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A CONSTITUTIONAL PERSPECTIVE ON THE RIGHT TO DECENT WORK: A COMPARATIVE STUDY OF INDIA, SOUTH AFRICA, BRAZIL

Adv. Charu Sharma ¹ & Shubham Upadhaya ²

I. ABSTRACT

This study examines the constitutional status of the right to decent work in India, South Africa, and Brazil, three major democracies of the Global South that confront persistent labour-market inequalities and significant informal employment. The concept of decent work derives from international legal and policy frameworks, particularly the International Labour Organization's Decent Work Agenda and Articles 6 to 8 of the International Covenant on Economic, Social and Cultural Rights. The research addresses a key gap in comparative constitutional scholarship by analysing the extent to which these jurisdictions recognise, protect, and enforce decent work as a justiciable socio-economic right. Using a doctrinal and comparative methodology, the study evaluates constitutional provisions, judicial decisions, labour legislation, and recent policy developments between 2018 and 2025. The findings reveal that India protects elements of decent work indirectly through Articles 14, 21, and the Directive Principles of State Policy, but does not expressly guarantee an enforceable right. South Africa provides stronger textual protection under Section 23 of its Constitution, although implementation remains uneven, particularly for migrant and informal workers. Brazil constitutionally recognises labour rights under Articles 6 and 7, yet labour deregulation and continuing informality have weakened effective protection. The study concludes that constitutional recognition must be complemented by robust enforcement mechanisms, stronger labour institutions, and inclusive protection for gig, migrant, and informal workers.

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II. KEYWORDS

Decent Work, Constitutional Labour Protection, Social economic Rights, Labour Law, Comparative Constitutional Law.

III. INTRODUCTION

Guy Ryder, the former Director-General of the International Labour Organization, says that economic development should be based on social justice and that decent work is the means to do so.³ The right to decent work has become a leading theme in the global human-rights discourse. The study is based on three large democracies of the Global South, India, South Africa and Brazil, which face different socio-economic and labour-market issues. The Constitution in India provides some rights in Articles 14, 21, and 39, but the right to decent work is not explicitly defined as a fundamental or enforceable right.

South Africa in the right to decent work is provided in a more progressive framework by the Constitution in Section 23, but is still problematic to enforce, especially among migrant and informal-sector workers. In Brazil, the right is reflected in Article 6 of the Constitution, although subsequent labour reforms that have been implemented since 2017 have undermined the rights of workers. This paper examines these constitutional differences and how such provisions are applied into real rights in practice.⁴

Existing scholarships have examined the constitutional and policy dimensions of decent work in different jurisdictions. Breetta Banerjee and Amit Kundu (2020) assess the Decent Work Index for informal workers in West Bengal and demonstrate that constitutional aspirations relating to livelihood and social justice remain inadequately realised in

³ International Labour Organization, 'ILO welcomes US-Brazil global initiative on decent work' (ILO, published c. early 2024), Available at <https://www.ilo.org/resource/news/ilo-welcomes-us-brazil-global-initiative-decent-work> (last visited on 25 Oct 2025).

⁴ United Nations Statistics Division and International Labour Organization, 'Decent Work and Statistical Measurement: ILO-UNCEBTS Discussion Paper' (United Nations, undated), Available at https://unstats.un.org/capacity-development/Meetings/CEBTS/UNCEBTS_3c_ILO_Decent_work.pdf (last visited on 1 Nov 2025).

practice. S. Harish Kumar (2025) analyses the precarious legal status of gig workers in India and argues for comprehensive labour law reform to secure their constitutional rights and access to social security. Espinoza and Albuquerque (2018) critically evaluate Brazil's 2017 labour reform and conclude that increased employer flexibility has weakened constitutionally protected labour rights. Govindjee and Dupper (2011) contend that, despite Section 23 of the South African Constitution, the right to work and unemployment security remain insufficiently protected.

