



Research Paper

An Overview of Regulatory Frameworks for Social Justice: A Comparative Study of Inclusive Policies in Asia and Africa

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Abstract

Social justice is becoming a central value in the development of regulatory policies and inclusive policies in both Asia and Africa. Although the two regions have common goals of equality and sustainable development, they show different patterns in how they formulate and enforce inclusive regulations. This paper discusses the regulatory regimes that support social justice in Asia and Africa, focusing on their legal, institutional, and policy aspects. The paper takes a comparative policy and legal analysis of the selected case studies of South Africa, Kenya, India, and Indonesia. The results suggest that even though these two areas have solid constitutional and legislative pledges to social justice, challenges still exist in implementation, distribution of resources, and participatory governance. Asia has gone a long way in affirmative action, social protection, and digital inclusion, whereas Africa has led the way in entrenching socio-economic rights and regional structures in the constitutions and African Union. In both instances, however, there are gaps between the policies as intended and the actual situation, which are generally exacerbated by inequality, political instability, and weak institutional capacity. The paper concludes that convergence of regulations, more enforcement mechanisms, and participatory structures that are inclusive are necessary to foster social justice in both continents. It prescribes reciprocal education between Asia and Africa, especially on matters of judicial activism, digital transformation, and empowerment of the grassroots.

Keywords: Social Justice, Inclusive Policy, Regulation, Asia, Africa

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I. Introduction

Recognizing the importance of social justice, or the equitable distribution of rights, opportunities, and resources among all members of society, equitable and effective governance frameworks have been developed and implemented across Asia and Africa.¹ The lack of equity in society and the acknowledgment that growth is not an equitable right or achievement are the reasons governments and regional organizations are embedding inclusive growth in their policies and frameworks.² This inclination toward inclusive governance, along with the increased social regulatory framework across governance and administrative services, is particularly important to Africa and Asia.³ This is because of their diverse colonial histories, socio-economic problems, and cultural differences.⁴

Asia's socio-economic problems are mostly due to increased inequalities in socio-economic structures, especially in the newly developed Indian, Chinese, and Indonesian economies.⁵ Social inequities and inequalities are addressed through governance frameworks such as social protective agencies, affirmative action, and digital incorporation policies within the socio-economic structures.⁶ Africa developed regional frameworks like the African Union Agenda 2063, which guides self-driven sustainable growth while protecting human rights.⁷ Other governance frameworks focused on social justice include Africa's post-apartheid South African constitution, Kenya's judicial reforms, and Nigeria's policies.⁸

With inclusive governance still unfulfilled in these regions, the gaps in achievement largely stem from such structural barriers as weak institutions, corruption, poor law enforcement, and the absence of reform-friendly politics.⁹ As weaknesses in the enforcement of progressive laws and policies are politically and socially tolerated, the status quo in the lives of the marginalized and the poor is unlikely to improve.¹⁰

¹ John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 2005).

² Geof Wood and Ian Gough, "A Comparative Welfare Regime Approach to Global Social Policy," *World Development* 34, no. 10 (2006): 1696–1712, <https://doi.org/10.1016/j.worlddev.2006.02.001>.

³ Anis Ben Brik and C. Taylor Brown, "Global Trends in Social Inclusion and Social Inclusion Policy: A Systematic Review and Research Agenda," *Social Policy and Society* (2024): 1–24, <https://doi.org/10.1017/S147474642400054X>.

⁴ Milena Petters Melo and Thiago Rafael Buckhart, "Constitutionalism 'of' the Global South? Epistemological Reflections on Emerging Constitutional Trends," *Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito* 14, no. 3 (2023): 420–438, <https://doi.org/10.4013/rechtd.2022.143.08>.

⁵ Ricardo Crespo, "Amartya SEN (2009), The Idea of Justice, The Belknap Press of Harvard University Press, Cambridge, MA". *Revista Empresa Y Humanismo* 14 no. 1 (2011): 128–30. <https://doi.org/10.15581/015.14.4268>.

⁶ Desi Rahma Aryanti, Hilman Sutanto, Iman Ahmad Gymnastiar, and Hendun Abd Rahman Shah, "Digital Inclusion and Governance Equity in the Age of Technological Transformation," *Visioner: Jurnal Pemerintahan Daerah di Indonesia* 17, no. 3 (2025): 13–23, <https://doi.org/10.54783/jv.v17i3.1423>.

⁷ African Union, *Agenda 2063: The Africa We Want* (Addis Ababa: African Union Commission, 2015), <https://au.int/en/agenda2063/overview>.

⁸ Heinz Klug, *Constituting Democracy: Law, Globalism and South Africa's Political Reconstruction* (Cambridge: Cambridge University Press, 2000), <https://doi.org/10.1017/CBO9780511560156>.

⁹ Herbert Obinger, Carina Schmitt, and Peter Starke, "Policy Diffusion and Policy Transfer in Comparative Welfare State Research," *Social Policy & Administration* 47, no. 1 (2013): 111–129, <https://doi.org/10.1111/spol.12003>.

¹⁰ Tom T., "Social Policy, Development and Democracy in Africa: Reconnoitering Thandika Mkandawire's Philosophy," *Journal of Asian and African Studies* 60, no. 8 (2025): 4841–4859, <https://doi.org/10.1177/00219096241270705>.

Both Africa and Asia have recognized social justice as a normative value, but the legal commitment to social justice remains largely unfulfilled at the policy level.¹¹ For each set of relationship statements from constitutions and laws, there are a host of policies at the bottom level that are not being activated; this gap is what has been termed the “policy implementation deficit.”¹² This problem greatly erodes trust in public institutions and leaves inequality unchallenged.¹³ More importantly, the deficit seriously undermines the consolidation of democracy in each of the countries and regions.¹⁴

There is also a gap in the comparative literature between Africa and Asia on inclusive regulatory frameworks. Most of the literature focuses on one region, or one country within a region, and misses the opportunity for learning that exists between the two regions.¹⁵ Because of the comparative value of colonial history, structural inequities, and the pursuit of inclusive social development, a cross-regional comparative study of Africa and Asia is valuable to both continents in advancing social justice.¹⁶

The article sets out to perform a comparative analysis of inclusive policies and regulatory frameworks between Asia and Africa through a study of social justice frameworks in particular nations from both continents. The research will examine the commonalities and distinctions in inclusive policy development between these two regions while evaluating their methods for handling inequality, rights, and governance deficiencies. The study will produce recommendations to enhance regulatory alignment between Asia and Africa. This will support knowledge exchange between the two regions.¹⁷

Over the past few decades, scholarship on social justice and regulation has made notable advancements. John Rawls's *A Theory of Justice* continues to be pivotal, presenting fairness and equality as the foundational principles of a just society.¹⁸ Amartya Sen strengthened the discourse further by focusing on capabilities and freedoms, stating that justice must go beyond mere formal equality and consider the real opportunities people have.¹⁹

On the Asian continent, literature focusing on social inclusion has examined the role of affirmative action in India, particularly the system of reservations for Scheduled Castes and

¹¹ David Bilchitz, “Socio-Economic Rights, Economic Crisis, and Legal Doctrine: A Rejoinder to Xenophon Contiades and Alkmene Fotiadou,” *International Journal of Constitutional Law* 12, no. 3 (2014): 747–750, <https://doi.org/10.1093/icon/mou046>.

¹² D. S. Fussy, “Governance of Social Science Research: Insights from Southeast Asia,” *Asian Journal of Social Science* 51, no. 2 (2023): 71–79, <https://doi.org/10.1016/j.ajss.2023.02.002>.

¹³ Iván Claudio Suazo-Galdames, Mahia Saracosti, and Alain Manuel Chaple-Gil, “Scientific Evidence and Public Policy: A Systematic Review of Barriers and Enablers for Evidence-Informed Decision-Making,” *Frontiers in Communication* 10 (2025), <https://doi.org/10.3389/fcomm.2025.1632305>.

¹⁴ Geof Wood and Ian Gough, “A Comparative Welfare Regime Approach to Global Social Policy,” 1705–1708.

