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Legal – Policy Interface as a Remediating Force for Climate Migration and Induced Displacement

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ABSTRACT

Complex problems call for far-reaching, long-term, holistic and sustainable solutions. It is not only necessary that such solutions are devised, but its effectiveness and implications are closely and regularly monitored and subjected to a feedback-mechanism for modifications and corrections. How can these be envisaged and incorporated in a single formula? The paper is an attempt at answering this query. Climate change is a looming reality rather than a speculative theory today with international and national efforts being channeled towards finding solutions to its ever-encompassing and at times, unforeseeable effects. For its normative prongs being founded in and connected to the socio, political, economic and technological manifestations of society, law is often chosen as a regulatory tool. However, even when its efficacy in this role is proven, law as a tool have met with failures too. So, how do one tether and define the boundaries, content and elements of a legal framework if we were to create one to address climate migration and induced displacement? It is the argument of the author that such formulations need to be based on informed data, and a solid blueprint rather than 'Latin and Greek' in isolation. The paper argues for an interface augmenting the elements of law, policy and science instead of a piece-meal approach of these realms.

Keyword: Legal-Policy, Science, Climate Change, Interdisciplinary, Interface.

I. INTRODUCTION

Globally, climate change's effects are felt increasingly more than ever, with significant implications for human mobility.² At one end, extreme climatic conditions raise displacement risks and migration, on the other, mobility constraints may prevent people from leaving, trapping them in places exhibiting high levels of climatic stress.³ In situ adaptations are

¹ Author is a LLM student at Department of Law, University of Kerala, India.

² R Hoffmann, A Dimitrova, R Muttarak, et al., *A Meta-Analysis of Country-Level Studies on Environmental Change and Migration*, 10 NATURE: CLIMATE CHANGE 904, 912 (2020) [hereinafter *Hoffman*].

³ H Benveniste, M Oppenheimer, M Fleurbaey, *Climate Change Increases Resource-Constrained International Immobility*, 12(7) NATURE: CLIMATE CHANGE 634, 637 (2022).

becoming difficult entailing risks for livelihoods and the health of populations⁴ and migration destinations are also becoming affected by adverse climate impacts.⁵ The vulnerability of the migrating populations further creates novel challenges to climate resilience and human security.⁶

An assay of the research in the past decades reveals a substantial increase in the production of scientific knowledge on climate change⁷ and increased attention to the subject matter in national and international policy initiatives, with a specific focus on migratory effects.⁸ However, this increased interest has hardly translated into effective policy responses comprehensively addressing the matter. Existing debates are confined to the lived experiences of affected communities and the intersections of inequality and vulnerability with hardly any focus on remedial policies and legal frameworks.⁹ The unsettled debate on defining ‘climate migration’ and its scope, coupled with active neglect of the diverse nature of human movements and immobility can be attributed to the questionable simplistic and deterministic narratives adopted by the policies in existence today.¹⁰

In this context, an argument is placed for a transdisciplinary approach marked by holistic integrations of science, law, and policy to understand climate migration and its implications. Law and policy plays primary role in addressing any social issue. However, law and policy are not be identified as two isolated remedial measures, rather as a confluence with interlinkages.¹¹ While law delineates the substantive rights and obligations, policy acts as the vehicle to carry out the role of law as a tool for social transformation.¹² It is for this reason that sound laws cater to issues that it may encounter even in the future. Such legislative actions require comprehensive understanding of the ground realities and the various factors to be considered during the drafting

⁴ M G L Tebboth, D Conway, W N Adger, *Mobility Endowment and Entitlements Mediate Resilience in Rural Livelihood Systems*, 54 GLOBAL ENVIRONMENTAL CHANGE 172, 179 (2019).

⁵ C Zickgraf, *Immobility* 72, in ROUTLEDGE HANDBOOK OF ENVIRONMENTAL DISPLACEMENT AND MIGRATION (R McLeman, F Gemenne eds., Routledge, 2018).

⁶ R Hoffmann, R Mutarak, *Environment, Migration and Urbanisation: Challenges and Solutions for Low- and Middle-Income Countries*, THINK20 (2021), <https://www.t20italy.org/2021/09/22/environment-migration-and-urbanisation-challenges-and-solutions-for-low-and-middle-income-countries/>.