Although these studies provide valuable jurisdiction-specific insights, there remains limited comparative scholarship examining how constitutional structures and recent labour law reforms influence the enforceability of decent work in India, South Africa, and Brazil. In particular, insufficient attention has been paid to the interaction between constitutional guarantees, statutory implementation, and institutional capacity in extending protection to informal, migrant, and gig workers. This study seeks to address that gap through a comparative constitutional analysis of these three democracies and to propose an integrated framework for strengthening the justiciability and effective enforcement of decent work rights

A. Research Objectives

1. To examine how much the right to decent work is recognized or not in the constitutional provisions of India, South Africa, and Brazil.
2. To analyze the mechanisms of decent work rights implementation in the context of socio-economic crises and increasing labor market inequalities.
3. To examine constitutional and legal deficiencies that prevent informal, migrant, and vulnerable workers from enjoying the right to decent work, and to develop a comparative and integrated strategy of entrenching the principles of decent work in the constitutions of developing democracies.

B. Statement of Problem

1. Why is the right to decent work not always a legitimate constitutional right in India, South Africa, and Brazil?

2. What are the consequences of labor deregulation and formalization to the constitutional right to fair labor practices and to the dignity of workers?
3. Does a coherent constitutional approach to the right to decent work increase its enforceability in countries facing various socio-economic issues?

C. Research Methodology

The research uses both primary and secondary data. Primary sources include constitutional provisions and landmark case law, whereas secondary sources include legal treatises, scholarly literature, and government reports. These sources are used to evaluate the right to decent work in India, Brazil, and South Africa.

D. Research Analysis

Definition of Decent Work the International Labor Organization (ILO) defines decent work as: Productive work opportunities that offer a decent income, employment security, and social safety of families, including enhanced chances of personal growth and social inclusion, liberty to voice issues, organize and engage in decision-making, and equal opportunity and treatment to everyone.

IV. INTERNATIONAL HUMAN RIGHTS LAW RECOGNITION

UDHR Articles 23 and 24 of the Universal Declaration of Human Rights (UDHR) outline the right to work. Article 23 confirms the right to work, fair working conditions, equal pay to equal work, unemployment protection and the right to negotiate and become members of trade unions, in addition to considering a salary that provides an adequate standard of living. Article 24 lays the principle of the right to rest and leisure and provides that the working hours must be reasonably restricted and paid regular holidays should be given. When all of these are put together, there is an emphasis on decent work as a fundamental element of human dignity.⁵

⁵ United Nations, 'Universal Declaration of Human Rights' (United Nations, adopted 10 December 1948) Available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited 15 Nov 2025)

V. RIGHT TO DECENT WORK-CONSTITUTIONAL PERSPECTIVE IN INDIA

A. Fundamental Rights

After the independence of India in 1947, it was followed by the enactment of the Constitution in 1950⁶, which gave to the citizen's rights and responsibilities that allow equality irrespective of caste, creed, gender, religion, and race and preserve their freedom in the pursuit of trade among other liberties. Article 19 protects the right to association or unions, participation in any occupation, profession, or trade. The right to decent work⁷, however, was not defined specifically in the Constitution but it has been concluded implicitly in judiciary as one of the aspects of Article 21. In *Olga Tellis v. Bombay Municipal Corporation & Ors.*⁸, The Supreme Court determined that the right to livelihood is an essential component of the right to life under Articles 21 of the constitution. Likewise, in *Francis Brother Coralie Mullin v The Administrator, Union Territory of Delhi & Ors.*⁹ The Supreme Court interpreted Article 21 to hold that the right to life includes the right to live with human dignity and all that goes along with it.

Article 23 of the Constitution of India 1950 forbids trafficking and forced labour, whereas Article 24 forbids the hiring of children under the age of fourteen in the use of a risky industry. In *D.K. Yadav v. J.M. A¹⁰Industries*, the Court once again noted that the right to livelihood was essentially irreplaceable to liberty and dignity deprivation of the right

⁶ 6. Constitution of India (Government of India, reprinted edn, 1950) Available at https://www.indiacode.nic.in/bitstream/123456789/19151/1/constitution_of_india.pdf (last visited on 3 January 2026).