¹⁵ Jaakko Husa, “Constitutionalism, Comparativism, and Asia—No More ‘Separate but Equal’?” *Journal of Comparative Law* (2023): 574–591, <https://doi.org/10.2139/ssrn.4764806>.

¹⁶ M. Dekker and N. Pouw, “Introduction to the Special Issue: Policies for Inclusive Development in Africa,” *European Journal of Development Research* 34 (2022): 2137–2155, <https://doi.org/10.1057/s41287-022-00561-x>.

¹⁷ Kalypso Filippou, Emmanuel O. Acquah, and Anette Bengs, “Inclusive Policies and Practices in Higher Education: A Systematic Literature Review,” *Review of Education* 13, no. 1 (2025), <https://doi.org/10.1002/rev3.70034>.

¹⁸ Rawls, *A Theory of Justice*.

¹⁹ Crespo, *Review of The Idea of Justice*.

Tribes.²⁰ Studies from Indonesia examine the relationship between decentralization and social welfare, along with the government's efforts to reduce poverty.²¹ Regionally, ASEAN has slowly integrated human rights and principles of inclusive development into its policy frameworks, though there is persistent discourse on the lack of compliance and enforcement.²²

African literature has acknowledged the positive impact that constitutionalism can bring within the scope of social justice, especially with the praise that South Africa's post-apartheid constitution receives for rights-based governance.²³ South Africa's post-apartheid constitution is often pointed to as a benchmark.²⁴ Likewise, social justice considerations were prominent in the 2010 Kenyan constitution.²⁵ The African Union has, at the continental level, positioned rights-inclusive development as the foundation for several of its policies, including the African Charter on Human and Peoples' Rights and Agenda 2063.²⁶

Still, the field lacks sufficient comparative work. There are some connections regarding constitutional design and affirmative action between India and South Africa, but most contexts simply lack comparative studies, especially beyond South Africa.²⁷ This is the focus of the present article, which attempts an analysis of Asia and Africa together as a single unit for study.

The analysis in this study is based on comparative legal and policy frameworks while integrating both doctrinal and empirical perspectives. The study draws on regulatory theory, which understands law and regulation not only as tools for the coordination of the economy but also as means for the attainment of social goals such as equity and inclusion.²⁸

The article applies a qualitative comparative approach. Africa and Asia are represented by the purposefully selected cases of India, Indonesia, South Africa, and Kenya to showcase different strategies in developing inclusive policies. The selection of India, Indonesia, South Africa, and Kenya as case studies is based on their strong representational value for their respective regions. The two Asian countries of India and Indonesia stand as the most populous democracies in the region, while using different methods to achieve social justice through affirmative action and decentralized systems. South Africa and Kenya, on the other hand, represent Africa's leading examples of constitutional transformation and judicial activism.²⁹ The

²⁰ Indra Sawhney v. Union of India, AIR 1993 SC 477, <https://sleepyclasses.com/indra-sawhney-vs-union-of-india/>.

²¹ Ebriyani Ebriyani and Indri Oktaviani, "Social Policy in Reducing Poverty in Indonesia: A Systematic Literature Review," *Jurnal Pendidikan Ekonomi Indonesia* 7, no. 2 (2025): 1–22, <https://doi.org/10.17509/jpei.v7i2.85422>.

²² Mathew Davies, "ASEAN and Human Rights Norms: Constructivism, Rational Choice, and the Action-Identity Gap," *International Relations of the Asia-Pacific* 13, no. 2 (2013): 207–231, <https://doi.org/10.1093/irap/lct002>.

²³ Government of the Republic of South Africa v. Grootboom, 2001 (1) SA 46 (CC), <https://www.saflii.org/za/cases/ZACC/2000/19.html>.

²⁴ Republic of South Africa, Constitution of the Republic of South Africa (1996), <https://www.gov.za/documents/constitution/constitution-republic-south-africa-1996-04-feb-1997>.

²⁵ Republic of Kenya, Constitution of Kenya (2010), <https://www.kenyalaw.org/kl/index.php?id=398>.

²⁶ African Union, Agenda 2063.

²⁷ Bruce J. Berman and Motoki Takahashi, "Ethnicity, Development, and Social Cohesion in Africa," in *From Divided Pasts to Cohesive Futures* (Cambridge: Cambridge University Press, 2019), 161–190, <https://doi.org/10.1017/9781108645195.006>.

²⁸ Obinger, Schmitt, and Starke, "Policy Diffusion and Policy Transfer," 112–118.

²⁹ Minister of Health v. Treatment Action Campaign, 2002 (5) SA 721 (CC), <https://www.saflii.org/za/cases/ZACC/2002/15.html>.

four countries present various legal systems and political structures, and regional leadership positions. Which establish them as appropriate bases for studying inclusive regulatory systems between the two continents. Through the comparison, the article hopes to highlight the best elements of social justice regulatory consolidation as well as the ongoing challenges.³⁰ The methodological steps are summarized in Figure 1.

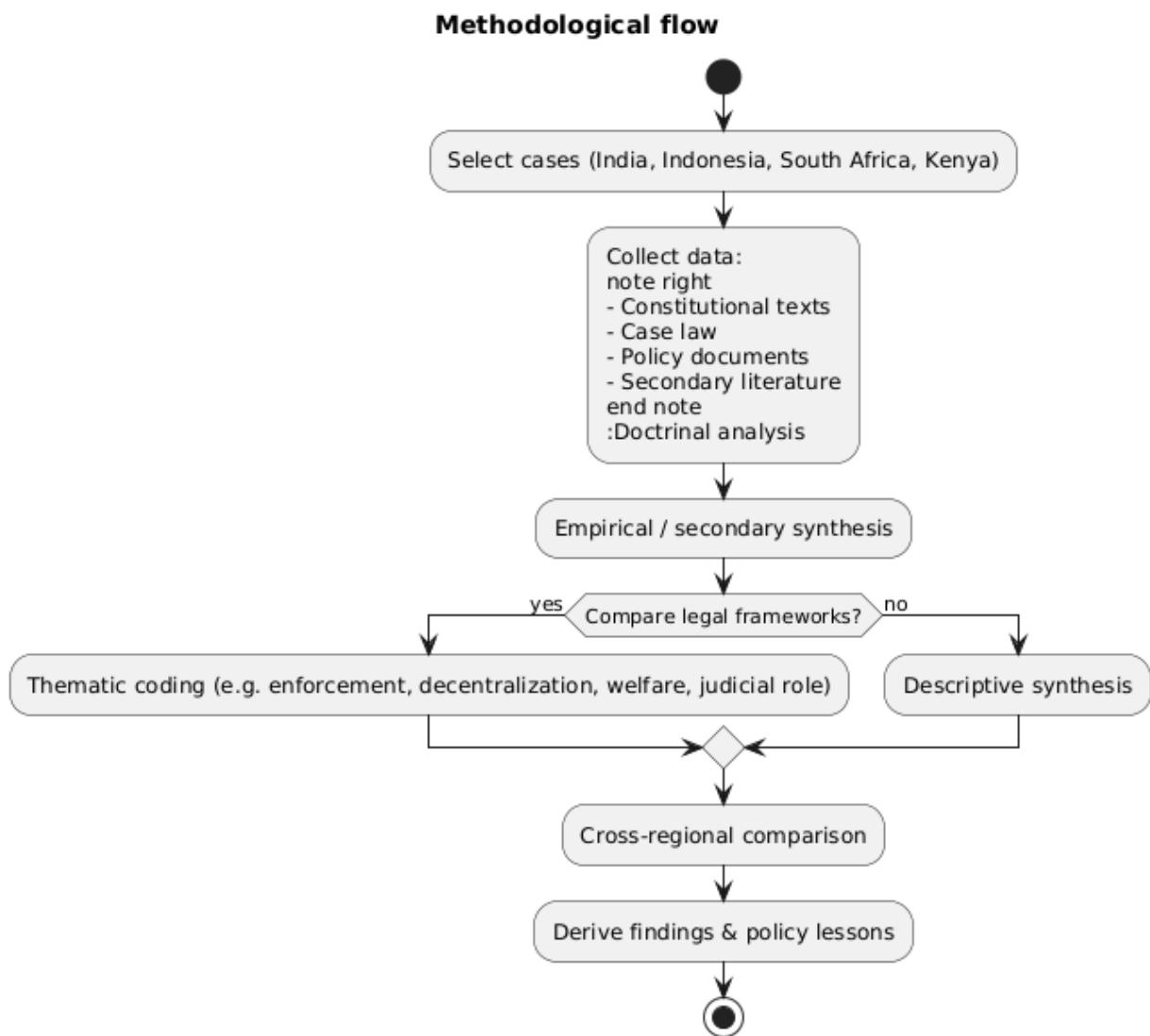


Figure 1. Methodological Flow — Case Selection, Data Collection, Comparative Coding, Synthesis

