

Fettered Lives

Contract Labour in Jawaharlal Nehru University

**People's Union for Democratic Rights
Delhi, June 2007**

By placing working people in such a position that they inevitably meet too early and an unnatural death....when it deprives thousands of the necessities of life, places them in conditions in which they cannot live...knows that these thousands of victims must perish and yet permits these conditions to remain, its deed is murder just as surely as the deed of the single individual.

Frederik Engels
The Conditions of Working Class in England

PREFACE

On 15 November 2006, fifteen construction workers employed at the School for Physical Sciences (SPS) site in the Jawaharlal Nehru University (JNU) were dismissed by the contractor when they protested a Rs. 5 cut in their daily wages. Prior to the wage-cut, the workers received Rs 70 per day, already far lesser than the (then) statutory minimum wage of Rs. 127.40 that was required to be paid for every day of unskilled work in Delhi. The post-cut Rs. 65 placed these workers, already living on a hand-to-mouth existence, in a perilous position.

The dismissed workers approached some JNU students to intervene in the matter. These students had been active earlier in another incident related to refusal by contractors to pay minimum wages to other workers at the School of Arts and Aesthetics site. At that time intervention by students had compelled the Contractor to clear the arrears. This time around, the issue became a campaign for minimum wages and was successful in highlighting the importance of labour law on campus. On its part however the JNU administration completely stone-walled the vital questions of the responsibility of the university administration in respecting labour law. It became clear that the existence of forced and bonded labour (see box) was in fact being condoned, if not actively encouraged by the JNU administration.

As the students' intervention grew, it became clear that the issue was not one limited to construction workers alone, but also affected other contract workers. The inquiry by the students highlighted the primitive nature of expropriation of labour, in what is believed to be amongst the enlightened institutions of the country. This report seeks to summarise the various illegalities related to contract workers in JNU. It evidences how protective legislation meant to protect the unorganized sector worker, be it the Contract Labour Act, the Minimum Wages (MW) Act, Equal Remuneration Act, Building and Construction Workers Act were followed in breach.

Along with PUDR's own research, the present report includes information from surveys conducted by the JNU students union (JNUSU) as also by student groups on various work sites within the JNU campus to examine the wage rates and living conditions of the workers. This is a departure for PUDR which goes by its own fact-finding while preparing reports. An exception was made this time because the students had already done a fine job of collecting primary data, which became apparent from reading the questionnaire modelled on an National Rural Employment Guarantee survey prepared by Jean Dreze and his group, as well as documents and interviews made available to us. Without this data and other notes collected by them, this report would not have been possible.

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1.

Introduction

In a report brought out by PUDR in May 1983 (“Anonymous Struggles; Democratic Rights of Unorganised Labour in India”), we had referred to the fact that “[u]norganised labour pervades all industries and services in India. Scattered in thousands of occupations, they tread their miserable lives sometimes as contract, sometimes as casual, sometimes as migrant, some other times as bonded labour”. Little did we know then that nearly a quarter century later and despite a plethora of supposedly protective legislations the condition of unorganized workers would have not merely stagnated, in some respects it would have regressed even further.

The term ‘unorganized’ refers to “those workers who have not been able to organize themselves in pursuit of their common interests due to certain constraints like casual nature of employment, ignorance and illiteracy, small and scattered size of establishment etc”. (Annual Report of Delhi Government 2002-03). It covers casual (badli workers) as well as contract labour employed through a labour contractor, ‘forced’ or ‘bonded’ labour, daily wage earner etc. While unorganised labour is found in both the unorganised as well as the organised sectors of the economy, it is the preponderant mode of employment in the unorganised sector of the economy. The impact of this is large as 227.94 million out of a total of 273.68 million workers in India (1999 figures) are in the unorganized sector. (*Employment-Unemployment Survey*, NCEUS 2006 www.nceus.gov.in)

The NCEUS report goes on to say that: “As per the definitions adopted by the Commission and the corresponding estimates of employment.....85.8 per cent of the total employment in the Indian economy during the period 1999-2000 was accounted for by the unorganised/informal sector. This was around 340 million including 4 million workers whose job status can be characterised as formal. As regards the type of employment, 91.3 per cent of the total employment was in the category of informal employment of around 362 million workers of which nearly 26 million were accounted for by the organised/formal sector”.(Emphasis ours). The proportion of unorganized workforce in Delhi is nearly 21 percentage points less than the national average. Nevertheless, at 70% it is very high indeed. It is also worth noting that 60 per cent of country’s gross domestic production comes from this sector. However, 98.5% of the workers have no social security coverage, although this sector accounts for 98% of all enterprises in the country. (The Hindustan Times, April 23, 2007).

Forced and Bonded Labour

Article 23 of the Constitution of India provides a fundamental ‘Right against exploitation’ and makes a specific reference to bonded labour and forced labour being prohibited. The scope of this provision was discussed by the Supreme Court in the landmark *Asiad Workers Case (People’s Union for Democratic Rights v. Union of India, AIR 1982 SC 1473)* which concluded that where a person was working for less than the minimum wages, it would be considered forced labour as required by Article 23.

In *Bandhua Mukti Morcha v. Union of India* ([1984] 3 SCC 161), the Supreme Court further elaborated, “... whenever it is shown that the labourer is made to provide forced labour, the Court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is, therefore, a bonded labour ... unless and until satisfactory material is provided for rebutting this presumption, the Court must proceed on the basis that the labourer is a bonded labourer”. The legal position is therefore undisputed – where a worker receives less than minimum wages, it is forced labour and will be presumed to be bonded labour, unless proven otherwise.

Contract Labour

A large number of unorganised workers end up working as contract labour. It was in recognition of the plight of these large numbers that the Contract Labour (Abolition and Regularisation) Act, 1970 was passed. The objective of the Act was “to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances”. The Act itself promised to ensure that the unorganized workers would be protected from being exploited by the Contractor. In the “Legislative Framework” of the Act, it was contended that contract labour “is neither borne on payroll or muster roll nor is paid wages directly. The establishment which farm out work to contractors, do not own any direct responsibility in regard to their labourers. Generally, the wage rates to be paid and observance of working conditions are stipulated in agreement but in practice they are not strictly adhered to”.

In order to ensure that minimum wages due to workers are paid, Section 21 clause (1) of the Contract Labour Act lays down that “A contractor shall be responsible for payment of wages to each worker employed by him as contract labour”. Clause (2) obliges the Principal Employer to “nominate a representative....to be present at the time of disbursement of wages by the contractor”. Clause (3) obliges the contractor to “ensure the disbursement of wages in the presence of the authorized representative of the principal employer. And through clause (4) makes principal employer “liable to make payment of wages in full or the unpaid balance due” if the contractor “fails to make payment of wages within the prescribed period or makes short payment”. Payment of Wages Act (4 of 1936) which defines wages (the same definition is applicable to the Contract Labour Act) also makes it abundantly clear that the contractor can not deduct from the wage “any contribution paid by the employer to any pension or provident fund”. Furthermore, the Contract Labour Act also extended certain benefits at workplace such as Canteens if the number of workers was hundred or more (Section 16); Rest Rooms if the worker is expected to halt at night (Section 17); Drinking Water, Toilets and Washing facilities (Section 18) etc.

It was felt that the exploitative conditions operating in work places and low wages paid to the contract labour would gradually be replaced as more and more jobs got regularized and in some processes or operation or manufacturing they are abolished. Instead partly as a result of the Act itself and partly because of a more industry friendly approach of the government as part of its economic reforms has seen that contract labour has become the standard. Instead of shrinking or getting abolished, indeed it has also become the predominant form of employment even in the organised sector.

When we say that the Act itself is open to abuse, it is to point towards the fact that the very fact of being an unorganized sector defies regularization. Although the Act enables the workers to fight for their rights, it pre-supposes that they are organized for them to fight for its enforcement. But the biggest problem casual and contract workers face is that the very nature of unorganized sector is geared to defeat trade unionization of the work force. The defining characteristic of unorganized sector contract labour is that its work is of temporary character and/or the employment is for a fixed period/project.

