Blocks Covered

Project Areas	Brick Kilns		Villages	
	Target	Current Reach	Target	Current Reach
Ajmer	10	10	10	14
Bhilwara	10	10	10	7
Surir, Mathura	10	9	10	10

### *Glimpses from the Project*



Food Festivals:  
Promoting healthy  
food habits





Poshan Vatikas:  
Growing Healthy  
Food Locally at the  
Kilns

### Connecting Pregnant and Lactating Women to the Health System

10 pregnant women workers from Havaladar, Dev and Bharat brick kilns in Surir were taken to Naujheel Hospital for vaccination and MCP Card.

No. of women assisted with  
getting the MCP card  
(as on 30 December, 2021)...

Ajmer - 30  
Bhilwara - 24  
Surir - 22



### Connecting Children to the Health System & Monitoring Growth



All it takes is a little effort to connect them to the health system...

Child "R", age 16 months weighed only 5 kg. on 5 September, 2021. On 30 September, 2021, he was taken to the PHC, from where he was referred to the Poshan Kendra (Nutrition Centre) at the District Hospital, Ajmer. After 8 days of care and treatment, the child weighed 6 kg 900 gm.



## Health Budgeting & Attitudinal Change: Key to Healthy & Happy Living



## Working with Adolescent Girls: Health & Personal Hygiene



## Multi-Stakeholder Interactions: Trade Unions, Workers' Collectives, Brick Kiln Owners, VHSNCs, SMCs, ASHA, Aanganwadi Workers, Gram Panchayat Leaders & PDS System





## Ask the Experts...

# Addressing Food Security of Migrant Workers Through One Nation One Ration Card: Realities from the Ground

According to the World Economic Forum, there are approximately 139 million migrants in India, mostly working as daily wage labourers in the manufacturing and construction industries.<sup>1</sup> A large proportion of these migrant workers originate from states such as Uttar Pradesh, Bihar, Rajasthan, Odisha, Chhattisgarh and Madhya Pradesh. Most of them find employment in India's informal sector, and thus, are denied access to basic services and dignity of labour. The spread of Covid-19, and the lockdowns that followed, shed light on the plight of these workers more than ever before. National and state lockdowns not only threatened their livelihood, but also stopped them from moving back to their homes, while the employers and contractors absolved themselves of all responsibilities. Dying of Covid was one thing, but nothing could have been worse than dying of food due to the lockdown and no help coming forth. Most migrant workers do not carry copies of their ration cards due to their non-portability. They also do not carry necessary documents for fear of losing them while on the move as well as lack of faith in their significance and use. They were missing out on what could have fetched them some food that was being distributed by government agencies.

On June 29, 2021, the Hon'ble Supreme Court directed all the States and Union Territories to implement 'One Nation One Ration Card' Scheme (ONORC) by 31<sup>st</sup> July, 2021. While ONORC was officially launched in October 2019, the foundation of the scheme was laid way back in 2011. The main objective of this scheme is to address the issue of food (in)security of underprivileged populations, especially migrant workers. The relevance of the ONORC resurfaced during the series of pandemic outbreak(s) in 2020 and 2021.

While the order from the Supreme Court in relation to ONORC was the need of the hour, it is also important to understand the issues, challenges and ground realities when it comes to its implementation in different contexts and social realities.

The Centre for Labour Research and Action (CLRA) has been working in Rajasthan for the last 15 years on the issue of migrant workers and their rights, their insights and experiences on the situation on ground and struggles of migrant workers become important when it comes to addressing the issues of lack of social security, violation of labour rights and dignity of labour. In order to unpack the challenges of food (in)security and to understand more about the recent order by the Hon'ble Supreme Court on ONORC, Ms. Bharti Ali, Co-founder & Executive Director of HAQ engaged in a conversation with Mr. Sudhir Katiyar, Executive Director of CLRA and a well-known labour rights activist, who has been fighting for the rights of workers in the informal sector. CLRA has been particularly involved with the brick kiln workers in order to better understand the issues faced by these workers, and how the recent order can help bring about a change, if any.