Source: Author's illustration (2025)

2. Inclusive Policy Framework in Asia

2.1. India: Affirmative Action and Social Justice

³⁰ Ghazala Mir, Naureen Durrani, Rachel Julian, Yasah Kimei, Saidur Mashreky, and T. T. Duong Doan, "Social Inclusion and Sustainable Development: Findings from Seven African and Asian Contexts," *Sustainability* 16, no. 11 (2024): 4859, <https://doi.org/10.3390/su16114859>.

India stands as one of the most ambitious and sustained attempts at integrating social justice into a constitution and regulatory framework. This is a consequence of the need for strong remedial measures post-independence due to colonial exploitation and caste-based exclusions for centuries.³¹ While the entrenchment of social justice into the constitution was a remarkable achievement, it was not the entire solution. The Indian constitution's framers recognized that social hierarchies and caste-based exclusions would not be sufficiently addressed with formal equality. Therefore, the institutionalization of "affirmative action," or "reservations," as a governance tool, served as a building block for the preservation and extension of social justice.³²

Furthermore, Articles 15 and 16 of the Indian Constitution speak directly to the State's obligation to make special provisions for the socially and educationally backward, SCs, and STs.³³ Article 17 abolished "untouchability" and caste discrimination in general, and Article 46 mandatorily directs the State to promote the educational and economic interests of the "weaker" sections.³⁴ As a package, these reinforced proclamations and the Guiding Principles of the Indian Constitution and policies eloquently articulate the social justice imperative.

Moreover, the scope and limits of affirmative action in India have been primarily defined by the Supreme Court. In the case of *Indra Sawhney v. Union of India* (1992), the Court upheld 27% reservations for Other Backward Classes (OBCs) and also proposed the idea of a "creamy layer" in the caste system to prevent the affluent and advanced sections of the backward classes from monopolizing the benefits.³⁵ In *Ashoka Kumar Thakur v. Union of India* (2008), the Court upheld the reservations in higher educational institutions but stressed the importance of a periodic review of such policies.³⁶ In such case laws, the judiciary has tried to balance the ideal of meritocracy with the spirit of social justice enshrined in the Constitution.

In addition, the reservation system has produced substantial changes to increase SCs, STs and OBCs presence in government positions along with educational institutions and legislative bodies.³⁷ Through affirmative action programs higher education institutions have achieved major success in boosting enrollment of communities which were previously denied access.³⁸ Political representation of SCs and STs through reserved seats in Parliament and State Assemblies has enabled marginalized groups to participate directly in policy formulation.³⁹

However, the system continues to face extensive opposition even though it has achieved its goals. Critics maintain that affirmative action has sometimes strengthened caste

³¹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford: Oxford University Press, 1966).

³² Rawls, *A Theory of Justice*.

³³ Republic of India, *Constitution of India* (1950), <https://www.constitutionofindia.net/constitution/constitution-of-india-1950/>.

³⁴ Republic of India, *Constitution of India* (1950).

³⁵ *Indra Sawhney v. Union of India*, AIR 1993 SC 477.

³⁶ *Ashoka Kumar Thakur v. Union of India*, (2008) 6 SCC 1, <https://indiankanoon.org/doc/1219385/>.

³⁷ Nidhi Sabharwal, "Understanding Students' Attitudes Towards Affirmative Action Policy in Higher Education in India," *Social Inclusion* 12 (2024), <https://doi.org/10.17645/si.7601>.

³⁸ Sandeep Hegade and Yogini Andalgavarkulkarni, "The Paradox of Solidarity in Higher Education: Caste, Gender, and the Affirmative Action Conundrum," *International Journal of Educational Development* 117 (2025): 103324, <https://doi.org/10.1016/j.ijedudev.2025.103324>.

³⁹ Republic of India, *Constitution of India* (1950).

identities instead of breaking them down thus maintaining social divisions.⁴⁰ The problem of elite capture emerges when better-off members from disadvantaged categories gain excessive advantages from affirmative action programs.⁴¹ State-level implementation of social justice policies remains inconsistent because some regions demonstrate higher commitment than others.

Another challenge is the private sector represents a major obstacle because it does not implement reservation policies. Since the 1990s liberalization and privatization have reduced government employment opportunities thus creating doubts about whether state-based affirmative action remains effective as the primary social justice measure.⁴²

Indeed, India has conducted trials to broaden its affirmative action policies by including women and economically disadvantaged upper-caste members. The 103rd Constitutional Amendment (2019) established a 10% EWS reservation which triggered discussions about using economic standards alongside or instead of caste-based systems.⁴³ The ongoing conflict between identity-based and class-based social justice approaches continues to exist.

Lastly, the Indian experience demonstrates both the advantages and restrictions of social justice regulations. The Indian system proves that affirmative action remains viable across multiple decades through constitutional protection and legislative development alongside judicial monitoring. The balancing of equity with efficiency and social cohesion remains a challenging task according to this example. The long-standing affirmative action system of India provides essential institutional design and judicial engagement lessons to African nations which face racial or ethnic exclusion histories.⁴⁴

2.2. Indonesia: Decentralization and Social Protection

Indonesia provides a unique example of the development of inclusive policies. This stems from the country's move from authoritarianism towards democracy. As the twentieth century progressed towards its close, the country began to adopt policies of democracy.⁴⁵ After President Suharto's fall, this was accompanied by one of the most extensive decentralization reforms the world has ever seen. This reform changed the regulatory framework and systems of the state and governance; power was reallocated from the central government of Jakarta to local governance units. These reforms "laid the groundwork for the participatory governance that would later enable the state to normalize..." social justice.⁴⁶

Moreover, Under the 1999 Regional Autonomy Laws (Laws No. 22 and 25 of 1999), local authorities received a mandate to manage public services, education, health, and other resources.⁴⁷ This, in turn, redefined local governance, and by extension, the local governance

⁴⁰ Anand Teltumbde, *The Persistence of Caste: The Khairlanji Murders and India's Hidden Apartheid* (London: Zed Books, 2010).

⁴¹ Reetika Khera, "Impact of Aadhaar in Welfare Programmes," SSRN Scholarly Paper, September 29, 2017, <https://doi.org/10.2139/ssrn.3045235>.

⁴² David Piachaud, Review of Capital and Ideology, by Thomas Piketty, *Journal of Social Policy* 50, no. 2 (2021): 440–441, <https://doi.org/10.1017/S0047279421000039>.

⁴³ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2019) 1 SCC 1, <https://indiankanoon.org/doc/127517806/>.

⁴⁴ Bilchitz, "Socio-Economic Rights, Economic Crisis, and Legal Doctrine."

⁴⁵ R. William Liddle, "Indonesia," *Indonesia*, no. 83 (2007): 175–179, <http://www.jstor.org/stable/40376421>.

⁴⁶ Simon Butt and Nicholas Parsons, "Judicial Review and the Supreme Court in Indonesia: A New Space for Law?" *Indonesia*, no. 97 (2014): 55–85, <https://doi.org/10.5728/indonesia.97.0055>.