⁷ Hoffman, *supra* note 1 at 906; K K Zander, S T Garnett, H Sterly, et al., *Topic Modelling Exposes Disciplinary Divergence in Research on the Nexus Between Human Mobility and the Environment*, 9(1) HUMANITIES AND SOCIAL SCIENCES COMMUNICATIONS 23 (2022).

⁸ IDMC, *Global Report on Internal Displacement*, IDMC, <https://www.internal-displacement.org/global-report/grid2021/>; IPCC, *Climate Change 2022: Impacts, Adaptation, and Vulnerability*, in CONTRIBUTION OF WORKING GROUP II TO THE SIXTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (Pörtner, D C Roberts, M Tignor, et al. eds., Cambridge University Press, 2021).

⁹ P Tschakert, A Neef, *Tracking Local and Regional Climate Immobilities through a Multidimensional Lens*, 22(3) REGIONAL ENVIRONMENTAL CHANGE 95 (2022).

¹⁰ *Id.*

¹¹ Kiyoun Kim, *The Relationship between the Law and Public Policy: Is it a Chi-square or Normative Shape for the Policy Makers?*, 3(4) SOCIAL SCIENCES 137, 137 (2014).

¹² Edward F Kammerer Jr. et al., *Law and Public Policy: A Gap Between Theory and Teaching?*, AMERICAN POLITICAL SCIENCE ASSOCIATION 292, 293 (2020).

process so that an effective policy framework which would stand the test of difficulties can be formulated.¹³

Climate change, too, like any other social issues affect its victims disproportionately.¹⁴ It is highly important that such vulnerabilities are identified and evaluated before any drafting is attempted. The paper aims at throwing light on the importance of correlating the effect of various vulnerabilities on the disproportionate effect of climate crisis on those who are internally displaced, which would form the basis of a model legislation and policy framework with graded and target-specific action-plans.

Thus, the paper undertakes a study on the various normative tenets of the interlinkages between science, law, and policy and analyses the importance of constructing interfaces.

II. DIMENSIONS OF LAW AND POLICY INTERLINKAGES

Public policy is premised on the interface between law and policy. The two-way interaction of these realms forms the basis of administration and response strategies. Inseparable, both these elements play hand-in-hand in addressing socio-economic-political issues.

(A) Role of law in policymaking

The law defines the goals and objectives of any particular policy i.e., to define the goals and outcomes that the policy intends to attain. In dealing with climate change adversities, it is necessary that while drafting a legislation, a sound policy framework outlining the various dimensions to be addressed and objectives and outcomes to be attained are to be delineated and described. The various prongs of such law are to be pre-determined. Without such a policy, the law may be directionless, overbroad, or lack effective coverage. Policy provides guiding principles on which such laws are to be made.

Now the question is whether a policy can be alone, not backed by a law. Often, such a method is adopted in the cases of schemes, campaigns, or action plans where laws may not be necessary to define their goals. In most cases, such issues intended to be addressed are simple or short-term. For example, in the cases of the Swachh Bharat Mission and the single-use plastic ban policy, there is no mention of the specific objectives of these projects in any existing law. Both policies focus on behavioral aspects, awareness campaigns, and schemes. This may produce results; however, it is yet to be determined whether a codified law will make any difference, particularly in the attainment of long-lasting solutions.

¹³ *Id.* at 294.

¹⁴ Shwetha Jayawardhan, *Vulnerability and Climate Change Induced Human Displacement*, 17 CONSILIENCE 103, 103 (2017).

(B) Relevance of law and policy interface

How do law and policy interject? The interjunction of law and policy results in the formation of interface of these realms and such interfaces have multifarious relevance. *Firstly, the* law ensures the accountability of a policy. The Sarva Shiksha Abhiyaan, started in 2002 was launched to achieve the objective of universal primary education. Even when its impact was concluded to be impressive, shortcomings were found. In 2010, the Right to Education Act came into force post the 86th Constitutional Amendment making free and compulsory education to children between the ages of 6 and 14 a fundamental right. This was identified by policymakers as a move that gave SSA the necessary legal force for its implementation.¹⁵ The law, by recognizing a legally protected right, puts the onus on the State, thereby ensuring accountability and transparency. MHRD concludes in the policy document for implementation of SSA that RTE created a justiciable legal framework within which SSA can be revamped by aligning it with mandated norms and standards.¹⁶ It further finds that harmonization of SSA with the RTE Act provides for a broader outline of approaches and implementation strategies with scope for detailed guidelines by States, effectively addressing various specific social, economic, and institutional factors.¹⁷

Secondly, a law validates a policy. For example, the reservation policy in India traces its validation in the constitutional provisions under Arts. 15 and 16. Similar is the case with various environmental policies, which derive their validation from Arts. 48A and 51A(g).

