

## **The Violation of the rights of domestic workers in Bangladesh: Islamic and Conventional law perspectives**

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**Abstract:** Recruiting domestic workers for the daily housekeeping is a common household economic feature in Bangladesh. However, even though the practice is more like a contract selling of labour, it still remains as a social contract. It has yet to get proper institutional recognition and legal protection. As a result violation of domestic worker's rights has become a common phenomenon in the country. Using interviews and other primary sources, this article examines the current domestic workers' rights in Bangladesh from the perspectives of legal institutionalization and its practice.

**Keywords:** Domestic worker, Human rights, Bangladesh, Constitution, Islam.

### **Introduction**

Domestic Workers such as house helpers and child minders are a particularly vulnerable group in Bangladesh and other countries as domestic work is often seen by both the employee and the employer as a private issue, rather than formal employment. They are seen as "part of the family", or as property (as many women are considered to be), and are sometimes treated more like slaves than employees with labour rights. The majority are women, putting them at added risk of abuse. They often do not have a chance or the means to come together with other domestic workers to share their views and have those views heard. Recent International Labour Organization (ILO) estimates based on national surveys of 117 countries, place the number of domestic workers at around 53 million. Given the fact that most of the domestic work is often hidden and unregistered, the total number of domestic workers could run into 100 million. The ILO also states that 83 percent of domestic workers are women and many are migrant workers. It is estimated that there are about seven million households in Bangladesh which are sufficiently well-off to employ a domestic worker and are urban or peri-urban. A conservative estimate of domestic workers would, therefore, be around seven million.

Domestic workers in many countries form a marginalized but highly vulnerable group. This is especially so in Bangladesh (See Ramirez-Machado, 2003). They are not only disadvantaged, but also disenfranchised. The situation is more acute due to the fact that a very high proportion of the domestic workers are children and women. They do not know their rights and suffer in silence when these rights are violated. They work long hours

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without any specified working conditions. In most cases, they do not have ways to ventilate their grievances. They do not have any practical and effective legal process to enforce their rights or to ensure their benefits and privileges. Initiatives to change their plight are not strong enough to get any immediate result. As always overlooked, domestic workers' issue do not appear in the agenda of political parties. The present paper aims to analyze and compare the rights of domestic workers from the perspectives of conventional and Islamic laws, and examines their condition in Bangladesh. It concludes by describing the steps suggested by the Supreme Court of Bangladesh to ensure the rights of domestic workers in Bangladesh.

### **Domestic worker and human rights**

Human rights are commonly considered as inalienable fundamental rights to which a person is inherently entitled simply because of his/her being a human being. These rights are essential without which no man can live as human being. These rights are applicable to all people throughout the world irrespective of their race, sex, colour, language, and religion, political or other considerations. Human rights are thus conceived as universal (applicable everywhere) and egalitarian (the same for everyone). National and international law recognize these rights as either natural or legal (U. N. 2014). It is argued that "universal respect for Human Rights is inseparable from world peace. At the root of all strife and tyranny, in the present as in the past, lies a violation of Human Rights in one form or another" (Mondol and Mondol, 1999: 14). According to Article 1 of the United Nations Universal Declaration of Human Rights (U. N. 2014) "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".

A Domestic Worker is a person who works within the employer's household on a contractual basis in return of cash or kind or both. Domestic workers perform a variety of household services for an individual or a family, such as providing care for children and elderly dependents, and housekeeping. Responsibilities may also include cooking, doing laundry and ironing, grocery buying and other household errands. Such workers are usually of two types- resident and non-resident. Resident workers reside with the same family as a full time household member; and non-resident workers perform the necessary duties and maintain a different residence of their own-

The ILO Convention on Decent Work for Domestic Workers (2011) has defined "domestic worker's work" as follows:

- a. The term "Domestic Worker's work" means work performed in or for a household or households;
- b. The term "domestic worker" means any person engaged in domestic work within an employment relationship;

- c. A person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker. *Servant* is an older English term for “domestic worker”, though not all servants worked inside the home.

