

## **The Law on Acquisition of Indian Citizenship - A Godsend Avenue or Quagmire for Refugees and Migrant Population in North East India**

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### **Abstract**

*Citizenship is associated with certain prized rights on those conferred with on those legally qualified through the process of acquisition. This is all the more so in respect to refugees and stateless persons. Despite India lacking in an effective legal regime on refugees and stateless persons, such persons have been able to obtain citizenship. The author addresses the issue of citizenship in a holistic manner both from a theoretical perspective and implementation of the law through the application of the domestic legal regime which has been subjected to amendment from time to time.*

*The issue is being addressed in the context of domestic and international imperatives also explores the pragmatic aspects and weaponisation indulged in.*

*The principle of jus soli and gradual acceptance of the jus sanguinis being invoked has facilitated the process, befitting a section of the refugee population across the country and the North Eastern states in particular. In addressing the issue, apprehensions and regional compulsions shredded with historical factors have also been taken into account in the context of influx and delicate balance prompting concerns and contestations on the issue. These and other relevant and related concerns having the propensity to counter balance the fragile socio-cultural factors have also been addressed.*

**Key Words:** Citizenship, Refugees, Statelessness, Illegal Migrants, Registration, Naturalisation

### **I. Introduction**

India post partition has been thriving as a peaceful and successful democratic entity. Into 75 years of regaining independence from colonial rule, the state has

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witnessed progress and development, particularly viewed in the context of her immediate neighbours in South Asia. The resilience witnessed in the wake of the tragic events during partition depicts much of the ancient cultural ethos, customs and her rich traditions.

The event leading to partition forced many to relocate on account of communal frenzy. Their faith, religious beliefs and language led to much sufferings, harbouring bitter memories. Many among them were reduced to penury having to leave behind their hearth and homes, some even surviving on the indescribable scars of traumatic experience. Many were witness to ghastly killings of their near and dear ones. Those who considered others as brethren suddenly had to adjust in new settings<sup>2</sup> adopting India citizenship, embracing feelings of one ancient nationality.

Post- independence, the country came to have international borders surrounded by seven countries and significantly impacted by regular inflow of people<sup>3</sup> who migrated from these places to India, on different grounds. Yet, during those days of much hatred, a silver lining was witnessed, in that humanitarian concerns prevailed, leading to accommodation of people during partition who became refugees overnight.

The situation of influx continued during the initial years of independence and much beyond, posing much concern for the underlying designs of spreading unrest and proselytization. One among the reasons for cross border flow of peoples in huge numbers happened to be the porous landlocked and riverine borders, especially in the North Eastern States. The ethnic identity and linguistic similarity or commonality furthered the migrant inflow. The settlers who came to Assam prior to independence from East Bengal facilitated the process.<sup>4</sup> Two factors in the main contributed to such illegal migration, namely, the constitutional mandate of grant of citizenship<sup>5</sup> and the country not being a party to the 1951 Refugee Convention.<sup>6</sup> Another contributing factor facilitating the

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<sup>2</sup> Territories falling within Pakistan.

<sup>3</sup> Among these, due to longstanding friendship with Bhutan and Nepal, the people from those countries however stand on a slightly different footing.

<sup>4</sup> The avowed aim of the Muslim League to settle more religious minorities in the state with the motive to include Assam in Pakistan through demographic change.

<sup>5</sup> Part II, Articles 5-11 Of the Constitution of India.

<sup>6</sup> Convention Relating to the Status of Refugees, 1951.

perennial inflow happened to be the lack of any domestic legislation or for that matter a comprehensive policy governing refugees or migrants. Hence, claiming migrations as legal or illegal refugees became a matter of debate for quite some time.

It is in this context that the issue of grant of citizenship prompted much debate and discussions involving wide ramifications. Therefore, the author ventures to discuss and analyse the provisions for grant of citizenship to people from other countries, who claim to be refugees or having the character of asylum seekers or stateless persons.

Towards enabling a proper appreciation of diverse aspects of citizenship and the legal and constitutional provisions governing grant of citizenship, a brief reflection is ventured into. The following paragraphs therefore intends to address the conceptual and theoretical dispositions governing citizenship besides addressing the constitutional mandate as incorporated by the founding fathers.

## II. Conceptual Position

The concept of citizenship is regarded as being quite complex; without any definitive explanation, it bears much significance in the contemporary world,<sup>7</sup> therefore identified philosophically as a powerful idea. The claim for citizenship or the status of being a citizen, apart from clothing and facilitating special treatment as a full member of the society, is considered an enabling right in itself, particularly in the legal, political and social sphere. Besides providing one a prized identity, it arms the individual with state protection, both within and beyond frontiers. Apart from xenophobic attitudes in Western countries<sup>8</sup> the concept extends from migration, residence to the ballot, besides issues of polity like equality of treatment of citizens. Though identity may be capacious in certain jurisdictions, its application however remains narrow.

However the concept of it being based upon status in the Greek *polis*<sup>9</sup> or Roman<sup>10</sup> *res publica* has given way to a much wider concept of citizenship,

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<sup>7</sup>Veera Ilona Iija, An Analysis of the Concept of Citizenship: Legal, Political and Social Dimensions, Masters Thesis, Dec, 2011.

<sup>8</sup>*Ibid.*

<sup>9</sup> Said to have first emerged between 600-700.

<sup>10</sup> Emerged around 500 with citizenship being recognized to have a legal status.

providing for a certain status in countries governed by the rule of law. It therefore mandates for abiding by certain obligation towards the process of availing the appurtenant rights. Citizenship has been stated by Avishai Margalit and Joseph Raz as a “[q]ualification for membership ... usually determined by non voluntary criteria. One cannot choose to belong. One belongs because of who one is”.<sup>11</sup>It brings about a sense of patriotic feeling to the society they belong to. This becomes very much pronounced in case of war, invasion or unrest in a country as evidence of patriotic feeling and identity of being a national, very much expound themselves.