It is to be noted that law and policy are not interchangeable concepts. While policies may exist independent of laws defining their various prongs, laws are always backed by a policy detailing the various objectives and intentions of the legislation. However, it would not be right to conclude that policies would be ineffective in the absence of law. It is a highly subjective question to be answered. In light of the complexity of the problem to be addressed, a sound policy backed by law is necessary for effectively addressing the same. In the context of climate change, the issue presents various challenges: (i) it is a complex issue having effects on various social, economic, political and cultural factors; (ii) stakeholders are manifold with differing stakes in terms of the content and nature of such stakes and the magnitude in which such stakes present itself; (iii) the issue is still to be explored in its entirety that the approach needs to be

¹⁵ Staff Reporter, *Will RTE fulfil the SSA dream?*, TIMES OF INDIA (Apr. 5, 2010), <https://timesofindia.indiatimes.com/education/news/will-rte-fulfil-the-ssa-dream/articleshow/5761551.cms#:~:text=Says%20Urmila%20Sarkar%2C%20chief%2C%20education,help%20of%20families%20and%20communities.%E2%80%9D>.

¹⁶ MINISTRY OF HUMAN RESOURCE DEVELOPMENT, SARVA SHIKSHA ABHIYAN: FRAMEWORK FOR IMPLEMENTATION BASED ON THE RIGHT OF CHILDREN TO FREE AND COMULSORY EDUCATION ACT, 2009, 3 (Department of School Education and Literacy, 2011).

¹⁷ *Id.* at 7.

flexible enough to accommodate new findings as and when they are experienced, thereby validating the policy framework; however, objective standards are to be put in place to deal with such subjective uncertainties, thereby calling for a legal framework; (iv) legal framework based on a rights-approach can put an onus on the State for actively formulating a responsible policy framework; (v) the judicial trends on the matter wherein a substantive right against adverse effects of climate change being identified a fundamental rights, approaching the matter from a human rights lens and sanctions being placed is inadvertently paving a way for legislations – such judicial interventions even when there exists policy frameworks validates the argument that existing policies are ineffective in the absence of a sound law delineating specific rights and duties.

(C) Legal – Policy formulation on migration and displacement

There arise various challenges when the legal-policy interface is to be formulated. Primarily, these challenges revolve around two aspects, *firstly*, challenges arise in the determination of appropriate objectives and outcomes and the effective identification of the stakeholders; *secondly*, challenge arises in delineating the right determinants of focus to be featured in the interface.

Most often, two systems of law are recognised in every jurisdiction, viz., the codified law and the customary law. Unlike other implications of climate change, migration, and displacement can challenge some of the core customary values of both the moving and receiving communities.¹⁸ This second system of law can further challenge the integration of international norms into domestic law and therefore calls for a national policy accommodating such customary norms and rights. Without the involvement of communities, their values, beliefs, and practices, successful resilient development is not possible.

Another argument furthered in this regard is to identify migration – gradual or relocation – as a policy option.¹⁹ In this approach, migration as an option is given a positive connotation, as an adaptation measure. In this approach, migration is adopted as a countervailing measure to adapt to the effects of climate change as opposed to migration manifesting itself as a harsh consequence of climate change. Seasonal migrations can be regulated through various schemes for seasonal employment and by providing channels for the development of regular, safe, and human-rights-based labour conditions.

Disregarding the role of the judiciary in strengthening the legal infrastructure can drag progress.

¹⁸ Cosmin Corendea, *Policy Report 2017 No. 2: Migration and Human Rights in the Wake of Climate Change: A Policy Perspective over the Pacific*, UN-EHS 15 (2017) [hereafter *Cosmin*].

¹⁹ Rabab Fathima, Anita Jawadurovna, Sabira Coelho, *Human Rights, Climate Change, Environmental Degradation and Migration: A New Paradigm*, MIGRATION POLICY INSTITUTE (2014), <https://www.migrationpolicy.org/print/5260>.