⁷ International Labour Organization, 'Productivity Ecosystems for Decent Work Programme 2022) South Africa' (ILO, launched 5 July) Available at <https://www.ilo.org/projects-and-partnerships/projects/productivity-ecosystems-decent-work-programme-south-africa> (Last visited on 6 January 2026)

⁸ *Olga Tellis v Bombay Municipal Corporation & Ors*, AIR 1986 SC 180; (1985) 3 SCC 545.

⁹ *Francis Coralie Mullin v The Administrator, Union Territory of Delhi & Ors* AIR 1981 SC 746; (1981) 1 SCC 608.

¹⁰ *DK Yadav v JMA Industries Ltd* (1993) 3 SCC 259.

would make existence animalistic. Such adjudications acknowledge the right to work as a primary right, but its effectiveness is largely limited to those activities within the state that are in the public sector. This right does not apply to employment in the private sector unless otherwise provided in particular legislation.

B. Impact of the Four Labour Codes on Decent Work in India

A significant recent development in India's labour law framework is the consolidation of twenty-nine labour statutes into four comprehensive Labour Codes: The Code on Wages, 2019; the Industrial Relations Code, 2020; the Code on Social Security, 2020; and the Occupational Safety, Health and Working Conditions Code, 2020. These Codes, brought into force with effect from 21 November 2025, represent an important statutory effort to operationalise the constitutional directives contained in Articles 14, 21, 39, 41, 42 and 43 of the Constitution.

The Code on Wages establishes a statutory National Floor Wage applicable across organised and unorganised sectors, thereby strengthening the constitutional objective of securing a living wage. The Code on Social Security is particularly significant because it expressly recognises gig workers and platform workers and provides for the creation of social security schemes funded in part by contributions from digital aggregators. The Occupational Safety, Health and Working Conditions Code consolidates protections relating to workplace safety, welfare and working conditions, while the Industrial Relations Code regulates trade unions, collective bargaining and dispute resolution.

These reforms advance several components of the International Labour Organization's Decent Work Agenda, especially social protection, fair remuneration and safe working conditions. However, substantial challenges remain in implementation, including delays in framing schemes, weak enforcement capacity, and the continued exclusion of many migrant and informal workers from effective coverage. Accordingly, while the Four Labour Codes strengthen the statutory foundation of decent work in India, they do not yet convert the right to decent work into a fully enforceable constitutional guarantee.

C. Principles of State Policy directing Employment Relations

Directive Principles are non-enforceable, and this forms the scaffolding of morality of governance. Article 38 enforces a societal structure that seeks to advance the greater good and reduce the current disparities. Articles 39(a)-(d) require livelihood security, equal taking with equal toiling and protection against exploitation and abuse. Article 41 entitles to the right of work, education, and social welfare. Article 42 creates fair and human conditions of working with maternity leave. Article 43 entails payment of a living wage and standard of living that is deemed decent to workers. Even though the state cannot enforce these provisions as a law, it has to work to ensure its actualization.

VI. DECENT WORK IN INDIA 2018-2019 VS. 2024-2025

A. Labour Force Participation and Informality

As of 2018 the general participation rate of the labour force was 37.5%. Amongst these workers, 52% were self-employed, about 25 percent were casual employees and 68.2 were employed under informal non-agricultural sectors. Out of ordinary wage earners, 69.5 per cent had no formal contract, 54 percent did not get paid leave, and 52 percent did not have social security.

