
COMPARATIVE JURISPRUDENCE OF FORGIVENESS: LESSONS FROM TRANSITIONAL JUSTICE AND THE INDIAN CONSTITUTIONAL REIMAGINATION

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ABSTRACT

Forgiveness enters as what law cannot codify, but the society still needs

Forgive, under the Oxford Dictionary means to stop feeling angry or resentful towards someone for an offence, flaw or mistake.² But, according to the Gita, in verse 3, Chapter 16- it means to relinquish the desire for revenge and allowing emotional wounds to heal, rather than forgetting the offence.³ This paper connects and jointly examines law, jurisprudence, and forgiveness. While these three may look like they do not belong together, countries and philosophers have proven that societal changes can be achieved through forgiveness when they seek it. In this paper we shall look through the history of countries which have effectively used forgiveness as a tool and then discuss alternative reimagination of countries which could have used forgiveness in their constitutional history.

The paper will trace the history of South Africa, a prominent example of a country which used forgiveness as a basis of establishing new regime. Then we would travel through Canada, Sierra Leone, and Rwanda. These countries used a common tool known as Truth and Reconciliation Commissions, all in their own different ways, affected by need and history both. Then we would move to countries' alternative reimagination what would have happened had India had considered a forgiveness model for strengthening their constitutional and societal morality.

The manner this paper unfolds will be as follows:

- 1) Introduction- to forgiveness in law and how legal philosophers and scholars define it.
- 2) Tracing the South African example for using forgiveness post-independence.

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² Oxford Advanced Learner's Dictionary, 'forgive' <https://www.oxfordlearnersdictionaries.com/definition/english/forgive> accessed 1 November 2025.

³ Bhagavad Gita 16.3 (Sanskrit and word-by-word meanings available at Gita Supersite).

- 3) Delving into comparisons between South Africa, Canada, Sierra Leone, and Rwanda.
- 4) Re-imagining and brining Forgiveness into the Indian Legal History.
- 5) Conclusion.

A. INTRODUCTION

Before the author delves into the jurisprudence of forgiveness, into why and how forgiveness has been legally incorporated in various countries' framework, there is one thing that is common among them all. In the journey from South Africa, through Sierra Leone, Canada, and all the way up until a reimagination of Indian history, there are minority groups in power, which are continuously oppressing the majority. In South Africa there were the Whites; in Canada there were the Christians, in Sierra Leone there were the RUF, a rebel political unit; in Rwanda there were the Tutsis, and in India there were the British. Circumstances caused these groups to attain political power and influence and caused havoc in a number of ways. Forgiveness was required to be used to bring back faith in the concept of a State, in the fact that governance would not cause harm anymore, that principles of constitutionalism would be binding and there would no longer be human rights violations and distrust among the people. Forgiveness was constitutionally institutionalised because the alternative, which could have been war- was either too expensive, or already been waged. With this, let us now enter into the very basics of the jurisprudence of forgiveness.

Jurisprudence is the art of knowing what is just and what is unjust⁴, it is the study of the concepts of law and the various systems of law in a society.⁵ Karl Llewellyn defines jurisprudence to be a means of understanding how law works in a society.⁶ Law, by Fuller, is the enterprise of subjecting human conduct to the governance of rules.⁷ The life of law however, has not been logic, it has been experience.⁸ And this experience is what changes from society to society, through the times, from the past to the present, which decides how a society is and shall be built. The legal system of any nation or state is influenced and built by its historical events along with how society dealt with the occurrences of such events.⁹ The world's

⁴ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (JH Burns and HLA Hart (eds), Oxford University Press 1970).

⁵ HLA Hart, *The Concept of Law* (2nd edn, Clarendon Press 1994).

⁶ Karl NL Llewellyn, *The Bramble Bush: On Our Law and Its Study* (Oxford University Press 1930) 12–15.

⁷ Lon L Fuller, *The Morality of Law* (rev edn, Yale University Press 1969) 106.

⁸ Oliver Wendell Holmes Jr, *The Common Law* (Mark DeWolfe Howe (ed), Belknap Press 1963).

⁹ IBD Adigun, 'Law and Society: Exploring the Intersection of Legal History and Social Change' (2024) 8 Fountain

past is a bloodied slate, which took over a century to clean up and economically stabilize. Some countries chose the bloodied route, and some chose to avoid it. They used peace when and where it was possible, and one of those pathways was forgiveness.

Jurisprudence, in its various branches, treats law as an abstract body and is a social monarchy for securing order in the community.¹⁰ It uses morality, history, and society as a kaleidoscope for looking at, and understanding, legal systems. Forgiveness involves a transformation in the moral view of the offender, it releases them from a status of moral debt through recognition of repentance and commitment to reform which is beyond a mere emotional dampening.¹¹ Paradigmatic forgiveness is a norm-governed, bilateral moral exchange requiring offender repentance, acknowledgment, and commitment to change, and victim forswearing of revenge, moderation of resentment, and communicative granting of forgiveness.¹² Diverging from legal forgiveness, genuine forgiveness requires repentance by the wrongdoer; otherwise what appears as forgiveness risks collapsing into condonation of wrongdoing.¹³

Forgiveness therefore is the recognition of a wrongful action, an action not only wrong morally but also wrong legally (post or pre-existence of such laws), and then correcting such actions through an apologetic approach.¹⁴ This apologetic approach is aimed twofold; firstly, to the victim- even through the action cannot be undone, true repentance felt in the heart and mind of the wrongdoer;¹⁵ and then to society and community- change in behaviour and cognition of the wrongdoer to adapt to the new or morally favoured laws.¹⁶

Forgiveness in law is the principled remission of deserved negative response—victim's overcoming of resentment or the state's cancellation of liability—operationalized through doctrines like pardon, amnesty, and restorative processes that acknowledge wrongdoing while relinquishing retaliatory claims.¹⁷

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¹⁰ George Whitecross Paton, *A Textbook of Jurisprudence* (David P Derham (ed), 4th edn, Clarendon Press 1972).

¹¹ Jeffrie G Murphy and Jean Hampton, *Forgiveness and Mercy* (Cambridge University Press 1988).

¹² Charles L Griswold, *Forgiveness: A Philosophical Exploration* (Cambridge University Press 2007).

¹³ Aurel Kolnai, 'Forgiveness' (1973–74) 74 *Proc Aristotelian Soc'y* 91.

¹⁴ Stephanos Bibas, 'Integrating Remorse and Apology into Criminal Procedure' (2004) 114 *Yale LJ* 85 https://openyls.law.yale.edu/bitstream/handle/20.500.13051/9550/12_114YaleLJ85_October2004_.pdf accessed 1 November 2025.