The development of a coherent legal–policy interface presupposes the development of a strong and independent jurisprudence answering to the unique requirements of the society being talked of. The government, the courts, and entire communities will need to work together to find transformative solutions for the harmonization of customs, human rights, and other norms to which all can relate.²⁰

III. DIMENSIONS OF SCIENCE AND POLICY INTERLINKAGES

It would be wrong to state that there hasn't been a scientific understanding of the subject and policy advancements based on such understanding. However, effective integration of science into the interface is needed to close the gaps remaining in addressing the humanitarian and socio-economic challenges posed by climate change.²¹ Thus, while creating a legal-policy interface, it becomes imperative to formulate the framework based on the holistic integration of science into the realm.

Edenhofer and Kowarsch's theory identifies the science-policy interface to be ideal for addressing complex and uncertain environmental problems.²² However, this premise may fail if such an interface is not modeled on balance;²³ while scientific independence can result in policy too strongly influencing research, skewed inclination on political priorities may lead to researchers overlooking cardinal questions on certain population groups and relationships.²⁴ To dissect and find out the best practices in adopting this lens, an appraisal of the various conceptual frameworks on the science-policy interface is attempted hereafter.

At least four models of science–policy interface have gained relevance and have been particularly influential. The **decisionist model** calls for subjective normative-ethical judgments to be made by political actors. In this model, scientific expertise is given too little importance wherein it is up to the subjective satisfaction of the political actors to rely on those results.²⁵ The **technocratic model** can be identified as a diabolical challenge to the decisionist model in the sense that it is based on the assumption that in the absence of scientific expertise, solutions for 'complex and wicked' problems cannot be produced.²⁶ Thus, this model relies completely

²⁰ Cosmin, *supra* note 13 at 24.

²¹ ROMAN HOFFMAN, KIRA VINKE, BARBORA SEDOVA, STRENGTHENING THE SCIENCE-POLICY INTERFACE IN THE CLIMATE MIGRATION FIELD IN INTERNATIONAL MIGRATION 1 (International Organization for Migration, John Wiley & Sons Ltd., 2023).

²² O Edenhofer, M Kowarsch, *Cartography of Pathways: A New Model for Environmental Policy Assessments* 51 ENVIRONMENTAL SCIENCE AND POLICY 56, 58 (2015) [hereafter *Edenhofer*].

²³ S Hinrichs-Krapels, J Bailey, H Boulding, B Duffy, R Hesketh, E Kinloch et al., *Using Policy Labs as a Process to Bring Evidence Closer to Public Policymaking: A Guide to One Approach*, 6(1) PALGRAVE COMMUNICATIONS 1, 7 (2020).

²⁴ O Bakewell, *Research Beyond the Categories: The Importance of Policy Irrelevant Research into Forced Migration*, 21(4) JOURNAL OF REFUGEE STUDIES, 432–453 (2008).

²⁵ M WEBER, ON THE METHODOLOGY OF THE SOCIAL SCIENCES (E Glencoe: The Free Press, 1949).

²⁶ H SCHELSKY, DER MENSCH IN DER WISSENSCHAFTLICHEN ZIVILISATION (Wiesbaden: VS Verlag für

on relevant scientific knowledge and moots for an instrumentalization of the authority of science for policymaking and detests any form of ethical judgment. Brown's **legitimization model** identifies scientific insight as a factor legitimizing policy decisions, but unlike the technocratic model doesn't argue for a servile reliance on scientific knowledge.²⁷ The model acknowledges the fact that not all policy decisions can be scientifically determined objectively.

As seen, these models describe the science-policy interface as a linear process and are built on the assumption that science generates value-neutral, objective knowledge. However, such models are not fit for complex and uncertain issues like climate migration.²⁸ **Habermas's pragmatic model** is one such discursive alternative and is skeptical of the role of science in policymaking. It is not to be misunderstood that the model does away with scientific insights; but rather is modelled on the consensus to be drawn between experts, policymakers, and the public through democratic processes.²⁹