The rate of unemployment did not change much as it was recorded at 3.2, but 86 per cent of the total labour forces were still executing their tasks in either unorganized or informal sectors. Thus, the Indian labour force, in spite of significant growth in labour-force participation to 60.1% BY 2023, and is still largely informal, without enough protection, more than 86 % of them can be involved in unorganized labour with no contracts, leave, and no social security.¹¹

B. Exposure of Income and Joblessness

¹¹ Press Information Bureau, 'Periodic Labour Force Survey (PLFS) -Annual Report (July 2023-June 2024)' (Ministry of Statistics & Programme Implementation, 23 September 2024) Available at <https://www.pib.gov.in/allrelease.aspx?reg=3&lang=2> (last visited on 23 January 2026)

In the period of 2018–2019, 42.2 per cent of full-time workers earned less than Rs. 9,750 per month¹², and 58 per cent among self-employed people and 92.5 per cent among casual workers. The recent wage data of 2024-2025 are not yet out but given this trend of informality that has remained the plight of low and irregular wages, chances of this to persist in the near future are high. This precarious earning situation affects women, rural workers and Scheduled Castes and Scheduled Tribes members disproportionately.

C. Violation of Law and New Problems

The number of children who were freed on child labour during the period of April 2024 to March 2025 was 44,902 and 90 percent of them had been subjected to the most dangerous types of work. However, 70 percent later went back to work in places like Krishna and NTR. Telangana (11,063), Bihar, and Rajasthan are the leaders in the state rescues, which means that there are systemic problems.

The rate of people not losing their jobs has been growing considerably since 2018. Informality, poor wages, and violation of labour rights, especially child labour are some of the issues that have remained burning issues.

It focuses on five major areas:

1. Guaranteeing the rights of employees against child labour and forced labour,
2. Making the workplace a secure and a fair place,
3. Justice in switching to clean energy,
4. Ethically, using AI and technology,
5. Ending workplace discrimination.

D. Brazil Constitution and the Right to Decent Work

¹² Aanchal Magazine, 'Expert committee recommends Rs 9,750 monthly national minimum wage' (The Indian Express, 15 February 2019) Available at <https://indianexpress.com/article/business/expert-committee-recommends-rs-9750-monthly-national-minimum-wage-5584848/> (Last Visited 1 feb 2026)

On 20 September 2023, in the United Nations general assembly in New York, the United States and Brazil signed a Partnership for Workers' Rights with the help of the International Labour Organization (ILO).¹³

The partnership has five main areas that it concentrates on and is aimed at promoting global labour justice. In October 2024, during the 11th Brazil-ILO South-South and Trilateral Cooperation Meeting, which took place in Itamaraty Palace in Brasília, Brazil and the ILO sign a new agreement that will promote decent work and labour rights¹⁴? Brazil is one of the countries where the right to decent work is directly established in the Federal Constitution of 1988 as an essential part of social justice and human dignity. Article 6 recognizes "WORK" as a basic social right and Article 7 grants workers a number of rights, such as social security, maternity and paternity leave, fair wages, health and safety, and protection against unfair dismissal.

Moreover, it guarantees that all people irrespective of their gender or status should be entitled to collective bargaining and equal treatment. Article 170 on the other hand highlights the importance of human labour and social well-being in the foundation of the economic order by guaranteeing the government to promote full employment and reduce inequality. The specialized labour courts system (Articles 111-114) of Brazil facilitates labour rights and provides that these constitutional rights are honored. Brazil is also able to show its adherence to international norms by ratifying many ILO conventions, including Convention 189 on domestic workers. Nevertheless, even with a good constitutional basis of decent work, there are still massive gaps in implementation and a high degree of informality.

