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# Re-defining the Indian Legal System

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## ABSTRACT

*Throughout history, comparative legal system evaluation has frequently been entwined with the notion of superiority, with Western legal frameworks judged inherently superior to those of non-Western nations. David Skuy, in his piece "Macaulay and the Indian Penal Code of 1862: The Myth of the Inherent Superiority and Modernity of the English Legal System Compared to India's Legal System in the Nineteenth Century," boldly challenges this prevalent myth and delves into the complex dynamics of the legal landscape of India during the colonial era. Skuy's study offers an astute critique of the popular narrative that portrays the English legal system as fundamentally superior and modern in comparison to its Indian counterpart and the involvement of Thomas Babington Macaulay, and the development of the Indian Penal Code of 1862. This paper aims at re-evaluating the claims made in David Skuy's piece.*

**Keywords:** IPC, Indian Penal Code, David Skuy, Thomas Macaulay.

## I. INTRODUCTION

During the nineteenth century, Lord Thomas Macaulay, a significant figure in British colonial administration in India, was instrumental in the creation and implementation of the Indian Penal Code. Historically, Macaulay's participation has been praised as an emblem of the excellence and modernity of the English legal system. Skuy's work, on the other hand, contradicts this viewpoint by providing a complete review of Macaulay's goals as well as the influence of the Indian Penal Code on Indian society. The Indian Penal Code, 1862, was the brainchild of Thomas Babington Macaulay<sup>2</sup>, who was insistent that India needed a legal system. "The principle is simply this; uniformity when you can have it; diversity when you must have it; but, in all cases, certainty" was the guiding thought behind Macaulay's proposed code. This idea defined the requirements for a legal system to be termed modern. Even though the Indian legal system did not meet these standards, a detailed understanding of the English legal system would be required to demonstrate that it was even near to the contemporary system Macaulay envisioned. Macaulay claims that the Indian Penal Code is unique, and that no other legal system has provided a proper precedent.

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<sup>2</sup> Peers, D. *Codification, Macaulay and the Indian penal code: The legacies ...* - JSTOR.

Macaulay's major mission was to rationalize and incorporate India's varied legal practices into a unified legal code. His efforts attempted to replace inconsistent and antiquated laws with a contemporary, accessible, and coherent legal system that could be enforced universally across the country. In doing so, he hoped to reduce legal uncertainty, promote justice, and improve the efficiency of the judicial system. In the process of codifying, Macaulay saw the significance of considering local customs, traditions, and legal principles. He researched indigenous legal systems and considered India's social and cultural environment. Macaulay's purpose was to establish a balance between the preservation of key indigenous legal notions and the implementation of progressive reforms to achieve justice and fairness. In the Indian Penal Code, Macaulay prioritized clarity and accessibility. He tried to build a legal framework that was understandable to both lawyers and the general people. His emphasis on clear wording and simple provisions aimed to decrease ambiguity and improve judicial administration.

On July 10, 1833, an aspiring young English lawyer called Macaulay testified before Parliament regarding the future role of British governance in India. As a result, the task of the British colonizer is to provide good governance to a people to whom we cannot provide free governance. Macaulay's good but not free government was built around what he saw as one of England's greatest gifts to the people: the rule of law. Macaulay's ideas about codification-creating "one great and entire work symmetrical in all its parts and pervaded by one spirit"-reflect the influence of Bentham. The extreme nature of Bentham's codification ideas entailed replacing the historical dead weight of the common law tradition with a complete set of knowable and understandable principles designed to guide conduct for all conceivable activities. Despite many rhetorical similarities, codification in India deviated from the past not by dismissing an excess of law, but by replacing the Oriental despot's lawless rule of personal discretion with the colonial rule of codification<sup>3</sup>. Consider the enormity of the task of aligning and integrating criminal law. This assignment was assigned entirely to Thomas Macaulay. Other British countries developed codes as well, with Thomas Babington Macaulay's Indian Penal Code (IPC) being the first and most directly influenced by Jeremy Bentham's ideas. Based on his criticism of common law and his ambitious "science of legislation," Bentham used the term "codification" to characterize a large legislative change. All existing laws were to be replaced with comprehensive provisions that were logical, uniform, and easy to understand, allowing for minimal judicial discretion and efficient administration.

The Indian Penal Code, which was passed in 186, consolidated and made uniform the disparate

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<sup>3</sup> Kolsky E, 'Codification and the Rule of Colonial Difference: Criminal Procedure in British India' (2005) 23(3) Law and History Review 631

regulations passed under the three presidencies that had caused inconsistencies and irregularities in the rules governing criminal justice. The indigenous inhabitants of India had been engaging in regional "customs and practices" for ages. These Indians had previously been adhering to their own set of customs and laws rather than being forced to adopt another set. They had complete freedom because they were not subject to any restrictions. When the British instituted formal regulations and codified laws, there was a shift from informal to formal institutions. Since criminal law was created to be applied equally to everyone, everywhere, it was simple to change.<sup>4</sup> The Macaulay's code is a striking example of logical, consistently moral, clear, and understandable criminal law. It marks a significant improvement over the English laws in force at the time and, in many ways, over the criminal laws in the majority of common law nations today. This is still the case despite the 1860 version's backward revisions, following colonial amendments, and the IPC's adoption in other parts of British South Asia, where more retrograde changes were made after independence.<sup>5</sup>

"Macaulay and the Indian Penal Code of 1862," by David Skuy, aims to dispel the idea of the English legal system's inherent superiority and modernity when contrasted to India's legal system in the nineteenth century. His disregard for historical context, cultural biases, disregard for indigenous legal systems, and refusal to recognize the negative repercussions of colonialism all undercut his portrayal of the English legal system as superior. Rather than promoting a narrative that supports one system's superiority over others, it is critical to recognize and respect the intricacies and diversity of legal systems around the world.

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<sup>4</sup> *Need for codification of law - IJIRL.*

<sup>5</sup> Wright, B. (1970) *Macaulay's India Law Reforms and Labour in the British Empire, Law Explorer.*

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