⁴⁷ Government of Indonesia, Regional Autonomy Laws No. 22 and 25 of 1999.

system in the country. This changed governance, especially in a country with vast and diverse socio-economic disparities. As a result, policies also became more innovative and inclusive, and local communities had more control over resources. Decentralization was also expected to address overly centralized authoritarianism. By fostering local institutions, equitably capturing local benefits, and curtailing overly central states, Indonesia hoped to counter center-state authoritarianism.⁴⁸

In addition, alongside decentralization, Indonesia aimed to implement large-scale social protection initiatives to address poverty and inequality. Conditional cash transfer programs, especially the one called *Program Keluarga Harapan* (PKH), initiated in 2007, provide benefits to low-income households as long as they provide schooling to their children and attend health services.⁴⁹ There was a remarkable increase in school attendance and improvements in maternal health and poverty during the coverage period of the program.⁵⁰

Furthermore, the 2014 introduction of *Badan Penyelenggara Jaminan Sosial Kesehatan* (BPJS Kesehatan) is another landmark achievement in the provision of universal health coverage. It is arguably one of the largest comprehensive health insurances within a single country, with over 200 million enrollees. It seeks to ensure equitable access to healthcare services and, thus, promotes social justice.⁵¹

Through the 2014 Village Law, Indonesia aimed to be even more inclusive by guaranteeing that villages could directly access central government funds. This was a development to reduce rural poverty and ensure that communities could determine their development priorities.⁵² Villages have implemented such funds in areas of community initiatives such as infrastructure, education, and community empowerment.

Philosophically, The Pancasila state philosophy, incorporated in the preamble of the 1945 Constitution, forms the basis of Indonesia's inclusive policies, as it encompasses the 5th principle, "social justice for all the people of Indonesia" (*Keadilan Sosial bagi seluruh rakyat Indonesia*).⁵³ This message has become a normative anchor for policy regulatory frameworks and has shaped policies on the judiciary and administration. This has, in turn, sparked legislative and administrative policy changes.

However, there are challenges with the instruments of social protection and the decentralization of Indonesia's social model. There are conflicting decentralization policies that have resulted in local elites becoming empowered, as opposed to the marginalized and more vulnerable communities. This has been accompanied by policies that have resulted in corruption, nepotism, and uneven policy results.⁵⁴ Poorer eastern districts and regions of Indonesia are also struggling to deliver even basic social protection, while wealthier districts are able to deliver more comprehensive services.

The BPJS Kesehatan initiative, aimed at expanding healthcare services, has also resulted in a chronic financial deficit, which has led to unsustainable services. PKH has also faced

⁴⁸ Berman and Takahashi, "Ethnicity, Development, and Social Cohesion in Africa."

⁴⁹ Ebriyani and Oktaviani, "Social Policy in Reducing Poverty in Indonesia."

⁵⁰ Mir et al., "Social Inclusion and Sustainable Development."

⁵¹ Aryanti et al., "Digital Inclusion and Governance Equity."

⁵² Dekker and Pouw, "Policies for Inclusive Development in Africa."

⁵³ Republic of Indonesia, Constitution of 1945.

⁵⁴ Fussy, "Governance of Social Science Research."

criticism for its narrow targeting of social safety net services. The lack of focus on gender and minority rights continues to be an area of concern.⁵⁵ Additionally, in some cases, decentralization has paved the way for more exclusionary local governance, including laws about women's attire or practices around religious discrimination, ultimately eroding the spirit of inclusion.⁵⁶

In summary, the experience of Indonesia shows the potential of decentralization for achieving social equity, as long as measures to prevent elite capture and contestability of inequality are implemented. Its social protection initiatives on a large scale have shown other middle-income countries that social equity policies can be inclusive and reach a considerable citizenry. For African countries trying out decentralization—Kenya and Nigeria, for example—Indonesia represents both the promise and challenge of decentralization in governance.⁵⁷

But Indonesia also demonstrates the converse. Without measures to address pervasive inequalities, the lack of impact strategies will, at best, bring about stagnation of growth in social equity. Without adequate measures to build institutional capacity and social accountability, resource decentralization will perpetuate inequities.⁵⁸

3. Inclusive Policy Framework in Africa

3.1. South Africa: Constitutional Entrenchment of Socio-Economic Rights

Among other justifiable reasons, South Africa represents the most advanced implementation of social justice within constitutions and laws in the world. After the social and legal injustices of the apartheid regime, the South African Constitution of 1996 became the world's first constitution to not only include but also recognize socio-economic and justiciable rights.⁵⁹ This means the apartheid injustices shifted social justice from solely a political expectation and aspiration to a legally enforceable obligation.⁶⁰

First, Systemic exclusion, segregation, and apartheid discrimination were overwhelmingly entrenched. Consequently, the socio-economic imbalances and inequities of the apartheid regime demanded comprehensive socio-economic change alongside the political transition to democracy in 1994.⁶¹ The African National Congress, the movement behind the liberation movement, placed the transformation of socio-economic inequities and imbalances as a pillar of the first democratic order. As a result, the vision of comprehensive transformation was constitutionalized and is a premier and transformative use of the law to address the inequities and imbalances of the apartheid regime.⁶²

⁵⁵ J. C. Hayvon, "Action against Inequalities: A Synthesis of Social Justice & Equity, Diversity, Inclusion Frameworks," *International Journal for Equity in Health* 23 (2024): 106, <https://doi.org/10.1186/s12939-024-02141-3>.

⁵⁶ Mir et al., "Social Inclusion and Sustainable Development."

⁵⁷ Obinger, Schmitt, and Starke, "Policy Diffusion and Policy Transfer."

⁵⁸ Wood and Gough, "A Comparative Welfare Regime Approach to Global Social Policy."

⁵⁹ Republic of South Africa, *Constitution of the Republic of South Africa* (1996).

⁶⁰ Klug, *Constituting Democracy*.

⁶¹ Berman and Takahashi, "Ethnicity, Development, and Social Cohesion in Africa."

⁶² Tom T., "Social Policy, Development and Democracy in Africa."

Moreover, Chapter Two of the 1996 Constitution deals with the Bill of Rights. This chapter devotes sections to social and economic rights, including rights to housing (Section 26), health care and social security (Section 27), as well as education (Section 29).⁶³ Socio-economic rights in the Bill of Rights are not only justiciable but also immediately enforceable. These rights impose an obligation on the state, which is mandated to provide socio-economic rights with a reasonable expectation not to regress.⁶⁴

In practice, Transformative as it may be, the Constitutional Court is supposed to breathe life into socio-economic rights. In *Government of the Republic of South Africa v. Grootboom* (2000), the Court highlighted the unconstitutionality of the state's housing policy by failing to cater to individuals with urgent shelter needs.⁶⁵ This determination established that socio-economic rights place a positive obligation on the state to devise and implement appropriate plans that respond to the urgent needs of the people.

A similar position was taken by the Court in *Minister of Health v. Treatment Action Campaign* (2002), when the Court mandated the state to increase access to antiretroviral drugs to prevent HIV transmission from mothers to children.⁶⁶ This case emphasized the right to health and the Court's willingness to hold the executive branch accountable for failure to implement a policy adequately.

Subsequent cases, *Khosa v. Minister of Social Development* (2004) and *Mazibuko v. City of Johannesburg* (2009), focused on socio-economic rights with respect to non-citizens and the right to access water. Together, these cases demonstrate the potential of constitutional law to convert a right from the abstract to the practical.⁶⁷

Beyond the courts, South Africa has also advanced policy measures to promote social justice. In the 1990s, the Reconstruction and Development Programme (RDP) sought to remedy housing and infrastructure deficits, while the subsequent Growth, Employment and Redistribution (GEAR) strategy centered on economic stability and growth.⁶⁸ Social assistance programs, especially the Child Support Grant and Old Age Pension, have been instrumental in reaching and helping millions of South Africans and alleviating poverty.⁶⁹

Black Economic Empowerment (BEE) and its follow-up, Broad-Based Black Economic Empowerment (BBBEE), were implemented to counter racial inequities in economic participation and ownership.⁷⁰ While these initiatives have nurtured a sizable cadre of Black entrepreneurs and professionals, critics argue that the initiatives disproportionately benefit the elite rather than the broader poor population.⁷¹

⁶³ Republic of South Africa, Constitution of the Republic of South Africa (1996).

