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**INTRODUCTION TO COMPARATIVE CONSTITUTIONALISM: A
COMPARATIVE STUDY BETWEEN INDIA AND FRANCE**

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Constitutionalism encourages stability, accountability, and the protection of citizens' liberties in a society by offering a framework for the use of power and setting boundaries on the scope of the government. Any nation that has a constitution, whether “Written or Unwritten”, is frequently concerned about the form that a government adopts in accordance with its structure. The nature of any country's government is determined by its Constitution, yet the mere existence of a constitution does not guarantee that constitutionalism will be upheld. Even in countries with constitutions, the ideas of “Constitutionalism” and “Limited Government” may not exist. For instance, a tyranny may exist in line with a constitution, but its regulations are more based on the tyrant's decision than the constitutional system. To grasp constitutionalism, one must grasp the essence of the state. Paradoxically, governance can sometimes erode these principles, leading to a tension between permissible actions and nurturing values. This contradiction risks law-making breakdown. To preserve principles, regulation is vital, balancing governmental authority and societal ideals. Constitutionalism restrains government through legal means, contrasting authoritarianism. The judiciary limits state power. Modern constitutions, like British and American, curb state authority. Constitutionalism evolves, fostering limited government via creative adaptation within a constitutional framework.

Within the realm Constitutionalism a multitude of scholars have grappled with various themes, theories, and concepts and this review of literature acts as an introduction for our inquiry into *“Introduction to Comparative Constitutionalism: A Comparative study between India and France”*. The Indian Constitution includes notion of Constitutionalism that support “Limited

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government”: *“federalism; secularism; reasonableness; an independent judiciary with judicial review powers; the rule of law and the separation of powers; free and fair elections, decentralized, accountable, and transparent democratic government²”*; These are the fundamental and foundational concepts that underlie and link the numerous sections of the written constitution. They provide constitutional cohesion. They make it a complete organism. The Indian constitution exemplifies the dynamic nature of Constitutionalism's guiding ideas. The Indian narrative provided in this article serves two functions, even though we do not claim to be providing anything new. France's constitutionalism is rooted in a dynamic history of governance changes. The current Constitution, established in 1958, underpins key principles: rule of law, separation of powers, and individual freedoms. While valuing regional identities, it centralizes authority within a unitary national government. The Constitutional Council ensures law legitimacy and defends rights, including secularism. France's evolving Constitutionalism exemplifies adaptation to societal needs through historical progression and judicial interpretations³.

France is chosen as a comparative country to India due to the shared feature of a written constitution as the supreme legal framework. Both nations' constitutions establish core values, government institutions, power distribution, and individual rights. They institute democratic governance with separated executive, legislative, and judicial branches for checks and balances. Additionally, France and India emphasize the rule of law, ensuring accountabilities for all, including public officials, under the legal system. There are many restrictions on the study of Comparative Constitutionalism in France and India, most of which result from the huge cultural, historical, and legal disparities between the two nations⁴. In stark contrast to France's more homogeneous cultural background and historical experiences is India's diverse and multi-ethnic culture, which was influenced by its colonial past and war for independence⁵. Additionally, there are differences in how constitutional ideas are interpreted and applied due to the common law legal systems in France and India. Direct comparisons are further

² Sujit Choudhary, Madhav Khosla, Pratap Bhanu Mehta, ‘Locating Indian Constitutionalism’, The Oxford Handbook of the Indian Constitution, 2016, pg. no. 1-13.

³ Nicholas Wahl, “The French Constitution of 1958: II. The Initial Draft and Its Origin.” The American Political Science Review, vol.53, no.2, 1959, pp. 358-82.

⁴ Pierre Legrand, ‘The Impossibility of Legal Transplants’, 4 Maastricht J. Euro. & Comp. L. (1997), pp. 111-124.

⁵ Shubhankar Dam, “India’s Constitution: Origins and Evolution”, Oxford University Press, 2017.

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complicated by differences in their political environments and socioeconomic environments, necessitating a cautious and nuanced approach to derive significant findings from the study⁶.

The essay will attempt to answer the following question to explore the topic “*Introduction to Comparative Constitutionalism: A Comparative study between India and France*”, like essential problems that concern their historical development, governance structures, and maintenance of fundamental principles. This analysis seeks to identify resemblance distinctions, and the extent to which each nation reflects the core ideas of Constitutionalism by examining how they are expressed in these countries.

