NOTE

Transplanting for Public Interest: A Case for Relaxing Procedural Standing Requirements in Environmental Litigation in the United States Based on India's PIL System

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Environmental litigation in the United States is restricted and burdened by narrow, privatized rules of standing and inflexible remedies. This Note lays out an argument for environmental litigation in the United States to permit relaxed standing requirements and flexible remedies like the Public Interest Litigation ("PIL") system in India, focusing primarily on how the constitutional concept of locus standi or standing should be broadened.

First, this Note lays out the context of how the PIL system functions and then explains the way PILs have been used in environmental jurisprudence through petitions to the Indian Supreme Court. After exhibiting the widespread impact PILs had on curbing environmental law and human rights violations, I use the idea of "reverse transplantation" to argue that such an adapted version of standing, adapted to the United States' constitutional context, should be used in environmental litigation in the United States. The Note highlights the need for accessible and urgent environmental litigation and explains how the prevailing privatized notion of standing in the United States hinders the goals of environmental protection. Briefly, the Note then addresses some legal realist concerns about broadening standing rules. I conclude that standing requirements should be explicitly and specifically relaxed for environmental litigation in the United States, such that members of the citizenry are able to sue on behalf of the public interest and have their claims adjudicated in federal court.

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Introduction

Who should be able to protect our environment in a court of law? An instrument entitled Public Interest Litigation ("PIL") plays an undeniably important role in Indian constitutional jurisprudence today, particularly in the field of environmental law. Concerned Indian citizens in the 1980s who sought to counter widespread human rights violations and illegalities that were causing environmental and public harm turned to this tool for tangible solutions.[1] In doing so, they knowingly or unknowingly participated in a system that redefined public law in the world's largest democracy;[2] constitutional scholar Shyam Divan called the PIL system "[a] new way to work a democratic constitution."[3] The PIL system has been largely successful in providing community members, lawyers, and legal scholars in India with a way to have their environmental concerns adjudicated in a flexible and effective manner.

This Note begins by explaining the foundation of PIL in Indian constitutional law and briefly explaining the way it functions through writ petitions, flexible and prospective remedies, and ongoing judicial intervention. Next, it details how standing has been relaxed through Indian Supreme Court precedent to create this accessible system. *Locus Standi* or standing is the capacity of a party to bring a suit in court.[4] The Indian Supreme Court recognized the importance of broadening standing doctrine to accommodate public interest

1. Christine M. Forster & Vedna Jivan, *Public Interest Litigation and Human Rights Implementation: The Indian and Australian Experience*, 3 Asian J. Compar. L. 1, 6 (2008); Shyam Divan, *Public Interest Litigation*, *in* The Oxford Handbook of the Indian Constitution, 662, 665 (Sujit Choudhry et al. eds., 2016).

2. India Const. art. 32; *id.* art. 226; Divan, *supra* note 1, at 663.

3. Divan, *supra* note 1, at 664.

4. *Standing*, Cornell L. Sch. Legal Info. Inst., https://www.law.cornell.edu/wex/standing#:~:text=Overview,to%20bring%20suit%20in%20court [https://perma.cc/7BQN-VXVJ] (last visited June 10, 2025).

lawsuits and thus allows "representational standing" and "citizen standing" in PIL cases. The Note then outlines how this relaxed standing requirement, coupled with simple initiation procedures, created a wealth of environmental PIL litigation that led to widespread environmental reform and compliance with Indian law. Activists, professors, and community members filed PILs on behalf of their own communities and communities across the country to hold polluters and other environmental law violators accountable.[5] PIL also allowed the Court to consider scientific expertise about the public interest involved in specific environmental harms and to fashion and oversee remedies to mitigate environmental damage.

Next, this Note moves on to argue how through the phenomenon of "reverse legal transplantation," as theorized by scholar Sital Kalantry, the pressing need for broad-based and accessible environmental litigation in the United States can be met by adopting a version of the Indian PIL system. Standing doctrine in the United States, in its current form created by United States Supreme Court precedent, is restrictive and privatized. While loopholes and Congressionally-granted exceptions have been used with some success by environmental litigants and organizations, the standing doctrine remains a roadblock to access to the court system for those seeking redress for broad-based environmental harms. This Note outlines how standing doctrine in the United States is judge-made and has not always been consistent; rather, different understandings of standing have prevailed in different periods of legal jurisprudence. Before concluding, this Note touches upon some commonly made critiques of broadened standing requirements and flexible remedies by addressing the fluidity of public opinion and legal realism in the United States federal court system. I ultimately conclude that adopting a relaxed standing requirement for non-particularized environmental harms that hurt larger segments of society would better ensure accountability and compliance with United States environmental law.

I. PIL in India

The Indian High Courts and Supreme Court locate their judicial power over PILs in Articles 32 and 226 of the lengthy Indian Constitution.[6] The PIL system grew in tandem with the Supreme Court's expansion of the constitutional right to life, enshrined in Article 21 of the Indian Constitution. The Court interpreted 'life' broadly to include the right of a person to live with dignity.[7] A major constitutional pivot enabling the functioning of PIL system in India has been Article 32 of the Indian Constitution, which grants citizens the right to petition the Supreme Court for enforcement of any fundamental

5. P. P. Craig & S. L. Deshpande, *Rights, Autonomy, and Process: Public Interest Litigation in India*, 9 Oxford J. Legal Stud. 356, 368–73 (1989).

6. V.S. Deshpande, *Standing and Justiciability*, 13 J. Indian L. Inst. 153, 156 (1971). Note that the States' High Courts and the Indian Supreme Court are both federal constitutional courts in India, with the Supreme Court acting as the final appellate court but also having original jurisdiction over certain matters.