⁶⁴ Elizabeth Brundige and Sital Kalantry, "Review of Socio-Economic Rights: Adjudication Under a Transformative Constitution," *Human Rights Quarterly* 34, no. 2 (2012): 579-601, <https://doi.org/10.1353/hrq.2012.0028>.

⁶⁵ *Government of the Republic of South Africa v. Grootboom*, 2001 (1) SA 46 (CC).

⁶⁶ *Minister of Health v. Treatment Action Campaign*, 2002 (5) SA 721 (CC).

⁶⁷ Bilchitz, "Socio-Economic Rights, Economic Crisis, and Legal Doctrine."

⁶⁸ Klug, *Constituting Democracy*.

⁶⁹ Wood and Gough, "A Comparative Welfare Regime Approach to Global Social Policy."

⁷⁰ Tom T., "Social Policy, Development and Democracy in Africa."

⁷¹ Piachaud, *Review of Capital and Ideology*.

However, despite its forward-looking norms and policy frameworks, South Africa remains one of the most unequal societies in the world. Factors such as rampant corruption, persistent unemployment, and weak service delivery continue to undermine the realization of socio-economic rights.⁷² Service delivery protests have erupted in townships in response to the frustrations of the citizenry toward the stagnation of meaningful, transformative efforts. Judicial enforcement of socio-economic rights also has its limitations.

Although the Constitutional Court has been creative, its use of “reasonableness” as a legal standard tends, as a rule, not to mandate concrete plans and leaves the executive with considerable discretion. This has led some commentators to suggest that the Court has, in fact, failed to do enough to encourage the state.⁷³

South Africa’s constitutional model illustrates the possibilities involved in treating socio-economic rights as legally enforceable rights. It clearly defines the active judicial role in balancing public policy and accountability within a state. For Asian countries, many of which, like India, treat socio-economic rights as merely directive in the constitution, South Africa’s approach to justiciability of rights is a model to consider.⁷⁴ However, South Africa also shows the limits of legal frameworks in addressing structural economic challenges and the lack of state capacity or governance. Therefore, South Africa serves as both an inspiration and a lesson. Its legal framework and the socio-economic rights constitutionally embedded within it highlight the transformative potential of law in social justice issues. At the same time, it represents a political, institutional, and economic reform challenge.

3.2. Kenya: Judicial Reforms and Social Justice

Kenya has faced challenges in developing social justice within its legal and governance systems, specifically authoritarian governance, contested elections, and struggles in constitutional reform. The promulgation of the new Constitution in 2010, recognized as one of the most progressive in Africa, was a turning point in the relationship between the state and the citizen.⁷⁵ Kenya placed social justice at the center of constitutional design and sought to address issues of injustice, inequality, and the need for accountability.

Moreover, apart from the widespread challenges of independence, Kenya was specifically challenged by centralization of power, weak control over the executive, and corruption. The one-party dominance of the Kenya African National Union (KANU) entrenched systems of disordered patronage and politicized, uneven development and rights denial.⁷⁶ The violent aftermath of the 2007 elections and the loss of public confidence in the state were clear tragedies for the nation, and the new 2010 Constitution sought to address them.

The Constitution, particularly Chapter Four—the Bill of Rights—provides robust protection of socio-economic rights, including housing, health care, food, water, education,

⁷² O. H. Okunola, “Beyond Institutional Silos: Rethinking Multilevel Disaster Risk Governance in Africa a Decade into the Sendai Framework Implementation,” *International Journal of Disaster Risk Science* 16 (2025): 321–332, <https://doi.org/10.1007/s13753-025-00646-1>.

⁷³ Brundige and Kalantry, “Review of Socio-Economic Rights: Adjudication Under a Transformative Constitution.”

⁷⁴ Jaakkko Husa, “Constitutionalism, Comparativism, and Asia.”

⁷⁵ Republic of Kenya, *Constitution of Kenya (2010)*.

⁷⁶ Liddle, “Indonesia.”

and social security (Articles 43–46).⁷⁷ Importantly, the Constitution emphasizes equity, human dignity, inclusiveness, and protection of marginalized groups as guiding principles for governance (Article 10).⁷⁸

The Article 159 mandate of the Constitution speaks to the transformative role of the judiciary in promoting justice without undue regard to technicalities. This transformative provision sought to eliminate the colonial culture of law that privileged form over substance.⁷⁹ The Constitution created independent commissions like the Commission on Administrative Justice (Office of the Ombudsman) and the National Gender and Equality Commission, promoting equity, fairness, and accountability.⁸⁰

Importantly, perhaps the primary reforms directed at improving independence and public trust in the judiciary involved the vetting of judges and magistrates, and the subsequent divestment of executive powers over the judiciary to the Judicial Service Commission (JSC). The judiciary is now able to appoint, discipline, and supervise judges and magistrates. The consolidation of the judiciary with the establishment of the Supreme Court was a further advancement, as it provided the judiciary with the power to resolve constitutional matters and election disputes.⁸¹ Judicial activism has since become a hallmark of Kenyan jurisprudence. Courts take social justice a step further by recognizing the rights of marginalized communities alongside balancing the enforcement of socio-economic rights and controlling executive overreach.

Several landmark cases, have underscored this transformative role. In *Mitu-Bell Welfare Society v. Kenya Airports Authority* (2021) case provided special recognition of the right to housing for holders of informal settlements.⁸² The Mitu-Bell decision uniformly established that the right to housing extends to informal settlements. The decision also recognized that the constitutional rights of informal settlers were violated and that no right to housing was afforded during forced eviction. It advanced the recognition of socio-economic rights alongside personal rights under the Constitution.

Communication Commission of Kenya v. Royal Media Services Ltd. (2014) also advanced social communication rights for the first time in Kenya's constitutional history.⁸³ The advancement of social communication rights was central to democracy. Courts also recognized the right to a clean and healthy environment, including the provisions of Article 42 of the Constitution.⁸⁴ These decisions advanced constitutionally recognized social rights, even when implementing conflicting policies.

However, despite these constitutional and judicial achievements, Kenya continues to face major challenges in realizing social justice. The implementation of socio-economic rights

⁷⁷ Republic of Kenya, Constitution of Kenya (2010).

⁷⁸ B. A. Ezati, "Social Diversity, Gender, Equity and Public Policy," in *Public Policy and Research in Africa*, ed. E. R. Aiyede and B. Muganda (Cham: Palgrave Macmillan, 2023), https://doi.org/10.1007/978-3-030-99724-3_8.

⁷⁹ Republic of Kenya, Constitution of Kenya (2010).

⁸⁰ Republic of Kenya, Constitution of Kenya (2010).

⁸¹ *Communication Commission of Kenya v. Royal Media Services Ltd.*, Supreme Court of Kenya, Petition No. 14 of 2014, accessed September 29, 2025, <https://new.kenyalaw.org/akn/ke/judgment/kesc/2014/53/eng@2014-09-29>.

⁸² *Mitu-Bell Welfare Society v. Kenya Airports Authority*, Supreme Court of Kenya, Petition No. 3 of 2018, 2021, <https://new.kenyalaw.org/akn/ke/judgment/kesc/2021/34/eng@2021-01-11>.

⁸³ *Communication Commission of Kenya v. Royal Media Services Ltd.*, Petition No. 14 of 2014.

⁸⁴ Republic of Kenya, Constitution of Kenya (2010).

continues to face obstacles due to a lack of fiscal resources, weak administrative capacity, and corruption.⁸⁵ Political elites attempt to diffuse tensions between the judiciary and the executive branches of government, especially when there are adverse consequences for entrenched interests.