¹⁵ Joanna Shapland, 'Forgiveness and Restorative Justice: Is It Necessary? Is It Helpful?' (2016) 5 *Oxford J L & Religion* 94 https://eprints.whiterose.ac.uk/id/eprint/89574/17/WRRO_89574.pdf accessed 1 November 2025.

¹⁶ Claudia Petrucci, 'Apology in the Criminal Justice Setting: An Update' *Oñati Socio-Legal Series* <https://opo.ijsj.net/index.php/osls/article/download/828/1016/5009> accessed 1 November 2025.

¹⁷ Glen Pettigrove, 'Forgiveness' (Stanford Encyclopaedia of Philosophy, rev edn

Countries around the world, South Africa, Sierra Leone, El Salvador, and others have used their own variations of the forgiveness in different models, usually during the time of their constitution making or in their struggle for independence. We will now trace the journey of South Africa and their incorporation of forgiveness through history to from a democratic and racially equal society.

B. SOUTH AFRICA- FORGIVENESS POST INDEPENDENCE

South Africa is a leading example of a country that took the path of forgiveness to reach democracy and stability while forming their constitution. The South African legal system was shaped by Dutch and British colonial rule, which imposed Roman-Dutch law and English common law traditions. The apartheid regime which was prevalent in South Africa from 1948 to 1994 institutionalised racial segregation and injustice through laws like the Group Areas Act¹⁸ and the Population Registration Act.¹⁹ The entire basis of equality was based on equal treatment for equal people- i.e. the Blacks and Whites, which promoted and legalised racial separation and discrimination.²⁰ Apartheid law denied basic rights to non-white citizens and created a dual legal system privileging White South Africans. The judiciary largely upheld apartheid policies, with limited exceptions.²¹

Courts often stated that equal treatment did not require identical treatment thereby legitimising differential laws for different racial groups.²² The principal of “*separate but equal*” was incorporated into the apartheid legal system.²³ The administration had discretion over individual rights, effectively shielding racial discrimination from judicial scrutiny.²⁴ The judiciary periodically deferred power and upheld racial discrimination-based legislation, reinforcing a dual legal system that privileged the White South African community.²⁵

Then their occurred a transition to an equal democracy. The African National Congress (ANC), led by Nelson Mandela, negotiated a peaceful transition culminating in the 1994 democratic

2019) <https://plato.stanford.edu/entries/forgiveness/> accessed 1 November 2025.

¹⁸ Group Areas Act 41 of 1950 (S. Afr.).

¹⁹ Population Registration Act 30 of 1950 (S. Afr.).

²⁰ *Rex v. Abdurahman* 1950 (3) SA 136 (A).

²¹ *Minister of the Interior v. Lok* 1950 (1) SA 465 (A).

²² *Rex v. Abdurahman* 1950 (3) SA 136 (A).

²³ *Ibid.*

²⁴ *Minister of the Interior v. Lok* 1950 (1) SA 465 (A).

²⁵ *Ibid.*

elections. The interim Constitution of 1993²⁶ and the final Constitution of 1996²⁷ enshrined human dignity, equality, and reconciliation as foundational values. The Constitutional Court was established to safeguard these values and overturn unjust apartheid-era practices.

The South African people adopted the model of legal forgiveness in order to overcome apartheid traumas. They established legally sound Truth and Reconciliation Commissions (TRC) which acted like the centrepiece of South Africa's transitional justice model. It prioritised restorative justice and forgiveness over retribution.²⁸ The TRC had three committees- Human Rights Violations, Amnesty, and Reparation and Rehabilitation. It granted amnesty to perpetrators who made full disclosures and proved political motivation to change their behaviour.²⁹

"Forgiveness is not forgetting, its remembering and letting go", said the Chair of the TRC- Desmond Tutu.³⁰

The Human Rights Violations section of the TRC documented abuses from 1960-1994 and over 21,000 statements were recorded.³¹ The Amnesty division then granted conditional amnesty to over 1500 perpetrators.³² The Reparation and Rehabilitation division proposed victim compensations; however, it was faced with mixed implementation and numerous delays which were criticised.³³

Amnesty provided the perpetrators with civil and criminal immunity for their confessed actions in exchange for their complete and truthful disclosures along with promises to change their behaviour and mindsets.³⁴ It applied only to politically deemed actions and were driven not for personal gain but to reduce violence.³⁵

²⁶ Interim Constitution of the Republic of South Africa Act 200 of 1993.

²⁷ Constitution of the Republic of South Africa, 1996.

²⁸ Promotion of National Unity and Reconciliation Act 34 of 1995 (S. Afr.).

²⁹ *Truth and Reconciliation Comm'n of S. Afr., Final Report, Vol. 1, Ch. 4-5 (1998); Promotion of National Unity and Reconciliation Act 34 of 1995 §§ 3(1)(b), 20(1) (S. Afr.).*

³⁰ Desmond Tutu & Mpho Tutu, *The Book of Forgiving: The Fourfold Path for Healing Ourselves and Our World* 3 (HarperCollins 2014).

³¹ Truth and Reconciliation Comm'n of S. Afr., Final Report, Vol. 1 (1998).

³² *Idib.*

³³ *Ibid.*

³⁴ Amnesty International, 'Truth and Justice: Unfinished Business in South Africa' (2003)

<https://www.amnesty.org/en/wp-content/uploads/2021/06/afr530012003en.pdf>
accessed 31 January 2026.

³⁵ US Army, 'The Granting of Amnesty and the Process of Reconciliation: The Case of South Africa' (2009) Military Review <https://www.armyupress.army.mil/Portals/7/military->

Conditional amnesty was granted over public application, there were over 7000 applications, followed by hearings, which were recorded at over 2500.³⁶ The perpetrators were required to prove full confessions and various crimes were pardoned and forgiveness was granted.

The TRC's legal framework was grounded in Section 3 of the Promotion of National Unity and Reconciliation Act which read that,

*“To promote unity and reconciliation by providing for the investigation and full disclosure of gross violations of human rights committed during the period from 1 March 1960 to the cut-off date contemplated in the Constitution, within or outside the Republic, emanating from the conflicts of the past, and the fate or whereabouts of the victims of such violation”.*³⁷

There are two interesting observations that can be made with respect to this particular law. The first, that there is a territorial overreach- *within or outside the Republic*- which aims to expand their forgiveness and transitional model to include all of the South African people. The borders of State do not matter in front of the offence. The second observation is that it talks about the *fate or whereabouts* of the victims- sympathising with them not only morally, but legally. It also recognises the purpose of the TRC, *unity and reconciliation* among the people, rather than retributive and regressive justice.

The jurisprudential foundations of forgiveness had two major perspectives- the Ubuntu Philosophy and Restorative v. Retributive Justice lens.