Refining the pragmatic model, Edenhofer and Kowarsch have propounded the **Pragmatic-Enlightened Model (PEM)**³⁰. Created with a particular focus on environmental issues, their complexities, and uncertainties, the model suggests the assessment of policy objectives against the background of their practical implications. Ongoing re-evaluations of policy objectives, collaboration with different stakeholders, regular assessments, and exploration of alternative policy pathways form the core of the model, thereby rendering scientific knowledge production more policy-relevant and less prescriptive.³¹ PEM argues for integrative frameworks fostering equal representation and empowerment of underrepresented groups, capacity building, and spaces for deliberation, thereby inculcating democratic ideals.³²

IV. DIMENSIONS OF LAW AND SCIENCE INTERLINKAGES

It is not the intention here to establish that law and science are intertwined and that science often feeds law and law reacts to scientific problems³³ as it is understood and proven. The influence of law can be seen both in the legislative phase, where scientific information is used by lawmakers to assess what should be regulated and how, and in the application and interpretation of

Sozialwissenschaften, 1961).

²⁷ M B BROWN, *SCIENCE IN DEMOCRACY: EXPERTISE, INSTITUTIONS, AND REPRESENTATION* (Cambridge University Press, 2009).

²⁸ T Koetz, *Institutional Dynamics of Science-Policy Interfaces in International Biodiversity Governance* (May 2012) (Ph.D thesis, University of Barcelona).

²⁹ J HABERMAS, *TECHNIK UND WISSENSCHAFT* (1968).

³⁰ Edenhofer, *supra* note 17 at 51.

³¹ R H Moss, P M Reed, A Hadjimichael, J Rozenberg, *Planned Relocation: Pluralistic and Integrated Science and Governance*, 372(6548) *SCIENCE* 1276, 77 (2021).

³² M Kowarsch, J Garard, P Rioussset, D Lenzi, M J Dorsch, B Knopf, et al., *Scientific Assessments to Facilitate Deliberative Policy Learning* 2(1) *PALGRAVE COMMUNICATIONS* 1,15 (2016).

³³ R C FELDMAN, *THE ROLE OF SCIENCE IN LAW* (Oxford University Press, 2009).

the law in individual cases by employing scientific or expert evidence. Even when there exists no debate on the interlinkages between science and law, problems may arise in fashioning an interface of these disciplines. This can result from the inappropriate categorization of a legal issue as scientific and vice versa,³⁴ lack of question-answer coordination between legal and scientific collaborators,³⁵ and differing interpretations of key concepts in legal and scientific contexts producing right answers to wrong questions.³⁶

In this context, to establish the interrelation between law and science and to address the identified challenges, reliance is placed on the *problem-feeding model of interdisciplinarity*.³⁷

In this model, when a question arises within a discipline that cannot be answered without the expertise of another discipline, such questions are transferred to the relevant community. The model is premised on the expectation that the relevant community can arrive at a solution. Placing the model in the analysis of the relationship between science and law, the collaboration of actors of both disciplines is identified to be the determinative ideal of the model.³⁸

That is to say, when actors within the discipline of law have an issue in hand, the answer for which would require collaborative input from a scientific actor,³⁹ the question is formulated and transferred to the relevant discipline (here Science). The solution provided by the community of expertise is implemented in the discipline that raised the question. An analogy in this regard can be drawn with the system of expert evidence. Expert opinion is sought when courts are tasked with adjudicating a matter involving questions concerning scientific information. The answers thus provided by the expert are used to support the legal decision-making by the courts. In light of the expert opinion, the court can streamline the legal evaluation based on an informed expectation. The process involved may be summarised as follows:

³⁴ *Id.*

³⁵ Lena Wahlberg, *Legal Questions and Scientific Answers: Ontological Differences and Epistemic Gaps in the Assessment of Causal Relations* (2010) (Doctoral dissertation, Department of Law, Lund University).

³⁶ Lena Wahlberg, Johannes Persson, *Importing Notions in Health Law: Science and Proven Experience*, 24(5) EUR. J. HEALTH LAW 24 (5), 565–590 (2017) (hereinafter *Wahlberg & Persson*).

³⁷ H Thorén, J Persson, *The Philosophy of Interdisciplinarity: Sustainability Science and Problem-Feeding*, 44 J. GEN. PHILOS. SCI. 337–355 (2013).

³⁸ Wahlberg & Persson, *supra* note 31.

³⁹ To be noted, here the disciplines of science are complementary with respect to the knowledge they can produce such that one can be dependent on the other.