### III. Broadening Horizon

Now- a- days the concept of citizenship is associated with gaining membership by birth, though most nation-states have some alternative mechanisms through which the membership can be acquired.<sup>12</sup> It may be stated that to a certain extent the concept of citizenship depends on the manner the different aspects are perceived. The liberal concept of citizenship draws within its fold the actualisation of social justice based on equality, in the context of a colour blind law, drawing in the concept of individualism. However, a new idea has emerged through the concept of global citizenship evolving the concept of inclusion and wider community identity that may be identified with the comity of nations.

A political scientist or a sociologist may address the concept of citizenship through another prism. It is viewed as a framework associated with individual autonomy and political democracy with a connection between present times with the ancient era.<sup>13</sup> Therefore, considering the present objective of naturalisation, the conceptual aspect as discussed above is considered to be sufficiently delineated in the present context.

### IV. The Theoretical Underpinning

From the days of Aristotle to the present, much light has been thrown on significant trends that have taken place on the concept and theoretical underpinnings. At times this has been very much pronounced, on other occasions

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<sup>11</sup>Margalit, A. & J. Raz, *National Self-Determination*, THE JOURNAL OF PHILOSOPHY, 87 (9) 439–461, at 447. (1990).

<sup>12</sup>*Id.* at 5.

<sup>13</sup> A. Acharyaa , *Citizenship in a Globalizing World*, 2012, 27, Pearson India Education Services Pvt. ltd,

much subtler. The difference and contestations become perceptibly visible from the different theories having unique foundational basis. In this regard the aspects of policies and principles, though the associated objective of goals and morals as propounded by Dworkin throw much light.<sup>14</sup> Despite their significance the theoretical reflections are being touched upon in brief, as the prime objective of the present endeavour is to analyse the legal and constitutional provision related to process of acquisition of citizenship through naturalization. Leading theoretical foundations have been identified with that of the Marxist concept,<sup>15</sup> that of the German philosopher Hegel's idea extending to the family, the civil society and the state, apart from the liberal theorists associated with the Western liberal traditions along with the fundamental rights and liberties in a sovereign state. The liberals came to be identified with the utilitarian's Bentham and Mill who propounded the concept through individual liberty, political participation and apportionment of property. Other theories identify citizenship through the concepts of political, social and legal points of view or for that matter aspects of multi-cultural citizenship or feminist concept which are kept outside of the present purview.

The evolving nature of citizenship, particularly in liberal capitalist democracies has been highlighted by T H Marshall.<sup>16</sup> His authoritative exposition finds adequately expressed in his publication on 'Citizenship and Social Class' wherein he traced the evolution of the concept as understood in a capitalistic state based upon his thesis that such capitalism evolved and underwent a transformation over time into social system based on class structure providing for democratic citizenship.<sup>17</sup> This according to him changes and adjustments was called for to reduce class inequity as the concept of citizenship as earlier propounded became mutually inconsistent.

The impact of the different theories has influenced the process of the development of the citizenship debate. Yet, its importance emerges from the legal recognition, for in the ultimate analysis the assertion of the right depends on the extent of

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<sup>14</sup> Ronald Dworkin, *Taking Rights Seriously*, 83, 1977 Gerald Duckworth & Co Ltd.

<sup>15</sup> True citizenship can never deliver in a society driven on class distinction or division. Identifying liberal democratic citizenship to be bourgeois Marx advocated a social revolution aimed at class abolition.

<sup>16</sup> *Supra note.6.*

<sup>17</sup> *Id.*

recognition by the legal regime. It is primarily through law that the rights and obligations relative to citizenship between the state and its citizens get recognized and promoted in facilitating substantive equality; yet aspects of exclusion are witnessed in many jurisdictions. It is in this context that citizenship and the prevailing rule of law determines that actuation of this prized legal right which in itself happen to be a facilitative right, rather providing for a fulcrum of rights.

Dispensations confronted with crucial and critical issues very often have to respond to situation in crisis ridden societies, at times plagued by ethnic, social divide. Coupled with challenges related to minorities, religious and appurtenant issues require prompt and pragmatic response. In such situations application of the citizenship laws pose challenges that call for practical measures in providing for equal treatment in contrasting situations. This is all the more crucial as manifestation of other rights depend on the true implementation or exposition of the citizenship rights. At times the disconnect with the rights of non-citizens or those citizens on the wrong side of the law have the propensity of leading to humongous issues , especially at the international level.

## **V. Pathways to Citizenship**

A person may acquire citizenship primarily under four or five situations. The modes depending on the constitution and laws of a sovereign entity may be associated with the place of birth or that of sanguinity by blood. It may either be by naturalization or through matrimony. In addition certain countries provide for grant of citizenship through investment, also identified as economic citizenship.

### **A. Citizenship by *Jus Soli***

Citizenship by birth is undoubtedly fairly simple with only circumstances or factors like that of parents being diplomatic representatives, ones born to enemy forces in hostile occupation of territory or with different nationalities normally being excluded from the process of grant of citizenship at the time of the birth of the infant. There may be a situation where a person resides temporarily in a state without owing any allegiance; although being akin to a citizen without being so. Similarly the situation may be somewhat complex in the event of determining

the status of asylum seekers and refugees.<sup>18</sup> An alien can obtain citizenship later on by fulfilling the stipulated conditions of the country concerned.

The significance of the principle of *jus soli*, ‘meaning right of the soil’ referred to “birthright citizenship” which is identified through birth within national boundaries, or subject to jurisdiction of the state, lies in ensuring that nobody is to be considered as being stateless *de jure*. In the United States of America it “allows for a more expansive legal inclusion of racial and ethnic immigrant minorities into the national community.<sup>19</sup> It therefore is considered to be the preferred mechanism in recognizing citizenship, irrespective of the citizenship of parentage. However, it becomes imperative to ensure careful recording of birth as in situations it may become very essential to a claim for citizenship or identity. Hence, the need for proper documentation emerges. However, *jussoli* should not be precarious as in that event as per international law it becomes well nigh possible to prove statelessness.