### **Rights of domestic workers in Islam**

In the early age, the term “servant” meant a slave (male and female). Slavery used to be considered as natural in ancient Greek, Roman and other civilizations, which did not regard slaves as human being. As such they were considered properties to be owned and traded in open market. Slavery was a status thought to be unalterable. Slaves used to perform all duties assigned by their masters. They had no personal self other than the mere existence. Ownership of slaves used to be by means of trade, victory in war, inheritance or gifting. The advent of Islam in the eight century CE humanized the slaves and gradually abolished the institution. After the abolition of slavery, they came to be known as free workers. The Qur’an (4: 36) states:

“Worship Allâh and join none with Him in worship, and do good to parents, kinsfolk, orphans, the poor, the neighbor who is near of kin, the neighbor who is a stranger, the companion by your side, the wayfarer (you meet), and those (slaves) whom your right hands possess. Verily, Allâh does not like such as are proud and boastful.”

“Treat (them) kindly as Allah treated you kindly” (28: 77)

“Allah has favored some of you over their provisions to those whom their right hand controls so that they become equal (partners) in it. Would they thus disclaim Allah’s favor?” (16: 71).

The Prophet (SAW) in his last sermon urged the believers to “be mindful of those who work under you. Feed and clothe them as you feed and clothe yourselves.” He is also reported to have enjoined the believers to “be serious” about their daily prayers “and servant” (Sunan al-Tirmizi, 3/522). The Prophet has also declared that “The servants, laborers or slaves are yours brothers; Allah (SWT) has made them your subordinates, under your responsibility. So feed what you eat and clothe them what you clothe. You ought not to impose any liability upon them which is impossible if you do so, help them in performing the same” (Muslim, 3/1282-83).

Islam has stated the rights of servants and workers in clear terms. Their works are valued as their properties which must be duly respected and valued. The following orders of the Prophet provide a clear guideline in this regard:

- a. Pay the worker’s remuneration before their sweat is dried up (Ibn Majah, al-sunan, 2/817).
- b. Pardon their fault for seventy times in a day (Abu Dawud, al Sunan, 4/341).
- c. Everyone of you is under obligation and every one will be asked about his duty and subordinates (Bukhari, 1/304).

- d. You will not compel them to work which is difficult to perform. If you force them to perform it, you will co-operate with them.
- e. When your servants prepare food for you, thereafter they distribute it among them and they pain at the time of preparing food by the temper and deposit of fire, you should feed them by seating besides you. But if the amount of food is small, you should give minimum one or two grips from your food.
- f. "He who misuse power over his servants shall not enter into the Heaven... so, take care of them as your own child and feed them what you eat.
- g. The Prophet (SAW) gifted a servant/slave to Ali (RA) and said don't beat him. I have seen him performing salah. Since, I have been forbidden to beat him who performs *salah*.

From the above sayings emerge several principles. First, there must be fraternity between master and servant. Second, the slaves must be fed, clothed and remunerated according to the qualities of service; third, they must be considered as human beings; and finally, there must be justice in delegating work. Thus, Islam has secured for the domestic workers security of life, liberty, wages, foods, cloths, shelter and all other necessities of life.

The most important element of humanizing factor of slaves in Islam is that freeing of a slave was often made a prescriptive punishment for errors in religious duties of free men and their wrong deeds in social and economic dealings. By so doing, Islam established the understanding that slavery was not a natural, immutable status, rather it was a transitory state for a person. But as long as a person is in the status, the person deserves strictly prescribed rights and privileges.

### **Human rights in International conventions**

There are a number of international conventions that have provided various rights to human beings in general and particular category of people in particular such as women and children. These conventions include among others the Cairo Declaration of Human Rights in Islam, The Convention on the Rights of Child, The Convention against Torture, and The ILO Convention on Domestic Workers. The following section provides synopsis of these conventions.

### **The Cairo declaration on human rights in Islam (CDHRI)**

The Cairo Declaration on Human Rights in Islam (CDHRI) is a declaration of the member states of the Organization of the Islamic Conference (now cooperation) adopted in Cairo in 1990, which provides an overview on the Islamic perspective on human rights, and affirms Islamic Shari'ah as its sole source (Brems, 2001). This declaration is usually seen as an Islamic response to the United Nations' Universal Declaration of Human Rights (UDHR) of 1948. The Declaration reflects the Islamic principles of human rights.

