Violation of Workers’ Rights at the Commonwealth Games Construction Site

Even as the Commonwealth Games are projected as a matter of national pride, the daily human indignity suffered by workers at the construction site – those who are actually labouring day in and day out to ensure the games are held – remains outside our social consciousness and frame of active engagement. These workers are being made to do begar and their fundamental rights (Articles 14, 23 and 21) are being violated with impunity.

The 18th Commonwealth Games are scheduled to be held in New Delhi between 3 and 14 October 2010. All across the city, the construction of sports stadiums, swimming pools, etc, transport and accommodation facilities for players and other visitors is in full swing. An estimated sum of Rs 5,200 crore has been sanctioned by the government of India to the Delhi government for revamping infrastructural and sports facilities. The construction projects have been assigned to different government authorities – the Central Public Works Department (CPWD), the Delhi Development Authority (DDA), the New Delhi Municipal Corporation (NDMC) and the Municipal Corporation of Delhi (MCD). These bodies have contracted the work out to private multinational real estate and construction companies, like Emaar-MGF, Era Infra Engineering, Simplex, DLF and London-based JMC for the physical execution of these projects. These companies have further subcontracted the work to smaller companies, which, in turn, have hired contractors for getting the work done.

All these massive construction projects employ a large number of contract workers. While the projects and their delays are often in the news, almost nothing is heard about the working and living conditions of the thousands of workers employed for construction or the effect of the pressure of meeting deadlines on their working conditions.

Exploitation of workforce in the unorganised sector throughout the country is not a new reality. But post-liberalisation, the contractualisation of workforce, entailing a systemic violation of workers’ rights, has been on the rise. It is therefore not a surprise that the contract workers at the Commonwealth Games construction sites are also facing widespread exploitation. That labour laws, and hence, workers’ rights are being violated with impunity under the very eyes of the government authorities to whom these projects have been assigned, reveals the widespread acceptance of such practices.

Background Study

Given below are the details of these violations at one of these construction sites – i.e., the Commonwealth Games village coming up on the Yamuna river bed near Akshardham temple:

1. None of the workers employed by the contractors are paid the legally stipulated minimum wages or overtime. Unskilled workers are paid Rs 85 to Rs 100 per day as against the stipulated minimum wage of Rs 142 (till February 2009), for eight hours of work. They are paid Rs 134 to Rs 150 for 12 hours of work (eight hours plus four hours of overtime) for which they should be paid Rs 284. Skilled workers are being paid Rs 120 to Rs 130 per day for eight hours of work, even though the stipulated wage was Rs 158 per day, till February 2009. Paying less than the minimum wage is a violation of the Minimum Wages Act, 1948; Inter-state Migrant Workmen (Regulation of Employment and Condition of Services) Act 1979 (from now ISMW Act), and amounts to begar as per the 1982 Supreme Court judgment on Asiad workers. The non-payment of overtime is a violation of the Minimum Wages Act, The Building and Other Construction Workers (Regulation of Employment and Conditions of Services) Act, 1996 (from now BCW Act), and the Delhi Buildings and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2002 (from now DCBW Rules).

2. Workers are made to work all seven days a week – at their regular wages and are not given any paid leave. As per the BCW Act and DCBW Rules, and the Minimum Wages Act, a weekly rest day is mandatory and if the workers work on the rest days they are to be paid double the stipulated wage rate. (3) Workers are not issued identity cards and not given pay slips. They, therefore, have no proof of their employment. Not issuing pay slips is a violation under Minimum Wages Act 1948.
and the Contract Labour (Prohibition and Regulation) Act 1970. As per the ISMW Act, all migrant workers are to be issued pass books affixed with a passport size photograph and indicating the following particulars: date of recruitment, date of employment, wage period, name and address of workman. None of the workers have any such pass books. (4) Mode of payment of wages is also a source of exploitation. Most of the contract workers are not paid regularly. Their money supposedly remains deposited with their contractor to be paid at the time of completion of work. These contractors give them only part of their dues, or send it to their families when there is a need. We found numerous cases where the first payment was made after 45 days of work, and that too for just 15 days. In subsequent months also these contractors similarly keep five days’ wages with themselves. Almost all workers have their dues pending with the contractors, which they may or may not get at the time of completion of work, because they do not have any proof for claiming the same.

Representatives of the company or the principal employer the DDA are not present at the time of payment of wages as is required under law. Non-payment of regular wages is a violation of the BCW Act, the DBCW Rules and of the ISMW Act. Further such non-payment also amounts to misappropriation under various provisions of the Indian Penal Code. (5) None of the outstation workers are being paid travel or displacement allowance as required under ISMW Act. (6) As per the BCW Act, in accordance with the rules laid down in DBCW Rules, the workers are required to be registered with the Building and Other Construction Workers Welfare Board. This social security provision which has emerged out of many years of struggle is meant to provide a safety net for workers in the unorganised sector. Under the Building and Other Construction Workers Welfare Cess Act, 1996 every contracting company must pay 2% of the total costs at the outset of the project into the Welfare Fund. This fund is to be used for the workers registered with the board and the beneficiaries are provided several facilities like old age pension, family pension, compensations in case of death or accident, and other financial assistance. Women workers get financial help through this fund for getting themselves married or for their daughters’ marriages. At the time of delivery also, women get financial help. Families get insurance in case of natural death, or in case of accidents leading to injuries. This fund also aims to help workers for buying house, implements, education of children and for last rites.

Observations
The workers at the site have not been registered with the board. Ahluwalia Contracts claim that 3,300 workers have been registered with the board, but none of the workers have the passbook which they should be getting on being registered. This means even if the workers are registered, they cannot avail the benefits of such registration.