In terms of wages, unorganised sector wages are invariably lower than those of organized workers as well as lower than that of the contract labour employed in organized sector. Further as this report and others too have shown, contract labour, especially in the unorganised sector, often receive wages lower than the statutory minimum wages. A caveat is necessary here. The basis for calculation of the minimum wage itself (see box) leaves much to be desired. This makes for poor nutrition, malnourishment of child and mother, and inadequate to provide education and health for those whose needs are most acute. In such circumstances for an unorganised worker to forego even

a day's wages is a huge sacrifice. Lacking a union and prevalence of low wage economy reduces their capacity to sustain a struggle or agitate for their rights. It means that obligations laid down under the Contract Labour Act are such that they can only be followed to the dot by a large and organized company or corporation. Whereas to enforce it on the unorganized sector's unorganized

Minimum Wages in India

Article 43 of India's Constitution lays down that "(t)he state shall endeavour to secure by suitable legislation or economic organisation or in any other way to all workers, agricultural, industrial or otherwise, work, a living wage conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities". The overwhelming majority of workers continue to be denied this conceptualisation of what would be considered a "fair wage". Instead the 15th Indian Labour Conference in 1957 moved towards setting down norms for fixing Minimum Wage, a euphemism for a "living wage".

The 15th ILC recommended that in the first place the standard working class family should be taken to mean husband, wife and two children below the age of 14 yrs. Second, minimum food requirement should be calculated on the basis of 2700 calories daily per adult man, 2160 for woman and 1620 for the child. Further clothing requirement of 72 yards for a family per annum would be added while housing allowance corresponding to the minimum area provided for under the governments industrial housing schemes. Lastly fuel, lighting and other items of expenditure should constitute 20% of the total Minimum Wage.

While the Government did not accept these recommendations, Supreme Court approved these norms through its judgement in the case of *U. Unichoyi v. State of Kerala* (AIR 1962 SC 12) and thereby acquiring the force of law behind it. And the apex court through its judgement in *Workmen v. Reptakos Brett & Co Ltd* (AIR 1992 SC 504) added a sixth norm – 25% of the total Minimum Wage was supposed to cover children's education, medical treatment, recreation etc. The Court observed that these six norms would be nothing more than Minimum Wage at "subsistence level" which the workers must get "at all times and under all circumstances". However, all this was easier said than done. Because let alone adherence to the six norms even the five norms laid down by the 15th ILC has been followed in breach.

Minimum wages across India vary from the low of Rs 25 in Nagaland to Rs 134 in Kerala. The assessment of basic needs of a "standard" household is most often subject of controversy. Because the size of the family taken as four ignores that the family may have old parents to take care of. In addition the arbitrary manner in which caloric intake of man and woman are considered shows the inbuilt miscalculation of the basic needs of a family as a unit. It has also been pointed out that while reviewing the Minimum Wages every five years, the price rise calculations do not reflect the disproportionately high burden placed on workers family to meet their basic needs. Because the Consumer Price Index is an aggregate of basket of food and other services calculated uniformly for the country. What this means is that even when the norms laid down are followed they leave much to be desired.

It is worth noting that in Haryana the Joint Trade Union Council, using the parameters set up by the 15th Labour Conference and the current price index, calculated the minimum wage to be Rs 7000 for vegetarians and Rs 7300 for non-vegetarians. The state government rejected this proposal and instead fixed a figure of Rs 3510 for contract labour employed in industry. But even this notification has not been issued following the opposition from the industrialists. (The Tribune June 1, 2007)

For more information see: Anuja Mirchandaney (2004), *Law Relating to Minimum Wages*, Alternative Law Forum, Bangalore

labour depends often on fortuitous circumstances. That is to say that if the “principal employer” has the interests of workers at heart. Or some trade union or social activists who live in close proximity take up the matter. For instance had it not been for the JNUSU their plight in JNU may not have gotten highlighted.

The Jawaharlal Nehru University

JNU was established in 1969, by an Act of Parliament, with the objective of promoting Nehruvian vision. Over the years, it has been a model university in terms of academic excellence. JNU’s website states that “(t)he very Nehruvian objectives embedded in the founding of the University, national integration, social justice, secularism, the democratic way of life, international understanding and scientific approach to the problems of society had built into it constant and energetic endeavour to renew knowledge through self-questioning.” (<http://jnu.nic.in>)

These are tall claims indeed, but then JNU is not just any university but one of the most progressive educational institutions of higher learning. JNU employs at least 550 teaching staff for a nearly 6000 strong student body. Another 1400-1500 persons are Grade IV employees for carrying out a variety of jobs. Spread over 1000 acres in the capital of India, New Delhi, and funded almost entirely by the central government, its very location and access to resources gave it an advantage over its provincial cousins. It became a premier institution also because it promoted inquiry and analysis and became the centre of many a debate that have had country-wide impact. Its active student body and the teaching staff, often in the forefront of democratic struggles, lent it an image for being vibrantly progressive. Its administration maintained a façade of being liberal in consonance with this progressive image.

Beginning 1993-94, JNU began replacing its permanent workforce with casual labour and introduced outsourcing of canteen, sanitation, gardening, security jobs, etc. The contractualization that began then was in clear violation of the central government itself, under whose rules JNU is constituted. A central government notification of December 1976 prohibited the employment of contract labour in sweeping (safai karamcharis), dusting, cleaning and security in central government establishments. However, starting about 1993, as permanent workers retired, they were replaced by workers hired on contract, completely illegally. The security guard apparatus was contracted out to private security companies. JNU’s violations hence go back a long way, and in this respect JNU was behaving no different from thousands of big and small employers all over the country at that time, all of whom have been contractualizing their workforce in many ways.

Hence over time, the percentage of contract labour gradually expanded. Construction of the buildings have also been undertaken by contract labour. Interestingly, there is no study which documents the contribution of the hundreds of contract labour who constructed the University. What became of them, where did they come from, what wages were paid to them, etc remains unknown. This lapse is compounded by presence of worst of the labour practises today in JNU. In this sense the plight of the contract labour working in JNU helps highlight the onerous battle that lies ahead for the working people.

2. Construction Workers in JNU

Although the move towards contractualisation of labour in JNU may be relatively recent, contract construction workers are as old as JNU itself. Due to JNU being a central university, all the major construction work including hostels and schools/ administration buildings etc is to be done by the Central Public Works Department (CPWD). Along with construction, CPWD is also responsible for the major maintenance and upkeep of JNU's buildings.

The CPWD often subcontracts the work out to various contractors and indeed most of the present campus buildings have been built through construction labour brought by various contractors and sub-contractors. Construction workers are hired by the sub-contractor through 'jobbers' also called 'jamadars'. Even though the tender filled by the contractor with the CPWD quotes wages at minimum rates, the jamadar of the group received Rs. 75-80 per worker from the Contractor. After the jamadar's cut, unskilled workmen normally received only about Rs. 70 while skilled workmen received between Rs. 110 and 130. Although the issue has come up various times in the past, it has rarely remained a consistent campaign. However events over the past few months have again brought the question of minimum wages to the forefront and exposed the JNU administration's exploitation of its workforce and violation of labour laws.

Roti aur Makaan – the human story

The majority of the construction labour on the JNU campus comes from Chhattisgarh, Madhya Pradesh, Jharkhand and Uttar Pradesh. Most have no agricultural land and cannot find work in the villages. A large number have substantial debts back home with rates of interest charged by money-lenders ranging between 36 – 60% per annum. This effectively forces them to move to the cities looking for work. The 'jamadar' or thekedar who brings them to the city charges a minimum of Rs. 3,000-4,000 for the family to travel – this is then repaid from the daily wages earned. This advance also ensures that the labour cannot move away from the 'jamadar' at will. Given that a large number of workers also send some amount of money back to their villages to repay loans or for extended family, they are left with little but a literal hand-to-mouth existence.

Given that an average worker earns less than Rs. 2000 per month, after the above deductions the workers are left with little to provide for accommodation. Though Section 17 of the Contract Labour Act makes a reference to 'rest-rooms' which are to be provided where labour is required to "halt at night in connection with the work of an establishment", this is almost never done by the contractors. Instead the workers often reside in jhuggis close to the worksite. Though these are tolerated by the JNU administration, the workers are always liable to be evicted as the standard JNU contracts clearly stipulate that no hutments would be allowed on campus. As in the instant case, this ensures that the workmen are at the complete mercy of the JNU administration and the contractors who can demolish their hutments at any time citing the provisions of the contract.