### **B. Citizenship by *Jus Sanguinis***

In certain countries, in contrast to *jus soli* citizenship of a child is determined through parentage. This is known as *jus sanguine*, also termed as derivative citizenship, where it is determined on the basis of blood relation. Citizenship is traced to blood relationship, that is through parentage or blood decent. In such situations citizenship is determined through the generational lineage. In certain jurisdictions factors like domicile establish the claim of citizenship. In situation where parents are not married certain difficulties surface and is addressed according to the law of the country concerned. In a number of jurisdictions in such situations the citizenship of the child is considered on the basis of the mother’s citizenship, primarily based on the nativist policies reflecting the gender asymmetry.

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<sup>18</sup> Subhram Rajkhowa & Sriparna Rajkhowa, *Citizenship Through Naturalisation Qua Refugees and Stateless Persons*, *Gauhati University Journal of Law*, Vol Xiii,7, 2019-20.

<sup>19</sup>T. RICHARD & IV MIDDLETON, *THE OPERATION OF THE PRINCIPLE OF JUS SOLI AND ITS AFFECT ON IMMIGRANT INCLUSION INTO A NATIONAL IDENTITY: AN ANALYSIS OF THE UNITED STATES AND THE DOMINICAN REPUBLIC*, VOL 13, NO 1, RUTGERS RACE AND THE LAW REVIEW, 69-96, FALL 2011.

### **C. Citizenship by Naturalisation**

A person may obtain citizenship through the process of naturalization. Under the extent law of a country it results in the change of political status of an individual that may be migrant centric or relate to migrants in limbo. Therefore, it may be termed as the legal process that helps in facilitating the right to acquire citizenship by non- citizens .It also has the propensity of bearing international ramifications. This may be possible on the event of fulfillment of certain conditions or qualifications, though at times grant of citizenship may be belied due to inherent policies of exclusion in the face of limited choice.

Naturalisation has come to be identified in an increasing manner with immigrants, mostly with respect to lawful permanent residents as in the case of the United States of America. It therefore vastly impacts upon the lives of immigrants through permissible standard administrative processes, meeting legal naturalization requirements determined by the state. In the case of India, the claim may be set forth by a foreigner, normally not being an illegal immigrant with the requirement of being an ordinarily resident for 12 years. The purpose of such naturalisation facilitates immigrant integration. Yet the recent developments in the country that will be alluded to later, reflects the profanity of conflicting concerns of impacting the delicate balance, despite the state nuanced perspective. In other words, the feeling of structural imbalance raises delicate issues prompted by migrant centric concerns like acculturation and social cohesion. Of course, the policies of the state determines the rates of naturalization. It can be said to be the culmination of state control over migrants' access to citizenship that according to Carens<sup>20</sup> constitute the most secure legal status for migrants and significantly their life chances and those of their descendants.

### **D. Citizenship by *Jus Matrimonii***

*Jus matrimonii*, that is citizenship by marriage appears to be quite normal but at times certain issues emerge. Citizenship on account of marriage depends upon the laws prevailing in respective countries. Earlier in respect of foreigners it was the recognized practice that upon marriage the woman was identified with the nationality of her husband. This was recognized on the basis of reciprocity

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<sup>20</sup> J H Carens, *Aliens and Citizens: The case of open borders*. THE REVIEW OF POLITICS 49(2): 251-2 73, 1987.



resulting in loss of her original nationality and consequent rights in her country of origin. In certain instances, it is provided that on marriage between couples belonging to different countries, the citizenship of the husband is recognized, whereas in other jurisdictions, the wife may have the option to continue with the citizenship of origin. However, in most cases, the person moving into the said country, particularly after the second world, could seek to obtain citizenship as per established procedure of naturalisation as a consequence of marriage. Yet some states provide for automatic conferment of nationality consequent upon marriage. With regard to *jus matrimonii*, Robin Cohen has observed as follows:

For some countries, automatic citizenship is conferred on the production of a marriage certificate. For others, spousal possibilities for a foreign partner include easier paths to unfettered residence rights or an accelerated period of naturalization. However, in many jurisdictions there is no recognition of gay marriages or civil unions, let alone looser arrangements like partnering or co-habitation agreements.<sup>21</sup>

Perhaps the most important challenge to the matrimonial principle is the criminalization of individuals who have married for the purpose of evading immigration and naturalization laws.<sup>22</sup>

#### **E. Citizenship by Investment**

Yet another mode of acquiring citizenship is by investment as an alternative opportunity. This can also be termed as economic citizenship or Olympic certificate. This in a way amounts to sale of citizenship to the global elite, many of whom scout for favourable tax regimes in return for investment. According to Kalin such countries targets individuals with exceptional skills, funds or talents, or with a particular religious or ethnic belonging.<sup>23</sup> Such a provision exists in some countries that are aimed at capital contribution. This however attaches certain conditions. In respect of a European country such grant provides the additional privilege available to members of Schengen countries. However certain

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<sup>21</sup>*Citizenship: from three to seven principles of belonging*, Vol. 28, Issue 1, JOURNAL FOR THE STUDY OF RACE, NATION AND CULTURE, , 139-146, 2022.

<sup>22</sup> *Ibid.*

<sup>23</sup>Christian H Kälin, “Facilitated Naturalization and Citizenship-by-Investment.” *In Investment Migration Programs 2021 – The Definitive Comparison of the Leading Residence and Citizenship Programs*, 20–29. New York: IDEOS. [[Google Scholar](#)].

countries require relinquishment of citizenship of their countries of origin. Many of the countries follow a very strict due diligence process requiring an ability to contribute economically but ensure that such applicants have a clean record without any criminality.

### **V. The Constitutional Provisions Relating to Citizenship in India**

Keeping in view the objectives at hand, the pivot around which one needs to gain a proper perspective of the grant of citizenship is the process of naturalization in the context of refugees. Therefore, a look at the provisions of the constitution and relevant laws are considered to be necessary. In this regard it would be instructive to touch upon in brief the deliberation of the Constituent Assembly in the context of conceptualization of the relevant law.

