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Ananaya Shee

*Law Student, 4<sup>th</sup> Year BBA.LL.B.(Hons.)*

*Narsee Monjee Institute of Management Studies, Bengaluru*

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# **A Desperate Exit: Rethinking the Criminalization of Attempt to Suicide under Indian Law through a Psychological Lens**

**Ananaya Shee**

*Law Student, 4<sup>th</sup> Year BBA.LL.B.(Hons.)  
Narsee Monjee Institute of Management Studies, Bengaluru*

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## **ABSTRACT**

*To attempt suicide is not merely a desire for death- it often represents a frantic action by an individual seeking to escape from unbearable suffering. It is a moment when anguish overshadows hope, and the will to live is overwhelmed by intense hopelessness. In legal terms, attempting suicide is defined as the effort to take one's own life while surviving the act.*

*This article is a critical analysis of the criminalization of attempt to suicide in Indian legal context from a psychological and gender perspective especially through the viewpoint of transition and evolution from Section 309 of the Indian Penal Code to Section 224 of Bhartiya Nyaya Samhita, 2023 . The investigation grows out of a particular theory: a woman, alone, murderously abused in captivity, both physically and sexually, commits suicide as her only apparent means of escape. She lives miraculously and then is discovered. Should the law punish her?*

*Despite BNS retaining a penal provision for attempt to suicide, this article argues that such a prescriptive structure fails to capture the lived realities of individuals forced to contemplate suicide under extreme mental and physical duress.*

*Based on the Mental Healthcare Act, 2017, especially Section 115, which states that "where a person attempts suicide, he shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under said provision", - this paper examines how Indian law has over time evolve towards a therapeutic (as opposed to punitive) approach. Cases*

*like Gian Kaur, Aruna Shanbaug and the recent interpretation by High Court have indicated that there is a liberal sensitive jurisprudence emerging towards psychological illness. From psychological theories of trauma, learned helplessness and loss of agency, it follows that suiciding in such coercive and abusive environments falls short of the required mens rea for criminal punishment.*

*Ultimately this paper suggests clear legislative evolution and interpretation in judicial aspects to make sure that compassion and not criminality guides the legal treatment of suicide survivors, especially those emerging from painful violence and despair.*

### **KEYWORDS**

*Attempt to suicide, Suicide, Indian Penal Code, Bhartiya Nyaya Sanhita, Mental Healthcare Act, 2017, Trauma, Abuse, Law.*

### **INTRODUCTION**

The paper revisits the criminalization of Section 309 of the Indian Penal Code<sup>1</sup> following the transition of this section to Section 224 of the Bhartiya Nyaya Samhita (BNS), 2023<sup>2</sup>, and delving deeper into its connection with Mental Healthcare Act, 2017<sup>3</sup>, which assumes mental distress in individuals who survived suicide attempts.

By exploring a poignant hypothesis about a woman who faces severe abuse and survives a suicide attempt, this study examines the criminality in situations arising not from intentional harm but from pervasive violence and extreme emotional breakdown.

In a nation where mental health remains misinterpreted and frequently stigmatized, the legal system can either provide compassion or cause more harm. A justice system that penalizes suffering, particularly the kind experienced in silence and isolation, betrays not just the Constitution but also its moral compass. The moment calls for trading condemnation for compassion-to see beyond laws and understand the lives that are actually getting impacted.

This paper examines the degree to which criminal responsibility for attempted suicide should be imposed in instances of extreme

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<sup>1</sup> Indian Penal Code, 1860, § 309, No. 45, Acts of Parliament, 1860 (India).

<sup>2</sup> Bhartiya Nyaya Sanhita, 2023, § 224, Acts of Parliament, 2023 (India).

<sup>3</sup> Mental Healthcare Act, 2017 (India).

psychological and physical abuse. Traditionally, this behaviour has been penalized to discourage self-harm based on a limited interpretation of intent and culpability. Nonetheless, a critical question emerges: should a woman who has suffered severe abuse and is pushed to her limits face punishment for trying to escape her pain when no other options are available? When suicide turns into a desperate means of escaping unbearable suffering, the legal system must confront the distinction between criminal intent and a plea for help stemming from deep human distress.