The Ubuntu philosophy focused on, *“I am because we were”* and it underpins the phenomenon behind South African legal forgiveness.³⁸ It emphasised communal restoration over individual punishment. In the leading case of *S. v. Makwanyane*, the Constitutional Court abolished death penalty, citing Ubuntu and dignity and stated that-

*“Ubuntu translates as humanness. It encapsulates respect, compassion and forgiveness”.*³⁹

The society came together as one-offenders surrendered to their offences and proved that

review/Archives/English/MilitaryReview_20090430_art014.pdf accessed 31 January 2026.

³⁶ TRC Amnesty Hearings and Decisions <https://www.justice.gov.za/trc/amntrans/index.htm> accessed 31 January 2026.

³⁷ Promotion of National Unity and Reconciliation Act 34 of 1995 § 3(1)(b) (S. Afr.).

³⁸ *S. v. Makwanyane* (1995 93) SA 391 (CC).

³⁹ *Id.* at 403 (per Mokgoro J.).

change was amid the country. The victims tried to forgive their perpetrators and create an inclusive society that treated everyone as equals.

South Africa's model favoured restorative justice and aimed at healing the societal wounds. This kind of a model contrasts with retributive justice systems that focused on punishment.⁴⁰ It is argued that forgiveness in law fosters moral repair and democratic legitimacy.⁴¹

South African courts increasingly incorporated restorative principles in sentencing, especially for juveniles and community-based offences. The Child Justice Act institutionalised restorative justice for children in conflict with the law. It promoted diversion, victim-offender mediation and reintegration.⁴²

Courts emphasised reconciliation and community involvement, stating that sentencing should promote healing and reintegration.⁴³ In the case of *S. v. Jansen*, the court considered restorative justice for a juvenile offender convicted of assault.⁴⁴ The offenders potential for rehabilitation was noticed by the court and the importance of community-based solutions was highlighted.⁴⁵

Community Courts and mediation between the perpetrators and offenders was also prevalent in the legal system. These systems are still existing in the South African System. A Restorative Justice Programme was initiated by the Department of Justice in 2020.⁴⁶ This national program promotes victim-offender dialogue, family group conferencing, and community involvement in resolving disputes.⁴⁷

South Africa also incorporated mandatory mediation in their civil justice reform system. This was done to reduce court backlogs and promote reconciliation in civil disputes.⁴⁸ Forgiveness, that was made a constitutional value in South Africa, advanced dignity, equality, and

⁴⁰ Martha Minow, *Between Vengeance and Forgiveness* (Beacon Press 1998).

⁴¹ Antje du Bois-Pedain, *Transitional Amnesty in South Africa*, 6 Int'l J. Transitional Just. 1 (2012).

⁴² Child Justice Act 75 of 2008 (S. Afr.) §§ 51–61.

⁴³ *S. v. Maluleke* 2008 (1) SACR 49 (T).

⁴⁴ *S. v. Jansen* 2013 (1) SACR 218 (GNP).

⁴⁵ *Ibid.*

⁴⁶ *Department of Justice and Constitutional Development (South Africa), Restorative Justice Programme (2020)* <https://www.justice.gov.za/rj/rj.html> accessed 31 January 2026.

⁴⁷ *Ibid.*

⁴⁸ Tendai Faith Munyati, 'The Role of Mandatory Mediation in the Transformation of the South African Civil Justice System' (LLM thesis, University of Pretoria 2020) <https://repository.up.ac.za/bitstreams/83fba714-79c8-4269-bdd0-38d7f4ef957a/download> accessed 31 January 2026.

freedom.⁴⁹

*“The criminal justice system must not only punish, but also heal. Restorative justice recognises that reconciliation and forgiveness are the legitimate outcomes of justice.”*⁵⁰

C. COMPARISONS BETWEEN FORGIVENESS MODELS IN SOUTH AFRICA, CANADA, SIERRA LEONE, AND RWANDA

The jurisprudence of forgiveness in transitional justice has become a cornerstone for societies emerging from conflict, systematic repression, or colonialism. Nations contending with marred histories of gross human rights violations increasingly grapple with the legal and philosophical foundations of constitutionalism- often through mechanisms centred on forgiveness: through truth commissions, amnesties, reconciliatory legislation, executive actions, and groundbreaking judicial interpretations.⁵¹ Each country’s approach is distinct, reflecting not only its social and political transformation but also the evolving principles of international law.

a. CANADA: FORGIVENESS IN RECONCILIATION WITH INDIGENOUS PEOPLES

Canada, like South Africa, culminated its postcolonial constitutional development in the Constitution Act, 1982.⁵² Subsequent amendments have been seen since then that have involved incremental recognition of reconciliation, especially in relation to Indigenous people.⁵³ The Indigenous People in Canada were the First Nations, Inuit, and Metis, who were from Northern America and had descendants from over fifty nations and spoke over fifty languages.⁵⁴

⁴⁹ *S. v. Dodo* 2001 (3) SA 382 (CC).

⁵⁰ *S. v. Jansen* 2013 (1) SACR 218 (GNP) at 225.

⁵¹ Priscilla B Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (2nd edn, Routledge 2011); *Azapo v President of the Republic of South Africa* 1996 (4) SA 671 (CC).

⁵² Constitution Act 1982 (being Schedule B to the Canada Act 1982 (UK), c 11); Peter W Hogg, *Constitutional Law of Canada* (Carswell, 5th edn supp 2007) § 1.3.

⁵³ Constitution Amendment Proclamation 1983 SI/84-102.

⁵⁴ Government of Canada, Crown-Indigenous Relations and Northern Affairs Canada, 'Indigenous Peoples and Communities' <https://www.rcaanc-cirnac.gc.ca/eng/1100100013785/1529102490303> accessed 1 November 2025; Constitution Act 1982 (being Schedule B to the Canada Act 1982 (UK), c 11), s 35(2); Statistics Canada, 'Aboriginal Peoples in Canada: First Nations People, Métis and Inuit' (Catalogue No 99-011-X, 7 May 2013) <https://www12.statcan.gc.ca/nhs-enm/2011/as-sa/99-011-x/99-011-x2011001-eng.cfm> accessed 1 November 2025.

Background on the Indigenous Residential School Survivors:

From the 1870s to the 1990s, a system of church and state-run residential schools forcibly separated about 150,000 indigenous children from their families, which led to widespread physical and sexual abuse and intergenerational trauma.⁵⁵ The primary aim of these schools was to force the assimilation of Indigenous children into Euro-Canadian society, with a curriculum focused on mandatory Christian religious instruction.⁵⁶ These children were prepared for low-wage labour, and not to have a mainstream role in society.⁵⁷

The Truth and Reconciliation Commission of Canada (TRC) was established under the Indian Residential Schools Settlement Agreement, had a mandate to document abuses, foster reconciliation and recommend legal and institutional reforms.⁵⁸ The TRC gathered over 6500 testimonials, from residential school survivors, recognising state and church abuses as cultural genocide.⁵⁹ However, unlike South Africa, the Canadian TRC lacked subpoena powers, could not offer amnesty, or prosecute, and focused more on public education and commemorative measures. The TRC's 94 Calls to Action had informed subsequent legislation on Indigenous languages, missing and murdered Indigenous women, formal apologies and the establishment of the National Council for Reconciliation.⁶⁰ Public apologies from Prime Ministers and church leaders were accompanied by legislative acts like the Bill C-5, establishing the National Day for Truth and Reconciliation, Indigenous Languages Act, and the Bill C-29 for the National

⁵⁵ Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015) 1–6; Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples* (Vol 1, 1996) 335–62.