Ethnic and regional disparities remain, reflecting deep-rooted and unresolved issues. Constitutional reforms can only do so much. The 2010 Devolution Constitution aimed to promote equitable development, but the elite still capture resources at the county level.⁸⁶ Civil society must contend with restrictions and political intimidation to advocate for enforcement of constitutional guarantees. This shows that despite progressive constitutional provisions in Kenya; the realization of social justice requires political accountability and civic engagement.

Therefore, Regulatory frameworks can incorporate social justice through constitutional reform and the empowerment of the judiciary, as shown in the Kenyan experience. Kenyan courts demonstrate judicial activism and how courts can encourage inclusive governance, unlike in Asia, where courts defer to political branches regarding socio-economic rights. Kenya also exemplifies the challenges of turning constitutional text into reality. The disparity between legal frameworks and their execution exists in both Asia and Africa and highlights the challenges of political will, resource allocation, and institutional capacity. For countries looking to judicial reform for social justice, Kenya demonstrates both the potential and challenges that come with such reform.

4. Comparative Insights Between Asia and Africa

4.1. Common Challenges: Inequality and Implementation Deficits

Asia and Africa maintain distinct historical paths yet share equivalent difficulties when trying to implement advanced constitutional and policy promises that benefit disadvantaged groups. The main ongoing problems consist of deep-rooted inequality alongside state weakness and political opposition and inconsistent social justice framework application.⁸⁷

4.1.1. Entrenched Inequality

The two continents maintain ongoing struggles with deep-rooted social inequalities that stem from colonial and pre-colonial social systems. The Indian caste system together with ethnic inequalities in Myanmar and Sri Lanka persist throughout decades of government attempts at affirmative action and constitutional protections in Asia. Africa faces economic racial inequalities in South Africa together with ethnic discrimination in Kenya as well as continent-wide gender discrimination. The current economic system along with neoliberal policies have worsened social gaps since they mainly serve elite interests while neglecting the needs of disadvantaged groups.⁸⁸

⁸⁵ Okunola, "Beyond Institutional Silos," 321–332.

⁸⁶ African Union, *Agenda 2063: The Africa We Want* (Addis Ababa: African Union Commission, 2015), <https://au.int/en/agenda2063/overview>.

⁸⁷ Anis Ben Brik and C. Taylor Brown, "Global Trends in Social Inclusion and Social Inclusion Policy: A Systematic Review and Research Agenda," *Social Policy and Society* (2024): 1–24; Rawls, *A Theory of Justice*.

⁸⁸ Anand Teltumbde, *The Persistence of Caste*, 1–310; Berman and Takahashi, "Ethnicity, Development, and Social Cohesion in Africa," 161–190; Piachaud, *Review of Capital and Ideology*, 440–441.

4.1.2. The Implementation Gap

The major obstacle that exists between legal frameworks and their actual implementation is the most important common challenge. The ambitious reservation policies in India have continuously struggled to achieve their goals because of inefficient bureaucracy and elite domination of the process. The decentralization process in Indonesia has enabled local elites to implement discriminatory regulations while creating corruption in specific regions.⁸⁹

The socio-economic rights of South Africa's constitution face delivery challenges, which result in widespread public dissatisfaction known as "service delivery protests." Kenya's judicial system has made progressive rulings about socio-economic rights, yet the enforcement process remains weak because of political interference and limited resources. The continuous failure to implement regulations weakens public confidence in institutions and destroys the legitimacy of the regulatory framework.⁹⁰

4.1.3. Weak Institutions and Political Resistance

The implementation of social justice reforms faces opposition from entrenched elites, while institutional capacities remain weak in both regions. Resources that are supposed to assist the poor are commonly misdirected through corruption, patronage networks, and rent-seeking practices. Political leaders tend to oppose the implementation of policies that endanger their core supporters—for example, land reforms in Africa or caste-based redistributive policies in Asia.⁹¹

4.1.4. Balancing Formal Equality and Substantive Inclusion

The conflict between formal equality and substantive equality presents a widespread challenge. The implementation of substantive inclusion policies through India's reservation system and South Africa's affirmative action programs has led to criticism about their potential to sustain identity-based divisions. Courts across these regions have faced the challenge of maintaining equality principles while providing necessary remedial interventions.⁹²

4.1.5. Civil Society and Social Movements

Civil society organizations across Asia and Africa have actively driven governments to implement their policies. Indian society witnesses Dalit movements together with women's organizations fighting for better rights enforcement. The Treatment Action Campaign in South Africa, together with Kenyan grassroots housing rights campaigns, uses both litigation and advocacy to make governments responsible to their citizens. These actors remain important

⁸⁹ Butt and Parsons, "Judicial Review and the Supreme Court in Indonesia," 55–85; Ebriyani and Oktaviani, "Social Policy in Reducing Poverty in Indonesia," 1–22.

⁹⁰ Klug, *Constituting Democracy*; Bilchitz, "Socio-Economic Rights, Economic Crisis, and Legal Doctrine," 747–750.

⁹¹ Obinger, Schmitt, and Starke, "Policy Diffusion and Policy Transfer," 111–129; Tom T., "Social Policy, Development and Democracy in Africa," 4841–4859.

⁹² Husa, "Constitutionalism, Comparativism, and Asia," 574–591; Bilchitz and Brundige, "Socio-Economic Rights: Adjudication Under a Transformative Constitution," 579–601.

for connecting legal principles to actual lived experiences, even though they encounter political threats and reduced opportunities for civic engagement.⁹³

Table 1. Comparative Insights Between Asia and Africa on Social Justice Frameworks

Key Dimension	Asia (India & Indonesia)	Africa (South Africa & Kenya)	Comparative Insight
Constitutional Foundations	Socio-economic rights often appear as directive principles, not enforceable.	Socio-economic rights are justiciable and enforceable (e.g., South Africa's 1996 Constitution).	Africa provides stronger legal enforceability, while Asia relies more on policy instruments.
Policy Instruments	Focus on affirmative action (India) and decentralization/social protection (Indonesia).	Focus on constitutional transformation and judicial activism (South Africa, Kenya).	Asia uses regulatory and welfare tools; Africa integrates rights-based constitutionalism.
Judicial Role	Courts interpret policies but are often restrained (India, Indonesia).	Courts are highly activist and transformative (South Africa, Kenya).	African courts play a more direct enforcement role in social justice.
Implementation Challenges	Bureaucratic inefficiency, elite capture, and regional disparity.	Corruption, weak institutions, and service delivery failures.	Both regions face governance and inequality gaps that hinder implementation.
Civil Society Participation	& Strong grassroots movements (e.g., Dalit, PKH beneficiaries).	Vibrant rights-based activism (e.g., TAC, housing rights groups).	Civil society acts as a bridge between law and lived experience in both regions.
Regional Integration	ASEAN promotes cooperation but with weak enforcement.	African Union (AU) uses normative frameworks like Agenda 2063 and ACHPR.	Africa's regional bodies have more binding social justice frameworks than Asia's.
Cross-Regional Lessons	Asia offers models of affirmative action and social protection.	Africa offers models of constitutional enforcement and	Mutual learning can strengthen both regions' social justice outcomes.

⁹³ Mir et al., "Social Inclusion and Sustainable Development," 4859; Zisengwe, "Intersections Between Civic Technology and Governance," 1-26.

judicial
empowerment.