### **HYPOTHESIS**

To what degree can a suicide attempt, occurring as a desperate psychological reaction to prolonged torture, sexual violence, and confinement, be considered a criminal act under India's existing legal system and how should such instances be understood in the context of trauma-informed jurisprudence, constitutional principles, and the advancing norms of mental health and human rights?

### **RATIONALE OF STUDY**

The criminalization of attempted suicide, particularly in instances where individuals—often women—view it as a desperate means of escaping ongoing torture, captivity, or sexual violence, presents significant legal and ethical dilemmas. This research is driven by an urgent call to reevaluate punitive laws considering the realities of trauma, mental health and constitutional rights.

By examining the transition from IPC to BNS, 2023, this paper aims to question whether the justice system effectively differentiates between criminal intent and psychological breakdown and promotes a trauma-informed, rights-centric legal approach to these profoundly human challenges.

### **RESEARCH METHODOLOGY**

This research adopts a doctrinal, Analytical and Comparative methodology. It primarily engages with doctrinal legal research by critically examining statutory provisions, particularly Section 309 of the Indian Penal Code<sup>4</sup> and its evolution under Section 224 of the Bhartiya Nyaya Sanhita, 2023<sup>5</sup>. The paper examines the legal evolution of suicide-related offences and constitutional ramifications of penalizing survivors of severe abuse.

The primary sources include the BNS, IPC and Mental Healthcare

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<sup>4</sup> Indian Penal Code, 1860, § 309, No. 45, Acts of Parliament, 1860 (India)

<sup>5</sup> Bhartiya Nyaya Sanhita, 2023, § 224, Acts of Parliament, 2023 (India)

Act, 2017, as well as judicial precedents from the Supreme Court and High Courts of India, highlighting pivotal cases like *Gian Kaur v. State of Punjab*<sup>6</sup>, *P. Rathinam v. Union of India*<sup>7</sup>, and *Common Cause v. Union of India*<sup>8</sup>. These are analysed for their interpretative stance on suicide, mental health and personal autonomy.

Secondary sources consist of peer-reviewed journals, studies on mental health, legislative reports, recommendations by the Law Commission, international treaties and scholarly analyses focused on trauma-informed legal reforms. Selected empirical research from psychological and sociological studies—like those featured in *Social Science & Medicine* and the *Journal of Interpersonal Violence*—are also examined to provide context for the emotional and cognitive effects of enduring abuse that can lead to suicidal thoughts.

Moreover, the research utilizes a comparative approach by briefly outlining how attempted suicide is legally addressed in countries like the UK and Canada, shedding light on decriminalization in cases of trauma.

## LITERATURE REVIEW

### *Journal articles*

1. *The relationship between sexual abuse and female suicidal behaviour*<sup>9</sup>

This piece explores the relationship between a background of sexual abuse and suicidal actions in women who have made a suicide attempt. The rationale might be that previous studies have indicated connections between abuse and suicide; however, this research specifically examines survivors who are currently seeking help after a suicide attempt. In this article, a study has been made about a group of 158 women aged 20 and older who had made a suicide attempt (initial attempt). A cross-sectional study with a one-year follow-up period. The baseline is differentiation between survivors who have a history of sexual abuse and those who do not. The follow-up-assessments monitored instances of repeated attempts and psychological changes. The key findings of this study were that presumably approx. 50% of the people who participated in this study were reported to have been victims of past sexual abuse.

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<sup>6</sup> *Gian Kaur v. State of Punjab*, (1996) 2SCC 648

<sup>7</sup> *P. Rathinam v. Union of India*, (1994) 3 SCC 394

<sup>8</sup> *Common Cause v. Union of India*, (2018) 5 SCC 1

<sup>9</sup> M. vanEgmond et al., *The Relationship Between Sexual Abuse and Female Suicidal Behaviour*, 14 *Crisis* 129, 129-39 (1993)

The baseline differences were as such that the women who were abused were younger in age. They had an increased rate of previous suicide attempts and more excruciating difficulties in life especially in sexuality, personal fulfilment and relationships. A follow up within one year was done where they key findings were such that the survivors of this act had significantly an increased rate of attempting another suicide within the year, sadly. They had their continuous struggle with relationships and their sexuality.

