

Module 1



LABOUR RIGHTS

Centre for Education and Communication (CEC)

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What are Labour Rights?



What are Labour Rights?

Labour rights or rights of workers are a group of legal rights available to the workers which cater to the labour relationship between the worker and the employers.

These rights are fundamental to the functioning of any establishment which employs workers/labourers.

Fundamental labour rights include decent working conditions, minimum wages, decent working hours, right to unionise, safety at workplace, equal pay for equal work etc.

These rights are backed by the Indian Constitution as well the law of the country.

What is bonded labour and how is it connected to brick kilns?



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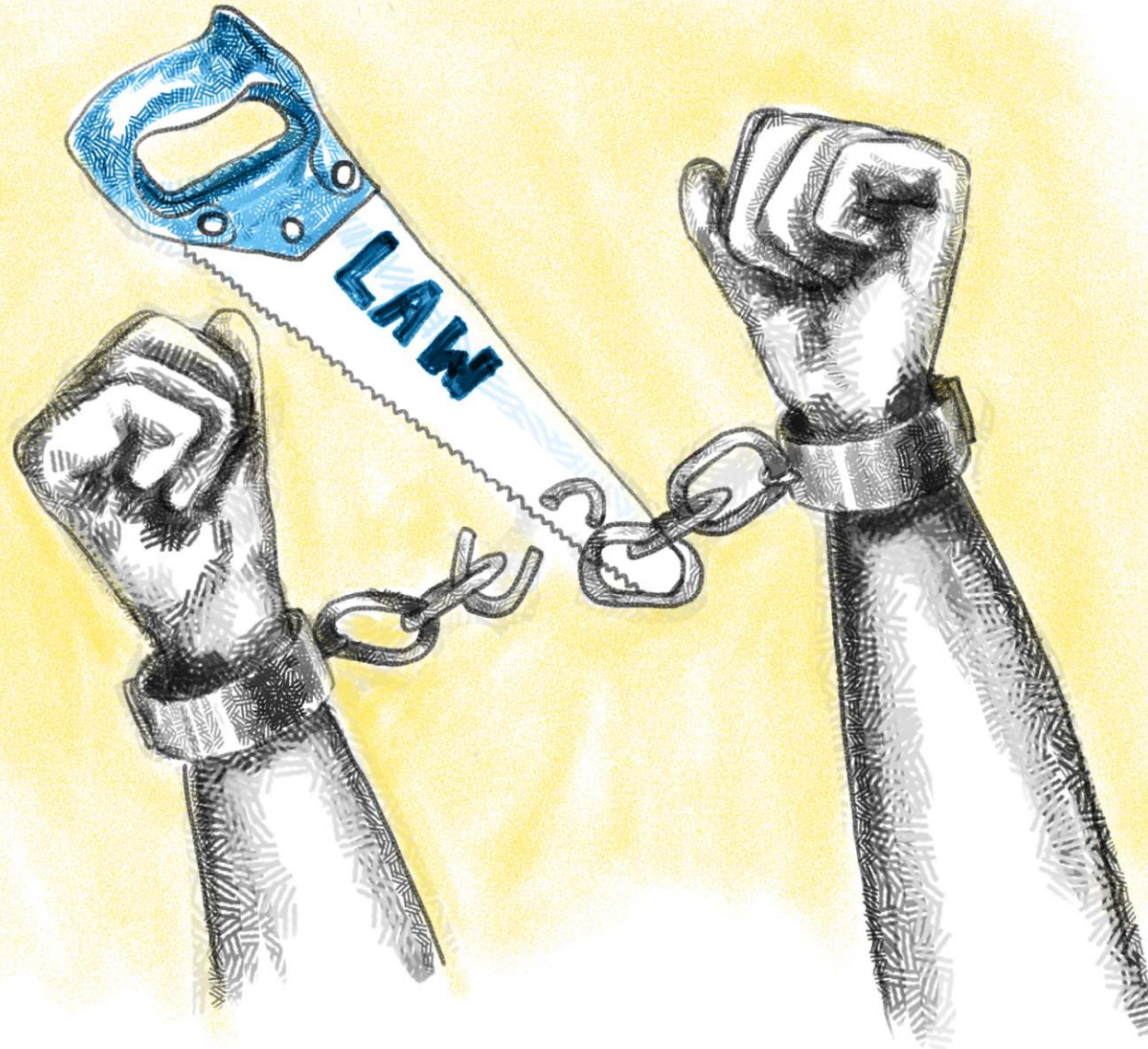
Traditional understanding of bonded labour was where whole families of peasant farmers were socially and economically tied to their landlords down the generations.