The Immediate Struggle

The construction of the School of Physical Sciences (SPS) was undertaken in August 2006 by M/ S Jia Lal Malhotra & Co who had been awarded the contract by CPWD. When work at the SPS site started, the wage was reduced from Rs 70 to Rs. 65. On 14 November 2006, fifteen workers from the site approached the JNU Students Union (JNUSU) seeking that the daily wage be reverted to Rs. 70. Mind you, this demand was far less than the statutory minimum wage of Rs. 127.40 that was required

to be paid at that time (it's currently Rs 133.45) for every day of unskilled work in Delhi. The very next day all the fifteen workers were dismissed by the contractor for making such demands. When the JNUSU met the JNU administration on 22 November 2006, the administration orally accepted the validity of the demands relating to payment of minimum wages and stated that it would act to ensure that labour law was respected. However the 15 'whistle-blower' workers were not taken back by the contractor and were threatened if they continued with their action. An injury to another workman on the SPS work-site on 27 November 2006 led to angry construction workers initially seeking first-aid and then continuing to assert their right to minimum wages and other entitlements. The contractor however stopped work and by 30 November, the workers were forced to move to other work-sites to earn a living. The stalemate was broken after sustained pressure by the JNUSU and on 2 December, in the presence of JNUSU and JNUTA members, and CPWD officials, the Contractor paid the remainder of minimum wages due to the workmen with retrospective effect. As the records of the contractor were found to be completely forged and manipulated, the JNUSU students got the same seized by JNU engineering department officials.

Subsequently on 9 December, after a number of protests and demonstrations, two other contractors, Chaudhry (electric sub-station) and Nafeez (Lohit Mess canteen) were pressured to pay the arrears of minimum wages. This time around the students were better prepared and had corrected discrepancies in the muster roll after interviewing the workmen and comparing their corroborated testimonies with the muster roll. Wages for November and arrears of the previous two month were paid in full to the workmen by the contractors.

The early victories however were misleading. On 13 December the 15 workers from the SPS site found work at the canteen of the School of Social Sciences. However they were dismissed from their jobs as the contractor received a direction to do so from one Mr. Dharamvir of the JNU Engineering Department. The next day, 14 December, the contractor Chaudhary under instruction from the officials of the JNU Engineering Department demolished the jhuggis of all the 15 workers despite attempts by students who tried to stop the demolition stating that jhuggis could not be removed without prior warning. With the contractor threatening the 15 workmen, and the JNU Engineering department intervening wherever they got work, the workmen were unable to find work on the campus and thus forced to leave the campus. This points towards collusion between the contractor and the JNU administration.

Violations of the Contract Labour Act

While the non-payment of the minimum wages to the construction labour was the most crucial issue, when the students checked the SPS worksite they found a number of irregularities. There was no information on the nature of work etc of the ongoing work available on site. No muster roll was displayed at the site and there was no provision of drinking water or toilets, let alone crèches. This was also true for other work-sites on the campus.

Section 18 of the Contract Labour Act requires every contractor to provide a "sufficient supply of wholesome drinking water for the contract labour at convenient places", "a sufficient number of latrines and urinals ... so situated as to be convenient and accessible" and "washing facilities". Section 19 requires that first aid facilities also be provided by the contractor at the work-site.

It is clear that despite the lofty statements of respect towards labour law and protection of workers rights and interests made by the CPWD in their "manual", there was little interest amongst their officials in ensuring the rights of the workers. In fact the workmen repeatedly asserted the nexus between the contractor, the JNU Engineering Department and the CPWD. On the part of the JNU administration, despite its promises in the early meeting with the JNUSU, it turned a blind eye to the

workmen. On 18 December, JNUSU office bearers met with the Vice-Chancellor and gave him a memorandum. The response of the JNU's Vice-Chancellor is startling in its complete lack of concern to the presence of bonded labour on its campus. The response of the JNU administration (Letter no. UC/177-[01], dated 6 February 2007, and signed by R. Venkateswaran, secretary to the Vice Chancellor) asserted that the legal onus of compliance lay with the CPWD and that "further action

Divide and Rule: the Suspension of Students

By bringing to light the irregularities related to the workers in the JNU campus and exposing the negligence or collusion of the administration, the students had angered the administration which was looking for an appropriate moment to crush their endeavour.

In mid-February, a number of handwritten posters put up by students about the struggle was torn down by the administration. On 19 February 2007, a large number of student gheraoed the Registrar of the university while he was in his car, seeking answers as to why posters had been removed. The Registrar refused to talk with the students and stayed inside the car, surrounded by the students for a number of hours. Subsequently nine students were suspended for this action. A circular dated 23 February 2007 issued by the University PRO states, "The reason for this outrageous act [i.e. the gherao] was the removal of *offensive posters* put up by certain group of students on the walls and staircases of Administrative Block." However the same circular continued, "The posters were related to the demands for ensuring minimum wages for contract labourers, regularizing daily wage/ muster roll workers etc." The circular does not state what demands were offensive to the JNU administration.

By suspending 9 students and instituting an inquiry only into the incident of 19 February, the University administration has attempted to deflect attention from the core issues of labour rights violations and its own complicity in this and reduce it to one merely on students disrupting the university. The students submitted formal letters of apology and their suspensions were cancelled.

Yet, the JNU administration carried on with its formal enquiry. The administration has now served show cause notices against eleven students, including three office bearers of the JNU Student Union, despite the fact that students had submitted apology letters. The show cause notice issued to each of the 11 students individually has varied charges, and we fear this may be a prelude to serious action against them. Whether or not this happens the very fact of holding a proctorial inquiry into the 'gherao' of the Registrar while remaining mute over the more fundamental issue of exploitation of contract labour shows the hypocrisy of the JNU administration. Lest we forget, JNU prides itself in promoting scientific temper and engaging in social concerns, which is precisely what the students were doing when they began their agitation against exploitation of contract labour by a nexus of JNU's administration and labour contractors. The JNU administration clearly does not believe in practising what it preaches.

The show cause notice to students is also an ominous portent for student activity on campus. If JNU is progressive, it is very largely because of its student's opposition to oppression and exploitation. It is pertinent here to note that JNU students have in recent times raised many serious issues on campus: the funding of some teaching posts by Ford Foundation; the entry of private industry in funding research; the underfunding of the library facilities and fewer periodicals as a consequence; the protests against the neoliberal policies of Manmohan Singh (when he was invited to campus); the entry of MNC products on campus; and now the issue of contract labour and minimum wages. The inordinately harsh response by the administration is then not just because a JNU official was gheraoed, but an attempt to rob JNU's student politics of its progressive commitment.

under the laws and contract agreements” would be taken by the CPWD. CPWD had also been “requested to ensure compliance of labour laws”.

In response to the student’s demand that information agreed to be given by the JNU administration in the previous meeting be provided (including information on all work taking place on the campus, display of muster rolls on work-sites as also transparency in payment), the administration responded: “Labour commissioner having the jurisdiction over the area can ask for any records and details from the contractors as well as impose fines and penalties for non-compliance of laws”. However this ignores the conditions laid down in Section 29 of the Contract Labour Act as per which the contractor is required to make such information available at the site of work.

The question of ‘Principal Employer’

Under the Contract Labour Act, the primary responsibility of payment of minimum wages and of ensuring certain basic services and amenities rests upon the contractor. However the Act also provides for a ‘Principal Employer’ who is liable for such services not being supplied. The term is defined in Section 2(g) to mean:

- I. In relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf,
- II. In a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so named,
- III. In a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named,
- IV. In any other establishment, any person responsible for the supervision and control of the establishment.

As mentioned earlier Section 21(4) makes the “principal employer” *liable* to make payment of wages “in full or the unpaid balance due” to the contract labour employed. The same clause further provides that the principal employer can recover the amount so paid from the contractor. Similarly Section 20 of the Act provides that where amenities (water, toilets etc) required to be provided for the benefit of contract labour employed in an establishment is not provided by the contractor, “such amenity *shall* be provided by the principal employer”. This section also provides that all expenses incurred by the principal employer in providing such amenities may be recovered by the principal employer from the contractor. The position of the ‘principal employer’ is thus strong and indeed vital for the protection of the interests and rights of contract labour. In the Asiad Games case the Supreme Court had chastised all the respondents - The Union of India, the Delhi Administration and the Delhi Development Authority when they attempted to argue that they had no responsibilities. The Court observed that the authorities “cannot fold their hands in despair and become silent spectators of the breach of a constitutional prohibition being committed by their own contractors.” This was, in fact, one of the main arguments raised by the JNU student community which called upon the University administration to honour its duty as a ‘principal employer’

Instead of accepting their duty as the ‘principal employer’ and taking further action, JNU has instead attempted to confuse the matter by bringing in its ‘special relationship with the Central Public Works Department (CPWD). According to the JNU administration, this makes CPWD the ‘principal employer’. Their letter dated 6 February 2007 referred to earlier, claims, “ *The construction of the building for School of Physical Science by M/s Jiyalal Malhotra and Co. is being done under a CPWD*

contract. The legal onus of compliance of the labour laws is on this contractor and the 'Principal Employer' who is the Executive Engineer, CD -VI, CPWD New Delhi."