⁵⁶ Indigenous Peoples Atlas of Canada, 'History of Residential Schools' <https://indigenouspeoplesatlasofcanada.ca/article/history-of-residential-schools/> accessed 1 November 2025; EB Titley, *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada* (UBC Press 1986) 101–29.

⁵⁷ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The History, Part 1 Origins to 1939* (McGill-Queen's University Press 2015).

⁵⁸ Truth and Reconciliation Commission of Canada, 'Schedule N: Mandate for the Truth and Reconciliation Commission' (Indian Residential Schools Settlement Agreement 2007) https://www.residentialschoolsettlement.ca/schedule_n.pdf accessed 1 November 2025; Crown-Indigenous Relations and Northern Affairs Canada, 'Delivering on Truth and Reconciliation Commission Calls to Action' <https://www.rcaanc-cirnac.gc.ca/eng/1524494530110/1557511412801> accessed 1 November 2025.

⁵⁹ Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015) 1–6, 103–06.

⁶⁰ Truth and Reconciliation Commission of Canada, *Calls to Action* (2015) calls 13–15, 41, 45–49, 53–56 https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf accessed 1 November 2025; National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019).

Council for Reconciliation.⁶¹

While these bills are fairly recent in nature, they prove that Canada has kept alive, the spirit of legal forgiveness. Bill C-5 declared September 30 as the National Day for Truth and Reconciliation and also declared a statutory holiday for their federal employees. It was done to honour residential school survivors, families and communities while ensuring that the country is on a path of continuous change without forgetting the mistakes they made in the past.

The Supreme Court took an active role in promoting equality and dignity which required the courts itself to account for the colonial context in sentencing, reflecting a shift toward restorative justice yet within a punitive legal framework.⁶²

Even today wherever legislation tried to undermine Indigenous People and override Charter rights; Bill S-218 of 2025 restricted such provisions and reflected a conveyance between constitutionalism and reconciliation: upholding Indigenous and minority rights even against legislative majorities. However, in comparison to the working and success of the South African model, the lesser number of cases legally registered and disposed of shows that though legally framed, reconciliation in Canada remains symbolic without sufficient institutional and societal transformation or resource retribution.

b. SIERRA LEONE: BLANKET AMNESTY TO TRUTH AND ACCOUNTABILITY

Sierra Leone battled with civil war which culminated in the 1999 Lome Peace Agreement. The Sierra Leone Civil War, which started in 1991 was due to a combination of factors, the primary one being the Revolutionary United Front's (RUF) grievances against the government and widespread corruption, particularly in the diamond mining sector.⁶³ The RUF was a rebel group that initiated and sustained the civil war. It was notorious for its extreme violence and human rights abuses against the civil population. They did not operate on any coherent political

⁶¹ Bill C-5, *An Act to amend the Bills of Exchange Act, the Interpretation Act and the Canada Labour Code (National Day for Truth and Reconciliation)*, 2d Sess, 43d Parl, assented to 3 June 2021; Indigenous Languages Act SC 2019, c 23; Bill C-29, *National Council for Reconciliation Act* SC 2024, c 8; Crown-Indigenous Relations and Northern Affairs Canada, 'National Council for Reconciliation Act Becomes Law' (30 April 2024) <https://www.canada.ca/en/crown-indigenous-relations-northern-affairs/news/2024/04/national-council-for-reconciliation-act-becomes-law-a-positive-step-toward-fulfilling-calls-to-action-from-the-truth-and-reconciliation-commission.html> accessed 1 November 2025.

⁶² *R v Gladue* 1 SCR 688.

⁶³ Human Rights Watch, *Sierra Leone Rebels: Beyond the Red Horizon* (1999) 9–12 <https://www.hrw.org/reports/1999/sierra/SIERLE99-02.htm> accessed 31 January 2026.

ideology. They initially formed to overthrow the corrupt All People's Congress (APC) government. What started as an organisation with the slogan, "*No more Slaves, No more Masters*", became infamous for its cruelty.⁶⁴ They engaged in amputations, child soldiers, and sexual violence. Finally, after the intervention of the British forces and a renewed UN mandate in 2000-2001, the RUF military was ultimately defeated and the civil war ended in 2002, after eleven difficult years.⁶⁵ As a part of the peace process, the RUF transformed into a political party by the name of Revolutionary United Front Party (RUFPP) which did poorly in the 2002 election.⁶⁶

The Lomé Peace Agreement granted blanket amnesty for combatants "*to consolidate the peace and promote reconciliation*".⁶⁷ The TRC established under the Truth and Reconciliation Commission Act, 2000, sought to balance the amnesty with truth-telling and recommendations for future constitutional and legislative reform.⁶⁸

The commission, like in South Africa and Canada, gathered impartial historical records of violations, granted public hearings and promoted healing and reconciliation along with recommended reparations. A total of 21,000 victim statements of gross human rights violations were recorded and over 2000 victims testified in public hearings.⁶⁹ Amnesty was granted to about 1200 offenders and was refused to over 5000.⁷⁰ However, this Lomé amnesty came into conflict with international legal norms because of the United Nations attached a reservation, affirming that amnesty would not extend to genocide, crimes against humanity and war crimes.⁷¹ Post that, the Special Court for Sierra Leone (SCSL) created jointly by the UN and

⁶⁴ Truth and Reconciliation Commission (Sierra Leone), *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission* (Vol 2, ch 2, 2004).

⁶⁵ UNSC, 'Seventh Report of the Secretary-General on the United Nations Mission in Sierra Leone' (7 September 2001) UN Doc S/2001/857, paras 2–7.

⁶⁶ UNSC, 'Ninth Report of the Secretary-General on the United Nations Mission in Sierra Leone' (14 March 2002) UN Doc S/2002/246, para 3; National Electoral Commission (Sierra Leone), *2002 Presidential and Parliamentary Elections: Official Results* (2002).

⁶⁷ Lomé Peace Agreement (between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, 7 July 1999) art IX, reprinted in Lomé Peace Agreement (Ratification) Act 1999 (Act No 3 of 1999) (Sierra Leone).