Currently, the term refers more to workers in a new type of bondage when they take monetary advances from their contractors, particularly in the off season, and then get trapped in a cycle of debt. This is known as debt bondage.

Basic characteristics of this new type of bondage are: advance money taken by workers; workers are paid below minimum wages (a state possible in turn due to their existing debt with the contractors); long hours of work on an average 12-16 hours a day; lack of mobility.

Taking advance payment is a common practice among brick kiln workers.

Rights of bonded labour



Rights of bonded labour

Bonded Labour is prohibited in India by law vide Article 21 and Article 23 of the Constitution of India.

Article 23 of the Constitution prohibits traffic in human beings and other similar forms of forced labour.

The specific law which has abolished the Bonded Labour System is the Bonded Labour System Abolition Act of 1976.

Under this law bonded labourers stand freed and discharged from any obligation to render bonded labour.

Any instrument or agreement which requires a worker to render bonded labour shall be void.

About the Bonded Labour System Abolition Act

The Bonded Labour System Abolition Act of 1976 is a Central Act whereas the responsibility to implement its provisions lies with the different state governments.

The responsibility of identifying bonded labourers lies with the District Magistrate (DM), who heads the Vigilance Committee constituted under the Act.

The Vigilance Committee advises the DM and is required to ensure that the Act is properly implemented his/her guidance and also to coordinate efforts towards rehabilitation of the freed bonded labour.

The National Human Rights Commission (NHRC) is mandated to oversee the implementation of the Bonded Labour System Abolition Act. A written application consisting of grievances can be sent to them in cases of forced labour at brick kilns.

Matter can also be brought to the notice of the Sub Divisional Magistrate of the area or any other person who is a member of the Vigilance Committee of District or Sub-division.

Relief available to the victim: The bonded labour is to be immediately released from bondage. His liability to repay bonded debt is deemed to have been extinguished. Freed bonded labour shall not be evicted from their homestead or other residential premises which they were occupying as part of consideration for the bonded labour. A rehabilitation grant of Rs. 20,000/- to each of the bonded labour is to be granted and assistance for his rehabilitation provided.

Rights of migrant workers



Rights of migrant workers

Workers who move from place to place to get work, especially seasonal work are called migrant workers.

Majority of workers at the brick kilns are migrants: interstate or intrastate.

For protection of rights of interstate migrant workers the government has in place The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

It applies to any workplace/establishment in which five or more than five inter-state migrant workers have been employed or were employed in the previous twelve months.

The Act makes it mandatory to register for establishments who have employed or are employing inter-state workmen.

It calls for issuing of licenses for contractors who employ interstate workers. The contractor must furnish details to the specified authority in the State from which such inter-state workmen are recruited.

It should also issue to all the inter-state workmen a pass-book affixed with a passport size photograph of the workman with the details like name, place of the establishment,

Rights of migrant workers

period of employment, proposed rates and modes of payment of wages, the displacement allowance payable, return fare payable to the workman on the expiry of the period of his employment, deductions made.

The contractor is responsible for making payment of wages to the inter-state workers within the prescribed period. In case the contractor fails to pay the same to the workers then the principal employer is made liable for whatever amount has not been paid to the workers.

The Act further provides punitive punishment for contravening provisions of employment or licensing provided under the Act. Such contravention is punishable with an imprisonment which may extend to one year or a fine of one thousand rupees, or both.

A displacement allowance equal to 50% of monthly wages or Rs.75/- whichever is higher to be paid at the time of recruitment to the workers.

The displacement allowance is to be given by the contractor to the migrant workers.

Rights of migrant workers

Remedies available to migrant workers

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 provides for the appointment of an Inspector to carry out the provisions of the Act.

Workers can approach and make a complaint to the Inspector, who is appointed under the Act by the appropriate State Government.

The Inspector is vested with the powers to enter the premises of any establishment or place where the inter-state migrant workmen have been employed for the purpose of satisfying himself whether the provisions of the Act in relation to payment of wages, conditions of service or other facilities to be provided to such workmen have been complied with or not.

For this purpose he can examine any register or record of notice required to be kept or exhibited vide the provisions of the Act and can also ask for the production thereof for inspection.