This study integrates Normative Universalism, Functionalism, Contextualism and Juxtaposition-plus⁷ methods to examine how legal norms are analyzed (normative universalism), how they are applied in practice (functionalism), and how the setting in which they are used (contextualism) influences their effectiveness⁸.

Dieter Grimm in his paper ‘*Types of Constitution*’ defines “*Constitutionalism as special and particularly ambitious form of legalization and it must be applied in a situation where political power was organized in the form of sovereign states with different traditions, conditions, and ideals. Therefore, it was realized in each state in a particular way*”⁹.

According to him Constitutionalism has its origin in national constitutions and that’s why he focuses on the functional characteristics of Constitutionalism like¹⁰: more focus on political decisions rather than pre-established truths as a source of Constitution, norms acting as a regulation in the exercise of public power which implies limitation, the self-sufficiency of these regulations, supremacy of Constitutional law (any act incompatible with the constitution cannot claim legal validity), and it finds its origin with people as the only legitimate source of power. If all these elements are present it shows the accomplishment of Constitutionalism. It safeguards the nation against absolute and arbitrary power of man over another. A constitution makes the

⁶ Sujit Choudhary, *Migration as a new Metaphor in comparative constitutional law*, Cambridge University Press, 2006.

⁷ Gunter Frankenberg, *Critical Comparisons: Re-thinking Comparative Law*, 26 HARV. INT’L. L. J. 411 (1985).

⁸ Mark Tushnet, *Some reflection on method on comparative constitutional law*, Cambridge University Press, 2009.

⁹ Dieter Grimm, *Types of Constitution*, *The Oxford Handbook of Comparative Constitutional Law*, 2012.

¹⁰ Dieter Grimm, ‘The Achievement of Constitutionalism and its Prospects in a Changed World’ in Petra Dobner and Martin Loughlin, *The Twilight of Constitutionalism*, 2010.

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exercise of public authority predictable by subjecting all government action to rules. This helps the governed foresee how the government will act toward them and gives them the confidence to deal with government officials without fear. At the same time, it becomes evident that several prerequisites must be satisfied for constitutionalism to succeed, without which the constitution would not have developed. Their operation would be impacted if these prerequisites disappeared. The consent of the people who would be governed acts as a pre-condition requisite in the demand of limited government. The accumulation of public power in the hands of the state was not contested by the constitution. Instead, the demand for constitutionalism was brought on by this concentration. The constitution's goal was to restrain governmental power for the sake of individual liberty.

Indian Constitutionalism is the natural outcome of its foundational governance principles. The Constitution, aided by laws, has established a robust administrative process. Yet, a growing gap between government and citizens persists, fostering inequality and stagnation in certain areas. In *“Rameshwar Prasad v. Union of India”*¹¹ India's apex court embraced *Constitutionalism*, emphasizing that it rejects absolutism, favoring the Rule of Law guided by constitutional provisions.

In *“IR Coelho v. State of Tamil Nadu”*¹², the Apex Court determined that *“Constitutionalism is a constitutional doctrine that needs control over the exercise of governmental authority to guarantee that the democratic ideals upon which the government is based are not eroded”*.

In the case *“State (NCT of Delhi) v. Union of India”*¹³ the court stated: *“The constitutional functionaries owe a greater degree of responsibility to this eloquent document because it is from this document that they derive their power and authority. As a natural corollary, they must ensure that they cultivate and develop a spirit of constitutionalism in which every action they take is governed by and in strict accordance with the Constitution's fundamental principles”*.

The **“French constitutionalism”** is reinforced & incorporated by an organization, the *“Constitutional Council”*, the precise mechanism of which has often seemed to be the subject of discussion.

¹¹ AIR 2006 SC 980

¹² AIR 2007 SC 861

¹³ (2018) 8 SCC 501

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In 1962, when it concluded that it lacked the authority to pronounce on the legality of a referendum statute, it supported its judgement by emphasizing its role as "the regulating body for the operations of the public authorities". After the renowned freedom of association ruling, this definition grew increasingly problematic. When the Constitutional Council decided to expand its powers to safeguard the privileges & liberties guaranteed by the Preamble, legal analysis determined that it was no longer regulating, and that the institution had thus changed.

In 1958, France was faced with a catastrophic and dire crisis. The end of the Fourth Republic occurred on June 1, 1958¹⁴. It was presented to the voters for approval in a referendum held on September 29, 1958, which was approved by a resounding majority and went into effect on October 4, 1958, signaling the end of the 4th Republic and the beginning of the 5th Republic.