The Constituent Assembly was confronted with the question of citizenship and divergent views were placed on the draft provisions.<sup>24</sup> A reading of the proceedings reveal that prior to arriving at a consensus, a number of drafts were presented. Aspects like religious, ethnic and hyper-nationalistic considerations led to contested debates, primarily relating to article 5, for its lack of exclusive and preferential provisions on religious lines regarding the declaration as to who shall be the citizens of India.<sup>25</sup> Dr P S Deshmukh proposed introduction of a provision laying down that “every person who is a Hindu or a Sikh by religion and is not a citizen of any other State, wherever he resides shall be entitled to be a citizen of India”<sup>26</sup>but the same was rejected. Consequently, Part II of the Constitution stood adopted.

### **VI. The Modus Operandi-Dynamics and Discomforts**

The Modus Operandi for obtaining and acquiring citizenship came to be adopted sometime later based on the relevant provisions in the shape of articles 5 – 11 of the Constitution. Yet, the it is considered essential to refer to the provisions in brief. It has been provided that a person born and resident in India subject to

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<sup>24</sup> The debates continued from 10<sup>th</sup> to 12 August, 1949. However, all the 21 amendments moved to draft article 5 and 6 were negatived.

<sup>25</sup> Citizenship Debate in the Constituent Assembly (accessed on 10.6.2022 at 10.17pm) <https://iasbaba.com/2021/12/citizenship-debate-in-the-constituent-assembly/>.

<sup>26</sup> *Ibid.*

fulfillment of certain condition could be a citizen of India.<sup>27</sup> So too, persons resident in India whose parents were born in India could be a citizen.<sup>28</sup> Likewise persons resident in India for more than five years since the commencement of the Constitution could also become citizens of the country.<sup>29</sup> A further provision related to those persons resettling to India from Pakistan after 1<sup>st</sup> March, 1947 as well as persons migrating to India before 19<sup>th</sup> July, 1948 or those who came afterwards and been resident in India.<sup>30</sup> Moreover it has been provided that in respect of persons resident outside India, either of whose parents or grandparents were born in India, could also be regarded as Indian citizens.<sup>31</sup>

From the above it is very much evident that people of the identified categories who migrated to India at the relevant time could also become citizens of India. This has obviously been provided due of historical aspects arising out of the complex nature of mass migration occasioned by partition. But the details were required to be formulated through legislation that only came about in the year 1955. The interregnum witnessed a few measures. By way of illustration mention may be had of the Immigration (Expulsion from Assam) Act, 1950. This piece of legislation was occasioned by the alarming gravity of the situation in Assam resulting from immigration of foreigners to Assam. As a response to the alarming situation the Act was enacted enabling deportation of such illegal immigrants. It provided for wide powers to official to initiate action ordering the expulsion of certain immigrants whose stay in Assam was considered to be detrimental to the interest of the general public of India or to some specified categories of people.<sup>32</sup> It also contained provisions for penal provisions against persons harbouring such immigrants. The Act delineated a distinct demarcation between undesirable immigrants and somewhat desirable immigrants.<sup>33</sup> Another important step taken in respect to the state happen to be the preparation of National Register of Citizens in the year 1951.

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<sup>27</sup> Article 5 (a) of the Constitution of India.

<sup>28</sup> Article 5 (b).

<sup>29</sup> Article 5 (c).

<sup>30</sup> Article 6 (b).

<sup>31</sup> Article 8.

<sup>32</sup> Immigrants (Expulsion from Assam) Act, 1950.

<sup>33</sup> N G Mahanta, *Citizenship Debate Over NRC & CAA*, 115, 2021 Sage.

It may be before relevance to mention that while discussions were going on in the Constituent Assembly on the issue of citizenship Jawaharlal Nehru expressed his view in the year 1948 that granting of citizenship to migrants from Pakistan to India on the basis of some identified criteria would be impossible to be examined separately.<sup>34</sup> Therefore the permit system was introduced on the basis of three identified criteria.- temporary permits for a month or two, a continuing permanent that did not entitle a man to settle but remain for business purposes and the third category permitting permanent stay.<sup>35</sup>

## VII. The Legal Landscape

Citizenship being a subject in the Union list only parliament has the competence to enact legislation on it. According, in terms of the mandate under Article 11 of the Constitution, parliament enacted the Citizenship Act, 1955. In view of its significant bearing on regulating the acquisition and termination<sup>36</sup> of citizenship, the salient provisions are enumerated in brief.

The law provides for acquiring citizenship by birth,<sup>37</sup> decent,<sup>38</sup> registration,<sup>39</sup> naturalisation<sup>40</sup> and incorporation<sup>41</sup> of territory. Section 6A<sup>42</sup> came to be inserted

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<sup>34</sup> *Id*, 163.

<sup>35</sup> *Id* 164, Nehru during CAD, 12 August, 1949, pp 398-401.

<sup>36</sup> Includes provisions for renunciation and deprivation.

<sup>37</sup> Section 3 of the Citizenship Act, 1955.

<sup>38</sup> *Ibid*, section 4.

<sup>39</sup> *Ibid*, Section 5.

<sup>40</sup> *Ibid*, Section 6.

<sup>41</sup> *Ibid*, Section 7.

<sup>42</sup> Citizenship Amendment Act, 1985. Therein it has been provided that (2) Subject to the provisions of the sub-sections (6) and (7), all persons of Indian origin who came before the 1st day of January, 1966 to Assam from the specified territory (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the People held in 1967) and who have been ordinarily resident in Assam since the dates of their entry into Assam shall be deemed to be citizens of India as from the 1st day of January, 1966.

(3) Subject to the provisions of sub-sections (6) and (7), every person of Indian origin who-

(a) came to Assam on or after the 1st day of January, 1966 but before the 25th day of March, 1971 from the specified territory; and

(b) has, since the date of his entry into Assam, been ordinarily resident in Assam; and

(c) has been detected to be a foreigner,

by way of an amendment to give effect to the provisions of the Assam Accord. Till 1987 the country followed the principle of *jus soli*. Thereafter, an amendment was effected providing that at least either parent was required to be an Indian citizen. The mother came into the picture as earlier no such provision was available. The law provides that subject to fulfillment of the stipulated conditions a person qualifies to seek citizenship by registration on the grounds of their Indian origin with requirement of residence in India or outside undivided India or by virtue of being married to an Indian. It has further been provided that a person can apply for citizenship through naturalization following due procedure as laid down under the Act and relevant rules. A change was effected through an amendment in the year 2003 that any child born after that year to parents, in the event of any one parent happening to be an illegal migrant would stand disqualified to be considered as a citizen by birth. Hence, the route to citizenship through illegal migration was considered a disqualification that includes a child being an offspring of such parents.