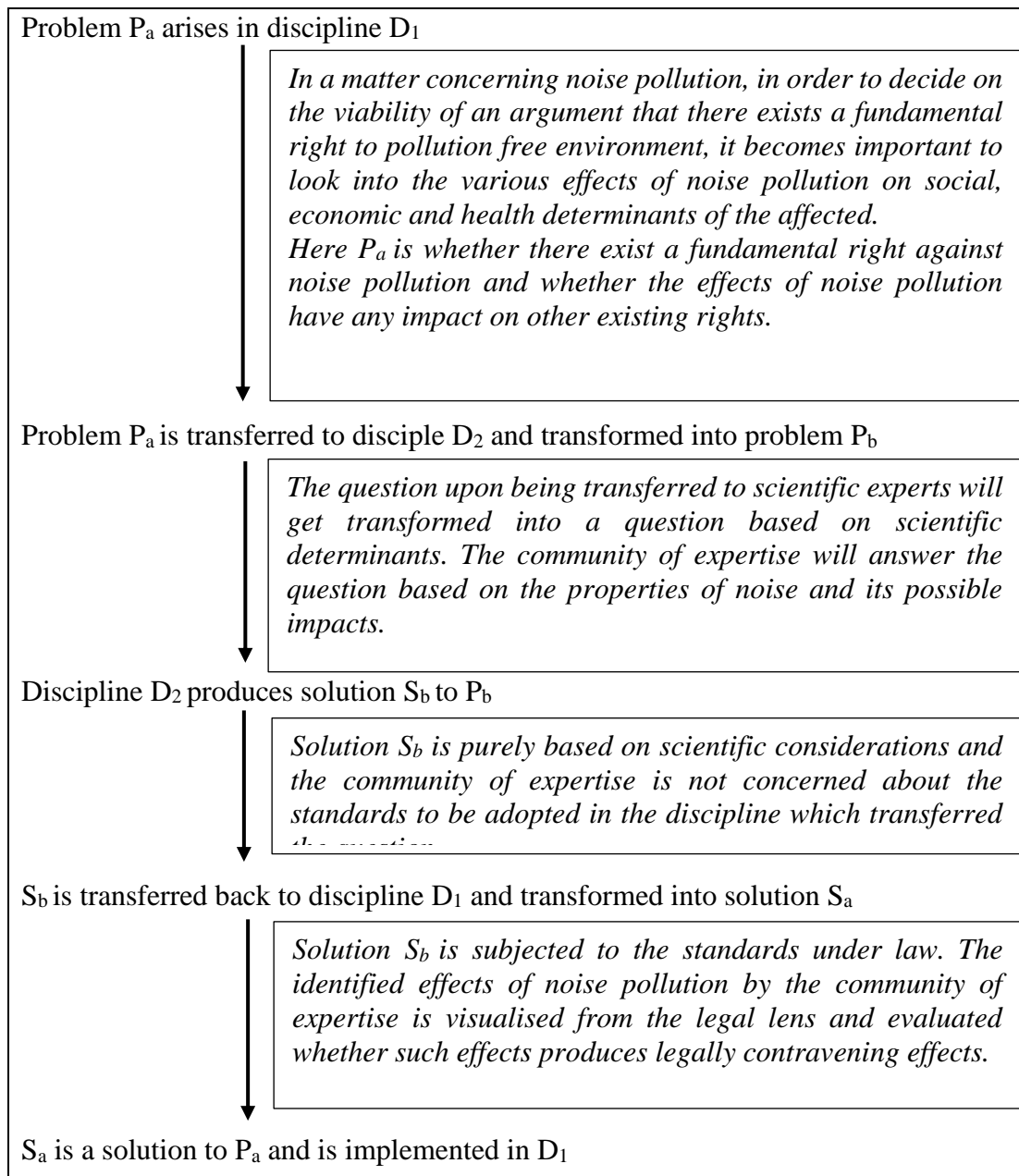


Fig. 1. Steps involved in problem-feeding model

The interrelationship between science and law in the legislative as well as in the post-legislative phase can be seen as one that is cyclical and dynamic. In the context of climate change, primarily an environmental issue understood predominantly through its scientific normative knowledge, it has presented itself with manifold crises challenging social, economic, political, and cultural dimensions of individual and social life. Climate migration, among other effects of climate change, occupies a peculiar position for the far-reaching pressures it impinges on the existing legal framework. Thus, seemingly a scientific issue peripherally, climate change and migration warrant a legal regulatory framework for the effective protection of rights. Here, science acts as a feeder for law, thereby initiating the legislative process.