*Dieter Grimm considers many features which characterizes the **Legal character of the Constitution** can be used to comprehend Constitutionalism in France and India:*

Written or Unwritten: Most of the India's constitution is written, carefully outlining its guiding concepts and regulations. In contrast, the constitution of France is a combination of written and unwritten provisions, with important tenets derived from earlier legal precedents and historical sources.

Effective or Ineffective: The constitution of India aspires to be effective by offering a thorough foundation for government. The efficacy of France's institutions and the defense of individual rights are both priorities under the constitution.

Foundational or Modifying: The constitution of India is significant since it set the guiding principles of the government. The constitution of France favors change, with an emphasis on developing and adapting to new situations.

Formal or Substantive: The formal and substantive provisions for governance are laid out in the constitution of India. The protection of individual rights and ideals is emphasized in France's constitution, which tends toward the substantive.

¹⁴ "The National Assembly transferred its legislative authority to General De Gaulle and adjourned. The French Parliament had entrusted De Gaulle's government with the responsibility of drafting the nation's constitution. In two months, a small cabinet committee was able to develop a constitution."

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High or Ordinary Law: The constitution of India is regarded as the highest form of law and the final arbiter of all disputes. The French constitution also has a strong legal standing and serves as the foundation for all other laws.

Rigid or Flexible: The alteration of India's constitution requires unique procedures due to its relative rigidity. The constitution of France is more adaptable and permits modifications through standard legislative procedures.

With or Without Judicial Review: Both France and India have judicial review processes. The Supreme Court of India examines the legality of laws. Similar duties are carried out by the Constitutional Council of France.

Inclusive or Exclusive: The inclusive nature of India's constitution aims to address the population's diversity. The constitution of France is also open-minded and emphasizes legal equality.

Truth or Consensus: The constitution of India aims to further truth by resolving societal inequities and historical wrongdoings. The French constitution prioritizes consensus while balancing divergent interests.

Reason or Will: The essential rights and guiding ideas for governing are incorporated into the Indian Constitution, which places an emphasis on reason. The constitution of France strives to reconcile the will of the people within the framework of existing organizations.

India and France can be classified as **Liberal Democratic and Social Welfare** constitutions in Dieter Grimm's classification of constitutional types. These labels result from the focus that each nation places on social welfare within its constitutional frameworks and liberal democratic norms.

Individual rights, freedom of speech, and the rule of law are all guaranteed under the Indian Constitution, which exemplifies a liberal democratic spirit. In *“IR Coelho v. State of Tamil Nadu and Others¹⁵, the court determined that constitutionalism is now a legal norm that requires oversight of the use of government authority to ensure that it does not undermine democratic values, which include the protection of Fundamental Rights”*. The assertive role of

¹⁵ AIR 2007 SC 861

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the Indian court in defending these rights and preserving a harmony between the power of the state and the liberties of its citizens is an example of the country's dedication to liberal democracy. state's functions are divided among the three major bodies of government: the Executive, the Legislature, and the Judiciary. This system serves as a check on the other organs' power, keeping the organs from serving unilaterally & arbitrarily without consideration for due process. In “*State (NCT of Delhi) v. Union of India*”¹⁶, Chief Justice Mishra stated, *the essence of Constitutionalism is the control of power by its distribution among several state organs or offices in such a way that they are each subject to reciprocal controls and compelled to cooperate in formulating the state's will*”. The Directive ideas of State Policy, which direct the government's responsibility to achieve social and economic fairness, eradicate inequality, and advance the wellbeing of all citizens, are another way in which the Indian Constitution incorporates social welfare ideas. The court stated: “*The constitutional functionaries owe a greater degree of responsibility to this eloquent document because it is from this document that they derive their power and authority. As a natural corollary, they must ensure that they cultivate and develop a spirit of constitutionalism in which every action they take is governed by and in strict accordance with the Constitution's fundamental principles*”. India also places a strong emphasis on social welfare, as seen by initiatives like the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) and policies meant to rectify long-standing socioeconomic inequalities.