To my research, this journal article draws a direct connection between excruciating abuse and continuous suicidality and this supports my hypothesis about women in torture driven description. It also emphasizes the aftermath of trauma, such as disrupted sexuality, faltering relationships, and ongoing emotional pain-all pertinent to the BNS legal context. Stresses the importance of therapeutic approaches over punitive measures- essential for making the case again at criminal penalties in these situations.

## *2. The Psychological impact of Rape<sup>10</sup>*

The purpose of this research, from what I could gather was that to demonstrate a study on how rape and mental health are connected for a woman who is a victim/survivor. This study covers the patterns of recover, what types pf symptoms do they show and influential variables at different stages like during the assault, before the heinous crime and its aftermath. The key findings of this study were that there was immediate anxiety, needless to say, PTSD and chronic fear. Depression, of course, sadly is an integral part of the symptom in addition with relationship dysfunctions, low self-esteem and social withdrawal. The recovery trajectories were as follows; the acute phase was seemed to be features by isolation, numbness and shock. They had difficult adjusting to the aftermath of the excruciating pain while they suffered from a turmoil within. In addition to that, there have been various documentations on suicidality. They are as such that the survivors, unfortunately suffer from a great deal of PTSD and increased rates of depression, both leading for an unfortunate decision of suicide ideation. The literature that was cited, describes that up to 40% of the victims seem to develop depressive symptoms after the act shortly.

On Secondary Victimization, the paper says,

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<sup>10</sup> Patricia A. Resick, *The Psychological Impact of Rape*, 8 J. INTERPERSONAL VIOLENCE 223, 223-5 (1993)

*“Victims who perceive social rejection or face disbelief are far more likely to report persistent suicidal thoughts.”*

This journal article describes how severe trauma plays a role in deep psychological distress and suicide impulses. This also adds on to the hypothesis that suicidal behaviour (in such context) is of traumatic nature and not as a criminal intent.

It also highlights the significance of therapeutic responses rather than punitive ones, emphasising the need to decriminalise suicide attempts in abusive situations.

### *Case Laws*

#### *1. Gian Kaur v. State of Punjab*<sup>11</sup>

This case becomes a critical reference point to contrast evolving views on mental health, autonomy and justice in my legal analysis.

In the case of Gian Kaur Singh, the Supreme Court re-assessed the validity of Section 309 of the Indian Penal Code<sup>12</sup>, which makes attempted suicide a criminal offence. This ruling notably overturned the earlier decision made in *P. Rathinam v. Union of India*<sup>13</sup>, where the Court had previously characterized Section 309 as unconstitutional by asserting that the “right to die” falls under the “right to live” protected by Article 21 of the Constitution<sup>14</sup>.

In *Gian Kaur*, the petitioners contested their conviction under Section 306 and 309 IPC, arguing that because the right to life encompasses the right to die, it should not be possible to penalize the abetment of suicide. However, the Constitutional Bench determined that the right to life is a fundamental, positive right that does not include the right to die, which is seen as damaging and contrary to the essence of life as enshrined in Article 21<sup>15</sup>. The Court highlighted the importance of life and the obligation of the state to protect it. It supported the constitution of Section 309 IPC<sup>16</sup> based on the need to uphold public morality, safeguard human dignity, and deter self-harm.