**Bharti:** Sudhir ji, for the benefit of readers could you please tell us how many states have actually adopted the "One Nation One Ration Card" scheme? How many states have benefited from this and what are the current challenges with respect to its adoption and implementation? Additionally, in your opinion, how relevant and practical are the Supreme Court's directions in this regard?

**Sudhir:** I believe that with the exception of Delhi, Assam, West Bengal and Chhattisgarh, all other states claim to have adopted this scheme. However, the ground reality, which we have experienced while working on and advocating for this issue, is starkly different. In Ahmadabad and Mehsana districts of Gujarat and in Ajmer and Bhilwara district of Rajasthan, we tried to implement the ONORC scheme for brick kiln workers, by taking a number of workers, along with their ration cards, to the local ration shop. In addition, we also visited the local district supply offices, and at least in Rajasthan, we reached out to the Secretary of Supplies as well. However, we did not succeed in procuring the ration for them.

Interestingly, not only do all the appropriate authorities say that the issue is at the top level in New Delhi (Centre), and that the linkage isn't present, they also provide false hope of a possible implementation of the scheme in the "near future", asking the workers to come back post-Covid. The Central Government, which is the coordinating agency on this issue, argues that the scheme has been implemented and that apparently, 50,000 transactions have taken place. We have to understand that 50,000 is a miniscule figure and I strongly feel that the Supreme court could have taken a stricter stance on poor implementation.

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<sup>1</sup> <https://www.weforum.org/agenda/2017/10/india-has-139-million-internal-migrants-we-must-not-forget-them/>



Hopefully, effective implementation will follow the Supreme Court's order. We hope that slowly but steadily, we will see effective implementation of the ONORC scheme across the nation. The Supreme Court order definitely provides an incentive, as there is now an option of filing contempt of court cases for non-compliance.

**Bharti:** So you've pointed out to something extremely important, which even the Indian Express news and other news channels have looked into, that the coverage under the ONORC scheme is very low. There are also problems related to linkages as you said, but is it only about linkages, or is it also about requirement for people to have complete documentation? We want to really understand what those real problems are, as far as people are concerned? Is it easy for them to just login and get themselves registered? How does it work on ground?

**Sudhir:** The ground exposure for ONORC is really limited, so let's hope that now when we work more on it and take the information dissemination to a bigger scale we will be able to address some difficulties. Practically, we must understand that access to the Public Distribution System (PDS) itself is very problematic.

Access to PDS is problematic in numerous ways. For one, many people do not have ration cards. Additionally, not only is it extremely difficult to get a new ration card made, it is also very tough to get a ration card divided. For example, with ration cards, we have two broad categories. One is the general ration card, also known as Above Poverty Line (APL) Ration Card, which is for people above poverty line, and the other is the BPL Ration Card, for people below the poverty line. There are other categories also but these are the two broad categories. Additionally, there is also an NFSA category now, which is the *National Food Security Act, 2013* category and the non-NFSA category. The central issue is that the non-NFSA category does not get ration at all, even though everybody is supposed to get ration. The Below Poverty Line (BPL)/NFSA category gets ration at a very subsidised rate, like Rs 2/kg and the APL/Non-NFSA category should get ration at a higher rate, which is still below the market rate, but in reality, the Non-NFSA card holders are very rarely able to get access to subsidised ration. That in itself, is a very big scam.

Another problem is that as the number of people increase in a household, the NFSA ration card gets divided. However, the new card is not considered NFSA automatically, and this poses another huge challenge. Then, there is the issue of online linkages and signatures not matching those already on record, despite the fact that two signatures are required. People provide two thumb impressions when applying for a ration card.

Lastly, the entire family rarely migrates together. More often than not, some members of a family migrate, while others stay behind and so, what happens in those situations is that the members who have migrated from another state may not be able to get access to ration in the state they work in.