This is a clear attempt by the JNU administration to absolve itself of all responsibility whatsoever. However its assertion that the CPWD is the principal employer is in fact incorrect. On its website, CPWD defines itself as "the principal agency of the Government of India, under the Ministry for Urban Development for creation and maintenance of all Central Government assets." The repeated references to 'clients' and being 'best service providers' on the website too leave little doubt about the nature of the organization – in essence an agency of the Central Government providing construction and maintenance service to various clients. JNU administration's argument that CPWD and not JNU is the 'principal employer' must then be examined in the light of these circumstances.

While CPWD is merely an executing agency, it is clear that whether in the case of the School of Physical Sciences or the other buildings, it is the University that pays for the assets, is the beneficiary and makes use of such assets and retains control and supervision over the construction which is on its premises. Indeed as the below box (discussing the process of constructing a building on the JNU campus) shows clearly, it is the JNU administration that decides when a building must be constructed and for what use. If it is a hostel building, it is JNU that would specify how many rooms are required – the number of single or double; the number with attached bathroom etc. After it provides its wish-list, the CPWD merely translates this into an engineering plan. Once the payment of the amount is made to CPWD, it constructs the building and hands the same over to JNU. It is therefore evident that JNU would be an 'establishment' as required by the definition of 'principal employer' in Section 2(g) IV of the Contract Labour Act.

CPWD Construction on JNU Campus – the procedure

When JNU requires any works executed (e.g. buildings constructed) through CPWD, it is required to send a formal requisition to CPWD. It is also required to send the details in a Performa (available at <http://cpwd.nic.in/procedureforwork.pdf>). This detailed form is meant to provide the CPWD with all the details of the eventual building(s) required. On receipt of the particulars, CPWD takes up survey work and preparation of the layout plan and preliminary drawings in consultation with JNU. Preliminary drawings are then submitted to JNU for approval and obtaining the formal clearance.

On receipt of approval for the drawings, preliminary estimate, based on plinth area norms duly enhanced with approved cost index for the location is prepared and sent by CPWD to JNU which is then required to convey Administrative Approval and Expenditure Sanction and return a countersigned copy of the preliminary estimate to CPWD for taking up the work and also make budgetary allocation. The Preliminary Estimate amount has to be deposited with the concerned Executive Engineer either in full or in instalments. Once these formalities are completed, the CPWD takes further action for the preparation of Detailed Working Drawings, Detailed Estimate and structural designs, call of tenders and award of works. The work is awarded stipulating reasonable period of completion. On completion, the building is handed over to JNU.

Although the CPWD can sign Memoranda of Understanding where the 'client' desires, there is no such MoU in the case of the SPS building with JNU. In response to an RTI application filed by two students seeking a copy of any MoU or agreement between CPWD and JNU, CPWD stated "As regard agreement between JNU & CPWD, it is clarified that this matter is clearly illustrated in CPWD Manual – II, Chapter Deposit Works. This is a *special arrangement made by Government of India for Construction/ Maintenance of Govt. Buildings.*" [Letter no. 20(11)/ No – 6, S.A (Yo-1)/ 326 dated 28-2-07].

In another circular issued by the Public Relations Officer of JNU on 23 February 2007, the University administration stated, "The University ... has categorically stated its position that the law of the land will always be complied with. The CPWD, a government organization, *has been entrusted with construction activities* of some of the buildings and they are carrying out the work through their prescribed procedure of implementation through contractors. The contract workers are hired by such contractors and CPWD is the principal employer." The circular also added, "However the University intervened and discussed with CPWD to see that the payment of minimum wages are made as per labour law." For the purposes of determining principal employer, this circular again reiterates both the control and supervision of the exercise by JNU which not only "entrusted" CPWD the tasks but discussed the problem of wages "to see that" the payment was made as per labour law.

The approach of the JNU administration is unoriginal and incorrect. In fact the Supreme Court has previously come down strongly upon such attempts at evasion of responsibility in the case of *Secretary, Haryana State Electricity Board v. Suresh* (AIR 1999 SC 1160). The Court stated, "the Contract Labour Regulation Act being a beneficial piece of legislation as engrafted in the statute book, ought to receive the widest possible interpretation in regard to the words used and unless words are taken to their maximum amplitude, it would be a violent injustice to the framers of the law....[and] the entire legislation would loose its efficacy and contract labour would be left on the mercy of the intermediary."

The Court also developed the below propositions:

Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off.....The Court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearances. (Emphasis added).

Clearly, if one were to keep in mind this wider interpretation urged by the Supreme Court; the nature of CPWD work mentioned on its website; the nature of their contracts with JNU; and JNU administration's own control over what is constructed and over the workers employed, then one would be forced to conclude without any ambiguity that JNU is in fact the principal employer and liable to meet what is required of a principal employer under the Contract Labour Act.

The manner in which the JNU administration has sought to wash its hands from the 'forced labour' on their campus has not merely serious legal implications, but also raises questions about the responsibility of education and non-profit institutions. The university receives a large amount of grants from the central government. Its position as one of India's foremost scholastic centres is tarred greatly by its blinkered approach to the marginalised workmen that labour on its premises.

JNU's General Conditions on Contract for 'works'

In all cases where JNU has a direct contract with a contractor for any "Works" – i.e. building or construction which are not to be undertaken by CPWD, the "General Conditions of Contract for Works" is applicable as it forms part of the contract between JNU and the contractor.

Clause 18B of the General Conditions recognises the 'principal employer' clause of the Contract Labour Act and allows the University to make deductions from payments to reimburse any amounts that may be paid by the University to workers as wages or any expenditure that may be incurred for providing welfare and health amenities as required by the law of by JNU's own Contractor's Labour regulations. Clause 19B (iii) also requires contractors to abide by the CPWD contractor's labour regulations. Where more than 20 workmen are employed, the 'Model Rules for the protection of Health and Sanitary Arrangements for Workers Employed by JNU or its contractors' requires that a first aid box be available at the worksite. Where more than 150 workers are on site, the rules require a person trained in first-aid to be in-charge of the first-aid box. Rule 4 requires "a sufficient supply of cold water fit for drinking" while Rule 5 requires adequate washing and cleaning facilities for male and female workers. Rule 6 requires at least one latrine for 25 male of female workers. Similarly Rule 7 requires proper shelter for rest and food while where there are more than 20 female workers; Rule 8 requires two rooms as a crèche for children under the age of 6 years.

Similarly the 'JNU contractor's Labour Regulations' too detail a number of provisions including payment of wages including manner of payment, overtime payment, records to be maintained and information that is to be displayed at the worksite. The regulations also refer to Attendance Card cum wage slip, employment card and service certificate which are meant to be issued by the contractor. Regulation 16 also provides that all prescribed labour records shall be made open for inspection by any worker or his agent besides by the labour officer or any other person, authorised by the university. Clearly there is a law and there is a reality...

3. Other Contract Workers on JNU Campus

Though the issue this time around has surfaced in the context of construction workers working on the JNU campus, a number of other contract workers on campus also suffer from similar violations. In fact in these cases, even JNU cannot contest that it is the 'principal employer' as there are direct contracts between JNU and the various contractors.

While reading about the basic violations and pathetic working conditions faced by these categories, it is relevant to bear in mind that these workers and many others have a strong case to be made permanent even as defined under the law. Section 10 (2) of the Contract Labour Act lays down certain indicators for the abolition of contract labour in any establishment: one, whether the process or operation is necessary for, or incidental to the establishment; two, whether it is of perennial nature, of sufficiently long duration to warrant the use of permanent workers; three, whether it is ordinarily done through regular workers in that establishment (in this case, university); and four, whether it is sufficient to employ a number of whole-time workers. All these four conditions need not apply to prohibit the employment of contract labour. What does one say of mess workers in the new hostels, who do the same work as permanent workers in the older hostels? Or of security guards who have been on contract for over a decade? Would a library, where contract workers are now employed, be considered, necessary for or incidental to a huge central university where nearly 6,000 students are registered?

Safai karamcharis and Gardeners

Approximately 42 safai karamcharis and 36 gardeners are employed by a contracting company, Vayudoot, for maintenance. Although the contracts between Vayudoot and JNU specify payment of Rs. 146.66 per day per person (for 8 hours' work) inclusive of employee contributions to the Employee State Insurance (ESI) and Provident Fund (PF) (clause 6 and 7), it was clear from the November – December wage records that the majority of the workmen received between Rs. 75 to Rs. 93 for a day's work. The lowest paid workers received around Rs. 58 per day while the highest paid received Rs. 103. It is unclear why there is such a huge range and difference in payments to workers doing similar jobs. A number of workers reported deductions made from their salary for uniforms.