The inspector can also examine any person in such premises or place for the purpose of determining whether such a person is an inter-state migrant workman.

Coverage of brick kilns under the Factories Act, 1948



Coverage of brick kilns under the Factories Act, 1948

Factories Act ensures the following for the workers:

- Health
- Safety
- Welfare
- Working Hours of Adults
- Annual leave with wages

Brick kilns are classified as factories within the meaning of the Act, as it has been established that the process of manufacturing bricks comes within the definition of the manufacturing process as defined under the Factories Act and that the premises where the process is carried on, is covered by the expression “premises” used in the definition of factory in the Act.

Therefore, provisions with regards to health, safety and welfare of factory workers also apply to the brick kilns.

Coverage of brick kilns under the Factories Act, 1948

The Act provides for effective arrangements to maintain sufficient supply of wholesome drinking water, sufficient latrine and urinal facility, including separate enclosed facility for male and female workers, and adequate and suitable facilities for washing.

First-aid boxes equipped with the prescribed contents are also to be provided in the premises.

Every worker who has worked 240 days in a year is entitled for leave with wages at the rate: one day's wage for every 20 days worked.

He/she may take leave during or after completion of the year.

In the case of a female worker, maternity leave with wages are to be provided for any number of days not exceeding twelve weeks.

Coverage of brick kilns under the Factories Act, 1948

Remedy under the Factories Act

What if the above mentioned provisions of Factories Act are not being followed?

If provisions of the Factories Act are being violated then you can approach the labour inspector or other labour officials and ask them to visit the brick kiln worksites for inspection. This inspection can be with regards to health, safety and/or welfare measures taken up at the brick kilns.

Alternatively, a written application about such grievances can also be sent to the labour department.

Contract Labour and rights under the Contract (Regulation and Abolition) Act



Contract Labour and rights under the Contract (Regulation and Abolition) Act

The owners/contractors and the workers, both believe that payment of advance money would promote mutual trust between the two but it ends up having bad results for the workers.

This practice does not only make the brick kiln workers more vulnerable to bondage but can also leads them into a vicious trap of continued indebtedness, which happens in most of the cases.

The vicious cycle of debt begins when the worker migrates to distant places in search of work in a brick kiln through middlemen known as “thekeedar” or contractors.

The Contract (R & A) Act provides for licensing of both the contractor and the principal employer and lays down elaborate list of facilities like canteens, toilets, rest rooms, crèches, washing facilities, first aid, etc., to be provided to the workers while on job.

Contract Labour and rights under the Contract (Regulation and Abolition) Act

The act also outlines duties of the contractor with respect to payment of wages to the workers. It binds the contractor to pay wages timely and before representatives of the principal employer.

Significantly, the Act also states that workers cannot be paid by the contractor at rates less than what has been given under the Minimum Wages Act, 1948.

According to the Act, the wages of the contract labour shall not be less than the rates prescribed under the Minimum Wages Act, 1948.

In cases where the contract worker perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays , hours of work and other conditions of service shall be the same as applicable to the workmen directly employed.

Contract Labour and rights under the Contract (Regulation and Abolition) Act

Remedy under the Act

The workers doing same or similar work and not getting same wages can raise the issue before the appropriate "Government". The Central Government is the appropriate Government in respect of the establishments falling under its jurisdiction. The private companies in the non-government sector and un-organized sector come under purview of state governments. In the former case, the complaints/grievances are received in the field offices of Chief Labour Commissioner (Central) Organization. In the latter case complaints can be made to the Deputy Labour Commissioners of that particular state.

Rights of Workers to receive Minimum Wages



Rights of Workers to receive Minimum Wages

OBLIGATIONS OF THE EMPLOYER UNDER THE MINIMUM WAGES ACT

REGISTERS	FORM NO.	WHEN TO COMPLY
Muster Roll cum Wage register	II	To be always maintained
Inspection Book		To be always maintained
Abstract	I	To be always displayed
Attendance cum wage slip or wage card		To be always maintained

All registers and records to be preserved for a period of THREE years

Rights of Workers to receive Minimum Wages

Under the Minimum Wages Act, it is mandatory for the employer to maintain a register of wages of all the employees working in the enterprise.

Under the Minimum Wages Rules 1950 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 where overtime was worked.

All the provisions of the Act equally apply to both male and female workers and it does not provide for any discrimination to an inter-state migrant workman in terms of wages.