**Bharti:** According to you, what are the possible solutions, because these are very real issues that we are talking about and we need to find answers for the situation to change. So where do you see some possible solutions?

**Sudhir:** One possible solution, and this is something that has also been highlighted by the Supreme Court, is that the government becomes more proactive in getting ration cards issued, with a special focus on the issuance of NFSA ration cards. The Supreme Court has especially been extremely proactive in ensuring the efficient distribution of food grains to the people who need them, while coming down hard on the government and saying that the government has not been efficient in the allocation of NFSA quotas, given that there are a lot of quotas still not being used.

*Government needs to be more proactive in getting ration cards issued, with special focus on NFSA ration cards.*

Furthermore, the PDS system, as is true of all public systems, works much better in some states than it does in other states. For example, southern states like Tamil Nadu and Kerala perform better than the northern states of Bihar, Uttar Pradesh and Rajasthan, which lack in increasing their own quotas. Therefore, the state machinery has to be more proactive, sensitive and efficient in ensuring that everybody gets a ration card.

*The state machinery has to be more proactive, sensitive and efficient in ensuring that everybody gets a ration card.*

**Bharti:** Correct, and we don't learn from good examples somehow...which is so unfortunate. Connected to this, it is not just about PDS, we are talking about the social sector as a whole and specifically about migrant workers and their access to other social sector schemes and benefits. One of the other schemes connected to food and nutrition is the Integrated Child Development Services Scheme (ICDS), which is for all children, including children of migrant workers, for example. If one were to look at it, what have been the difficulties in accessing those kind of schemes?

**Sudhir:** Once again, with ICDS, it has been very difficult to access the schemes for children of migrant workers, and we know from personal experience that we have been working on this issue for the last, almost 15 years now, mainly for brick kiln workers but also for all migrant workers who are easy to document, define and capture, because they are living in one location for six months.

Additionally, the brick kiln themselves are permanent structures; even though the workforce is migrant, the brick kilns are permanently there, they don't shift like construction sites do. Once a brick kiln is created, it will be there for a long time and everyone knows migrant workers come there. Despite this knowledge, we have had a tough time accessing the benefits of ICDS. A couple of times, the local Child Development Project Officer (CDPO) gave us the confirmation that we can distribute ration. The children of the brick kiln workers cannot be enrolled in Anganwadis because they are located far from where the children reside. They cannot go to the Anganwadi, so the Anganwadi has to come to them. Opening a new Anganwadi is not possible because the common planning departments cite lack of budget for creating new ICDS centres.

This situation is not unique to ICDS, but is common across all areas, including health and education. For example, we have an act that serves as a fundamental right by the name of Right to Free & Compulsory Education Act, 2009, but despite that, gaining access to education for these children is difficult. We consistently provide the local school authorities, the SMCs, SSA department officials, local district education officials with a list of eligible children. The experience has however, been that sometimes they will respond and sometimes they will not. For example, we see successful access to education in two cases, Gandhinagar and Bhilwara. In Gandhinagar (Gujarat), the local authorities have opened schools at brick kilns, almost for the last 10 years. Similarly, in Bhilwara district of Rajasthan, such schools have been opened for a decade, but unfortunately, these cases are the exceptions and not the rule, as no such thing has happened in other districts.

*Government authorities say they don't have the budget to open schools*

*The models keep changing - sometimes schools are opened at the brick kilns itself and at other times the authorities say that they will enroll children in local schools, which may not be feasible everywhere due to language issues.*

It is very difficult to pin down the exact reasons as to why it is happening in Bhilwara but not in Ajmer when in fact, this should be happening everywhere, all across the states. It is very difficult, especially when we hear that "we [government authorities] don't have the budget for opening schools" or when the models for schooling keep changing (sometimes opening schools at the brick kilns being the option, and other times enrolling the children in local schools, which may not be feasible everywhere due to language issues). For example, in Gujarat, if the migrant children speak Hindi, they will need to enroll in a school that has teachers who speak Hindi and such logistics can often be difficult to organise in local schools with limited resources.