Some of these workers approached JNUSU on 11 December 2006. An official from Vayudoot's office at NOIDA, in a discussion with students from JNUSU in the office of the Engineering Department argued that they had no option but to pay less than minimum wages as the amount stated in the contract included Vayudoot's commission. This is indeed in contrast to JNU administration's contract with RITES (clause 5.1) which mentions remuneration for RITES as 5.9% of the total cost of project and that between JNU and UP Jal Nigam (clause 4.1) which makes reference to service charge of 12.5% .

Irrespective of the terms of the contract, the payment of less than minimum wages is illegal and punishable by imprisonment as per the provisions of the Contract Labour Act. Although JNU's letter dated 6 February 2007 claims that "The responsibility of paying minimum wages to the unskilled workers lies with service providers", it cannot avoid its responsibility as the Principal Employer under Section 21(4). The same clause further provides that the principal employer can recover the amount so paid from the contractor. The punishment for violating provisions regarding employment of contract labour (section 23 of CLA) and Other Offences (section 24) is "imprisonment for a term which may extend to three months". Section 2 (g) D mentions "any person responsible for the supervision and control of the Establishment". Who would that be then? The Vice Chancellor? The Chief Proctor? The Head of the Engineering Department?

In fact Section 21(2) requires every principal employer to "nominate a representative ... to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed." This effectively nullifies any objection on the part of the JNU administration that it is unaware of whether wages are being paid at less than the stipulated legal minimum wages. In the case of Vayudoot, payments were usually made in JNU under the supervision of an official from the estate branch, so the JNU official was actually supervising the payment of wages at less than the minimum wages. However, once students raised the issue, the contractor refused to bring the money to the campus so that workers went without wages for an entire month and university officials didn't bring any pressure to bear on the contractor for over a month. In this period, the contractor contacted individual workers and asked them to come to NOIDA and collect their payment where they were made to sign on blank muster rolls etc.

Worse, those identified as whistle blowers were one by one retrenched from their jobs during the months of December-January so as to break the unity between workers. As many as 30 of the 36 gardeners were retrenched in a phased manner starting 24 December 2006, while safai karamcharis worked under constant threat of retrenchment. Instead of taking any positive action to safeguard the rights of the workmen as the JNU administration is obligated to do, workers have reported that it was essentially the nexus between the contractor and administration that compelled the workers to leave. After sustained campaigning and student pressure, between 16-18 Jan 2007, Vayudoot paid over Rs. 1,90,000 for wages previously denied and wrongful refunds for deduction of amount for uniform.

Wage-claims were prepared by students in consultation with the workers and payment of wages was conducted in the presence of the Registrar and Chief Engineer of JNU. The Safai Karamcharis received additional payments while almost all the gardeners also got the additional payments. Subsequently Vayudoot has begun paying its employees minimum wages. However, not all the retrenched positions have been filled, and there is an increased load of work on the existing workers who are now working overtime.

Another contracting company, *Naya Savera*, also employs safai karamcharis, about 16-20 of them. These workers also approached the JNUSU on January 16, 2007, highlighting their poor work conditions. The entire work-staff was made to work with no gloves, no shoes or even soap provided. Their regular working hours were from 7 am to 5 pm and there was no overtime paid nor any holidays provided. While most workers were paid Rs. 2,785 per month, three were paid Rs. 2,500 and one only Rs. 2,000, all of which are below the then minimum wages of Rs 3,312 for unskilled labour. Further there was no fixed date for payment and this took place sometime between the 15th and 20th of the month. One worker, who PUDR met was of the opinion that *Naya Savera* might have employed more people because of high work-load. After the struggle when they were required to pay higher wages, they fired three workers. When three of the workers were removed, their workload had to be completed by the others. Even though *Naya Savera* claimed to be an NGO, workers claimed that they were no better than the previous contractors who had operated before them.

One worker with *Naya Savera* who raised his voice and sought minimum wages was accused of manhandling his lady supervisor by the contractor and roughed up and thrown out of his job. After intervention by students he did receive his back-wages, although the contractor refused to give him his job back. He subsequently found employment on the campus with the other contractor, Vayudoot..

Library Workers

Contract workers have also been employed at the JNU library, through a contracting agency, Chase Detective Agencies. Hearing of the student intervention in other cases, a few of the workers approached the JNU students for assistance in January 2007. Of the total 20 workers, payments range between Rs 1,800-1,900 per month, at a miserly Rs. 63 per day. The Supervisor is paid Rs. 3,500.

The contract between Chase and JNU is itself violative of the Minimum Wages Act, and the Contract Labour Act. The total amount specified for 21 workers is Rs 65,240. The figure per person is therefore Rs. 3,115 per month, less than the minimum wage as on 27 June 2006 (the date of signing the contract) of Rs 3,312 per month for unskilled work, and Rs 3,478 for semi-skilled work. Further clause 7, 8 of the contract with Chase also specify that the total amount includes payment for ESI/ PF. Given that ESI is 1.5% and PF is 12.5 % of the basic salary it is clear that JNU's contract with Chase Agencies itself provides for less than minimum wages and is blatantly illegal. Such matters do not however appear to concern the JNU administration. Let alone their obligations as 'Principal Employers', here their own contract blatantly disregarded the law.

Irregularities are also blatant in the payment of wages. The supervisor of the workers maintains a muster-roll which is filled up after the payments are made to show payment of minimum wages on the record. At the time of workers signing their receipt, the wages column is empty. The difference is then pocketed by the contractor. Subsequent to discussions between students and one with contractor Anil of Chase, the monthly wages of workers was increased slightly but payments were made at Hauz Khas. This was not acceptable to the workers as it allowed for further manipulation. After much negotiation, wages and preparation of wage-claims by workers and students, back wages were also paid but only @ Rs. 75 per day. In March 2007, workers reported receiving wages @ Rs. 90 per

day and in April 2007 wages for working in March were given at a flat rate of Rs. 2,500 per month. Further the supervisor also threatened workers that if they continued to agitate for minimum wages they would be transferred to a place in Katwaria Sarai run by Chase where only Rs. 1,800 a month is paid to workers. .

Mess Workers

There are two kinds of messes being run in JNU. The old hostels (Ganga, Sutlej, Jhelum, Periyar, Kaveri, Godavari, Narmada, Sabarmati, Tapti, Brahmaputra) mostly have permanent university employees in the mess, whose payments usually approximate minimum wage. Following a 1993 order however, as and when employees retire, new workers are taken in on contract and currently there are one or two of these casual workers in each hostel. The payment of these casual workers is the same as the permanent mess workers.

The three recently constructed hostels, Mahi-Mandavi, Lohit and Chandrabhaga, however are operating with privatized messes where workers all are on contract. Lohit and Mahi-Mandavi by Garima Arora, GA Digital Web Word Pvt. Ltd. and Chandrabhaga by Highlander. A survey of these mess workers was undertaken in December 2006 and January 2007 by student groups and revealed payment of less than minimum wages in all the three messes.

Even though the work they do is the same in all the three messes, the differences in wage rates across the three hostels are due to different contracts for each hostel. Even where agreements have been reached with the same contractor [Mahi-Mandavi and Lohit], there are different figures quoted in the contract documents. This is the one of the many flaws in the contract labour system: workers doing exactly the same work on the same campus getting paid differently simply because they have

Mahi-Mandavi Hostel				
November 2006 (Both morning and evening shift). Number of workers employed: 18				
Description of Work	Number of workers	No. of days	Wage p.m paid by contractor	Minimum Wage Rate
Experienced cooks	2	30	Rs. 3500	Rs. 3,736/ 4850
Non-experienced cooks	4	30	Rs. 3100	Rs. 3,736/ 4850
Helpers	12	30	Rs. 2100	Rs. 3312.40/ 4,300

Chandrabhaga Hostel				
1 November 2006 to 18 December 2006 (Both morning and evening shift) Number of workers employed: 18				
Description of Work	Number of workers	No. of days	Wage p.m paid by contractor	Minimum Wage Rate
Cooks	6	30	Rs. 2900	Rs. 3,736/ 4850
Helpers	12	30	Rs. 1900	Rs. 3312.40/ 4,300
<i>Note: The latter rate in the last column includes double overtime under the law</i>				

Lohit Hostel				
November 2006 (morning shift only). Number of workers employed: 09				
Description of Work	Number of workers	No. of days	Wage p.m paid by contractor	Minimum Wage Rate
Cooks	6	30	Rs. 2900	Rs. 3,736/ 4850
Helpers	12	30	Rs. 1900	Rs. 3312.40/ 4,300
<i>Note</i> : The latter rate in the last column includes double overtime under the law <i>Source</i> : Survey by JNUSU. Actual wage rates are based on the survey by students.				

been hired by different contractors. As the JNU contracts pay contractors amounts less than minimum wage, and the contractor makes further deductions before paying the workers, it is not surprising that the workers receive an amount far below their minimum legal entitlement. Minimum wages are calculated for 26 days' work in a month, and all these workers seem to be working four days overtime each month. Not only is making workers work constantly without a weekly off illegal, they are also entitled to double overtime for the four days. Hence their minimum wage works out to Rs 4,300 for helpers (deemed 'unskilled'), and Rs 4,850 for cooks. However, even the contracts on paper between Garima and JNU for the Lohit and Mahi-Mandvi messes provide payments of merely Rs. 2,900 for mess helpers and Rs. 4,000 per month for cooks. While these are themselves below minimum wage, they are much higher than what is actually received by the workers – indicating illegality in the contract and obvious corruption by the contractor.