Source: Author's compilation (2025)

4.2. Lessons for Cross-Regional Policy Learning

The difficulties faced by Asia and Africa do not negate their ability to provide mutual lessons for social justice development. The comparative analysis points to methods of cross-regional learning that can improve regulatory frameworks across both continents. First, Asia provides important lessons about how to integrate affirmative action together with social welfare programs through regulatory frameworks. Through its reservation system, India demonstrates how constitutional frameworks can establish permanent inclusion measures, while Indonesia shows how middle-income nations can expand social protection programs to directly assist impoverished populations. Therefore, African countries should take these models as inspiration to build detailed affirmative action and welfare programs that focus on education, healthcare, and employment.⁹⁴

Moreover, the increasing digital governance practices across Asia offer useful lessons to African states. The Indian Aadhaar system, together with Indonesian e-governance platforms, has broadened welfare program accessibility while decreasing fraud and boosting operational effectiveness. In this respect, the mobile money revolution in Kenya serves as an example for African states to combine these technological models to improve social justice delivery through digital inclusion efforts.⁹⁵

In contrast, the continent of Africa provides valuable educational experiences regarding constitutional protection mechanisms and active judiciary systems. Through its constitutional framework, South Africa enables courts to enforce socio-economic rights directly while holding government entities responsible for compliance. The Kenyan judiciary shows how courts obtain power to advance social justice through constitutional reforms, even in political environments that are unfriendly to judicial intervention. By comparison, Asian constitutions frequently classify socio-economic rights as directive principles that do not have enforceable status. Thus, the African example shows Asian nations how to enhance judicial power, which would make social justice obligations legally binding.⁹⁶

Furthermore, the African continent also illustrates how regional organizations work to encourage inclusive governance. The African Union's Agenda 2063, together with the African Charter on Human and Peoples' Rights, establishes continental normative standards that member states must follow. Although the African Union's enforcement efforts have been limited, it has managed to establish a common perspective on rights-based development. ASEAN, by contrast, maintains its tradition of non-intervention by avoiding binding human rights commitments for member states. Through its regional organizations, Africa demonstrates that national policies can be shaped by normative standards even when sovereignty remains sensitive.⁹⁷

⁹⁴ Wood and Gough, "A Comparative Welfare Regime Approach to Global Social Policy," 1696–1712; Khera, "Impact of Aadhaar in Welfare Programmes."

⁹⁵ Aryanti et al., "Digital Inclusion and Governance Equity," 13–23; Zisengwe, "Intersections Between Civic Technology and Governance," 1–26.

⁹⁶ Republic of South Africa, Constitution of the Republic of South Africa (1996); Republic of Kenya, Constitution of Kenya (2010); Bilchitz, "Socio-Economic Rights and Legal Doctrine," 747–750.

⁹⁷ African Union, Agenda 2063, 2015; Davies, "ASEAN and Human Rights Norms," 207–231.

In addition, A collaborative exchange of ideas between Asia and Africa would enhance the strength of both regions. Multiple platforms for joint policy discussions, as well as judicial exchanges and academic partnerships, would enable the distribution of optimal methods. African policymakers need to examine India's affirmative action framework, while Asian jurists should evaluate South Africa's socio-economic rights jurisprudence. International organizations should facilitate meetings, yet regional institutions need to maintain control to develop solutions that fit local circumstances.⁹⁸

Finally, the domestic social justice frameworks of Asia and Africa face worldwide influence from neoliberal economic systems, climate change effects, and migration patterns. The exchange of strategic approaches between Asia's welfare systems and Africa's constitutional frameworks will enhance their combined ability to negotiate international governance systems.⁹⁹

Table 2. Cross-Regional Lessons Between Asia and Africa on Social Justice Frameworks

Focus Area	Lessons from Asia to Africa	Lessons from Asia to Africa	Key Takeaway
Affirmative Action & Welfare	India's reservation policies and Indonesia's large-scale social protection programs show how inclusive welfare and affirmative action can reduce inequality.	Africa's rights-based constitutions (South Africa, Kenya) make social justice legally enforceable, turning welfare goals into legal obligations.	Combine Asia's policy design with Africa's constitutional enforceability for stronger equity outcomes.
Judicial Role Constitutional Design	Courts in Asia are more restrained, offering scope to learn from Africa's proactive judiciary.	African courts like South Africa's Constitutional Court and Kenya's Supreme Court demonstrate effective judicial activism in enforcing socio-economic rights.	Strengthen judicial independence and expand justiciability of socio-economic rights.
Digital Inclusion & Innovation	India's Aadhaar and Indonesia's e-governance platforms improve service access and reduce fraud.	Kenya's M-Pesa and digital civic engagement show technology's potential	Integrate digital innovation with welfare delivery to strengthen inclusion.

⁹⁸ Obinger, Schmitt, and Starke, "Policy Diffusion and Policy Transfer," 111-129; Melo and Buckhart, "Constitutionalism 'of the Global South?'" 420-438.

⁹⁹ Suazo-Galdames et al., "Scientific Evidence and Public Policy"; Feka et al., "The Role of Human Rights in Shaping Asia-Pacific Policies and Strategies."

empowerment and transparency.					
Regional Cooperation	ASEAN's cautious regionalism can learn from Africa's normative frameworks such as the AU's Agenda 2063.	Africa's regional charters and rights systems illustrate how collective standards can shape national policies.	Stronger institutions can harmonize social justice goals.		
Global Positioning	Asia's development-driven welfare models promote state-led growth.	Africa's rights-based approaches emphasize equality within global governance.	Joint advocacy between Asia and Africa can amplify the Global South's voice for fairer global systems.		

Source: Author's compilation (2025).

5. Conclusion and Recommendations

The comparative analysis of the social justice regulatory frameworks in Asia and Africa shows both the high success stories and the shortcomings in the process of entrenching inclusive policies into governance. In India, as well as in Indonesia, South Africa, and Kenya, constitutions, laws, and judicial rulings have revealed that social justice is not a dream but a principle that can be implemented in the systems of rules. But, even with powerful legal frameworks, there is no even implementation, and structural inequalities still hold back transformative results.¹⁰⁰

5.1. Conclusion

To begin with, the paper concludes that Asia and Africa have attempted to address past injustices by using affirmative action, decentralization, welfare programmes, and constitutional entrenchment. Affirmative action in India has increased education, employment, and political representation of historically disadvantaged groups, and the social protection programmes in Indonesia show how massive welfare bureaucracies can alleviate poverty. South Africa has a Constitution in Africa that is a world model of justiciable socio-economic rights, and Kenya is an example of the potential radicalism of judicial activism in promoting social justice.¹⁰¹

Second, the comparison shows that universal issues still exist in both areas. These are endemic inequality, poor institutions, elite capture, and a continued disparity between law and action. Ambitious frameworks are not always effective in producing fair results on the ground in both Asia and Africa, which discredits institutions in the eyes of the population.¹⁰²

¹⁰⁰ Brik and Brown, "Global Trends in Social Inclusion and Social Inclusion Policy," 1-24; Rawls, *A Theory of Justice*.

¹⁰¹ Khera, "Impact of Aadhaar in Welfare Programmes"; Ebriyani and Oktaviani, "Social Policy in Reducing Poverty in Indonesia"; Klug, *Constituting Democracy*.

¹⁰² Piachaud, review of Capital and Ideology; Obinger, Schmitt, and Starke, "Policy Diffusion and Policy Transfer."

Third, the analysis demonstrates that courts and civil society organizations are very important in helping bridge the gap between policy and practice. In India, South Africa, and Kenya, some landmark cases in judiciaries have used socio-economic rights as effective ways to enforce them, and at the grassroots, the Treatment Action Campaign in South Africa has demonstrated mobilization to force governments to act, and Dalit rights movements in India have demonstrated mobilization to compel governments to act.¹⁰³

Lastly, the results emphasize the fact that cross-regional learning is not only possible but also needed. The positive action and welfare policies that have worked in Asia convey lessons to the African states on how they can design redistributive policy, and the African model of constitutional entrenchment and judicial activism may encourage Asian countries to reconsider their quest to enforce socio-economic rights.¹⁰⁴

5.2. Recommendations

On the basis of the comparative lessons, a number of recommendations can be offered to policymakers, regional bodies, and civil society actors in Asia and Africa.