Workers are not given basic safety equipment like shoes, helmets, safety belts, etc. Even when helmets and shoes are given, money is deducted from their wages. Not providing these personal safety equipment at the cost of the employer is a violation of the DBCW Rules.

Five per cent of the workers are women. They are paid less than their male counterparts for same work. This is a violation of the Equal Remuneration Act 1976.

Workers are made to live in cramped camps with rooms made of tin sheets and asbestos. Some of the rooms of the four existing workers’ camps have leaking roofs, others lack electricity, doors, ventilation, space to cook and lack all privacy. The workers have had to brave the harsh Delhi winters in rooms without doors. The rooms which have an electricity connection do not have any fans. The place is full of mosquitoes. There are no toilets; open cemented space, with partition for men and women serves as the bathroom. Living conditions are nowhere close to those described in detail in BCW Act and the DBCW Rules.

Most of the workers at the Commonwealth Games village site are from Bihar, Jharkhand, Orissa, Madhya Pradesh, eastern Uttar Pradesh and West Bengal. Nothing can be said about the total number of workers at the site with surety. The number of workers keeps on fluctuating depending on the availability of work. Maintaining ambiguity about the real number and identity of contract workers is one of the methods by which contractors escape accountability. Also the number of workers keeps on fluctuating depending on the availability of work. These poor migrant workers are in no state to bargain with their contractor, or complain to authorities, because they are in desperate need for employment and any such step may lead to their being thrown away.

Unconcerned Authorities
The authorities on their part are absolutely unconcerned. The labour department claims to have appointed labour enforcement officers (LEOs), who regularly visit the construction site and if any violations are brought to their notice, they take remedial measures. According to the regional labour commissioner, these violations are not very common. Such widespread violations remaining invisible to the department is reflective of its collusion with the construction company. The labour department is not just required to make regular inspections of the equipment and machinery and also the enforcement of the labour laws. The labour department is also not supposed to wait for a complaint, but should take suo moto action in case of violations.

It has been reported in the press that a number of workers were not paid their wages for three months at the beginning of this year. Officials of Ahluwalia Contracts claim that they could not pay the wages because of lack of funds which were to be provided by the Emaar-MGF. Emaar-MGF on the other hand says that they have no responsibility for non-payment of wages to the workers since they do not deal with workforce-related matters. The principal employer for the Commonwealth Games village construction site, DDA, is blissfully unaware of any worker-related issues. It apparently relies on the contractors to furnish information and data on employment and payment of workers, even though as the principal employer it is the statutory responsibility of the DDA to pay all pending dues of the workers. It is clear that the state agencies are completely abdicating their statutory obligation which is to protect the interests of marginalised labour, who are disadvantaged in economic, social and legal terms.

On 14 December 2008, a worker died at the site, when part of a poorly maintained
crane fell on him. This worker was an employee of the Ahluwalia Contracts. It was reported that the worker had earlier made complaints about the malfunctioning of the crane. This accident is indicative of both negligence and non-adherence to the safety norms, which are elaborately listed in the DBCW Rules. After the accident the workers stopped work and protested for two days.

They claimed there had been several similar accidents at the site, which were covered up by the construction company. It is, however, not possible either to cross-check their claims or inspect the working conditions, as the entry to the construction site is highly restricted. No outsiders – members of workers’ unions, NGOs, civil rights organisations or even journalists – are allowed to enter the site, which is enclosed by huge boundary walls, with heavy security at the gates. DDA, which is the principal employer, refuses to grant permission to outsiders to visit the site and the labour department claims that it does not have the authority to grant such permission. The two companies, Emaar-MGF and the Ahluwalia Contracts, refuse to talk to civil rights organisations like People’s Union for Democratic Rights (PUDR) regarding any issues related to workers. There is thus total lack of transparency at the work-site. The construction company has a captive labour force with seemingly no economic or legal rights, and no access to an outside world in the form of those who might help them exercise these rights and hold the concerned company accountable.

Conclusions
In 1982, PUDR had done a similar fact finding report into the working conditions of the Asiad workers and sent its report to the chief justice of the Supreme Court, who treated this letter as a public interest litigation (PIL) and gave a historic judgment. According to this judgment payment of wages less than the minimum wages is equivalent to “traffic in human beings and begar” as described in Article 23 of the Constitution. Similarly, violations of Equal Remuneration Act and Contract Labour (Abolition and Regulation) Act were explained as the violation of Article 14 (violation of right to equality) and that Article 21 (right to life and liberty), respectively. The Supreme Court held the central government, Delhi administration and DDA as responsible for these violations because as principal employers they are responsible for ensuring that these rights are not violated.

Going by this judgment it is clear that the workers are being made to do begar at the Commonwealth Games village construction site and their fundamental rights (Articles 14, 23 and 21) are being violated with impunity. Finally, a point seems to be that for their completion these projects take for granted an endless supply of the desperately poor. Even as the Commonwealth Games are projected as a matter of national pride, and as India prepares for a sporting event that celebrates human excellence and achievement, the daily human indignity suffered by people, who are actually labouring day in and day out to ensure the games are held, remains outside our social consciousness and frame of active engagement. This signifies a collective failure of our society and polity that must be speedily rectified, if we are not to hang our heads in shame.

NOTE
1 These observations are based on the fact finding done by PUDR, Delhi. The construction here has been contracted by the DDA to Emaar-MGF, which further subcontracted the construction to some companies including Ahluwalia Contracts India.

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