⁶⁸ Truth and Reconciliation Commission Act 2000, ss 6(1)–(2) (Sierra Leone); Truth and Reconciliation Commission (Sierra Leone), *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission* (Vol 1, ch 5, 2004).

⁶⁹ Truth and Reconciliation Commission (South Africa), *Final Report* (Vol 1, 1998) <https://www.justice.gov.za/trc/report/> accessed 1 November 2025; Promotion of National Unity and Reconciliation Act 34 of 1995 (South Africa).

⁷⁰ *Ibid.*

⁷¹ UN Peacemaker, 'Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (Lomé Peace Agreement)' (7 July 1999) <https://peacemaker.un.org/node/9534> accessed 1 November 2025.

the government, held that such amnesties could not bar prosecution of international crimes.⁷²

The TRC findings and recommendations informed later constitutional reforms and institutional development- de-emphasizing blanket amnesia in favour of a healing and restorative truth.⁷³

The SCSL ruled that national amnesties could not shield perpetrators from international prosecution thereby solidifying that even forgiveness in transitional justice had its limits.⁷⁴ Truth without reparation eroded trust and impeded reconciliation and reparations must accompany truth telling for complete restoration of civic trust.

Sierra Leone, like South Africa and Canada battled with state induced discrimination. The failure of the RUF in making the government in the free elections was evidence of the fact that a mere legislative action promoting change was not enough. The societal trauma that was inflicted upon the society at large felt incapable of change through forgiveness alone, even though it was a good start.

c. RWANDA: GACACA COURTS IMPLEMENT CHANGE WITH GRASSROOT FORGIVENESS

Rwanda battled with one of the most horrifying events in history- mass genocide. It was a systematically planned and executed mass murder campaign that went over a hundred days from April of 1994 to July.⁷⁵ Over 800,000 to one million people, primarily of the Tutsis and moderate Hutus communities were brutally killed by the Hutu extremists.⁷⁶

The Tutsis and Hutus were the two primary social groups in Rwanda, whose relationship was altered fundamentally due to colonialism- which transformed them from categories with social

⁷² Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone (16 January 2002) 2178 UNTS 137, art 10; Simon M Meisenberg, 'Legality of Amnesties in International Humanitarian Law: The Lomé Amnesty Decision of the Special Court for Sierra Leone' (2004) 86 Intl Rev Red Cross 837, 840–44.

⁷³ Truth and Reconciliation Commission (Sierra Leone), *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission* (Vol 2, ch 3, paras 123–26, 2004); Human Rights Commission of Sierra Leone and UNIOSIL, *Matrix on the Status of Implementation of the TRC Recommendations* (2007).

⁷⁴ *Prosecutor v Kallon* SCSL-2004-15-AR72(E) (SCSL Appeals Chamber, 13 March 2004) paras 64–73; *Prosecutor v Kamara* SCSL-2004-16-AR72(E) (SCSL Appeals Chamber, 13 March 2004) paras 64–73; Statute of the Special Court for Sierra Leone, art 10 (2178 UNTS 145, 2002); Truth and Reconciliation Commission (Sierra Leone), *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission* (Vol 2, ch 3, 2004).

⁷⁵ Commission of Experts on Rwanda, 'Interim Report' (4 October 1994) UN Doc S/1994/1125; Linda Melvern, 'The UK Government and the 1994 Genocide in Rwanda' (2009) 4 Genocide Stud & Prevention 245, 253–54.

⁷⁶ United States Holocaust Memorial Museum, 'The Rwanda Genocide' (4 April 2021) <https://encyclopedia.ushmm.org/content/en/article/the-rwanda-genocide> accessed 2 November 2025.

mobility into rigid, antagonistic ethnic identities.⁷⁷ The Hutus were the majority population and were mostly farmers or agriculturists while the Tutsis were the minority group and were cattle herders and held more administrative power and wealth.⁷⁸ Fluidity was common among these groups through marriage, which was lost due to colonial influence.⁷⁹ In the late 19th century, pre 1962, European colonists arrived and created and solidified the rift between Hutu and Tutsi basing this classification on traditional roles and physical characteristics.⁸⁰ Post 1962, following independence, these historical and colonist created divisions led to unequal power distribution leading further to conflict and violence.⁸¹

Post 1962, Hutu leaders took power and promoted an anti-Tutsi agenda, marginalising Tutsis and forcing them to flee into exile.⁸² In 1990 a civil war broke out, the Rwandan Patriotic Front (RPF), Tutsi-dominated rebel group of exiles based in Uganda, invaded Rwanda to fight for their return. A peace agreement, the Arusha Accords, was signed in 1993, but was highly opposed by the Hutu extremists.⁸³ The assassination of the Hutu president on April 6, 1994 was the final blow leading to mass genocide of the Tutsis, who were blamed for this assassination.⁸⁴

From April 7 to July 19 1994 killings began and blood flooded the streets of Rwanda. The Rwandan army set up roadblocks to check identity and went house to house slaughtering Tutsis and moderate Hutus.⁸⁵ Hate speech became prevalent on live TV and radio broadcasts and

⁷⁷ Ayalew Getachew Kassa, 'Post-genocide Identity Politics and Colonial Durabilities in Rwanda' (2022) 10 J East African Stud.

⁷⁸ Fiveable, 'Hutu and Tutsi Ethnic Groups – History of Africa: 1800 to Present' <https://fiveable.me/key-terms/africa-since-1800/hutu-and-tutsi-ethnic-groups> accessed 2 November 2025.

⁷⁹ Emre Karabacak, 'Colonial Regime in Rwanda and Its Effects on the Tutsi-Hutu Relations' (Academia.edu) https://www.academia.edu/12115557/Colonial_Regime_in_Rwanda_and_Its_Effects_on_the_Tutsi_Hutu_Relations accessed 2 November 2025.

⁸⁰ Jessica Djessa, 'United, Divided, and on a Path Back to Reconciliation: The Introduction of Ethnic Division during Colonialism and Its Effect on Post-Colonial Rwanda' (2023) 23 Hanover Hist Rev <https://history.hanover.edu/hhr/23/hhr2023djessa.pdf> accessed 2 November 2025.

⁸¹ Raymond Yanbemo E Odyuo and Swati Shastri, 'India's Struggle After Independence' (2024) IJCRT IJCRT24A3322 <https://ijcrt.org/papers/IJCRT24A3322.pdf> accessed 31 January 2026.

⁸² EBSCO, 'Rwandan Hutus Overthrow Tutsi Monarchy' (Research Starters) <https://www.ebsco.com/research-starters/history/rwandan-hutus-overthrow-tutsi-monarchy> accessed 31 January 2026; Donatien Nikuze, 'The Genocide Against the Tutsi in Rwanda: Origins, Causes, Implementation, Consequences, and the Post-Genocide Era' (2014) 3 Intl J Dev & Sustainability 1086 <https://isdnet.com/ijds-v3n5-13.pdf> accessed 31 January 2026.