Liberty, equality, and fraternity (Article 2 of the French Constitution) are the cornerstones of French constitutional law. The nation's Constitution reflects a dedication to liberal democracy by enshrining these ideas. The judicial review conducted by the Constitutional Council is one example of how the French Constitution emphasizes the division of powers and the preservation of individual rights. France is renowned for its extensive social security system, which gives individuals access to social services, healthcare, and education. In line with its goal to promote a just and equitable society, the nation's policies and practices are firmly interwoven with social welfare principles. The *Article 92* of the French Constitution of the Fifth Republic, which was rushed into being under General de Gaulle's direction during a time of national emergency, has drawn criticism for its stiff tone and poor drafting. The constitution combines elements of both

¹⁶ (2018) 8 SCC 501

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the presidential and parliamentary systems, and the National Assembly uses censure measures to keep the government accountable. If the National Assembly rejects the administration's policies, the President, who serves as both the head of state and the head of government, is responsible for accepting the resignation of the government. The government can act on additional topics by proclamation, but the legislative branch's authority is limited to those that are expressly covered by the Constitution. People have the constitutional right to form political groups and to join them, subject to adhering to democratic principles and the “Multi-party System” in place.

The amalgamation of liberal democratic ideals and social welfare objectives in India and France highlights both countries' dedication to establishing inclusive and just societies. However, their commitment to tackling socioeconomic inequalities and boosting citizens' well-being through welfare measures reinforces their position as social welfare countries. While the emphasis on individual rights, democratic governance, and the rule of law categorizes them as liberal democratic countries. This dual emphasis demonstrates how these countries have successfully incorporated these ideals into their own constitutional systems, advancing both individual liberties and social welfare.

With divergent histories France, and India both have colonial legacies that have influenced the development of their respective constitutions. The Enlightenment, the French Revolution, and succeeding republics all shaped France's history. India, in contrast, was ruled by the British until it gained independence in 1947. The fundamental beliefs, ideas, and concepts that serve as the cornerstones of each country's constitution are profoundly influenced by their diverse histories. Constitutional provisions in India meticulously define government powers, preventing arbitrary actions and fostering constitutionalism. Judges play a vital role in upholding this value. Every provision holds significance, even if not explicitly stated. France's constitutionalism, emerging six decades post-1958, displays distinctiveness. It operates through a unique group functioning as both a court and an advisory organ, bridging legislative aspects, setting it apart from India's constitutionalism¹⁷.

¹⁷DMP Singh, “Constitutionalism in India in Comparative Perspective - NUJS Law Review” (NUJS Law Review).

India's Constitution embodies democracy, secularism, and social justice, while France's Constitution emphasizes liberty, equality, and fraternity within a semi-presidential structure. This highlights distinct governance approaches, power distribution, and representation. Both nations value separation of powers, the rule of law, and individual rights. India's Fundamental Rights ensure diverse liberties, and Directive Principles guide social-economic policies. France upholds human rights in its Declaration of the Rights of Man and the Citizen. Shared values underscore citizen rights and curbing authority misuse. In France, legislation is limited by a set list; the President handles other matters, showcasing Executive Supremacy unique in democratic constitutions. France remains politically unsettled. France and India both possess written constitutions. As a result of volatility, the French Constitution is often amended. The current French Constitution is the country's fifth constitution. Both the French and Indian constitutions provide that government heads are chosen throughout their respective mandates. France and India are republics with democratically elected leaders. Both the French and Indian constitutions have emergency authority clauses.

Despite their differences, France's constitutional journey and India's face similar obstacles. Both countries struggle to strike a balance between centralized and decentralized governance as well as social inequality and cultural diversity. While France manages the conflict between a powerful central government and the maintenance of cultural identities, India's federal system tries to consider linguistic, religious, and regional diversity.

There are areas where mutual learning could benefit their systems, even though their approaches to constitutionalism diverge. France might help India strengthen checks and balances by imparting its distinct separation of powers and thorough constitutional scrutiny. France may also investigate India's skill at integrating various communities within its democratic framework, strengthening minority rights and representation. To support individual liberty, voter participation, and the expression of society ideals in France, India's strong protections for fundamental rights, electoral procedures, and comprehensive constitutional preamble should serve as models.

In healthy democracies, Constitutionalism flourishes, yet governments frequently abuse the system for their own ends, harming the general welfare. Weakening of checks and balances

results from authoritative individuals interpreting the constitution. The Constitution of India places restrictions on latitude to avoid arbitrary action. Justice, liberty, equality, and fraternity are highlighted in the Preamble, with protections including an impartial court, the rule of law, and government accountability. Equal rights and constitutional importance depend on judicial independence. French constitutionalism, which developed after 1958, distinguishes out because to a special organization that oversees constitutional counsel and ensures that it belongs in a class by itself.

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