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<sup>11</sup> *Gian Kaur v. State of Punjab*, (1996) 2 SCC 648

<sup>12</sup> Indian Penal Code, 1860, § 309, No. 45, Acts of Parliament, 1860 (India)

<sup>13</sup> *P. Rathinam v. Union of India*, (1994) 3 SCC 394

<sup>14</sup> INDIA CONST. art 21

<sup>15</sup> INDIA CONST. art 21

<sup>16</sup> Indian Penal Code, 1860, § 309, No. 45, Acts of Parliament, 1860 (India)

- This ruling is crucial for my study as it reinforces the criminal categorization of attempted suicide under Indian law prior to the Mental Healthcare Act, 2017<sup>17</sup> and continues to impact modern interpretations under the Bhartiya Nyaya Sanhita (BNS), 2023<sup>18</sup>.
- Regarding the hypothesis- the Gian Kaur decision provides a foundational viewpoint on how Indian courts have historically regarded suicidal actions as legally punishable, regardless of psychological distress.
- Nonetheless, our research challenges the justness of imposing such penalties in severe instances of abuse advocating for a trauma-informed and empathetic legal framework.

## 2. *P. Rathinam v Union of India*<sup>19</sup>

This case revolves around two individual petitioners, P. Rathinam being one of them who had actually attempted suicide, challenged Section 309 of the IPC<sup>20</sup>- which criminalizes suicide attempts- arguing that it violates their fundamental rights as stated in Articles 14<sup>21</sup> and 21<sup>22</sup>. They contended that punishing such attempts further traumatizes individuals who are already in a mental distress.

On one hand the petitioners claimed that criminalizing suicide attempts is “harsh and inhumane” referencing progressive reforms such as the UK’s Suicide Act of 1961<sup>23</sup>, principles of Mental Health and the Law Commission’s 42<sup>nd</sup> Report advocating for its repeal while on the other hand, the Union of India contended that the state has a significant interest in preserving life, upholding public morality and discouraging the normalization of suicide. The division bench consisting of Justices Saha and Hansaria determined that Section 309 infringes upon both Articles 14 and 21. The Court concluded that the “*right to life*” in Article 21 logically includes the choice not to live, and the act of criminalizing attempts is cruel and irrational, deeming it unacceptable for individuals already suffering from mental anguish.

- This establishes a historic legal acknowledgement of the psychological breakdown that leads to suicide attempts.

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<sup>17</sup> Mental Healthcare Act, 2017 (India)

<sup>18</sup> Bhartiya Nyaya Sanhita, 2023 (India)

<sup>19</sup> P. Rathinam v. Union of India, (1994) 3 SCC 394

<sup>20</sup> Indian Penal Code, 1860, § 309, No. 45, Acts of Parliament, 1860 (India)

<sup>21</sup> INDIA CONST. art 14

<sup>22</sup> INDIA CONST. art. 21

<sup>23</sup> Suicide Act, 1961, § 1, No. 60, Acts of Parliament, 1961 (UK)



- It reinforces our argument that suicide attempts in situations of torture or abuse may not involve criminal intent, but rather stem from trauma.
- It also provides a jurisprudential foundation for moving away from punitive measures and shifting the focus towards rehabilitation—a concept reflected in the Mental Healthcare Act of 2017, and BNS, 2023.

## **CHAPTER 1- THE BURDEN OF SURVIVAL- UNDERSTANDING ATTEMPT TO SUICIDE**

In the hushed corners of society, far from legal systems and regulations, individuals struggle with such deep anguish that they consider relinquish the most fundamental instinct—life itself. Suicide is not simply an action; it is a desperate call for help, a collapse of hopelessness when every avenue seems blocked. Those who survive such attempts often do not seek death but rather a cessation of suffering, and survival does not always equate to rescue—it can frequently mark the onset of harsher scrutiny. Responding with criminal charges rather than empathy is to misinterpret that plea for help.

### ***Evolution of this law***

Historically, the topic of suicide has ignited controversy, both ethically and legally. In colonial India, the Indian Penal Code of 1860 established by Lord Macaulay, declared the act of attempting suicide a crime under Section 309. The justification was primarily derived from Victorian English ethical standards, which viewed self-harm as sinful, against divine principles and a threat to societal order. However, the law provided no healing—only punishment for those who were broken.