⁸³ Peace Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front (Arusha Accords, 4 August 1993) https://constitutionnet.org/sites/default/files/rwanda_arusha_accords_1993-2003.pdf accessed 31 January 2026; History Rise, 'The Arusha Accords and Their Role in Rwanda's Political History' (27 November 2024) <https://historyrise.com/the-arusha-accords-and-their-role-in-rwandas-political-history/> accessed 31 January 2026.

⁸⁴ *Ibid.*

⁸⁵ Rwandan Stories, 'Roadblocks' <http://www.rwandanstories.org/genocide/roadblocks.html> accessed 31 January 2026; Jean de la Croix Tabaro, 'The Passport to Death: Story of Rwanda's Notorious ID' (KT Press, 13 July

sexual violence was used as a weapon of genocide.⁸⁶ About 250,000 to 500,000 women were raped and most was infected with HIV.⁸⁷

The UN peacekeeping force sent peacekeepers, over ten of whom were killed.⁸⁸ The RPF continued their military campaign gaining control of the country by mid-July, finally putting an end to the genocide.⁸⁹ Ultimately, they also succeeded in forming a united national government. The UN established the International Crime Tribunal for Rwanda (ICTR) to prosecute high level organisers and community-based actions were taken to handle lower-level cases.⁹⁰

The transition to justice was a challenge too big. Over 120,000 suspects, hundreds of thousands of survivors, and a society traumatised by communicable violence.⁹¹ Rwanda took a three-pronged approach to curb the trauma. The International Criminal Tribunal for Rwanda (ICTR) was established for the major perpetrators; domestic national courts were established for planners and leaders; and Gacaca courts, a revival of traditional community-based justice was created to handle the mass of lower and mid-level cases.⁹²

The Gacaca courts, through the Organic Law No. 16/2004, tried over 1.2 million cases,

2015) <https://www.ktpress.rw/2015/07/the-passport-to-death-story-of-rwandas-notorious-id/> accessed 31 January 2026.

⁸⁶ Angela Hefti and Laura Ausserladscheider Jonas, 'From Hate Speech to Incitement to Genocide: The Role of the Media in the Rwandan Genocide' (2020) 38 BU Intl LJ 1; Frans Viljoen, 'Hate Speech in Rwanda as a Test Case for International Human Rights Law' (2014) 22 African Human Rights LJ 1 <https://www.jstor.org/stable/23252193> accessed 31 January 2026.

⁸⁷ Geraldine Umutesi and others, *Care & Treatment to Women Genocide Survivors Raped and Infected with HIV, as a Human Right & HIV Response – A Lesson from Rwanda* (Imbuto Foundation, October 2024) https://imbutofoundation.org/wp-content/uploads/2024/10/women_raped_and_infected_with_hiv_during_genocide.pdf accessed 31 January 2026.

⁸⁸ Alison Des Forges, *Leave None to Tell the Story: Genocide in Rwanda* (Human Rights Watch, March 1999) <https://www.hrw.org/report/1999/03/01/leave-none-tell-story/genocide-rwanda> accessed 31 January 2026.

⁸⁹ United Nations Office on Genocide Prevention and the Responsibility to Protect, '1994 Genocide against the Tutsi in Rwanda' <https://www.un.org/en/preventgenocide/rwanda/historical-background.shtml> accessed 2 November 2025.

⁹⁰ SC Res 955 (8 November 1994) UN Doc S/RES/955, para 1; Organic Law No 16/2004 of 19/6/2004 Establishing the Organisation, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes Against Humanity, Committed Between 1 October 1990 and 31 December 1994 (Rwanda); United Nations, 'The Justice and Reconciliation Process in Rwanda' 1–4 <https://www.un.org/en/preventgenocide/rwanda/pdf/bgjustice.pdf> accessed 2 November 2025.

⁹¹ Human Rights Watch, *Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts* (31 May 2011) 17–18 <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts> accessed 31 January 2026.

⁹² SC Res 955 (8 November 1994) UN Doc S/RES/955, para 1; Statute of the International Criminal Tribunal for Rwanda (adopted by annex to SC Res 955, 8 November 1994) UN Doc S/RES/955, arts 1–7; Organic Law No 16/2004 of 19/06/2004 Establishing the Organisation, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes Against Humanity, Committed Between 1 October 1990 and 31 December 1994 (Rwanda).

sentenced public confessions, apologies, victim testimonies, and community-based sentencing.⁹³ This law codified confessions, guilty pleas, repentance, and apologies.⁹⁴ This was their alternative route to reduced sentences and social reintegration, reflecting a unique combination of restorative and retributive justice. Confessions and repentance were a mandate to access mitigated sentences or community service.⁹⁵ This was done especially for non-primary perpetrators and some “first category” cases which could benefit if they confessed timely and in a comprehensive fashion.⁹⁶

Gacaca was designed to rebuild the communal bonds shattered by genocide: truth-telling was not only cathartic but an essential part of “social-psychological reconciliation” and “spiritual healing,” as theorized by contemporary reconciliation scholars.⁹⁷ Critics of *Gacaca* point to its lack of legal guarantees for the accused, uneven application, and potential for local abuses—but defenders highlight its success in reducing prison overcrowding, promoting acknowledgment of guilt, and enabling local-level reconciliation and reintegration.⁹⁸

The National Unity and Reconciliation Commission institutionalized forgiveness into national constitutionalism, complementing the *Gacaca*-based community approach with top-down statutes and executive programs.⁹⁹

Rwanda’s forgiveness jurisprudence treats mercy as a conditional legal virtue: truth precedes pardon, confession triggers mitigation, and reparative acts ground reintegration, aligning community healing with constitutional policy. Through *Gacaca*, repentance and public acknowledgment converted guilt into community service and restitution; through national institutions, the state codified unity and reconciliation as ongoing duties rather than episodic

⁹³ Organic Law No 16/2004 of 19/06/2004 Establishing the Organisation, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes Against Humanity, Committed Between 1 October 1990 and 31 December 1994 (Rwanda).

⁹⁴ *Ibid.*

⁹⁵ Maya Goldstein Bolocan, 'Rwandan Gacaca: An Experiment in Transitional Justice' (2004) J Disp Resol 355, 372–77.

⁹⁶ Organic Law No 10/2007 of 01/03/2007 Modifying and Complementing Organic Law No 16/2004 Establishing the Organisation, Competence and Functioning of Gacaca Courts, arts 2–4, 9–12 (Rwanda).

⁹⁷ Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice Without Lawyers* (Cambridge University Press 2010) 31–39; Timothy Longman, 'Memory and Justice in Post-Genocide Rwanda' in Scott Straus and Lars Waldorf (eds), *Remaking Rwanda: State Building and Human Rights After Mass Violence* (University of Wisconsin Press 2011) 162, 168–74.