The lack of awareness amongst the workers also makes it difficult for them to obtain their fair wage. At Mahi-Mandavi, workers were aware of the rate for unskilled workers, but did not know the rate for skilled workers. At Chandrabhaga some said they were aware of the official rate, but at Lohit no worker had any idea of what the minimum wage amount itself was. Methods of payment too ensure that there is little transparency. At Mahi-Mandavi, payment of wages is made monthly, generally by the 10th of each month although they are occasionally delayed. The contractor gives money to a cook who then distributes it. Signatures are taken by the contractor on a paper on which only the names of workers are written; but there is nothing filled in the column for amount. The muster roll does not have any other entry except attendance. At Chandrabhaga monthly wages are paid generally between the 17th and the 20th of the month.

On Sunday 4th February 2007 the contractor came to make the payment for Lohit and Mahi-Mandavi messes. He had brought money according to his daily rates and two sheets for the workers to sign on. One stated the rate while the other was a blank sheet. Though the students were unable to enforce payment of minimum wages, they were able to ensure that payments were made according to the days actually worked by the workers and that amounts received were filled in on the signed sheets. A similar process was followed for Mahi-Mandavi hostel and for Chandrabhaga on 15th February. A bare perusal of the wage claim sheet prepared by the students reveals the number of days that the contractor arbitrarily reduces from the payment, pocketing the difference. This is only possible when the contractor is in collusion with the nominated representative of the principal employer or like in this case, where there is no representative even present during payment.

Poor Working Conditions/ Other Debilitating Violations

The general working conditions in the messes are poor. Mess workers work in two shifts and prepare breakfast, lunch and dinner for the hostel residents. There is no provision for paid holidays for the workers of any hostel although they are entitled to them. If one worker is absent, a co-worker performs his duty as well; in return the wage for those days of absence is subtracted from the payment of the absent worker and given to the co-worker who worked in his place.

Amenities too are poor. There are no lockers, no water connection or piping in the kitchen. There is a fan in the shade behind the kitchen which rarely works. Workers have no bonus and there are no funds for emergencies. One worker had an accident at the workplace, the treatment for which he had to pay for from his monthly income. Another worker had an accident that was treated with students' contribution.

At Chandrabhaga, workers complained that they had no medical aid at the workplace. One worker slipped and injured his head, and had to miss work for 10 days without payment. The exhaust was not working; there are few lockers and only one staff room for 18 people. They said they also required a pantry for dish washing. At Lohit, the workers are provided drinking water facilities and rest rooms. There is no first aid kit, however, and they are forced to use ashes and turmeric powder for any cuts or burns. One worker at Chandrabhaga reported that he had been thrown out of work because he had been on leave for some days. At none of the hostels was soap, dusters or buckets provided for work and none had any space to bathe or rest.

In discussions with students, workers at Chandrabhaga complained of being threatened with retrenchment by the contractor when they asked for an increase in payments. They also complained that on national holidays [when messes stay closed] they are not paid for that day, even though they provide students with breakfast and a packed lunch. They also pointed out that there had been an increase of only Rs. 100 in monthly wages over the last two years. Workers at Lohit also complained of low wages and the absence of any provisions for a paid holiday. In this day and age with rising prices of so many essential commodities, how does one expect workers to keep body and soul together with just a Rs 100 increase over two years? Less than 3% over two years when inflations has jumped by at least 15% for the poor over that period?

Although in February 2007, following the students' noteworthy campaign, circulars were sent by the University administration to some hostel authorities clarifying the minimum wage rates and observing that certain contractors were violating the Minimum Wage Act and that minimum wage should be paid, there was little other action that the JNU administration undertook. Similarly in March 2007 a circular dated 25 September 06 was displayed in the hostels stating rates for minimum wages w.e.f 01.08.06. However these rates are given only for 26 days while the mess stays open for 31 days and there is no procedure for accounting for the additional workload of those 4-5 days. The contractor (Garima) also informed students that they were not bound by the contract to pay overtime for workers working on their off day.

While the above-mentioned details were specific to different categories of contract workers, there was a common complaint of the workers spread over different services. While some deductions for Provident Fund or Employees State Insurance were being made from their wages, they receive no documents or papers against these deductions made nor any benefits so there is no telling whether these PF and ESI deductions are actually passed on by the contractor to the relevant authorities. Probably not, but again that is a commonplace under the contract labour system.

It is also pertinent to note that the Contract Labour Act and the Payments of Wages Act, 1936 do not permit any employer contributions to be deducted from the wages. Again, in all the instances discussed above, the JNU administration does not have even the façade of not being 'principal employer' as it did in the context of the CPWD contracted construction workers. Yet a large number

of workers in JNU continue to remain 'forced' labour as they receive less than minimum wages prescribed by the law. Further when contacted by the students, the JNU administration even claimed that it had no records whatsoever about workers and payments made to them by private contractors for services such as library, vayudoot etc. Such claims, if true, itself amounts to a violation of its statutory obligation as a 'principal employer' in relation to some of the contract workers. Besides, JNU's refusal to pressure the contractors to issue the workers identity cards too must be condemned as these IDs would have blunted to some extent the hire-and-fire policies operated by the contractors.

Targetting the Struggling Workers

Instead of protecting the contract workers' basic rights, they were instead targeted for raising their collective voice, for meeting JNUSU and making the most elementary demands. Those workers who had first protested the arbitrary wage-cut by the contractor and who were living in the campus for several years found to their horror that their houses were demolished. Having lost their livelihood, they were later driven out from the JNU campus. They are now working on a construction site near Dhaula Kuan earning Rs. 80 per day, still a lot lesser than the minimum wages.

The struggles have undoubtedly resulted in some gains. As a result of the agitation, the wages paid by contractors on campus have improved marginally to the new group of construction workers, yet these wages too continue to fall well short of the statutory minimum wages. With respect to contract workers directly contracted by JNU for various other services, the agitation by the students and others did help in embarrassing the JNU administration which quickly moved to re-negotiate contracts for mess workers and to take back workers who had been dismissed. A letter dated 2-3-07 from Sohan Lal (Assistant Registrar) to the Senior Warden, Lohit Hostel states, "the VC has approved payment of minimum wages @ 4,700 per month (Rupees Four thousand seven hundred only) on the basis of rate approved for the Aravalli Guest House for 26 days, 6 days week." This particular letter however referred only to sanitation staff in the hostel and required that the senior warden be present when wages were paid. While it is likely that the JNU administration would have rewritten some of the blatantly violative contracts with the service-providers, it is not also clear whether the new contracts have again been amended and wages increased after the increase of the minimum wage w.e.f 1 Feb 2007 announced by the Government of Delhi on 13 March 2007.. This difference in results for the construction labour and mess workers or other service providing labour also brings out the fact that whereas the former remain by and large out of sight, the latter jobs entails coming into contact with students. JNU is perhaps somewhat more circumspect in its handling of this lot of workers in contrast to construction labour.

In a number of cases those whose dismissals were revoked went back to their old jobs but they are not on the muster roll and they fear that once their contract period ends they will not find work in JNU campus. This fear also gnaws the mess workers and safai karamcharis because the contractor may prefer to hire new people who will be more amenable to follow their diktat. This obviously means that once the dust settled, barring few improvements, things reverted back to the 'good' old ways.

Further, while some mess workers and safai karamacharis have had a small hike in their wages, their workload and hours of work have been reported to have increased, which effectively means more intensified exploitation.