As time progressed, India's legal and societal landscape evolved. The 42<sup>nd</sup> Law Commission Report (1971) advocated for the decriminalization of attempted suicide, acknowledging that mental illness or intolerable suffering, rather than criminal purpose, propels individuals towards such actions. In *P. Rathinam v. Union of India* (1994)<sup>24</sup>, the Supreme Court made a bold move by declaring Section 309 unconstitutional. It recognised that the right to life encompasses dignity and autonomy over one's body, including the choice to end one's suffering. Nevertheless, this perspective was fleeting.

In *Gian Kaur v State of Punjab* (1996), a constitutional bench overturned the ruling in *Rathinam*, stating that the right to die conflicts with Article 21. The Court highlighted that life is sacred

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<sup>24</sup> P. Rathinam v. Union of India, (1994) 3 SCC 394

and must be preserved. Consequently, Section 309 was reinstated, reaffirming the state's commitment to safeguarding life. The inconsistency in judicial decisions mirrored India's ongoing dilemma-should suicide be viewed as sin or symptom?

### ***The current status of Indian legal system regarding attempt to suicide***

The turning point emerged with the Mental Healthcare Act of 2017. Section 115 suggests that a person attempting suicide is experiencing "severe stress" and requires care rather than punishment. This notion was echoed in the BNS, 2023 which reintroduces Section 309 as Clause 24, though ambiguity persists regarding whether it remains genuinely punishable or serves merely as a symbolic deterrent.

Intellectually, one must consider: what is the aim of criminalizing suicide? If punishment is intended as a deterrent, can it truly dissuade someone who already perceives existence as intolerable? To me, the answer lies not in legal reasoning but humanity. Laws should at some point, embody compassion, not archaic morals. If we profess to care for those grappling with mental illness, trauma and abuse we must begin by attuning ourselves to their experiences. Attempting suicide is a manifestation. A manifestation of systematic failure -of neglect, injustice and isolation. The appropriate response ought to be one of support and healing.

In this chapter, the groundwork has been laid for profound exploration. As we proceed and delve deeper into the topic, we shall critically assess the legal framework surrounding suicide attempts in India, and whether the contemporary legal system genuinely acknowledges the psychological realities of human suffering.

## **CHAPTER 2 – THE CONSTITUTIONALITY OF CRIMINALIZING ATTEMPT TO SUICIDE - A JURISPRUDENTIAL AND CASE LAW ANALYSIS**

At the constitutional crossroads of law, ethics and mental health lies a profound question regarding personal autonomy: Is it a symbol of colonial morality? Its constitutional validity is both philosophically and legally questionable in a contemporary right-oriented democracy.

The central focus of this inquiry is Article 21 of the Indian Constitution<sup>25</sup>, which guarantees the right to life and personal

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<sup>25</sup> INDIA CONST. art 21

liberty. In the case of *Rathinam v Union of India*<sup>26</sup> the Supreme Court interpreted this clause to include a “right to die” arguing that the right to life inherently includes its opposite. The Court concluded that criminalizing suicide attempts was inconsistent with Article 21, describing Section 309 as “*unjust, cruel and irrational*”. This view was later overruled by the Supreme Court in *Gian Kaur v State of Punjab*<sup>27</sup> which stated that the right to life doesn’t include right to die.

Nevertheless, the Court introduced an important distinction-it acknowledged the right to a dignified death as encompassed within Article 21, especially in instances of terminal illness. This careful acknowledgement set stage for the Court’s ruling in *Common Cause v Union of India*<sup>28</sup> in which passive euthanasia was deemed constitutionally valid. It is definitely an interesting discussion to have.

From a philosophical standpoint, the autonomy argument is reinforced by John Stuart Mills’s liberty principle, laid out in his influential work, *On Liberty* (1859)<sup>29</sup>, where he argues that the legitimate exercise of power over any member of a civilised society is solely to avert harm to others. This concept of personal autonomy and bodily integrity was reiterated in *Justice K.S. Puttaswamy v Union of India*<sup>30</sup> where the Supreme Court affirmed that privacy, dignity and individual autonomy are fundamental to Article 21.