⁹⁸ Amnesty International, *Rwanda: Gacaca—A Question of Justice* (AFR 47/007/2002, 2002) 7–15; Human Rights Watch, *Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts* (31 May 2011) 20–45 <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts> accessed 31 January 2026.

⁹⁹ Law No 03/99 of 12 March 1999 Establishing the National Unity and Reconciliation Commission (Rwanda); Constitution of the Republic of Rwanda 2003 (rev 2015) art 178.

grace.¹⁰⁰ In this framework, forgiveness is neither erasure nor amnesty but a normatively structured pathway—truth, responsibility, repair—by which law transforms atrocity into restored civic relationship.

In conclusion, each country used forgiveness in their constitutional models differently. One thing common was the aim of using corrective or restorative measures to bring change and harmony to their society. Transitional justice operationalised differently in South Africa, which tired conditional amnesty for full disclosures before a truth commission.¹⁰¹ Sierra Leone had their peace agreement granting broader amnesty along with hybrid tribunals for higher and lower-level cases.¹⁰² Canada emphasised truth telling and recognition of their Indigenous survivors without amnesty¹⁰³ and Rwanda embedded confessions, apologies and community-based sentencing through their Gacaca courts and public pardons.¹⁰⁴

D. RE-IMAGINING AND BRINING FORGIVENESS INTO THE INDIAN LEGAL HISTORY

The path to India's independence, constitution making, and ultimately running free India was marred by bloodshed due to partition that started after the passing of the Indian Independence Act, passed on July 18, 1947,¹⁰⁵ which divided India into India and Pakistan, borders drawn by Cyril Radcliffe.¹⁰⁶ These borders were finally approved on August 17, 1947 when the partition took effect.¹⁰⁷ But the partition was not the only reason, it was the final straw yes, however

¹⁰⁰ United Nations Office on Genocide Prevention and the Responsibility to Protect, *The Justice and Reconciliation Process in Rwanda* 2–7 <https://www.un.org/en/preventgenocide/rwanda/pdf/bgjustice.pdf> accessed 31 January 2026.

¹⁰¹ Joseph Liechty, 'Summary of Daniel Philpott Daye, Political Forgiveness: Lessons from South Africa' (Beyond Intractability) <https://www.beyondintractability.org/bksum/daye-political> accessed 3 November 2025.

¹⁰² Truth and Reconciliation Commission (Sierra Leone), *Report* (Vol 1, ch 1) <http://www.sierraleonetrctc.org/index.php/view-report-text-vol-1/item/vol-one-chapter-one> accessed 3 November 2025; Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (Lomé Peace Agreement) (7 July 1999) https://peaceaccords.nd.edu/wpcontent/accords/The_Lome_Peace_Agreement-_1999_0.pdf accessed 3 November 2025.

¹⁰³ Ksenia Petoukhov, 'An Evaluation of Canada's Truth and Reconciliation Commission' (MA thesis, University of Windsor 2011); Department of Justice Canada, 'Indigenous Justice, Recognition and Reconciliation' <https://www.justice.gc.ca/eng/csjsj-sjc/ijr-dja/index.html> accessed 3 November 2025.

¹⁰⁴ United Nations, *The Justice and Reconciliation Process in Rwanda* <https://www.un.org/en/preventgenocide/rwanda/assets/pdf/Backgrounder%20Justice%202014.pdf> accessed 3 November 2025; Linda Ingela Hedlund, 'Reconciliation Through the Gacaca Tribunals in Rwanda' (BA thesis, Lund University 2009) <https://lup.lub.lu.se/student-papers/record/1398926/file/1415566.pdf> accessed 3 November 2025.

¹⁰⁵ Indian Independence Act 1947, 10 & 11 Geo 6 c 30 (UK).

¹⁰⁶ Indian Independence Act 1947, 10 & 11 Geo 6 c 30 (UK); Radcliffe Award (in C H Philips and Mary Doreen Wainwright (eds), *The Partition of India: Policies and Perspectives 1935–1947* (MIT Press 1970) 292).

¹⁰⁷ Radcliffe Award (17 August 1947) in C H Philips and Mary Doreen Wainwright (eds), *The Partition of India:*

British Rule, which led to such partition was the true sword that cut through the country and its people.¹⁰⁸

The unapologetic nature of colonialism led to people uniting and aggression taking the centre stage. This was balanced by Gandhi's ahimsa philosophy however; the partition was one such state of affairs to which Gandhi's non-violence could not reach.¹⁰⁹

The 1947 partition destroyed homes, communities, relationships, and left large number of victims on both sides of the border.¹¹⁰ The constitutional project was in itself a negotiated settlement among diverse parties, interests and regional powers that sought to hold a vast and plural polity after imperial exit.¹¹¹ The police, colonial courts, bureaucrats, had their hands full in communal violence at the time of violence, dislocations and administrative collapses.¹¹² These circumstances limited non-violent mechanisms and institutionalising truth-telling, amnesty, and other restorative methods to reach justice.¹¹³

Post this, on the route to achieving constitutionalism was the Emergency of 1975-77, when President Fakhruddin Ali Ahmed invoked Article 352 on Prime Minister Indira Gandhi citing internal disturbances. This led to a 21-month long suspension of civil liberties, mass arrests, press censorship, and forced sterilizations.

Forgiveness in India can lay its roots in Articles 72 and 61- the pardoning powers. There could be the formation of a National Forgiveness and Reconciliation Commission (NFRC), balancing amnesty with accountability through judicial oversight and victim reparations.

Policies and Perspectives 1935–1947 (MIT Press 1970) 292.

¹⁰⁸ Ayesha Jalal, *The Sole Spokesman: Jinnah, the Muslim League and the Demand for Pakistan* (Cambridge University Press 1985) 3–5; Bipan Chandra and others, *India's Struggle for Independence* (Penguin Books 1988) 446–48.

¹⁰⁹ Ramachandra Guha, *Gandhi: The Years That Changed the World, 1914–1948* (Penguin Allen Lane 2018) 815–20; Yasmin Khan, *The Great Partition: The Making of India and Pakistan* (Yale University Press 2007) 135–38.

¹¹⁰ Yasmin Khan, *The Great Partition: The Making of India and Pakistan* (Yale University Press 2007) 14–185; Partition Museum, 'Partition of India - 1947 Partition, History' <https://www.partitionmuseum.org/partition-of-india> accessed 31 January 2026.

¹¹¹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966) 30–35; Usha Mehta, 'Constitutionalism in India: The Founding Moment' in Zoya Hasan and others (eds), *India's Living Constitution: Ideas, Practices, Controversies* (Permanent Black 2002) 38–41.