¹³ International Labour Organization and Brazil, 'Brazil and ILO sign a new agreement to promote labour rights and decent work' (ILO, 15 October 2024) Available at <https://www.ilo.org/resource/news/brazil-and-ilo-new-agreement-promote-labour-rights-decent-work>. (Last visited 5 feb 2026)

¹⁴ international Labour Organization, 'Brazil and the ILO sign new South-South Partnership programmed to promote social justice in the Global South' (ILO News, 14 October 2024), Available at <https://www.ilo.org/resource/news/brazil-and-ilo-sign-new-south-south-partnership-programme-promote-social> (last visited 20 Feb 2026)

VII. DECENT WORK 2018-2019 FORMS THE BACKGROUND TO THE PROPOSED CHANGES TO THE DECENT WORK THAT ARE EXPECTED TO TAKE PLACE IN THE 2024-2025 PERIOD

Brazil ratified the Domestic Workers Convention of the International Labour Organization Convention No. 189 on 31 January 2018 and thereby provided legal protection to the domestic workers in the country, numbering about seven million. Such protections include the eight-hour working day, paid leave, social security access and child labour are not allowed. In the past, the Brazilian Constitution, especially Articles 6, 7, and 170, were to be used to defend the rights of the workers; however, due to the widespread informality, the lack of labour inspection, and the unequal protection of vulnerable populations, such as rural and informal workers, remained the thorns on the flesh.¹⁵

A. International Leadership and Policy Growth 2024-2025

On 16 June 2023, Brazil launched the South-South Cooperation Programme 2023-2027, named Social Justice to the Global South. The objectives of the program me are the improvement of equity in partner states, the advancement of occupational safety and the elimination of child and forced labour.¹⁶

On 14 October 2024, the Brazil and the International Labour Organization presented a trilateral project worth five million dollars, called Decent Work and Social Justice. The project is expected to enhance social dialogue, wage equality, and enhance labour inspection, and child and forced labour in the Global South countries.

¹⁵ Drishti IAS, 'Periodic Labour Force Survey (PLFS) Report 2023-24' (Drishti IAS, 10 months ago) Available at <https://www.drishtiiias.com/daily-updates/daily-news-analysis/periodic-labour-force-survey-plfs-report-2023-24> (last visited 3 March 2026)

¹⁶ IAS Gyan, 'Child Labour in India (IAS Gyan, 25 June 2025) Available at <https://www.iasgyan.in/daily-current-affairs/child-labour-in-india-11> (last Visited 15 March 2026).

During its 2024 G20 Presidency, Brazil promoted policy statements on decent work, gender equality, living wages, and just energy transitions at the G20 Leaders' Summit held in November 2024.¹⁷ The International Labour Organization recognised Brazil as an important contributor to the advancement of decent work principles within multilateral governance frameworks. In 2025, the G20 Presidency was assumed by South Africa, which continued these discussions through the Employment Working Group and related labour initiatives. In June 2025, Brazil gave its backing to an ILO effort to develop a new international agreement to protect the rights of workers involved in platform-based work.

In the Madalena Gordiano case,¹⁸ a domestic worker was subjected to conditions analogous to slavery for nearly four decades without adequate remuneration. The case underscored the continuing vulnerability of domestic workers in Brazil and reinforced the importance of strict enforcement of constitutional labour protections, anti-slavery laws, and the standards established under ILO Convention No. 189 concerning decent work for domestic workers. The modern slavery problem in Bento Gonçalves, in which more than 200 harvesting employees were subjected to appalling conditions, underscored the fact that the government had rescued the workers; the fines of more than three million Brazilian reais against the employers allegedly increased supply-chain responsibility and enhanced working conditions.

B. The constitutional perception of the right to decent work in South Africa

The South African Constitution under section 23 provides every person the right to fair labour practices. This provision includes freedom to organize and to be part of trade

¹⁷ International Labour Organization, 'Promoting Decent Work for All: ILO's footprint during Brazil's G20 Presidency' (ILO, 29 November 2024) Available at <https://www.ilo.org/resource/news/brazil-hands-over-g20-employment-working-group-south-africa-during-ilo> (last visited 20 march 2026).