Foreigners Act adopted prior to independence continued to remain in force in determining identification of the status of such persons and being subject to deportation. Along with the Passports Act of 1967 the central government has been conferred with the power to address matters including regulating entry, exit and residence of foreigners within the country. However, in respect of Assam The IMDT Act till such time it was declared void by the Supreme Court in the Sarbananda Sonowal case eclipsed the Foreigners Act in the State of Assam. The citizenship law witnessed amendments on a number of occasions in 1986, 1992, 2003, 2005, 2015 and 2019 gradually introducing the principle of *jus sanguinis*.

A reading of the developments of continued immigration over the years to the North East, predominantly into Assam with purported designs at religious and cultural invasion prompted there measures as will be evident from the debates in the Constituent Assembly and at forums presaging such discussions. Considering

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shall register himself in accordance with the rules made by the Central Government in this behalf under section 18 with such authority (hereafter in this sub-section referred to as the registering authority) as may be specified in such rules and if his name is included in any electoral roll any Assembly or Parliamentary constituency in force on the date of such detection, his name shall be deleted therefrom.

the purport of the present write-up, other by way of mention further incursion on the issue is deliberately refrained from.

In the year 2015 and 2016 notifications were issued leading to exemption of certain groups of illegal migrants from the Foreigners Act and the Passports Act and these have a significant bearing on acquiring of citizenship.

#### **A. International Legal Regime on Refugees and Domestic Concerns**

In any conflict situation, whatever be the motive or intention, it is often seen that the lives of the common people are vastly impacted upon. Although all are affected, women and children suffer the brunt of violations imperiling their lives. Such situation often leads to displacement and forced migration, people being compelled to move beyond their national frontiers. The sufferings of people of unmitigated dimensions having to leave their hearths and homes at times separated from their families, particularly during the world wars are a grim reminder of the predicament they were faced with in the face of persecution and genocide.

The world community responded by setting up the institution of the Office of the United Nations High Commissioner for Refugees as well as the Convention Relating to the Status of Refugees, 1951 through the Conference of Plenipotentiaries followed by the Protocol of 1967. Its significance lies in the universally agreed definition on Refugees, with the convention itself regarded . Dr Sadako Ogata, the then United Nations High Commissioner for Refugees,<sup>43</sup> termed the convention as an outstanding achievement in the field of humanitarian law that calls for international cooperation and burden sharing. Based on the principle of non-refoulement, the convention defines a refugee as a person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.<sup>44</sup> Non-

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<sup>43</sup> Foreword to THE REFUGEE CONVENTION, 1951 THE TRAVAUX PREPARATOIRES ANALYSED WITH A COMMENTARY BY DR PAUL WEIS, (accessed on 11, Jul, 2022 at 8 PM), <https://www.unhcr.org/4ca34be29.pdf>.

<sup>44</sup> Article 1 of the Convention.

refoulment, <sup>45</sup>the core principle considered to be *jus cogens* is based on the recognition that those facing serious threat in the country of origin should not be sent back.<sup>46</sup>

India is home to refugees' from Sri Lanka, Tibet, Afghanistan, and Myanmar, besides illegal migrants from Bangladesh. India is yet to become a party to the Refugee Convention<sup>47</sup> though it is on the board of its Executive Committee. On the other hand the country does not have a legal regime on refugees. As on 2021 the country was estimated to have around 400000 refugees with about 46000 refugees and asylum seekers in the country as on January 2022 registered with the UNHCR. Afghan and Myanmar refugees comprise the majority of registered refugees against a global projected figure estimated at 102 million people of concern including stateless and those under forced displacement.<sup>48</sup> Refugees account for about 30 million worldwide that comprised about 26.4 million a year back.<sup>49</sup> The international migrant population as per Global Migration indicators for 2021 was estimated at 258 million with 135 million women and 40.9 million children.<sup>50</sup> The figures are based on the figures arrived at through Big Data computation. Due to the war in Ukraine the figure is likely to be much higher this year.<sup>51</sup> It has been incorporated as an integral part of the global sustainable development.

Apart from the Stateless, Asylum seekers, migration of people particularly in the past was also accounted by genocide and ethnic cleansing leading to mass exodus. Migration may be attributed to various factors. These may be occasioned by porous borders, historical reasons based on migration patterns, economic reasons as well as prompted by cultural and linguistic factors. Similarly, people from theocratic states may under compulsion have to leave their country of origin. This was very

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<sup>45</sup> However certain restrictions apply in case of offenders and those with serious criminal antecedents.

<sup>46</sup> *supra* note 17, 13.

<sup>47</sup> presently 128 countries are party to the Refugee Convention.

<sup>48</sup> UNHCR the Global Appeal, <https://www.unhcr.org/globalappeal2022/> accessed on 11.6.2022 at 9.34 pm

<sup>49</sup> <https://www.refugeecouncil.org.au/howmany.refugees/#:~:text=UNHCR%20most%20recently%20estimated%20that,and%20over%2026.6%20million%20refugees.> accessed on 11.6.2021 at 10.46 pm.

<sup>50</sup> Global Migration Data Portal.

<sup>51</sup> The exact figures for the year are announced on the 20<sup>th</sup> June, every year.

much in evidence during ancient times when power was being exercised on the basis of theocratic beliefs. All these people often initially seek refuge and later on seek citizenship in destination countries. Gaining citizenship by these categories of people are prized highly as it leads to their integration, thereby providing them with a sense of security to lead life anew.<sup>52</sup>

Despite a high population density and the absence of any legal regime governing refugees, the country has been granting citizenship to such people over the year through primarily the government has been fairly laid back in taking effective measures. In fact in most cases their initial refugee status very much depends on adhocism, based on merit and circumstances of individual cases, resulting in differential yardstick and treatment primarily based on a standard operating procedure in contrast to Chins and Chakmas as well be seen later. The magnitude of the problem has been occasioned due to the prevalence of low intensity conflicts and disturbed governance in some of the neighbouring countries coupled with concerns at fundamentalism and theocracy. Apart from people fleeing from any form of persecution other factors including economic migration has occasioned such influx resulting in the hosting of millions of illegal migrants. As for Nepal and Bhutan the special arrangements facilitate movement of peoples, hence do not strictly be considered as illegal migrants.