Despite the breadth of research on climate change and displacement, there is still a dearth of robust and precise empirical evidence on its impacts, thereby inhibiting the capacity of the legal frameworks to respond. More comparative and cross-scale research (micro- and macro-studies) can provide a rounded understanding of the multi-dimensional interplay between environmental, political, social, and economic factors and forced migration outcomes.⁴⁰ During the legislative phase, for identifying the various prongs of law to be incorporated, deciding the nature and scope of protection and liabilities to be accorded, and determining the objectives and goals of the policy to be adopted, scientific information is needed. In the post-legislative phase, the enactments may need to be subjected to interpretative exercises and further reworking and amendments. In both these cases, the problem-feeder model comes into play.

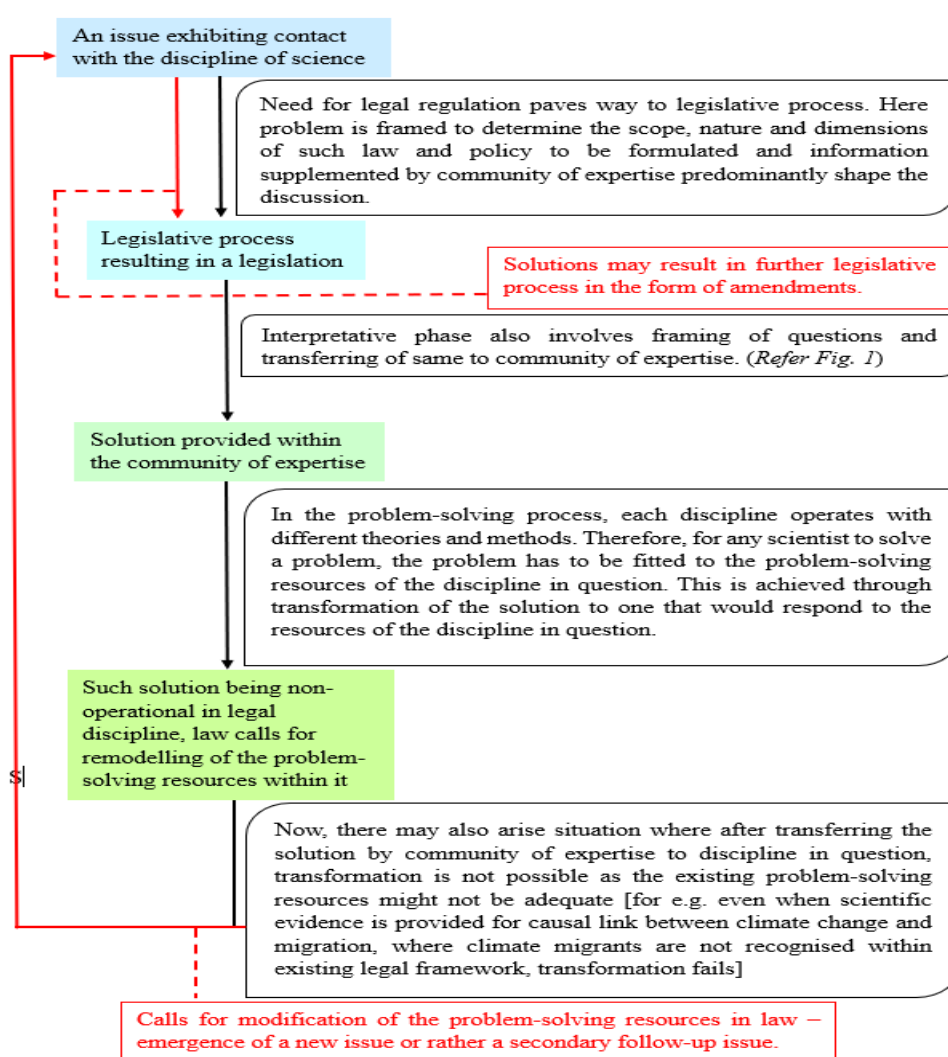


Fig 2: Cyclical working of problem-feeder model in law-science interface

⁴⁰ Camillo Boano, Tim Morris, *Environmentally Displaced People: Understanding the Linkages between Environmental Change, Livelihoods and Forced Migration* 24, Refugee Studies Centre for the Conflict, Humanitarian and Security Department, Department for International Development (Dec. 20, 2007).