The Declaration forbids (in terms of basic human dignity and basic obligations and responsibilities) “discrimination on the basis of race, color, language, belief, sex, religion, political affiliation, social status or other considerations”. It proclaims the sanctity of life, and declares the “preservation of human life” as “a duty prescribed by the Shariah”.

Article 2 of the Cairo Declaration states: (a) Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to God the Most-High. Article 19 states: (a) All individuals are equal before the law, without distinction between the ruler and the ruled; (b) The right to resort to justice is guaranteed to everyone. c) Liability is in essence personal; (d) There shall be no crime or punishment except as provided for in the Shari’ah; (e) A defendant is innocent until his guilt is proven in a fair trial in.

**The convention on the rights of child (CRC), 1989** acknowledges that every child has certain basic rights, including the right to life, his or her own name and identity, to be raised by his or her parents within a family or cultural grouping, and to have a relationship with both parents, even if they are separated. The Convention forbids capital punishment for children. In its General Comment 8 (2000) the Committee on the Rights of the Child stated that there was an “obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children”. Article 19 of the Convention states that, “State Parties must take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence”. Children domestic workers can enjoy the rights given under this convention.

**Convention against torture (CAT), 1984** considers Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as an international human rights instrument, under the review of the United Nations that aims to prevent torture around the world. Article 2 of the convention prohibits torture, and requires parties to take effective measures to prevent it in any territory under its jurisdiction. This prohibition is absolute and non-derogable. “No exceptional circumstances whatsoever” may be invoked to justify torture. The provisions of the convention provide safeguards against violation of rights of domestic workers.

**The ILO convention on domestic workers, 2011** formerly the Convention concerning Decent Work for Domestic Workers is a convention setting labour standards for domestic workers. It is the 189<sup>th</sup> ILO convention and was adopted during the 100<sup>th</sup> session of the International Labour Organization. The main rights given to domestic workers as decent work are daily and weekly (at least 24 hours) rest hours, entitlement to minimum wage and to choose the place where they live and spend their leave. Ratifying states parties should also take protective measures against violence, safety measures for health, harassment abuse of all forms and should enforce a minimum age which is consistent with the minimum age at other types of employment. Workers furthermore have a right to

a clear (preferably written) communication of employment conditions which should in case of international recruitment be communicated prior to immigration. They are furthermore not required to reside at the house where they work, or to stay at the house during their leave.

### **Domestic workers under the constitution of Bangladesh**

As Bangladesh is a signatory to all these conventions, it is under obligation to incorporate the rights and privileges in its constitution and legal system. The Constitution of the People's Republic of Bangladesh, as shown in the preamble, adopted a system of democracy with rule of law and recognition of human rights (Bangladesh, 1972). Thus the constitutional spirit mandates that the rights of the underprivileged sections of the society are guaranteed, including those of the domestic workers.

Article 2 of the Constitution declares that fundamental human rights and freedoms and respect for the dignity and worth of the human persons shall be guaranteed. Article 14 states that it shall be a fundamental responsibility of the State to emancipate the toiling masses, the peasants and workers, and backward sections of the people from all forms of exploitation. Article 15 declares that the State has fundamental responsibility to ensure the provision of basic necessities, right to work at a reasonable wages, right to reasonable rest, recreation and leisure and right to social security. Article 17 provides for free and compulsory education. Article 20 declares that work is a right, a duty and matter of respect.

Part III of the Constitution declares that the rights guaranteed are enforceable by the Supreme Court of Bangladesh under its Writ jurisdiction (Bangladesh, 1972: Article 44, 102). Domestic workers are entitled to enjoy all the Fundamental Rights, but some are very relevant for domestic workers. Article 27 declares that all citizens are equal before the law and are entitled to equal protection of law. Article 28 states that the State shall not discriminate against any citizen on grounds of religion, race, caste, sex or place of birth. Women shall have equal rights with men in all spheres of the State and of public life. However, it further states that nothing shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens. Article 31 says that to enjoy the protection of the law. Article 32 guarantees right to life and personal liberty. Article 34 prohibits all forms of forced labour. Article 36 guarantees freedom of movement. Article 37 declares freedom of assembly. Article 38 is also very relevant as it says that every citizen shall have the right to form associations of unions. Article 39 safeguards freedom of thought, conscience and speech. Article 41 guarantees freedom of religion. Article 43 declares, among other things, privacy of correspondence and communication. In case of violation of any of the Fundamental Rights, which are to be interpreted in the light of the Preamble and the Fundamental Principles, the aggrieved person can file a writ petition before the High Court Division.