Rights of Workers to receive Minimum Wages

Remedy available under Minimum Wages Act

Not getting Minimum Wages, what is the remedy?

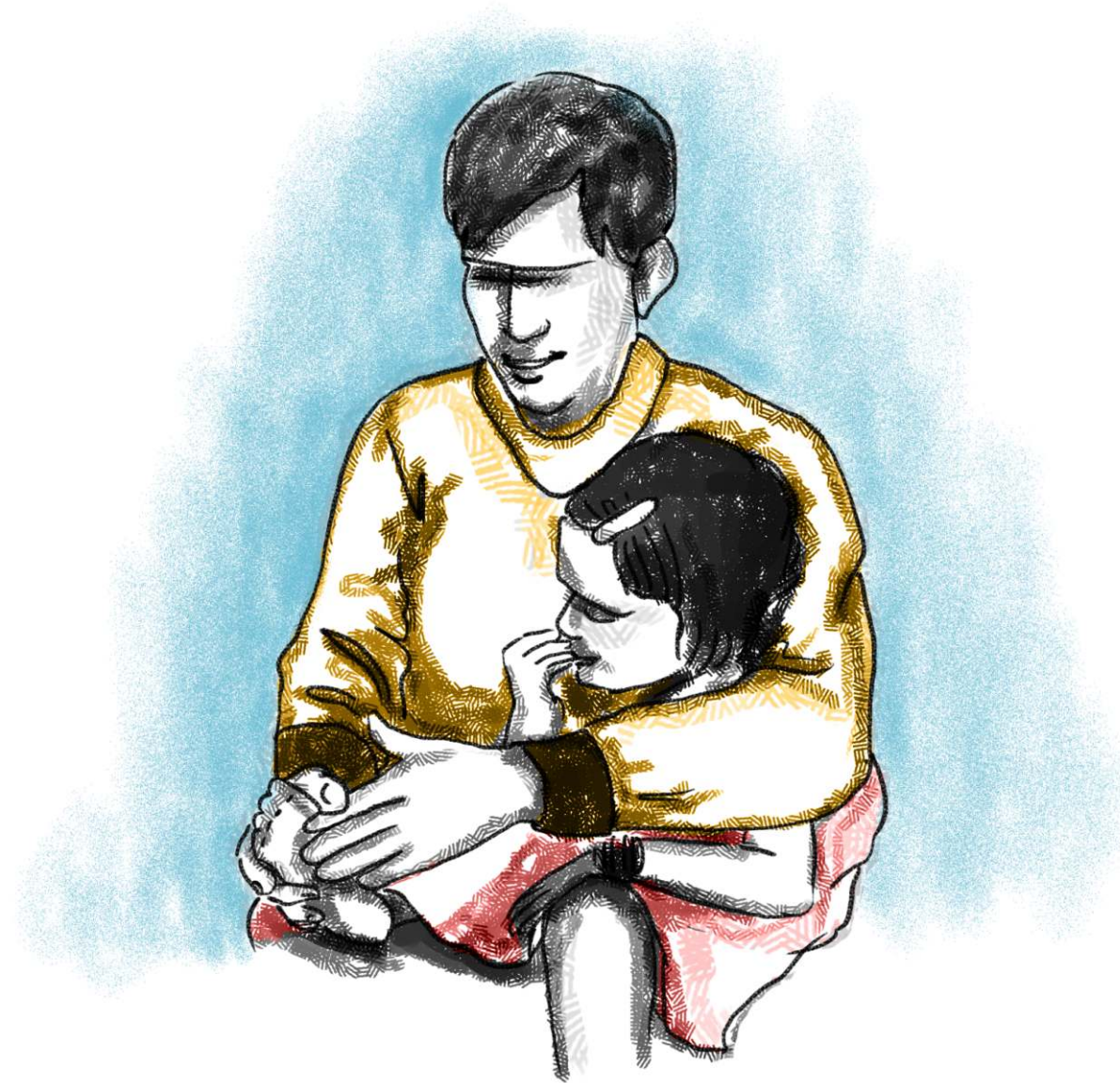
The presiding officers of the Labour court and Deputy Labour Commissioners hear and decide claims arising out of non-payment of minimum wages. File a claim petition with them.

The employee or any legal practitioner or any official of a registered Trade Union or any Inspector or any other authorized person may file a claim petition under this Act.

Employee is not maintaining the prescribed registers. Where should I complain?