Many ideas have been experimented with. There was a whole scheme of opening hostels for children of migrant workers, so that children do not migrate. This idea was incorporated in government budgets, in SSA budgets and these hostels did open in many locations. For example, in Orissa, they [government] opened a large number of migrant hostels, but again, it is very episodic, in the sense that it happens in some places, but not in others; consistency is seriously lacking. Whether or not schemes are implemented, or even how effectively schemes are implemented, depends on the local education department officials and whether or not they prioritise such schemes. If he/she is a sensitive person, he/she puts it on the board, implements it and it may thus, get institutionalised in some districts, as in the case of Gandhinagar and Bhilwara. However, we all know that such good officers in the government are limited; we have them, but in small numbers. In fact, many people just do not want to do the extra work and thus, there is a considerable resistance to the progress and effective implementation of such schemes.

**Bharti:** These are some very critical points that you have raised, one of them being that whatever social sector schemes are rolled out, if they do not have a lens to look at the issues of migrant workers and their families, then they are bound to fail a lot of people in the long run. I don't know how that migrant workers' lens can be pushed for in all policy-making, but it is definitely an agenda to take up in the years to come. Moreover, this pandemic has really thrown up the question to everyone at large. As we understand, one thing is the lens of migrant workers and its application to all policy-making, the other issue is also about laws relating to migrant workers, and how far we have been able to implement those laws which actually somewhere regulate work; this is something on which we would like to hear more from you.

**Sudhir:** When we talk about labour laws, there is only one law which specifically deals with migration, and that is the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. Most other labour laws are universal in nature and they apply to all kinds of labour and that should generally be the case as we don't need specific laws for migrant labour. But the labour laws that exist should be applied properly. So specifically talking about the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; it's not been applied anywhere because of many reasons. In fact, we also don't push for the application of this Act, although we did push for its implementation in the beginning. Later we realised that this [Inter-State Migrant Workmen Act] is a very dangerous Act. It will only create a barrier to free movement of the workers if we try



to push for its implementation. For example, many brick kiln workers migrate from west Orissa to South India, to places such as Telangana, which is infamous for its exploitative working conditions. Violation of labour laws has always been in news and the government has responded to such news by coming hard on the implementation of the Inter-State Migrant Workmen Act.

As a result, now in western Orissa, a fee is imposed on the movement of workers. For every worker who is moving out of western Orissa, the contractor has to pay almost INR 5000/-, as of four years back, when we conducted this survey, and this fare essentially came out of the worker's pocket, enabling everyone except the worker to benefit financially. For instance, the local sarpanch would charge money, the ticket collector (who is booking tickets at the railway station) would charge money, the local labour department would of course have a hand under the table. As you can see, everybody is making money because it is institutionalised. If a worker wants to migrate, but is not registered, the officials demand money for registration and for all these reasons, we realised that this Act is extremely dangerous.

The Inter-State Migrant Workmen Act can be a barrier to free movement of the workers if implemented. Experience has shown that migrant workers end up shelling from their pockets the amount charged to the contractor for taking them out for employment as well as meeting the legitimate and illegitimate demands made by every other person in the pipeline who is supposed to or likely to know about the movement of workers.

Therefore, we have stopped asking for the implementation of the Inter-State Migrant Workmen Act; we know that if we try to implement it, all that will happen is that it will end up being a hindrance to the movement of workers without providing any benefits to the workers.

**Bharti:** That we are not asking for implementation of a law merely because of reasons like corruption is disheartening. There is exploitation at different levels even otherwise, without a law, so how do you weigh the two kinds of exploitations against each other; one where there is regulation of working conditions in law but that very regulation opens up doors for corruption and exploitation, and other where there is no regulation which inevitably leads to corruption and exploitation?