The workers' rights have also received recognition in several other documents as follows:

1. *East Pakistan Ordinance XLIV of 1961*. The only statute directly dealing with the domestic workers is 'The Domestic Servants' Registration Ordinance 1961. This Ordinance was promulgated for registering the names and address of the workers with the police stations only in Dhaka. It did not say anything about the rights of the 'domestic workers' but the real intention was to identify and detain those who run away from work by committing theft.
2. *The Bangladesh Labour Code 2006*. The labour laws in Bangladesh formerly consisted of various statutes, each dealing with one or more aspects. The Labour Code, 2006 was promulgated repealing most of the earlier statutes and modifying some others (See Nirmalendu, 2006). This single statute now provides almost the entire labour law related provisions applicable in Bangladesh. The Labour Code excludes domestic workers from its ambit. Section 1(4) (o) expressly says that the law shall not be applicable to domestic workers. The implication of this provision is very clear. Domestic workers cannot claim any of the rights guaranteed under the Code of 2006. Furthermore, there is no scope for them to go to the labour courts. It is very interesting to note that in certain cases, the Code of 2006 actually goes backwards. For example the Minimum Wages Ordinance 1961 included domestic workers within its definition or workers and as such their minimum wages could be fixed through the mechanism provided by the Ordinance. The Code of 2006 has repealed this Ordinance and incorporated in Chapter 11 the provisions of the Ordinance including formation and functions of a Minimum Wage Board. Under the Code of 2006, the domestic workers have been excluded. Similarly, the Children (Pledging of Labour) Act 1933.
3. *The Contract Act 1872*. Whenever a domestic worker starts to work in a house, there is an agreement between the employer and the worker. This agreement is almost always unwritten. Yet it cannot be ignored that there is an understanding between the parties. The most important terms of the understanding is often the amount of money the worker will get at the end of the month as salary. There may be other terms such as how many times she can take a vacation to visit her village home, how many times she will be given new clothes by the employer etc. Accordingly, even if not formal, written or exhaustive, the parties enter into an agreement. This agreement is enforceable under the Contract Act 1872. This is a service contract which the law courts must recognize.
4. *The Code of Criminal Procedure 1860*. Any act that has been defined by law as a crime is punishable by the courts of law. Apart from the Penal Code 1860, many other laws define criminal acts. All criminal acts are adjudicated by criminal courts and the domestic workers, like any other citizen, are under the jurisdiction

of the criminal courts (Huq, 2003). Under the Penal Code, especially relevant for the domestic workers are culpable homicide (S-299), grievous hurt (section 320), wrongful restraint (section 339), wrongful confinement (section 340), assault (section 351), kidnapping (section 359), abduction (section 362), rape (section 375) and theft (section 378) (Miah, 2001). These and many other provisions of criminal law apply to domestic workers in the same way in which they apply to other citizens. There is however no statute that specifically deals with domestic workers and declares an act to be a criminal act considering the special circumstances of the domestic workers.

In addition to the above, there are special laws in Bangladesh that bear directly upon the workers. *The Children Act 1974* is the major legislation that aims to protect children. This statute provides for the creation of juvenile courts and a separate system of trial for the children. It provides for probation officers, establishment and operation of certified institutions for offender children, protection of their privacy, their custody during and after trial etc. Since a considerable portion of the domestic workers are children, the Act is very relevant in safeguarding their rights and interests. Section 34 of the Act has special relevance as it provides for penalty when a child is assaulted, ill-treated or neglected by a person having charge or care of the child.