¹¹² Gyanendra Pandey, *Remembering Partition: Violence, Nationalism and History in India* 112–15 (Cambridge Univ. Press 2001); see also Urvashi Butalia, *The Other Side of Silence: Voices from the Partition of India* 87–90 (Penguin Books 1998).

¹¹³ Priya Satia, 'Partition of 1947 Continues to Haunt India, Pakistan' (Stanford Report, 7 March 2019) <https://news.stanford.edu/stories/2019/03/partition-1947-continues-haunt-india-pakistan-stanford-scholar-says> accessed 31 January 2026.

The 1947 Partition displaced over 15 million and killed over 2 million Indians, amid Hindu-Muslim-Sikh riots.¹¹⁴ Gandhi's assassination by Nathuram Godse in 1948 deepened the communal mistrust, while princely state integrations involved amnesties for local rulers.¹¹⁵ The 1975-77 Emergency period further detained over 140,000 people under MISA (Maintenance of Internal Security Act), eroding the Habeus Corpus.¹¹⁶

Therefore, the perfect time to incorporate the NFRC would have been in 1948, through an amendment to the draft Constitution of India. Drawing from South Africa¹¹⁷, the NFRC would have been a statutory body under the President (Art. 72), with State Governor panels (Art. 161). Its composition would include judges, activists, and victim representations.

The operational process would incorporate victim-led hearings and the NFRC would have regional and substantive tribunals- Punjab, Bengal, UP to grant partition amnesties, and Delhi tribunal for the Emergency.

<i>Phase</i>	<i>Trigger Events</i>	<i>Foreign Model</i>	<i>Indian Features</i>	<i>Projected Caseload</i>
1948-52	Partition riots, princely mergers	S Africa TRC amnesty	Art 72 hearings in Lahore/Delhi; victim veto	50,000 low-level rioters ¹¹⁸
1978-82	Emergency detentions	Rwanda Gacaca	Governor panels; MISA file disclosures	20,000 detainees ¹¹⁹
1985-90	Sikh riots, Punjab militancy	Sierra Leone TRC	SC oversight; reparations via Art 161	10,000 cases ¹²⁰
2025+	Manipur, Naxal violence	Hybrid (all)	Digital portal for submissions	Ongoing, 5,000/year ¹²¹

¹¹⁴ Yasmin Khan, *The Great Partition: The Making of India and Pakistan* (Yale UP 2007) 14-185.

¹¹⁵ *Constituent Assembly Debates* (Vol VII, 13 December 1948) 452 (Ambedkar on integrations).

¹¹⁶ 42nd Constitutional Amendment Act 1976, s 3; *ADM Jabalpur v Shivkant Shukla* (1976) 2 SCC 521.

¹¹⁷ Promotion of National Unity and Reconciliation Act 34 of 1995 (S Af) ss 3-4.

¹¹⁸ Tanveer T et al, 'Catastrophic impact of 1947 partition of India on people's health' (2024) 4(1) *PMC* 1; Britannica, 'Partition of India' (2025)

¹¹⁹ MISA records, National Archives of India (1975-77 estimates).

¹²⁰ Projected from Punjab riot estimates: Urvashi Butalia, *The Other Side of Silence* (Penguin 1998) 78-100 (low-level actors ~10% of total).

¹²¹ NCRB, *Crime in India 2025* (hypothetical 2026 est. from trends); aligns with prior *India Human Development*

A reimagination for India using forgiveness looks farfetched given the number of situations that the country had to deal with- colonial rule, partition, emergency, the forming of the Indian federal structure- which started off by giving the States more autonomy than what would be considered a quasi-federal structure that it is currently. The original reimaginings that were thought of included forgiveness from the various colonial rulers and their supporters. However, the sheer unapologetic nature of our colonisers made that difficult. Then there was a reimagining that regarded implementing forgiveness for the survivors of the partition, but who is to blame for that too is unclear.

One thing that emerged clear while forming these reimaginings was that forgiveness as a constitutional model has its limits. What can forgiveness achieve to a person who has lost their family, their homeland, their identity? What can forgiveness offer to someone who has been robbed of their personal liberty during the Emergency? Is the Indian State one with such big heart that its executives, within whom these very people have vested power, even ask for such forgiveness? How can forgiveness cure two hundred years' worth of colonial rule, where its poor people were asked to pay exorbitant tax on essential livelihood like salt? Whom are these people even supposed to forgive- a coloniser who robbed their Golden Bird but left it with modern forms of governance; or a religion which felt as if they had to have an entire country because they were scared that the communal divide would promise a fate worse than the one that that country has today?

E. CONCLUSION

Forgiveness in law can help make a country's past unique, ambitious and save it from people resenting each other. Forgiveness can also survive in the modern constitutional dynamic. It can save perpetrators from retributive punishment and grant them a new way of life.

Forgiveness, therefore, occupies a space that law alone cannot inhabit — that of emotional repair, moral restoration, and social cohesion. The study of transitional contexts such as South Africa or Rwanda demonstrates that forgiveness is not a passive virtue but an active instrument of justice when guided by institutional structure and collective memory. Truth and Reconciliation Commissions (TRCs) across jurisdictions have proven that when the state acknowledges past wrongs and invites participation from both victims and perpetrators,

societies can transform moral injury into moral recovery.

From a jurisprudential standpoint, integrating forgiveness into law requires moving away from purely retributive frameworks towards restorative and reconciliatory ones. Philosophers such as Hannah Arendt and Martha Nussbaum have long argued that law must preserve space for human emotion and moral agency, rather than reduce justice to procedural closure.¹²² Forgiveness, in this reading, is not a negation of accountability but its deepening — it acknowledges harm truthfully while rejecting perpetual vengeance as a social principle.

In the Indian constitutional context, forgiveness could have been embedded in responses to communal conflict, caste-based discrimination, and historical injustice. A “forgiveness framework” within legal processes—perhaps through independent restorative commissions or structured apology mechanisms—could strengthen constitutional morality by reconciling communities around shared ethical purpose rather than polarized grievance. Likewise, integrating forgiveness as a jurisprudential value would align with the constitutional vision of fraternity and compassion embedded in the Preamble.

In the end, justice beyond law beckons us toward a jurisprudence enriched by forgiveness—not as sentimental indulgence, but as the vital pulse of human moral agency. Where procedural closure risks calcifying into sterile retribution, forgiveness unveils law's deeper telos: restoration, reconciliation, and the shared horizon of our fragile plurality. Embracing this expansive vision does not undermine legal order but elevates it, weaving emotion's intelligent grace into the fabric of justice, ensuring that law serves not merely as rule's enforcer, but as humanity's enduring witness.

¹²² HN Arendt *Eichmann in Jerusalem: A Report on the Banality of Evil* (rev edn Viking Press 1963) ch 3; MC Nussbaum *Upheavals of Thought: The Intelligence of Emotions* (CUP 2001) 1–70.