The gravity of the situation in India is accounted for refugees and illegal migrants from countries like Pakistan, Bangladesh, Sri Lanka and other neighbouring countries have their presence in India. The affinity in language, religion and culture, particularly of the Bangladeshis and Sri Lankas raise difficulty with respect to identification as many mingle with the local population avoiding the refugee camps which compounds matters further.<sup>53</sup> So far the North Eastern States are concerned, they are home to illegal migrants from Bangladesh and refugees from Myanmar and Tibet. The Chakmas are mostly stateless persons and have a considerable presence in Arunachal Pradesh, Tripura and Mizoram. However, the most pressing problem in the country happens to be that of the illegal migrants from Bangladesh. It may be pertinent to mention that as per draft NRC of 2019 the total number of non-citizens or illegal foreign nationals

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<sup>52</sup> *Supra note 17, 20.*

<sup>53</sup> *Supra note 17, 27.*



comprise 1.9 million.<sup>54</sup> It is in this context the extent and expanse of the problem emerges, calling for being adequately addressed.

The existing laws of the country call for such person being detected and deported after following the due process of law. As Bangladesh denies the emigration from that country it becomes a big problem for the state to surmount the same. Addressing the issue in proper perspective calls for an adequate understanding in historical context The same is therefore being advanced in brief before addressing the issue in the context of the North East.

The influx of peoples from East Bengal during the pre- partition days continued perennially for over a century. Much was occasioned by political considerations to impact upon the population structure of the state though the purported plea was to provide for agricultural labourers. As revealed from the Census data the population in several districts new settlers gradually began to increase more than proportionately and a in a few districts they even outnumbered the local population.

The situation in Assam and other states of North East India is very much complex in relation to other parts of the country. Here, due to the international border that the states share there is an increased propensity of immigration. This has largely been facilitated by the disturbed situation in countries like Bangladesh and Myanmar. As discussed earlier, there has been a perennial migration of Muslims from former East Pakistan and now Bangladesh. This has been occasioned by geo political considerations pre-partition since the past 100 years or more. Coupled with economic migrants from the country encouraged due to better opportunities and secured shelter have found easy access. The country being a theocratic state many people belonging to the minority communities, particularly those professing the Hindu faith have had to surreptitiously cross over the borders and mingle with people speaking the same dialect, professing same religious belief. In the context of Myanmar, the failed democracy coupled with ethnic divide have forced many to cross over the porous international border. The affinity of language, ethnicity and religion to a certain extent furthered the cause of illegal migration. It has to be remembered that the before the introduction of federal structure under the

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<sup>54</sup>Accessed on 11 Jul 2021 at 10.06 PM, <https://www.indiatoday.in/india/story/nrc-final-list-how-and-where-to-check-your-name-on-assam-national-register-of-citizens-1593695-2019-08-31>.

Government of India Act, 1935m Burma happened to be a part of India. The Tankhul Nagas have effective presence in Myanmar. so is the case with the Chins and Brus many of whom have been forced to cross over mostly illegally due to the persecution of the religious and ethnic minorities in Myanmar. They have affinity of cultures and customs with people across the border, particularly in Mizoram. Tripura too which is surrounded by Bangladesh on three sides have witnessed a grave problem of influx leading to a change in demography and consequently political power wherein the indigenous Kok Boroks comprise a deplorable minority. Moreover, the presence of Chakmas who migrated due to certain developments in the Chittagong Hills Tracts both prior to and post-independence of Bangladesh have made the situation of states like Tripura and Arunachal in particular much vulnerable.

The influx from the Autonomous Region of Tibet that China lays its claim upon have led the Buddhist owing allegiance to the temporal head, the Dalai Lama have crossed over to India in good numbers. Of course in their case the policy of the government of India differs from that being followed in respect of the other migrants who have come over to India. It is in the above context that the present analysis is ventured in the context of grant of refugee status *vis -a -vis* illegal migrants.

Under the law, illegal migrants are required to be deported following due procedure. In the absence of any domestic law and the country yet to be a party to the Refugee Convention and that on Statelessness, the government is found to adopt a policy of adhocism. Hence, allegation has been leveled against the government in accepting some while denying refugee status to others. A case in point relates to denial of refugee status to Rohingyas whereas earlier Burmese nationals were considered for such refugee status. Of course, as mentioned earlier a claim of application has to be based non only exclusively on humanitarian considerations but as per the laid down or policy followed in practice. While demand are there for their repatriation, others hold the view that considering their plight in their countries of origin they be provided protection as refugees and also granted citizenship by registration and naturalization.

The situation of those having migrated long back seem to be even more perilous being either stateless or being regarded as non-citizens. Their status has been recognized under the UN Declaration on non-citizens. Despite law and order being a state subject, granting of refugee status has ramifications for the country

concerned, hence considered to be within the domain of the Central government. Hence, the authority or prerogative to grant refugee status lies with the centre.

### **B. The Constitutional Text**

It has been stated above that the country is neither a party to the refugee convention nor that to the convention on statelessness. Yet due to the constitutional dictates under article 51 she has an international obligation to fulfil.<sup>55</sup> Similarly the country being bound by the International Bill of Human Rights has an obligation to promote the rights contained therein unless she has entered into any reservation. Moreover there are certain provisions in the constitution that are available to both citizens and non-citizens. Such provisions are therefore made also available to the migrants who are entitled to seek legal redress regardless of their status. The relevant provisions in the Constitution of India apply to the refugees in the same manner as the Indian Citizens. Article 21 of the constitution relating to the right to life and personal liberty therefore can be availed by refugees. There are provisions in the Indian Constitution that apply to the refugees in the same manner as the Indian Citizens. Firstly, it applies Article 21 to the refugees as it states the Right to life and personal liberty. It is useful to all the people whether they are citizens of India or not.