Complain can be filed with the Assistant Labour officer having jurisdiction over the area where he is notified as the Inspector under the Minimum Wages Act.

Working hours and rest time



Working hours and rest time

Brick kilns fall under the ambit of the Factories Act, 1948 which states that a worker cannot be employed for more than 48 hours in a week.

Compulsory weekly holiday has to be provided to the workers and added to this a worker cannot be employed for more than 9 hours in a day.

Minimum one holiday to be provided within 10 working days to the worker.

Extra Wages to be paid for overtime

Maximum of ten and a half hours of work (which includes intervals)

WORKING HOURS OF ADULTS

Weekly Hours: < 48 hours

Weekly Holidays: Minimum 1 holiday in a week, swap holidays

Compensatory Holidays

Daily Hours <9 hours

Intervals for rest: at least half an hour

Night Shifts

Non Discrimination at workplace



Non Discrimination at workplace

Discrimination means treating someone unfairly because of who they are or because they have certain characteristics.

Discrimination at brick kilns is generally faced by:

- Migrant workers;
- Workers belonging to certain cultural and ethnic groups;
- Women workers not being recognised as workers at brick kilns;
- Workers belonging to different religions;

In order to protect the interest of specific communities and groups from any sort of discrimination there has been the enactment of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Any form of intentional humiliation and insults being done to a person of Scheduled Castes and Schedule Tribes is deemed to be an atrocity under the Act.

Non Discrimination at workplace

This Act also prevents the practice of bonded labour or forced labour by punishing with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

Further any form of discrimination based on caste, creed, sex, religion, race or place of birth is prohibited under Article 14 of the Constitution.

The Equal Remuneration Act, 1976 is a beneficial legislation which ensures adequate payment or remuneration to be made irrespective of the physical strength of employee and removing the scope of social and economic injustice merely on the ground of sex, thereby working to establish a just society in the country.

Non Discrimination at workplace

Remedy in cases of discrimination

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 mandates establishment of exclusive Special Courts and appointment of Exclusive Special Public Prosecutors to try the offences under the Act. This is made to enable speedy justice and expeditious disposal of cases.

The Special Courts have been authorized to take direct cognizance of offence and as far as possible, completion of trial of the case within two months, from the date of filing of the charge sheet.

The victim or any person who knows that an offence has been committed under the Act may report the incident to the nearest police station and lodge a complaint.

The complaint will be registered as an FIR by the police officer. An offence under the Act has to be investigated by a police officer, not below the rank of a Deputy Superintendent of Police. The investigating officer has to complete the investigation within 30 days on top priority.

Non Discrimination at workplace

Under the Equal Remuneration Act, 1976 there is no distinction like employment or the period of employment and applies to all workers even if engaged only for a day or few days.

No overriding effect is given to any agreement, settlement or contract to the provisions of the Equal Remuneration Act.

Any settlement or any agreement with the employee that is detrimental to the employee isn't allowed.

The Ministry of Labour and the Central Advisory Committee are responsible for enforcing this Act.

For any discrimination faced by women workers with regards to the payment of remuneration, complaint can be filed with the labour officer and the labour department.

Constitutional rights of workers



Constitutional rights of workers

Constitution is the single most important legal document in our country.

Rights which are provided under the Constitution are called Constitutional rights.

Article 14 of the Constitution talks about equality before law and the concept of “equal pay for equal work” is derived from this Article of the Constitution.

Secondly, Article 19(1)(c) provides the right to form association and unions.

Dignity of human labour is recognised under Article 21 of the Constitution which provides for Right to lead a life with dignity.

Article 23 of the Constitution prohibits traffic in human being and beggar and other similar forms of forced labour.

There are certain directive principles which cater to the interest of workers as human beings. They provide for:

For securing the health and strength of employees, men and women;

Constitutional rights of workers

That the tender age of children are not abused;

That citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

Just and humane conditions of work and maternity relief are provided; and

That the Government shall take steps, by suitable legislation or in any other way, to secure the participation of employee in the management of undertakings, establishments or other organisations engaged in any industry.