5.2.1. Strengthen Enforcement Mechanisms

Laws and constitutional guarantees can only progress with enforcement. Corruption needs to be minimized, and governments must invest in institutional capacity and hold public officials accountable. Independent oversight bodies (such as ombudsman institutions and human rights commissions) should be sufficiently staffed and enabled to oversee compliance.¹⁰⁵

5.2.2. Balance Formal and Substantive Equality

Redistributive policies and affirmative action should continue to play a significant role in correcting historical disadvantage; however, over time, they require checking to avoid elite capture. In India, this involves refining the principle of the creamy layer; in South Africa, this would mean ensuring that the policies do not reinforce divisions along identity lines.¹⁰⁶

5.2.2. Expand Social Protection and Welfare Programs

The example of Indonesia's Program Keluarga Harapan and universal health insurance demonstrates the possibility of high-level welfare programs to decrease poverty and inequality. Similar models can be adapted by African states, and Asian states should ensure that current schemes are sustainable and inclusive, since the burden of poverty and exclusion falls disproportionately on women.¹⁰⁷

5.2.2. Enhance Judicial Capacity and Independence

¹⁰³ Minister of Health v. Treatment Action Campaign, 2002 (5) SA 721 (CC); Teltumbde, *The Persistence of Caste*; Mir et al., "Social Inclusion and Sustainable Development."

¹⁰⁴ Husa, "Constitutionalism, Comparativism, and Asia"; Melo and Buckhart, "Constitutionalism 'of' the Global South?"

¹⁰⁵ Brundige and Kalantry, "Socio-Economic Rights"; Ezati, "Social Diversity, Gender, Equity and Public Policy."

¹⁰⁶ Hegade and Andalgavkarkulkarni, "The Affirmative Action Conundrum"; Bilchitz, "Socio-Economic Rights and Legal Doctrine."

¹⁰⁷ Ebriyani and Oktaviani, "Social Policy in Reducing Poverty in Indonesia"; Wood and Gough, "Comparative Welfare Regimes."

The judiciaries should be empowered to ensure the implementation of socio-economic rights. The Constitutional Court of South Africa and the Supreme Court of Kenya should serve as examples of how courts can apply constitutional provisions broadly to advance justice. In Asia, where socio-economic rights are commonly viewed as guiding principles, constitutional reform and judicial activism are necessary to enhance their enforceable nature. It is important to train judges in socio-economic rights jurisprudence and safeguard the independence of the judiciary against political influence.¹⁰⁸

5.2.2. Foster Participatory Governance and Civic Engagement

Decentralization, as in Indonesia and Kenya, has the potential to empower locals, but threats of elite capture must be mitigated. Governments ought to institutionalize participatory budgeting, enhance transparency, and safeguard civil society organizations against political intimidation. Participation at the grassroots level ensures that social justice policies are more responsive to local needs and implies that the policies are more legitimate.¹⁰⁹

5.2.2. Promote Regional and Cross-Regional Learning

Policy dialogue and best practices should be shared within regional organizations. Agenda 2063 (the African Union) and the evolving human rights systems in ASEAN can be used as platforms to collaborate and integrate new ideas on affirmative action, welfare services, judicial implementation, and digital governance. Joint forums between the African Union and ASEAN would allow the sharing of innovations in affirmative action, welfare provision, judicial implementation, and digital governance.¹¹⁰

5.2.2. Integrate Social Justice into Global Governance

Lastly, Asia and Africa should launch a concerted effort to promote a more democratic international economic model that facilitates the realization of social justice at home. The policy space of states in the two regions needs to be expanded with debt relief, climate finance, and fair-trade rules to overcome global inequities. To ensure the proposed reforms are actionable,¹¹¹ Figure 2 presents a policy implementation cycle that links identified gaps to interventions, piloting, evaluation, and scaling up.

¹⁰⁸ Republic of South Africa, Constitution of the Republic of South Africa (1996); Republic of Kenya, Constitution of Kenya (2010); Bilchitz, “Socio-Economic Rights,” 747–750.

¹⁰⁹ Butt and Parsons, “Judicial Review in Indonesia”; Zisengwe, “Civic Technology and Governance.”

¹¹⁰ African Union, Agenda 2063; Davies, “ASEAN and Human Rights Norms.”

¹¹¹ Suazo-Galdames et al., “Scientific Evidence and Public Policy”; Feka et al., “Human Rights in Asia-Pacific Policies.”

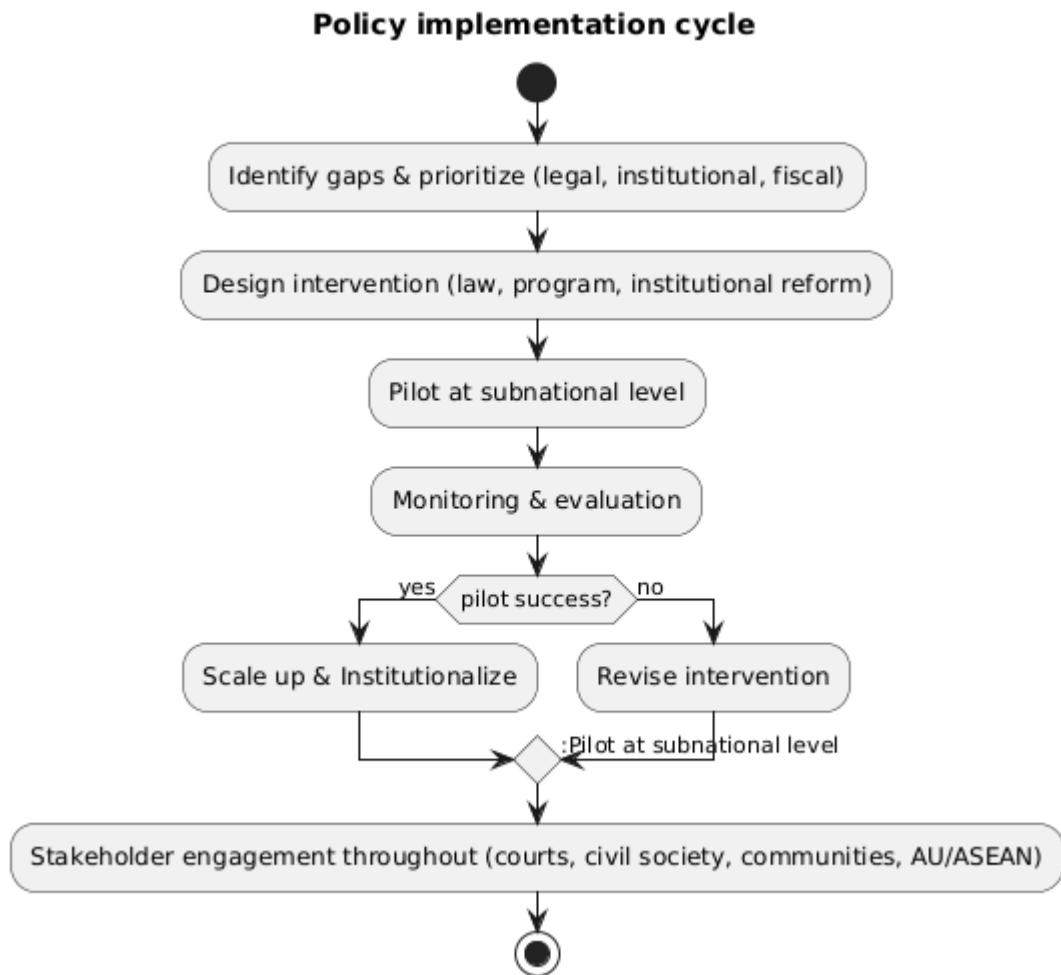


Figure 2. Policy Implementation Cycle for Inclusive Regulatory Reforms
Source: Author's illustration (2025)

The research demonstrates that legal frameworks together with regulations serve as transformative tools, yet they fail to eliminate deep-rooted social inequalities. The achievement of social justice demands progressive frameworks, ongoing political support, institutional changes, and active participation from civic groups. Asia and Africa currently face identical crossroads because each region developed distinct inclusive approaches, yet both continue to fight ongoing social inequalities. The two continents can develop their shared path toward inclusive societies by examining Asia's established affirmative action and welfare practices alongside Africa's constitutional entrenchment and judicial activism. The pursuit of social justice requires action beyond regional boundaries because it stands as a worldwide essential need.¹¹²

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¹¹² Brik and Brown, "Global Trends in Social Inclusion"; Tom T., "Social Policy, Development and Democracy in Africa."

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