**Sudhir:** The problem with the current law is that there is a regulation on the supply of workers. The Inter-State Migrant Workmen Act is actually the Contract Labour (Regulation and Abolition) Act, 1970 that essentially seeks to regulate the supply of labour. We therefore have been consistently insisting that the government needs to regulate the workplace along with the workers who are employed and thus, build social security around the workplace. This is a universal model, where social security comes from the workplace. For example, all of us get provident fund payments which are related to our salary, which comes from our workplace. This is the model all over the world for social security. If you try to ensure social security independent of the workplace, then that leads to a huge set of problems. Therefore, we push for regulation of the brick kiln, and argue that once the brick kiln is regulated, the workers will automatically also be regulated and their working and living conditions will improve.

The Factories Act, 1948 which is a major law, is also not being implemented. If the government cannot even implement the Factories Act, 1948 which is the backbone of the labour code, then that reveals a lot about the casual attitude of the authorities towards the implementation of these laws. It is all a sham, and that is why I have critiqued this entire public sector regulatory model; they say implement Inter-State Migrant Workmen Act and they have a new portal but I ask, what use will the portal be? The government had made umpteenth attempts; they came up with this 'Shramev Jayate' program seven years back and said that we will issue ID cards to all workers. We filled thousands of forms in cities like Surat; these forms are still lying in my office; we are still getting phone calls from workers but we don't know what to tell them now. The government spent INR 45 crores on this portal, which I believe is going to be a total waste of money, because they cannot do it.

The thing is that these are unorganised and informal workers. Unless you change the "informality" and formalise the workers, how can you regulate the workers? And the fact of the matter is that you cannot change the formality of these workers because the government simply doesn't want to.

**Bharti:** In fact, the Supreme Court talks about issuance of ID Cards under three laws. One of course, is the Inter-State Migrant Workmen Act, 1979, the other being the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and the Unorganised Workers' Social Security Act, 2008. The first question that comes to my mind is that how will people get these identity cards? Even if people get these ID cards, will this work at loggerheads; will there be a conflict as to which identity card to use when?

**Sudhir:** As far as the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 is considered, the builder must submit the list of workers. The builder anyways has to deposit 1-2% of cess into the Welfare Fund, why does he not also deposit a list of workers, and thereby, create that linkage? The truth is that nobody is interested in doing

this. Even the NGOs and the Trade Unions have not taken this forward, and this is the situation despite the Boards having a large amount of money, which could have been put to good use, especially with construction being a fairly regulated sector and a very big corporate industry; which theoretically means that it can be very well regulated, but we're not being able to do so despite a law in this regard. As far as the Unorganised Workers' Social Security Act, 2008 is concerned, it is a useless Act.

**Bharti:** Why do you say so, because under the Unorganised Workers' Social Security Act, 2008 the registration is led through the worker and not through the employer?

**Sudhir:** Yes, that is exactly why. That is why these schemes collapse, because workers are for the most part, illiterate. And where are these workers coming from? They are travelling over enormous distances, so they don't have the time for all the bureaucratic red tape such as filling forms, especially given how many times one has to visit government offices to get such paperwork completed - all to obtain a registration certificate which needs to be renewed annually. The most important commodity for workers is their time; they are daily wage earners and thus, cannot afford to spend even a day on completing the paperwork formalities. The way these laws are being made is nonsensical. I visited a labour services office in UP a couple of years ago, and their offices are full, everyone has come for registration of a worker's card, in the hope that it might help them gain some benefits. The office was in a state of complete chaos and confusion.

**Bharti:** If there is a facilitation desk that is set up, do you think that will help or will the situation still be the same?

**Sudhir:** Yes, the situation will be the same. You have to regulate the workplace and if you can't do that, you cannot regulate the registrations. If you want to regulate workers, then you need to start with regulating the workplace.

**Bharti:** Now we also have a commitment from the World Bank for strengthening social protection for the informal sector workers. They have committed around USD 500 million to India and the report suggests that about a USD 112.5 million will be financed by a credit from the IDA (International Development Association), which is a concessionary lending arm of the World Bank. But the rest, which is USD 387.5 million will be a loan to India from the International Bank for Construction and Development. In a stage of the economy, where we have one more loan coming on, and again for social protection schemes for informal sector workers, not a general scheme that could be rolled out, what would you like to say?