Other related important constitutional provisions include article 14 that provides for the right to equality.<sup>56</sup> The usage of the word ‘person’ against citizen makes the intention of the founding fathers abundantly clear to include both citizens and non-citizens.

### **C. The Applicable Law**

As seen above, the country relies on the Foreigners’ Act, 1946 and the Passport (Entry into India) Act, 1920 to address the legal issues pertaining to the determination of refugees. Of course policy decisions find reflection in the notifications issued from time to time.

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<sup>55</sup> Article 51 c- Article 51 c forming part of the Directive Principles of State Policy requires the State to foster respect for International Laws and Treaties.

<sup>56</sup> Article 14 of the Constitution of India provides for equality before law and equal protection of law to every person.

### ***Refugees in North East India***

For the purpose of the present exercise aspects of grant of refugee status with regard to Brus and Chins of Mizoram is being taken up followed by the influx Rohingyas to the state . Thereafter the issue related to the Chakmas and Tibetans are being dealt with. Illegal migration from Bangladesh is being discussed in the context of the latest amendment to the citizenship Act touching upon the NRC as well. However, the formalized institutional structure already being considered earlier, further discussion on the same is consciously being excluded from the present enquiry.

#### **a. Mizoram**

Mizoram has a 510 kilometer long international boundary with Myanmar.<sup>57</sup>Due to historical ties there is an arrangement permitting the Mizos and Chins to enter each others territory without visa upto a distance of 16 kilometres. this in other words accommodate limited free passage between Mizoram and Myanmar. This drives home the fact of close affinity between the peoples across the border.

#### ***A Brief about the Chins and their relation with the Mizos***

Some tribes collectively identified as Zo, predominantly inhabitants of the mountainous Chin Hills region in North Western Myanmar .These Chin tribes share same ancestry with Mizos and marriages between Mizos and Chins are quite common. They too follow Christianity and both these tribes also call themselves as one people. Mizos are also connected with a revered religious lake by Mizos called Rih Din in situated in the Chin state of Myanmar . In the year 1988, during an anti democratic crackdown in Myanmar , the Chin refugees have travelled to Mizoram across the Tiau Rover and settled in Champhai District in India and have been integrated into their society.<sup>58</sup>

Due to the disturbed situation in Myanmar about 300 chins have crossed over to Mizoram. the government of Mizoram in apprehension of the persecution of

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<sup>57</sup>Accessed on 1st Mar. 2022, 5,34P.M.), [https://www.mea.gov.in/Portal/ForeignRelation/Myanamr\\_Feb\\_2016.pdf](https://www.mea.gov.in/Portal/ForeignRelation/Myanamr_Feb_2016.pdf).

<sup>58</sup>Accessed on 2nd Mar.2022, 5'40 P.M.) [https://www.researchgate.net/publication/254307342\\_Chins\\_in\\_Mizoram\\_The\\_Case\\_of\\_Borders\\_Making\\_Brothers\\_Illegal](https://www.researchgate.net/publication/254307342_Chins_in_Mizoram_The_Case_of_Borders_Making_Brothers_Illegal), April 2012, Journal of Borderlands Studies 27(1), Sahana Basavapatna

the chins for professing Christianity by the military regime in Myanmar have provided shelter<sup>59</sup> to such people in contrast to the Rohingyas. However the problem has arisen recently<sup>60</sup> with the influx of the Rohingyas who have not been granted shelter by the government terming them as being family like.<sup>61</sup>This was done despite instructions to send back all the immigrants following the coup in Myanmar. As they belong to Myanmar neither such or migrants refugees are entitled to claim citizenship under the citizenship amendment Act of 2019

The government of India has expressed reservations on the latest move by the state government,. This has brought to the fore the differential treatment in respect of recognition of certain classes of people as refugees.

Similarly the Chakmas and the Hajongs who happen to be Hindus and Buddhist had to flee the Chittagong hills tracts for fear of persecution on the ground of religion and language as alleged, as well as the commissioning of the Kaptai Hydro Electric project, initially during the period between 1964 and 1966, that is prior to the formation of Bangladesh. a part of a group of tribes who were collectively called the Jummas ,and who were the indigenous people of Bangladesh<sup>62</sup> However the government of Bangladesh deny their migration as they were not in the said territory when the country gained independence. These people profess Hindu faith strictly speaking without being recognized either by Bangladesh or by India fall to be classified as stateless persons under international law. Living in Arunachal Pradesh for about 6 decades , the Chakmas ,according

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<sup>59</sup> Accessed on 1st Mar. 2022, 11'05A.M., [tps://theprint.in/india/why-mizoram-sees-myanmar-refugees-as-family-close-ethnic-ties-that-have-survived-a-border/627009/](https://theprint.in/india/why-mizoram-sees-myanmar-refugees-as-family-close-ethnic-ties-that-have-survived-a-border/627009/), Why Mizoram sees Myanmar refugees as 'family' — close ethnic ties that have survived a border, Pia Krishnankutty, Bismee Taskin  
59 Accessed on 1st Mar.,2022, 9'14 A.M, <http://economictimes.indiatimes.com/news/india/mizoram-issues-ids-for-myanmar-refugees/articleshow/90786334.cms?from=mdr>, Mizoram issues IDs for Myanmar refugees, Bikash Singh.

<sup>61</sup> Accessed on 1st Mar, 2022 , 5'15A.M , [tps://indianexpress.com/article/india/change-policy-on-myanmar-refugees-mizo-mp-in-rajya-sabha-7231692/](https://indianexpress.com/article/india/change-policy-on-myanmar-refugees-mizo-mp-in-rajya-sabha-7231692/), Change policy on Myanmar refugees: Mizo MP in Rajya Sabha, Dipankar Ghose.