The Spread of the Malaise

While this particular report focuses on JNU, it is clear that it is not the only educational institution that has forced labour on campus. In the University of Delhi the University Community for Workers Rights has supported workers on a number of attempts to highlight similar issues of wages being less than minimum wages, lack of access to facilities as required by statute and sexual molestation of women workers. This was also evident in a strike by 80 workers in Gwyer Hall in September 2004. Contact: univcom4workersright@yahoo.co.in

Similarly in the Indian Institute of Technology – Kanpur, a deemed university, a survey conducted by students in 1999 found that virtually no contractor was paying minimum wages. Though initially the Institute attempted to ignore the issue, after continuing pressure it engaged with the students and faculty which raised the issue and instituted the Minimum Wage Monitoring Committee (MWMC) in November 2000.

Headed by a member of the faculty but run virtually entirely by student volunteers, the MWMC has attempted to establish a system of monitoring contractors' actual wage payments by working out an appropriate and formal format for recording attendance, advance payments, and monthly wage payments. In February 2004, the Institute also made available a small office to the MWMC for wage disbursement by contractors /sub-contractors and ordered that the payment to the contractors be made only if they showed a certificate of payment issued from the wage committee's office. This office is open on all working days from 4-6 p.m and it has been found that most of the contractors have been making payments at this Office. Unfortunately despite the office orders, some contractors have yet been able to avoid making payments under supervision of the MWMC. Yet, it is clear that there is pressure both upon the Institute administration and the contractors on campus to ensure that basic legal requirements are followed. The absence of a "consistent, comprehensible and transparent policy for contracts" has also led the MWMC to prepare draft guidelines to assist the Institute in preparing such a policy. Unfortunately these have received no response from the Administration since submission in July 2006. The MWMC is also looking to expand its monitoring to ensure photo identification records of every worker, payments by cheque, random monitoring of attendance by the MWMC, employee retained attendance cards etc. Even though the MWMC is designated as a 'advisory body', the absence of a completely confrontational response by the Administration has ensured that there is at least some progress as all payments by contractors to workmen were directed to be made in the presence of the MWMC. For more information see: www.cse.iitk.ac.in/~hk/mwmc

4. Many Laws, Little Implementation

While this report is an indictment of JNU, it is perhaps a larger reminder of the failure of the legal system in the protection of workers under the contract labour act and other protective legislation.

It is scarcely our case that the Contract Labour Act is above criticism. For one, it only applies to establishments and contractors employing 20 workers, whereas it should actually be made applicable to all establishments, irrespective of the number of workers. Two, even if contract workers were to be able to struggle to be made permanent, the process under the Act takes years, effectively hampering such struggles. Three, even if the contract work is abolished in a given occupation in an establishment (after a long struggle), there is no guarantee that the *specific* workers who struggled to be made permanent would get absorbed. This lacuna regarding 'automatic absorption' was reinforced by one of the most anti-worker judgements in the Supreme Court's history, on 30 August 2001, in *Steel*

Authority of India Ltd and Ors. Vs National Union Water Front Workers and Ors. Hence, workers who actually succeed in abolishing the contract labour system have no assurance that they would get the permanent jobs. Why would workers struggle to be made permanent if this loophole exists in the law?

Notwithstanding these and other serious flaws, the law as it exists on paper is itself scarcely implemented. The Rules framed under the Contract Labour Act, especially Rules 74 to 83 clearly spell out that every contractor is obligated to maintain Muster Roll; Register of Wages; Register of Deductions; Register of Overtime; Register of Fines; Register of Advances; and Wage Slip. The Contractors are required to send half-yearly returns to the Licensing Officer. Vide Rule 81 (3) even the principal employer is required to submit return “within fifteen days of the commencement or completion of each contract” to the Inspector. This is to ensure official oversight and employer accountability. Yet it becomes clear that there is no serious perusal of these records, assuming at all that they are sent. This is no surprise given that the machinery meant to oversee that employers comply with the Act are the very same local labour office which has the onerous task of protecting the interests of the organized sector work force. This means they are supposed to, between everything else they do, find time to make periodic visit and follow up. It has been our experience that Labour Dept officials say in their defence that there are too few officers to carry out inspections of every workplace. This is flawed, because if so, it then becomes the government’s responsibility to fill more posts, but governments lack the political will and just don’t give a damn. In addition, it is also common practice for inspecting labour officials to pocket bribes on a regular basis and allow employers to get away with all manner of violations.

Section 26 of the Act ensures that no court can take sanction of any violation of the Contract Labour Act without either a complaint from or prior sanction in writing from the Inspector. Similarly Section 27 then goes on to say that cognizance of the offence will not be taken unless the complaint is made within three months from the date of alleged commission of offence came to Inspector’s knowledge. This period can be extended up to six months provided Inspector gives a written order which is disobeyed by the employer. Thus the Act leaves contract labour firmly dependent on the official machinery for judicial redressal of its grievance. In a case like the present where the principal employer (JNU), the executing agency (CPWD) and the contractor are all sharing the benefits of workers being paid less than minimum wages, the provisions of the Act are rendered meaningless as the inspection machinery too is completely silent.

The provisions of the Bonded Labour System (Abolition) Act, 1976 do however provide the District Magistrate with powers. Section 12 of the Act makes it the duty of every District Magistrate (and every officer specified by him under Section 10) to inquire whether any bonded labour system or any other form of forced labour is being enforced by any person resident within the local limits of his jurisdiction. The Section also requires him “to take action as may be necessary to eradicate such forced labour”. Similarly, state governments are also required to set up Vigilance Committees as per Section 13 which is meant to also “to make ... survey as to whether there is any offence of which cognizance ought to be taken under this Act”. Unfortunately it is because of such duty being cast upon state bodies that the State does not wish to recognise at all the existence of bonded or forced labour in its area.

Another piece of relevant legislation is the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 which is applicable wherever five or more workers are recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State. [Section 2(e) read with Section 1(4)(a)]. Given that almost all the construction labour on the JNU campus comes from Central India (see box) and is

brought by jamadars for JNU-CPWD contracts, it is clear that this Act has great relevance for these workmen. Section 4 of the Act requires that principal employers register with the appropriate registering officer and Section 6 lays down that No principal employer can employ inter-State migrant workmen in the establishment without such registration. Section 12 provides a large number of duties for the contractor including recording of payment of displacement allowance (Section 14), return fare (Section 15) and wages to be paid. The Inter-State Migrant Act also has an inspection machinery similar to the Contract Labour Act. Unfortunately this too suffers from similar defects. The State would also remain liable for benefits to workmen available under the Workmen's Compensation Act 1923, The Employees' State Insurance Act 1948, The Employees' Provident Funds and Misc. Provisions Act, 1952, and the Maternity Benefit Act 1961.

The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 is an often ignored legislation that is relevant in the particular case. The Statement of Objects and Reasons for this Act acknowledge, "The building and other construction works are characterized by their inherent risk to the life and limb of the workers. The work is also characterized by its casual nature, temporary relationship between employer and employee, uncertain working hours, lack of basic amenities and inadequacy of welfare facilities." The Act also provides for payment of overtime (Section 29), Drinking water (Section 32), First Aid (section 36) and other similar provisions. However most vitally, Section 34 provides that the contractor would have to provide free of charges and near the work site temporary living accommodation for the workers. Like the other legislation this Act too has an inspection machinery.

In the *Asiad Games Case (PUDR v. Union of India, 1982)*, the Supreme Court was scathing in its indictment of both the judiciary and the government. With respect to prosecutions against contractors, the Supreme Court stated (Para 9):

"The Magistrates seem to view the violations of labour laws with great indifference and unconcern as if they are trifling offences undeserving of judicial severity. They seem to over-look the fact labour laws are enacted for improving the conditions of workers and the employers cannot be allowed to buy off immunity against violations of labour laws by paying a paltry fine which they would not mind paying, because by violations the labour laws they would be making profit which would far exceed the amount of the fine..... We would like to impress upon the Magistrates and Judges in the country that violations of labour laws must be viewed with strictness and whenever any violations of labour laws are established before them, they should punish the errant employers by imposing adequate punishment."

With reference to the Government, similarly the Court also directed (para 22) , "... whenever any construction work is being carried out either departmentally or through contractors, the government or any other governmental authority including a public sector corporation which is carrying out such work must take great care to see that the provisions of the labour laws are being strictly observed and *they should not wait for any complaint* to be received from the workmen in regard to nonobservance of any such provision before proceeding to take action against the erring officers or contractor".

Despite all these laws and all the judgements situation remains unchanged for contract labour in general.

5: **Conclusion: The Way Forward**

This report narrates how the contract labour system ensures that hundreds of contract workers employed in different occupations in JNU – construction workers, safai karamcharis, library staff, mess workers, etc – are being denied even statutory minimum wage, which is in any case pegged too low (*see box*) and is nothing more than a 'subsistence' wage. In addition, wherever one could examine their working conditions, they were found to be abysmal and devoid of the most basic requirements. Let us recall that the intent behind the Contract Labour Act was to gradually abolish or drastically reduce this category of workers and extend protection and privileges due to sellers of labour power. On both counts we have a long way to travel.