Constitutional rights of workers

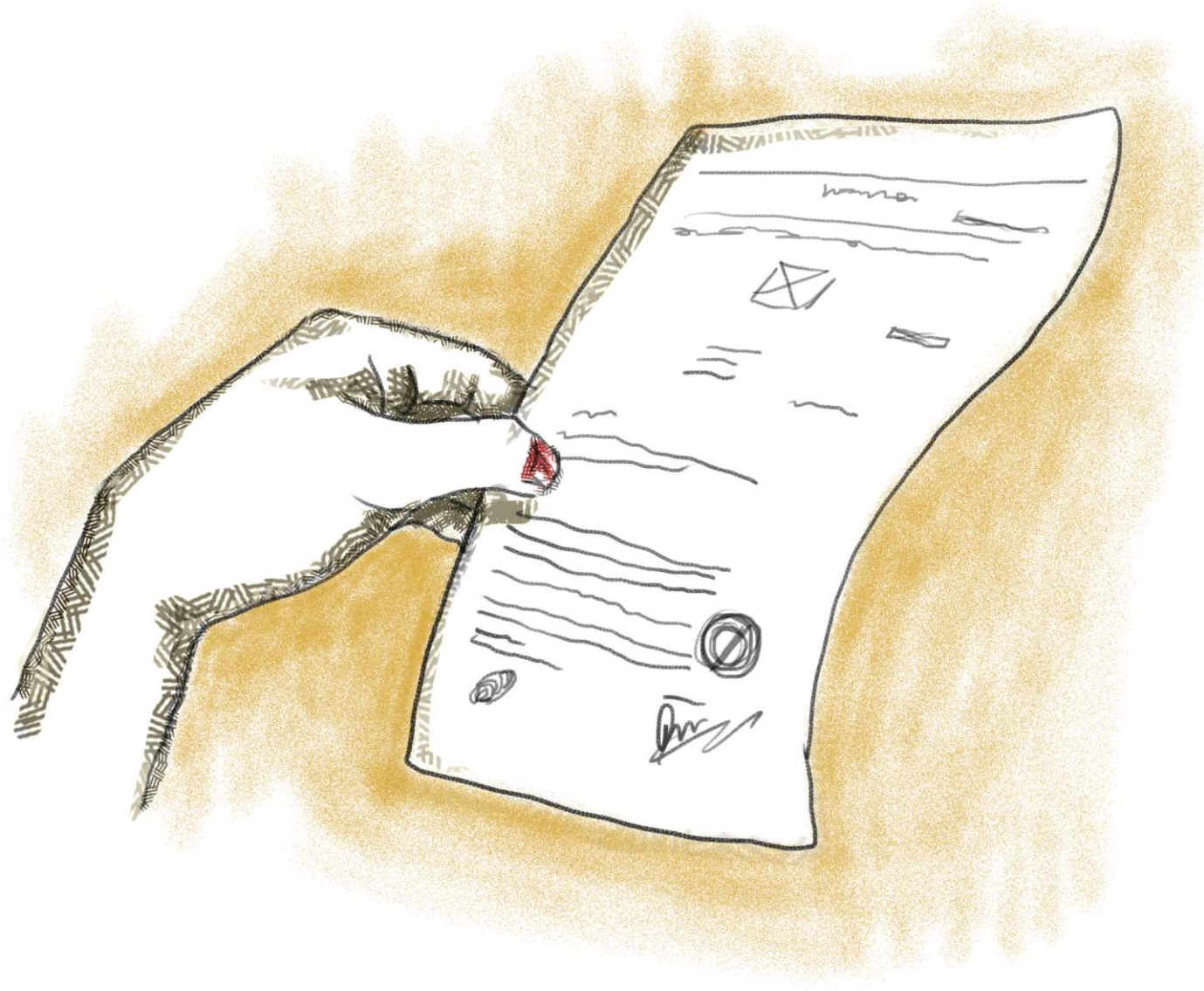
Remedy

In order to provide legal assistance and legal aid to the unorganized workers in respect of any claim or defence before any court or other authority and to ensure efficient implementation of beneficial schemes to the organised sector workers, the State has come up with a Scheme called “National Legal Services Authority (Legal Services to the Workers in the Unorganised Sector) Scheme 2015”

In order to provide effective legal services to the workers in this sector, each State Legal Services Authority (SLSA) forms a special cell focusing exclusively on these services. The cell is manned by one panel lawyer specialising in Labour Laws, one counsellor, wherever feasible, representative of an NGO and Para Legal Volunteers.

The special cell for Unorganized Workers provides counselling, legal assistance and legal aid by way of legal representation before any court or other authority, as required, to all Unorganized Workers.

Employer- Employee relationship



Employer- Employee relationship

Workers are considered to be employees of the brick kiln owners and the owners are called employers.