There also exists the Nari O Shishu Nirjatan Daman Ain 2000 (laws for preventing torture on women and children 2000). It was promulgated to take stringent measures against crimes oppressing women and children. Many of the provisions of this statute deal with issues that are relevant for domestic child or causes such child to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause such child unnecessary suffering or injury to his health, including loss of sight or hearing or injury to limb or organ of the body and any mental derangement, such person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to taka one thousand, or with both.”. Section 4 deals with death, attempt to murder, grievous hurt or mutilation by using corrosive, incendiary or poisonous substances (especially throwing of acid). Section 5 deals with trafficking of women for prostitution and allied matters. Section 6 provides for trafficking and stealing of children. Section 7 deals with kidnapping and abduction of women and children. Section 9 deals with rape and section 9A covers situations where women are lead to suicide because of acts of others. Section 13 provides for children born after rape. Section 14 protects privacy of women and children from media exposure. The punishments for the crimes defined under the Act are very stringent. The Act forms a tribunal to effectively adjudicate these matters and provides for detailed procedures. Although the Act of 2000 covers many aspects relevant for domestic workers, it was promulgated to safeguard women and children in general and no specific attention was given to the domestic workers.

### **Domestic workers' rights in Bangladesh**

As a signatory to major international conventions on human rights, Bangladesh is expected to implement the rights prescribed. However in reality the domestic workers remain the most overlooked segment of the labor force in the country. In 2006, Bangladesh Institute of Labour Studies (BILS) conducted a survey on domestic workers in Dhaka City. The survey found that 50% of the workers are of between 05-15 years of age and 76.67% are female. Amongst them 46.67% identified poverty as a major cause to choose such a job, whilst lack of education and professional qualification also forced them to opt for the job. The survey also found that not only the domestic workers are very low paid they are also forced to work longer hours. About 46.67% of domestic workers work 11-12 hours a day but their monthly average wage is only TK.509.6 (US\$ 6.5). About 50% of them receive a monthly salary of TK.301-600 (US\$3-5); 60% of the workers get their wages on a regular basis and 40% get irregularly. They have no separate room for privacy and sleeping. The survey disclosed that 40% of the domestic workers sleep in the drawing room or on the floor of bed room, 33.33% on the kitchen floor, 16.67% at veranda, and 3.33% in the store room. Only 6.67% sleep at separate room. Domestic workers do not enjoy any regular holidays or any days off during the week.

Daily newspapers in Bangladesh regularly print numerous reports of abuse and mistreatment of domestic workers in the country. A cursory scanning of the major dailies during 2010-2011 found domestic workers' abuse and violation of rights in the form of scolding, beating, burning body parts, depriving of sleep, denial of food or forcing to eat rotten food, depriving from basic necessities, and at times beating to death. For instance:

*Daily Amar Desh*, on 03.05.2010 reported that a 10 year old child domestic aid broke a flower vase for which she was brutally tortured which required hospitalization. The doctors informed the police and the lady of the house was arrested. *Daily Bhorer Kagoj* (22.01.2011) reported of an 11 year child domestic aid was brutally tortured for allegedly breaking a house-hold item. The lady employer mutilated her body by putting hot iron on different parts of the child worker. *Daily Jano-Kantha* (18.01.2011) contained a story about a 15 year old child domestic aid who was constantly beaten by employers for small mistakes and confined her in the bathroom for the whole night. *Daily Ittefaq* (28.12.2010) reported that the domestic aid, Dolly Begum, was beaten to death by her employers on the suspicion that she had stolen a gold chain. To hide the killing, the employers hanged her body to make it appear as a case of suicide. *Daily Kaler Kantha* (02.11.2010) carried a report to the effect that an 11 year old child was beaten up on a daily basis and she was given rotten food to eat. She finally ended up in the One-stop Crisis Centre (OCC) of Dhaka Medical College Hospital. According to *Daily Prothom Alo* (29.07.2010), employers at a rented house killed a five year old domestic aid by beating and strangulation.

It may be noted that those who commit such heinous offences are very often well educated and holding high positions in society or in the government. In many cases, action is taken against the employers by filing cases with the police, but the police are reluctant to record any case against the perpetrators, particularly since the accused are well-to-do and influential persons. Moreover, if and when legal proceeding is started, the employers somehow manage to get the case settled by paying the informants/complainants, thus defeating any possibility of getting justice for the children and other domestic workers.