Most of these JNU workers meet the criteria regarding the abolition of contract labour listed in section 10 (2) of the Act and should in fact be made permanent workers of JNU. However, many factors ensure they remain in the uncertainty and insecurity of being contract workers, and that the contract labour system thrives in JNU. For **one**, the Act itself is flawed on this count: the process under the Act by which contract labour is abolished in a workplace is so long drawn out that it would impede most contract workers from attempting it. **Two**, principal employers tend to save large sums of money – in large establishments these can run into crores each year – by employing workers under suppressed wages and the denial of benefits. Hence both the contractors and principal employers benefit. Besides monetary benefits, the added advantage is that workers would find it that much more difficult to organize themselves, as recent events in JNU have shown. **Three**, in most large establishments (such as JNU), there are petty vested interests that profit from the continuance of contract labour system, from the annual contracts that are awarded. **Four**, the JNU administration does not exist in a vacuum, and is part of the larger ideological belief system that has become so hostile to workers over the last 15-20 years. This hostility to working class concerns since the 1990s has been accompanied by a series of anti-worker judgements from the judiciary, and a sustained assault by industry to amend labour laws, including, specifically, the parts relating to abolition in Section 10 of the Contract Labour Act.

Hence the reluctance of JNU to accept its responsibilities as the principal employer under the Contract Labour Act – to ensure the payment of minimum wages or to provide basic facilities such as water, medicines or toilet facilities – is shocking. Their response shows how employers, even those with the image of being the best among them, try to shirk their responsibility. There have been some gains from the struggle including the payment of some back wages, but there also has been a backlash from both the administration and the contractors (again it is the contract labour system that enables it): the workers who had first protested the arbitrary wage cuts by the contractor and who were living in the campus for years were driven away from the JNU campus, because they had dared to 'blow the whistle' on unlawful labour practises.

They were replaced with a new group of workers and the wages of this new lot continue to lag behind the statutory minimum wages. And regarding mess workers, while the agitation by the students and karamcharis compelled the JNU administration to re-negotiate their contracts and to take back workers who had been dismissed, there remains the question about the number of days that a worker gets paid for as well as payment for overtime. (This different response and difference in wages being received by construction workers and mess workers is perhaps because mess workers tend to be in daily contact with students whereas the labour of the former tends to be largely invisibilized.. However, in both cases, workers are yet to begin receiving the compensation due to them.)

On the construction site, as mentioned, new workers have replaced the old workforce which had struck work. Anecdotal evidence suggests that wages are back to the old scales and continue to be accompanied by arbitrary cuts. Those whose dismissals were revoked went back to their old jobs. Except that they are no longer on muster roll and there is the apprehension that once their contract period ends they will not find work in JNU campus. This fears gnaws at the mess workers and safai karamcharis too because the contractor may prefer to hire new people who will be more amenable to follow their diktat. This means that once the dust has settled, barring few improvements, things will revert back to the 'good' old ways.

This brings us to a crucial issue – which is that an unorganised, i.e. non-unionised workforce is the single biggest cause behind the disarticulation between enactment of law and its enforcement. How does whatever meaningful there is in the Contract Labour Act and other laws get realised in real life? The government believes that the agency for this is the Labour Department, NGOs, social activists etc. As discussed in the report, the dependence on labour inspectors has proved to be misplaced. As for NGOs, the National Commission on Enterprises in the Unorganised Sector (NCEUS) in its report to the PM submitted in May 2006 (Social Security for Unorganised Workers Report) says that the total number of individuals covered by various social sector schemes undertaken by NGOs reaches no more than 1.5% of the estimated 340 million workers in the unorganised sector. Therefore, unless those who sell their labour power are enabled to form their own unions and they raise their voice, not much is going to bring a change to their lives.

JNUSU's efforts in the struggle too indicates the importance of workers' unionisation. Their struggle was remarkable, but their capacity to sustain the agitation and help the construction workers was limited by the manner in which the University authorities managed to threaten the agitating students by suspending nine of them, instituting a Proctorial inquiry against them (and now serving show cause notices on those 9 plus two more). The fact that JNU administration is still not complying with the provisions of law reveals the propensity of the employer to sidestep obligations. Now if this be the state of affairs in JNU in the heart of Delhi with active students' and teachers' union then one can imagine how much worse would be the conditions of contract labour elsewhere.

One would have expected that miserable conditions of employment of the contract labour would have resulted in its abolition. Instead the government is yet again thinking of enacting a *new* law to provide some relief to the contract labour. The central government is considering a draft law prepared by the NCEUS called 'Unorganised Agricultural Workers (Conditions of Work and Livelihood) Bill 2007' as well as 'Unorganised Sector Non Agricultural Workers (Condition of Work and Livelihood) Bill 2007'. It proposes through their section 3 (which is identical in both draft bills) to place the "burden of proof, that compliance with the provisions of the Act has been effected, will be entirely on the employer wherever applicable". It also speaks of a National Minimum Wage to ensure uniform wage structure. And also seeks to provide social security coverage to the workers. This is all very well. However, the onus for ensuring compliance rests on the same official machinery and NGOs who have shown themselves incapable of enforcing compliance with a plethora of legal-welfare provisions which are there already enacted.

Consequently, it is only when the workers get organised that other things begin to fall in their place. We appreciate that any efforts at collective struggles are happening in hostile times. Often there is an immediate backlash from the authorities, as witnessed in the dismissal of the construction workers, the destruction of their jhuggis, the retrenching of most gardeners, the dismissal of a worker by Naya Savera, and the anxiety of reprisals in the minds of other workers.

While on this point, a slightly less hostile administration as in IIT Kanpur, (*see box*) could provide a more conducive situation for workers to mobilize for their demands, so would a more active

teaching community. Despite this absence of a conducive atmosphere and the possibility of a backlash, history suggests that only workers who are organised and can collectively bargain have any meaningful chance of getting anywhere. There may seem to be an apparent contradiction between unionisation and the nature of the unorganised sector defying this precisely because it's virtually unregulated, and especially when there is surplus labour in abundance. Besides, when even organised sector unions are coming under attack or are being replaced by pro-management unions, to see unions as a panacea for many ills plaguing the unorganised sector may appear incongruous. However, it would be an error to believe that, therefore, unions have outlived their purpose. It is organizing themselves alone that can help workers abolish primitive forms of their exploitation which continue to dominate in this age of liberalization. Or else workers will be stuck at saving their jobs at any cost, fighting for wages that are in any case ridiculously low, and falling comprehensively short of empowering themselves to fight for their right to live in dignity. In other words, the abolition of the contract labour system itself demands their unionisation. For far too long the focus and efforts have been directed towards NGOs and social activists i.e. 'well intentioned outsiders' intervening to realise what various laws offer. We have tried to show how each of these laws continue to be practised in breach. Therefore, unless the focus shifts towards unionisation of contract labour for realising the enforcement of welfare legislations, there cannot be any improvement in the working conditions or their wages, let alone the abolition of contract labour system itself.

OPEN LETTER

As the report was being printed, JNU administration announced rustication of seven students. These seven students are amongst the 11 students who were issued show cause notices earlier. Three others have been fined Rs.2000\ - each.

PUDR strongly condemns the decision. It is even more condemnable because the students had already submitted their written apology.

If such a course of action is deemed fit in view of the gherao of JNU's Registrar by students then proportionality demands that reason for student agitation at the mistreatment and exploitation of contract workers in JNU should result in whole sale change in JNU administration. It was only when the administration refused to look into the matter, began demanding that the students stop the agitation and tore posters put up by the students that highlighted the non-payment of statutory minimum wages, and non-compliance with provisions of Contract Labour Act and other laws, that students gheraoed the Registrar.

The punishment meted out to the students is, therefore, in sharp contest to the prevarication of the JNU administration over the issue of exploitation of contract labour. By making 'illegal confinement' of the Registrar to be a bigger issue than the issue of violation of rights of hundreds of contract labour means it is an attempt to divert attention from the question of working conditions in JNU. Also by targeting the tradition of student political activity and dissent in JNU, the university that claims to promote scientific temper and social engagement, is punishing them for precisely living up to their social responsibility. That the students exposed the JNU administration's culpability has been held against the students.

PUDR demands that the Vice-Chancellor should

1. Immediately withdraw the rustication order.
2. Hold an independent inquiry into the violation by JNU of its statutory obligations towards contract labour employed by them in their capacity as the "principal employer".

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