Entering into an agreement with the employer is in the best interest for both the employer as well as the employees (workers).

The agreement acts as a proof of employment for the workers, thus providing them benefits under various labour laws and schemes formulated by the government.

The employer cannot go against the terms of the agreement which he has signed with the employee. He has to abide by the terms mentioned in it.

Under the law, it is mandatory for the employer of brick kiln workers to maintain a register with the name of all the workers.

Records are important because they help in providing social security benefits to the workers.

Employer- Employee relationship

For instance the Maternity Benefits Act, 1961 requires a muster roll to be maintained at each kiln and the nonappearance of any woman's name on the roll prohibits them from maternity benefits accessible under the Act.

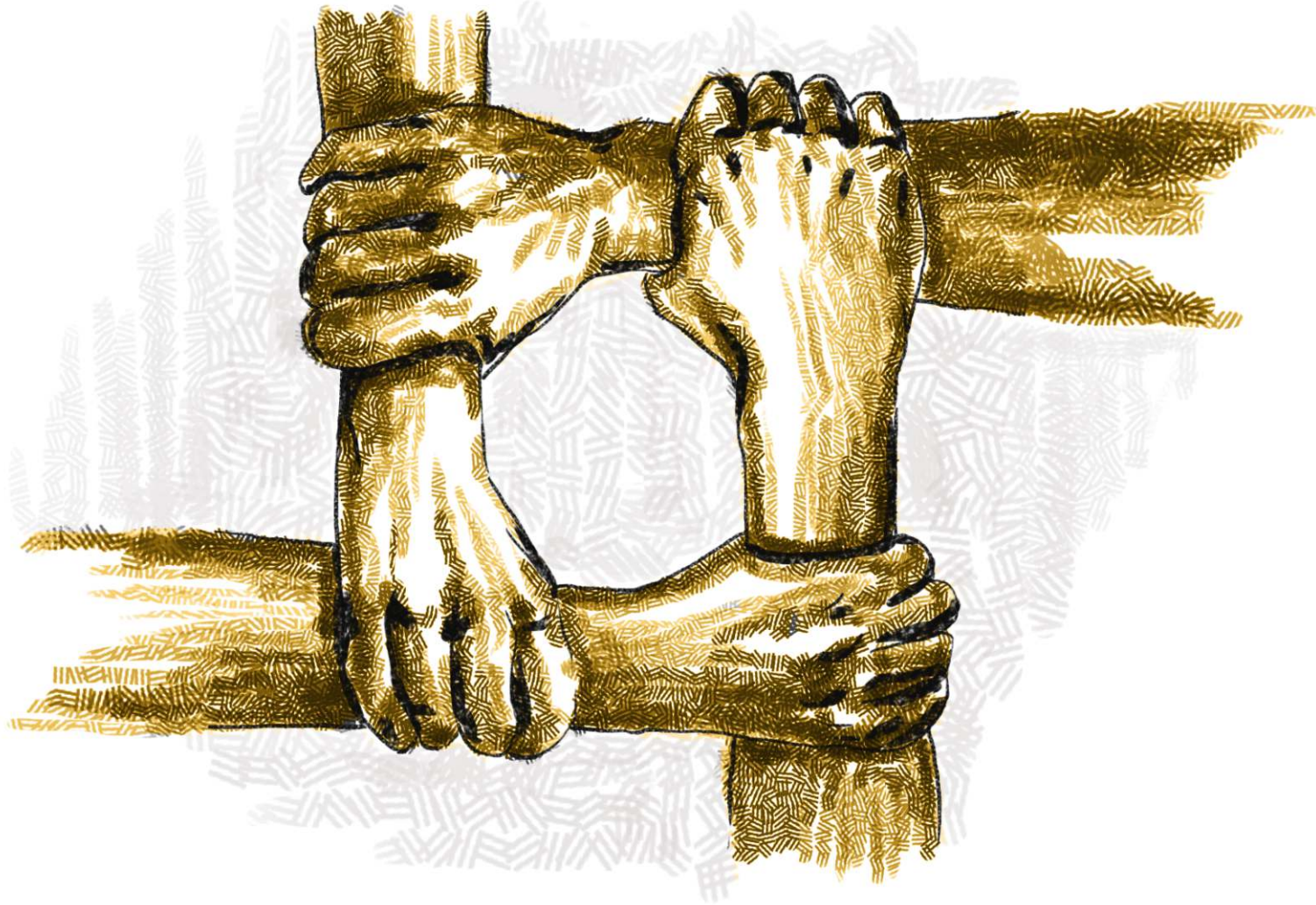
Workers should also maintain their own record of the account of bricks that they work upon every day.