¹⁸ Public Prosecutor's Office for Labour (Ministério Público do Trabalho) v Milene de Oliveira Rigueira and Others, Labour Court of Minas Gerais, Brazil (2021). See also [International Labour Organization](#), 'Domestic Worker Enslaved for Decades in Brazil Highlights the Need for Stronger Protection of Domestic Workers' (background materials on contemporary forms of slavery and domestic work).

unions, freedom to negotiate collectively, and to safeguard workers against exploitation and unfair dismissal.¹⁹

C. Structural Difficulties in 2018-2019

The productivity in South Africa was slow, especially in the manufacturing and export industries, where labour absorption rates were at 40 per cent and unemployment was at 37.8 per cent. In addition, 27 per cent of the workforce was involved in informal jobs, which, in most cases, lack formal contracts or social security coverage, particularly among women and the young population. Even though fair labour practices are ensured by Section 23 of the Constitution, it has not been applied uniformly. Legal labour rights have not been translated into inclusive and high-quality employment.²⁰

D. Productivity Driven Policy- Shift 2024-2025

The 2024-2025 policy changes were motivated by an agenda of productivity. South Africa responded by introducing the Productivity Ecosystems for Decent Work Programme (2021-2025) with the International Labour Organization and Switzerland. More than fifty small and medium-sized enterprises were trained on how to improve working conditions using tools like quality circles and 5S methodology by 2024. Certain organisations attended workshops introducing new measures such as Quality-Adjusted Labour Input, and it is hoped that this will measure and encourage inclusive productivity growth. Policy has changed to focus on the establishment of good, long-term jobs despite the continued unemployment. As a result, South Africa shifted its focus on productivity as a tool of decent work between 2018 and 2025 as it was no longer focused on uneven enforcement but rather on productivity; however, the inclusion of the informal sector and

¹⁹ 27. The Informal Economy and Decent Work in Senegal, Burundi and South Africa' (Equal Times, 28 January 2022) Available at <https://www.equaltimes.org/the-informal-economy-and-decent> (last Visited 5 April 2026).

²⁰ 70% of child labourers back to work in NTR, Krishna dists' (Times of India, 12 June 2025) Available at <https://timesofindia.indiatimes.com/city/vijayawada/70-of-child-labourers-back-to-work-in-ntr-krishna-dists/articleshow/121809197.cms> (last visited 10 April 2026).

its implementation is still lacking. In *Shushu & Others v. Distell Ltd (Springs)*,²¹ the Johannesburg Labour Court held that the dismissal of workers who refused to accept a 10 per cent pay cut was substantively unfair and ordered their reinstatement. The Court found that the dismissals were disproportionate because the employer had already achieved substantial cost savings and the prejudice suffered by the employees outweighed any remaining operational benefit to the company.

VIII. FINIDINGS

The research suggests that, although all the constitutions of South Africa, India and Brazil acknowledge decent labour to some extent, they do not provide any fully enforceable right. There are no legal mechanisms in place in India to ensure good labour standards. South Africa has a problem of implementation and Brazil has a problem of labour reform and informality despite the strong constitutional protection. The common marginalization of vulnerable populations, including gig workers, migrants, and informal labourers, negatively affects the successful implementation of constitutional goals.

IX. SUGGESTION

Decent work should be a constitutional right, especially in South Africa and India. Carry out a comparative legal analysis of budgetary commitments, implementation strategies and state or provincial labour laws. Enhance the enforcement through incorporation of gig and informal workers into digital platforms, specialized labour courts and social audits. Improve implementation by legal change and labour inspection and encourage inclusive governance by multi-stakeholder discourse.

²¹ *Shushu and Others v Distell Ltd (Springs)* (JS81/21) [2024] ZALCJHB 527 (Labour Court, Johannesburg, 10 December 2024).

X. CONCLUSION

Labour rights are human rights. Brazil, South Africa and India have aspirational but unfulfilled constitutional rights to decent labour. In order to maintain dignity, equity and labour justice, a unified framework based on international standards is necessary. Decent employment can be transformed into a policy goal and a real constitutional right by reducing the implementation gap.

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