V. CONCLUSION

Thus, from the foregone discussions, the relevance, importance, and necessity of legal-policy-scientific interfaces are deciphered, as illustrated in *Fig. 3*. It can be safely concluded that for an issue exhibiting profound complexities, climate change-induced migration and forced displacement require the adoption of sound and informed interfaces rather than a linear disciplinary approach truly rooted in law. Such formulations for their effective manifestation can employ the pragmatic enlightened model and the problem-feeding interdisciplinary approach for defining the borders and content of such interface and for accessing requisite expert information for policy-making.

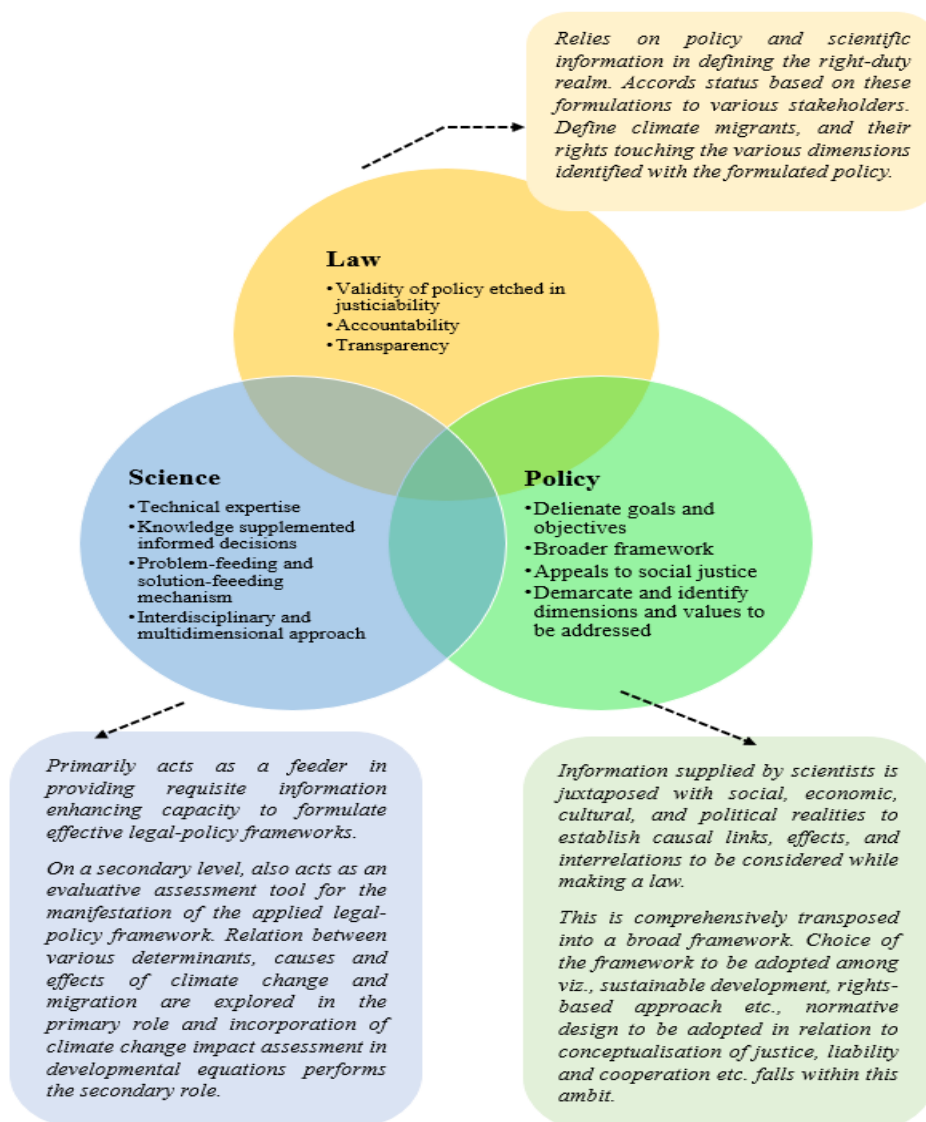


Fig. 3. *Legal-Policy-Science Interface and the application of its elements in the issue of climate migration*