### **The Supreme Court directives**

It is thought that in Bangladesh the legal system and the enforcement of laws are not properly institutionalized. A number of observations can be made that there is no recognition of 'domestic workers' as worker under Bangladesh Labor Code, 2006; no recognition of offences as crimes committed on 'domestic workers' under strict law; non maintenance of 'registration' of the 'domestic workers' throughout the country; and reluctance of the concerned ministry and law enforcement agencies to pay proper attention and take necessary legal action.

It is because of this that the Supreme Court came up with particular directives to the government recently. Exercising special jurisdiction on a writ petition (3598 of 2010) filed by the Bangladesh National Women Lawyers Association (BNWLA), known as BNWLA vs. Govt. of Bangladesh, the Supreme Court directed the government as follows:

To take immediate steps to prohibit employment of children up to the age of 12 from any type of employment, including employment in the domestic sector, particularly with the view to ensuring that children up to the age of 12 attend school and obtain the basic education which is necessary as a foundation for their future life.

To ensure that domestic workers aged between 13 and 18 are allowed by the employers to attend educational or vocational training institutes.

To implement the provisions mentioned in the National Elimination of Child Labour Policy 2010 published in the gazette dated 08.04.2010. In particular, the court strongly recommended for the establishment of a focal Ministry/focal point, Child Labour Unit and National Child Labour Welfare Council in order to ensure implementation of the policies as mentioned in the Policy, 2010.

To include domestic workers within the definition of 'worker' in the Labour Code, 2006 and also to implement all the beneficial provisions of the draft of Domestic Worker Protection and welfare Policy 2010 as announced by the government.

To monitor and prosecute the perpetrators of violence upon the domestic workers. The court expressed dismay at the disinterested and sometimes motivated way in

which the prosecution conducts the investigation and trial procedure resulting in the perpetrators being acquitted or discharged or even remaining untouched due to the high social position. The government has a duty to protect all citizens of this country, be they rich or poor. It must not be forgotten that the domestic workers come from a poverty-stricken background and deserve all the more protection from the government and the authorities' setup by the government.

To maintain a track on the movement of young children from the villages to the urban areas in order to prevent trafficking in particular. Parents must be required to register at the local Union Parishad the name and address of the person to whom the child is being sent for the purpose of employment. The Chairman of the Union Parishad must be required to maintain a register with the details of any children of his union who are sent away from the locality for the purpose of being engaged in any employment. If any middleman is involved, then his/her name and other details must be entered in the register.

To ensure mandatory registration of all domestic workers by all employers engaging in their household any child or other domestic worker and to maintain an effective system through the respective local government units such as Pourashava or Municipal Corporations in all towns and cities for tracking down each and every change of employment or transfer of all the registered domestic workers from one house-hold to another.

To promulgate laws making it mandatory for the employers to ensure health check up of domestic workers at least once in every two months.

To strengthen the legal framework to ensure all the benefits of regulated working hours, rest, recreation, home-visits, salary etc. of all domestic workers.

To ensure proper medical treatment and compensation by the employers for all domestic workers, who suffer any illness, injury or fatality during the course of their employment or as a result of it.

## **Conclusion**

Having domestic workers for housekeeping is a practice popular in many countries. However, the practice is kept rather as a social system or contract denied of legal aura in most cases. In Bangladesh having domestic workers' for housekeeping is a common practice, but it has failed to develop as a distinct economic sector. Because it is kept as informal economy, its institutionalization with proper legal provisions has not taken place. Even though several laws have been passed for the protection of domestic worker's rights, its implementation remains overlooked. There is clear evidence of gross violation of domestic workers' rights in the country.

Both Islam, which is the religion of the majority in Bangladesh, and many international conventions recognize certain rights of the domestic workers. Bangladesh being a

signatory to all these conventions and being a Muslim majority state is expected to treat the sector as an important labor and economic sector. Therefore, the country needs to institutionalize the sector so that implementation of the laws becomes easier. While the international conventions and national statutory laws can provide clear legal prescriptions, the Islamic religious values, morals and incentives can provide ethical prescriptions for upholding domestic workers' rights.

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