<sup>62</sup> Accessed on 2nd Mar. 2022, 747 P.M, <https://www.survivalinternational.org/tribes/jummas>.

to the census in 2011 were around 47, 471 in number.<sup>63</sup> The Chakma Development Foundation in India located in New Delhi has states the figure in today's time to be about 65,000 .Out of these 65,000, it is being said that 60,500 are citizens by birth virtue of Section 3 of the Citizenship Act 1955( after being born in 1987 and as descendants of those born before 1987).<sup>64</sup> In fact, way back in 1996 the Supreme Court<sup>65</sup> directed the government to not expel or relocate the Chakmas from their land and process the applications of around 4,462 Chakmas to grant them Indian Citizenship <sup>66</sup> besides issuing directions to process all the pending applications for grant of citizenship. It reiterated the same in 2015 *interalia* observing that the process should be completed within three months. Their demand for extension of the Citizenship Amendment Act, 2019 has remained so till date. The government of Arunachal Pradesh and the local people there feel that the demography of their state is affected due to the increasing Chakma population and they having to share the limited resources of the land with the Chakma and Hajongs creates socioeconomic issues.<sup>67</sup>

It may be stated that the policy of the government with regards to the Tibetans has been different. Consequent upon their persecution in Tibet, the Dalai Lama the temporal head of the Buddhist sect in the country along with a number of his followers who entered the then North East Frontier Agency, present day Arunachal Pradesh in the year 1959. They were immediately granted asylum by

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<sup>63</sup> S Rajkhowa & S Gope, *Citizenship in the Context of Refugees and Internally Displaced People in the North East India*, Paper presented at National Seminar on Citizenship at Jorhat Law College, Apr. 23-24, 2022.

<sup>64</sup> Accessed on 7th Mar, 2022, 12'05 P.M, <https://economictimes.indiatimes.com/news/india/nhrc-seeks-report-from-centre-arunachal-govt-on-racial-profiling-of-chakmas-hajongs/articleshow/89123066.cms?from=mdr>, NHRC seeks report from Centre, Arunachal govt on 'racial profiling' of Chakmas, Hajongs , Bikash Singh

<sup>65</sup>in *National Human Rights Commission vs. State of Arunachal Pradesh & Anr* (also called the Chakma Refugee case) AIR1996 SC1234.

<sup>66</sup><https://thewire.in/politics/chakma-issue-roils-arunachal-as-supreme-court-decrees-end-to-their-statelessness>, Chakma Issue Roils Arunachal as Supreme Court Decrees End to Their Statelessness, Sangeeta Barooah Pisharoty.

<sup>67</sup> *supra note* 62.

the Indian Government and relief operations were kick-started<sup>68</sup> and subsequently permitted to establish their government in exile at Dharamshala.

It cannot but be gainsaid that the most complex issue in the North East has been that of the Bangladeshis. As discussed earlier their continued infiltration has a historical past aimed at expansionism. However post liberation of East Pakistan perennial illegal immigration has been taking place almost on a daily basis. This led to measures at bringing about a National Register of Citizens in 1951, Another was proposed in 1965 though it did not materialize till such time the Supreme Court monitored process resulted in the final draft of the NRC in 2019. It was identified that 1.9 million people were unable to establish their citizenship despite the liberal policy to produce any of the 22 documents leading to claim of citizenship. Since the matter of illegal migrants has already been discussed a brief reference is being made here. The figure arrived at is disputed since some feel that the abnormal increase of such people in certain vulnerable districts are not properly reflected whereas others feel that many claims have been unjustifiably rejected. Political consideration at claims and counter claims have been witnessed. These however does not diminish the sincerity of the entire exercise at the instance of the apex court.

### **VIII. Conclusion**

It has been observed that the Citizenship Act of 1955 has been subjected to amendment on six occasions. The latest in the year 2019 evoked much reaction. While the purpose of the amendment has been to consider those person for citizenship who have entered into India prior to 31<sup>st</sup> December, 2014, the registration of such persons being confined to the identified minorities that too from Pakistan, Afghanistan and Bangladesh has been viewed rather skeptically by some. The logic behind keeping the exercise restricted to the countries mentioned above, leaving out Sri Lanka, Myanmar in particular has been attributed to an underlying current of faith. Similarly, the issue of the Ahmadiyahs has also been viewed with some concern.

The necessity or justification of the said amendment has been looked upon with much apprehension in Assam in particular. For one the reduction in the period of residence in India has not been very much justified. The concerns

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<sup>68</sup> *Ibid.*

emanate further from the fact that economic migrants who have infiltrated for better prospects should not have been treated at par with people genuinely facing persecution in the countries of their birth. Furthermore, the tribal states being left out of the purview of the amendment as that of the Sixth Schedule areas. This will lead to concentration of people in the plains district of Brahmaputra and Barak valley; consequently, resulting in further wedge of the populace. This will be detrimental to the economic, social and political spheres pertaining to the local people. Moreover, it does not provide any assurance of the misuse of the provision or its relaxation in future.

So far the illegal migrants happen to be concerned, it has been a godsend opportunity being rewarded with citizenship and for other identified persons a facilitative process without having to be accorded such recognition of being recognized as a refugee and facing the possibility of having to return to their country of origin in the event of changed situation. This prompts one to ponder whether through the present amendment the issue of citizenship has been weaponised. This though gains currency in the rather subtle shift that the policy of the government that has been witnessed. If one relates to the pronouncement of leaders and the government, one would realise that the shift in the stated observation has brought about a very crucial change in the manner the shift has been occasioned. Apart from the shift from *jus soli* to *jus sanguinis*, the present amendment has facilitated the process of obtaining citizenship. In the long run the portends may lead to demographic and linguistic implications on diverse aspects on the nation.

It may further be observed that the process of deportation of economic migrants not be occasioned to the identified categories. Much of the pain and efforts leading to the tripartite Assam Accord too would result in a goby. It remains to be seen to what extent the rules as a when framed would facilitate an unhindered process.

The country would have been better served both domestically and at the international forum if the government would have come out with a law on refugees rather than such piecemeal legislative measures. Further its standing at the UNHCR would have been enhanced. Instead the present exercise has come in for criticism which could have been avoided and the necessity of rebuttal would not have arisen.