**Sudhir:** This is the first time that I am hearing about this scheme of the World Bank, so I cannot really say much about it. But one thing that I can say as a general comment is that if you have a separate social security scheme for unorganised sector workers, that will never work. The mechanism has to be universal, and so, the workers need to be linked to a universal scheme and thus, I'm a huge supporter of the provident fund scheme as that is universal and the organised sector workers are already involved in that scheme. So linking unorganised sector workers with Provident Fund (PF) will automatically regulate the workplace, because the employer has to give the contribution. If one tries to create separate mechanisms, it won't work. Additionally, money is not

Separate social security scheme for unorganised sector workers will not work as the mechanism has to be universal. Linking unorganised sector workers with Provident Fund (PF) will automatically regulate the workplace, because the employer has to give the contribution.

an issue at all; the government does not need to pump in any money if we go down the PF route, because we contribute our own money to the PF, and the workers will do the same. The government will just have to create a system and regulate it.

**Bharti:** I'm just trying to understand this in terms of certain sectors like mining, and I don't know about brick kilns and I was hoping you could enlighten me on that, but there is a lot of illegal mining that happens, and they are not registered units anywhere or under any law. So then how would that work because they don't exist on paper?

**Sudhir:** Right now, most of the informal sector workers are not on paper. In one of the villages close to Gujarat, where I work, they address workers as No. 1 worker and No. 2 worker, the former referring to the legal worker whose name is in the records, and latter implying the illegal worker. Majority of the workers are No. 2 workers. Even though the entity may be legal, there are no records maintained for workers. So that is a separate issue altogether. The other thing is, there can be a universal component of social security as well. People argue that if you link social security with the workplace, what happens to self-employed workers? My answer to that is that we have to devise add on social security mechanisms that will cover everybody.

**Bharti:** So the two have to go hand-in-hand, no doubt about that. The article that you wrote in The Wire mentions the Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969 which also raised a curiosity as to why Maharashtra has been able to implement this and what is it that others have to learn from it. We would like to hear some more about such good practices.



**Sudhir:** We keep quoting the Mathadi Act as a model because it is working in Maharashtra for a long time. The Act was passed in 1969. It drew from another similar law for dock workers. Mathadis are basically head loaders/hamals in North India. The Mathadi Act has been successful because it is regulating the workplace and not the workers. Once the Act is implemented in the district, then the employer has to be registered with the Board created under the Act and has no option. You cannot employ workers without registering with the Board. Even the salaries are not paid directly to the Mathadis, the employer pays salary to the Board, and the Board then pays the salary to the Mathadis and charges a 30% fee over the salary to ensure social security. Despite being part of the informal sector, all Mathadis in Maharashtra have PFs, bonus, housing schemes, they have built hospitals with their own funds, and thus upward mobility into the middle class is visible for a whole generation of Mathadis. The Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969 can be implemented across India and for different sectors.

**Bharti:** I was just reading the 2013-2014 response of the Ministry of Labour to the Parliamentary Standing Committee on the Welfare Boards under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996. They acknowledge that many states have not constituted the Welfare Boards with full manpower. So with those kind of challenges how are we going to achieve replication of the Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969 in the Building and Construction sector despite a similar provision in existence.

**Sudhir:** Even if the Boards are set up under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, they are not fully operationalised. It has been done very inefficiently, though they have money. The Mathadi Boards on the other hand, are independent. While they have a top boss coming from the Labour Department, they are for the most part not very dependent on the Ministry of Labour and Employment. Additionally, the profile of workers in the Mathadi Boards also has a part to play in their success story; the Mathadi workforce in Maharashtra comes primarily from the Maratha community. The Marathas are a powerful caste and a powerful community in Maharashtra with great political power. They are also organised in a way that other kinds of informal workers in other parts of the country are not. Therefore, despite the fact that the Mathadi Board has suffered many legal, administrative and political challenges, they have survived because the workforce is organised, and more importantly, is politically aware of its rights. Being aware of one's rights is the key here. It doesn't matter how many schemes we roll out, unless the workforce is politically organised, these schemes will not work.