Employer- Employee relationship

Remedy

A consequence of entering into an agreement with the employer or the contractor is that the terms of the employment are defined and noted. Non-abidance of the terms of the agreement is a breach of the contract which is a violation of the law. Secondly, the employers are forced to enter the names of such workers in official records, thereby creating a database for such workers. This database helps the workers in being identified as a worker for the purpose of government based social security schemes.

Right to unionise



Right to unionise

A group or association formed by people with common interest or purpose is a union.

A union caters to the needs and interest of people which forms part of it by presenting these interests to the employers.

There is a clear recognition guaranteed by the Constitution of India for individuals “to form associations or unions”. This right has been provided as a fundamental right under Article 19 of the Constitution.

In addition to the above there is a specific statute related to the labour unions, which is the Trade Unions Act of 1926.

It legalizes the formation of trade unions and provides safeguards for trade union related activities.

Labour Unions provide workers an opportunity to make their concerns heard by the management through the use of collective bargaining.

This Act will be further discussed in the “Right of representation and forming collectives” module.

Injury related compensation to workers



Injury related compensation to workers

The Workmen Compensation Act, 1923 provides that in the case of an employment injury, compensation is to be provided to the injured workman and in case of his death to his dependants.

An employer is liable to provide monetary compensation to a disabled workman, or to his dependents, in case of his death, if the disablement or death occurs "out of and in the course of employment."

Employer to compensate in following cases:

- Death;
- Permanent Total Disablement;
- Permanent Partial Disablement;
- Temporary disablement whether partial or total;
- Contracted Occupational Diseases

Injury related compensation to workers

The employer is only liable under the Act in cases of where disablement to the workman is for more than 3 days.

The compensation is provided in accordance with the following:

- (1) In cases of death: an amount equal to 50% of the monthly wage multiplied by the relevant factor or Rs. 80,000/- whichever is more.
- (2) In case of permanent total disablement, it is 60% or Rs. 90,000/- whichever is more and
- (3) In case of permanent partial disablement occurs then the compensation is proportionate to the disability arrived as at (2) above

Injury related compensation to workers

Remedy under the Act

In order to receive compensation, the workman or his/her dependents have to give a notice to their employer.

If the employer refuses or fails to provide compensation to the injured workman then the workman can file an application to the Commissioner under the Workmen's Compensation Act, 1923, who is either the Assistant Labour Commissioner or the Labour-cum-Conciliation Officer of the area where the accident took place or where the claimant ordinarily resides or where the employer has his registered office. After hearing both the parties, the Commissioner decides the claim.

Any agreement whereby an injured workman or his dependant, relinquishes or reduces his right to receive compensation is null and void to that extent.

Points to remember

Labour rights or rights of workers are a group of legal rights available to the workers which cater to the labour relationship between the worker and the employers.

Fundamental labour rights include decent working conditions, minimum wages, decent working hours, right to unionise, safety at workplace, equal pay for equal work etc.

Bonded Labour is prohibited in India by law vide Article 21 and Article 23 of the Constitution of India. A new type of bondage is with regards to advance being taken by workers particularly in the off season and then getting trapped in a cycle of debt with the owner or contractor. This is known as debt bondage.

Points to remember

Discrimination at brick kilns is generally faced by:

- Migrant Workers;
- Workers belonging to minority groups;
- Women workers not being recognised as workers at brick kilns;
- Workers belonging to different religions;

The rights of interstate migrant workers are protected by the government through The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

Factories Act ensures health, safety, welfare, proper wages and annual leave for workers working in brick kilns.

Under the Minimum Wages Act, it is mandatory for the employer to maintain a register of wages of all the employees working in the enterprise.

Points to remember

The Equal Remuneration Act, 1976 ensures adequate payment or remuneration to be made irrespective of the physical strength of employee and removing the scope of social and economic injustice merely on the ground of gender.

Workers are provided with a right to form a union which has been provided as a fundamental right under Article 19 of the Constitution.

In case of injury or death of worker during work compensation has to be provided under The Workmen Compensation Act.

Complaint with regards to benefits available to the workers can be filed with the labour commissioner or other labour officials. Cases of bonded labour and/or child labour can also be reported to the local police.

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