Furthermore, Section 309 raises issues under Article 14 of the Constitution which ensures equality before the law and bans arbitrary classification. Criminalizing an individual experiencing a mental health crisis does not satisfy the “reasonable classification” standard established in *State of West Bengal v Anwar Ali Sarkar*<sup>31</sup> as it does not differentiate between those who are unequal-an essential aspect of Article 14 jurisprudence.

The current status is that The Mental Healthcare Act, 2017 indicates legislative intent to decriminalize suicide attempts by presuming mental illness and mandating the State to provide care rather than punishment.

### CHAPTER 3- CRITICAL ANALYSIS

The hypothesis underlying this paper is that making suicide a

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<sup>26</sup> P. Rathinam v. Union of India, (1994) 3 SCC 394

<sup>27</sup> Gian Kaur v. State of Punjab, (1996) 2 SCC 648

<sup>28</sup> Common Cause v. Union of India, (2018) 5 SCC 1

<sup>29</sup> JOHN STUART MILL, ON LIBERTY (Penguin Classics 2006)

<sup>30</sup> K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1

<sup>31</sup> State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75

crime is constitutionally unjustifiable, ethically regressive and practically futile, particularly considering current insights into mental health. This reasoning is rooted in evidence and not in sentiments: people who attempt such an act majorly do not do so with criminal intent, they are expressing severe psychological suffering, often triggered by prolonged trauma, abuse or unaddressed mental health underlying issues.

As per the National Crime Records Bureau (NCRB). India reported more than 170,000 suicides in 2022, with “family issues” and “health conditions” accounting for nearly 65% of these cases. These statistics highlight socio-psychological challenges rather than criminal behaviours. Additionally, a study published in the Indian Journal of Psychiatry in 2016 found that over 90% of individuals who attempted suicide were experiencing diagnosable mental health disorders at the time of the attempt. This suggests that the ongoing presence of Section 309 of the Indian Penal Code is not only misguided but also counterproductive, as it discourages individuals from seeking assistance due to fear of legal repercussions.

In the case of *Aruna Ramachandra Shaunbag v Union of India*<sup>32</sup>, the Supreme Court affirmed the importance of life while simultaneously creating space in the Constitution for passive euthanasia, thereby implicitly acknowledging the need to balance autonomy, suffering and dignity. This conflict indicates that the State does not hold absolute control over decisions related to life. However, in instances of suicide attempts, it still claims the authority to impose punishment rather than offer assistance and support.

An often overlooked yet intriguing perspective for me is the difference between public health and public order. The primary purpose of criminal law is to maintain public order and avert harm to others. In contrast, suicide is primarily a public health concern—similar to infectious diseases, substance dependency, or trauma—necessitating medical and societal support, addressing it within criminal justice framework undermines the constitutional tenet of proportionality, as established in *Modern Dental College and Research Centre v State of Madhya Pradesh*<sup>33</sup>.

In addition to this, the Mental Healthcare Act, 2017 assumes that individuals that attempt suicide are under extreme stress and requires them to receive care instead of facing legal consequences. However, the lack of clear repeal of Section 309 results in a legal

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<sup>32</sup> *Aruna Ramachandra Shanbaug v. Union of India*, (2011) 4 SCC 454

<sup>33</sup> *Modern Dental College and Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353

contradiction-on one side, there is constitutional compassion, while on the other there is penal deterrence.

### **CONCLUSION**

To penalize someone for trying to end their own life reflects a misunderstanding of profound human suffering. It is not always a criminal intent that brings someone to such a brink-it might be the result of prolonged trauma or the overwhelming silence that accompanies untreated mental health issues.

This must not be the conclusion. The repeal of a law does not automatically eliminate the stigma, the embarrassment, or the silence associated with it. Suicide continues to claim thousands of lives annually, and countless others endure in silence—hesitant to speak out, seek assistance, or be recognized. If the law no longer inflicts punishment, society must ensure it does not either.

May this moment serve not only as a legislative correction but as a collective awakening. Let it inspire us to create more robust mental healthcare systems, to listen more attentively, and to provide support for those who feel overlooked

It is our responsibility to propagate its message: no one in distress should fear the law—they should discover help, hope, and an opportunity for a new beginning.