It is important that the workforce is organised, and politically aware of its rights.

**Bharti:** And specifically, when it comes to mining and brick kiln workers, why is the workforce not as organised as it should be?

**Sudhir:** That is a question which requires a separate discussion. For the most part, the problem stems from the fact that a large section of workers is uneducated and illiterate. Therefore, they are not politically aware of their rights and entitlements.

Education is the key here. If workers were more/better educated, they would be more aware of their rights, and thus, in a better position to demand those rights. Another aspect of the problem that we need to consider, is the fact that these workers do not even have any expectations. A brick kiln worker or a construction worker has no expectation from the government and thus, they don't demand social security. Without this sense of entitlement, how will they get their share of social security? And the lack of existence of this awareness points to the failure of our collapsing community education system.

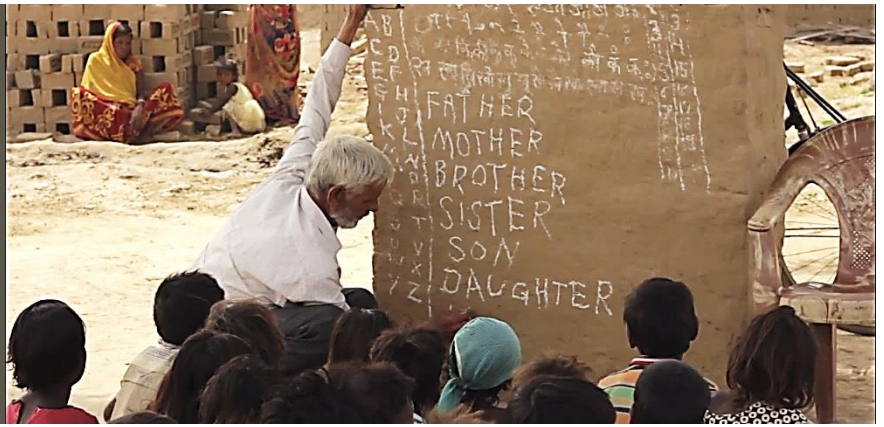
The quality of education in a government school is also in shambles; a migrant worker can put his/her child in a government school for ten years, and it would hardly make a difference, such is the quality of the education provided there. The children want to study, and I'm sure if we want, we can create schools in the brick kilns themselves, it cannot be an impossible task.

**Bharti:** Indeed, it is quite a complex situation. What would be your final words for different actors – the Supreme Court, the Government, Trade Unions, the World Bank and the Workers?

**Sudhir:** There are no short term remedies. Passing a law won't change anything, unless people become more aware and the path to that involves mass literacy and common schooling system.

**HAQ:** Centre for Child Rights is extremely grateful to Mr. Sudhir Katiyar for such a candid interview reminding the child rights sector about the fundamental demand that was made a common school system, but remains overlooked by every succeeding government.

# final thoughts...



## Quality of life improves one brick at a time

Mothers, infants and children at Rajasthan's brick kilns access health services, meals and care through Tata Trusts' Udaan Kendras

### Read more on...

<https://www.tatatrusts.org/our-stories/article/quality-of-life-improves-one-brick-at-a-time>

## The key to change ...

While focussing on health and nutrition, children at the brick kilns selected for intervention through the HAQ-CEC-CLRA partnership are being connected to school.



coming soon >>>

## In the Next Issue

*Impact of Pollution on the health of brick kiln workers and their families*

*Legal Developments to promote rights of brick kiln workers: Insights into important cases in the Supreme Court and various High Courts*

*Success Stories*

*Ask the Experts: Is eco-friendly brick production a sustainable solution?*



839 children are registered at the Health and Nutrition Centres established at 20 kilns in Ajmer and Bhilwara and 9 kilns in Surir



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