7. Divan, *supra* note 1, at 666.

right in the Constitution.[8] While Article 32 gives the Indian Supreme Court original jurisdiction to issue "directions, orders, and writs" to enforce fundamental rights, Article 226 confers a similar power upon states' High Courts.[9]

The litigation brought through a PIL writ is unique in several ways. PILs concern public grievances, and so the judicial controversy is not traditionally adversarial but rather flexible in scope and character; the court sees it more as an adjudication to halt illegal activities on behalf of the state, but not against the state itself.[10] Petitioners aim to prevent a harmful state of affairs from continuing by challenging an illegitimate policy that violates statutes or the Constitution; this is thus not purely retrospective or corrective in nature but also forward-looking.[11] Remedies are prospective and flexible to the specific needs of the case, ranging from traditional monetary relief to injunctions, orders, and directions.[12] This is a polycentric exercise wherein new issues may arise anytime, and the scope and duration of the case is undeterminable.[13] The judge steps into the implementation process after playing their role in organizing the litigation.[14]

PIL is also characterized by simple initiation procedures and increased accessibility to the court system. Public interest cases can be filed without paying hefty court fees required in traditional private litigation.[15] In a discussion at the National Constitutional Center, international law scholar Tom Ginsburg explained, "[i]f you are trying to make a claim based on a fundamental right, you basically just write something on a piece of paper and send it to the court."[16] Often, these letters are sent by the court to lawyers, as *amicus curiae,* who in turn may then choose to file petitions based on them.[17]

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8. Divan, *supra* note 1, at 668; India Const. art. 32.

9. Deshpande, *supra* note 6, at 156; India Const. art. 32, cl. 2 ("The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, *quo warranto* and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part."); *id.* art. 226, cl. 1 ("[E]very High Court shall have power . . . to issue to any person or authority, including in appropriate cases, any Government, . . . directions, orders or writs, including [writs in the nature of habeas corpus, mandamus, prohibition, *quo warranto* and certiorari, or any of them, for the enforcement of any of the rights . . . .]").

10. Forster & Jivan, *supra* note 1, at 18; Divan, *supra* note 1, at 662–63.

11. *See* S. P. Gupta v. Union of India, (1982) 2 SCR 365 (1981) (India); Divan, *supra* note 1, at 663.

12. Forster & Jivan, *supra* note 1, at 19. Once again, this power has an explicit constitutional grant in Article 142 of the Indian Constitution, which empowers the Supreme Court to issue decrees and orders to do justice in any matter before the Court. India Const. art. 142.

13. Divan, *supra* note 1, at 664–65.

14. Divan, *supra* note 1.

15. Narayani Bhatnagar, *Basics of Public Interest Litigation (PIL) in India*, Impact & Pol'y Rsch. Inst. (July 18, 2023), https://www.impriindia.com/insights/basics-of-pil-event-report/ [https://perma.cc/Q24H-ZY86].

16. *India and America: A Constitutional Dialogue*, Nat'l Const. Ctr., at 00:15:31–00:15:52 (Jan. 25, 2022), https://constitutioncenter.org/news-debate/americas-town-hall-programs/india-and-america-a-constitutional-dialogue [https://perma.cc/2HN5-UASP] (scroll down to the subheading "Podcast"; click "00:15:31" on the seek bar).

17. Forster & Jivan, *supra* note 1, at 17.

PIL litigation commands respect while also increasing the public's access to the highest courts in the country.[18]

The success of PIL as a system in India is attributable in large part to the amount of procedural flexibility and broad access it provides. Without rigid standing rules and initiation procedures, a larger number of public interest matters that would otherwise be ineligible for adjudication consequently become redressable through the court system.[19]

A. *Locus Standi* in PIL in India

A traditional and narrow view of *locus standi* would preclude the existence of PILs. Public injuries such as environmental degradation or air pollution could not be easily redressed through the judicial system if standing was restrictive. As the Indian Supreme Court noted in *Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai*, "Public interest is promoted by a spacious construction of *locus standi* in our socio-economic circumstances . . . ."[20] Hence, the Court relaxed the standard for standing by enlarging the concept of "person aggrieved" in the judicial determination of who has sufficient interest in the controversy.[21] Earlier, an individual asserting a public right or interest had to show that they had been specially injured over the general public.[22] In the relaxed notion of standing in PIL, a concerned member of the public can sue without the special injury requirement; in fact, a disinterested plaintiff is preferred to a self-interested plaintiff, because they are presumed to be better capable of facing the pressure of a broad-based litigation exercise and less susceptible to being bought off.[23]

With PIL, the *locus standi* standard of the injured person or "person aggrieved" transformed into a broader standard in Indian constitutional law.[24] The broader standard requires a threshold level of "utmost good faith" on behalf of the litigant, which translates into a need for civil responsibility.[25] Heavy sanctions are imposed upon petitioners who lack good faith according to the residing court, whether the court finds that they are pursuing hidden agendas, hoping for publicity, or acting on behalf of lobbies.[26]

Using the Indian courts' first modification of standing, "representative standing," low-income and marginalized communities in India can be represented through PILs by volunteers and activists.[27] High-profile Supreme Court

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18. Nat'l Const. Ctr., *supra* note 16. Guruswamy also discusses the Indian Supreme Court's *suo moto* jurisdiction to take up cases of their own volition when the cases are considered to reflect important social problems, which essentially functions through these letters that are treated as PILs. Nat'l Const. Ctr., *supra* note 16, at 00:22:00.

19. Forster & Jivan, *supra* note 1, at 25.

20. Mumbai Kamgar Sabha v. M/S Abdulbhai Faizullabhai, AIR 1976 SC 1455 (India); Divan, *supra* note 1, at 668.

21. Forster & Jivan, *supra* note 1, at 14.

22. Divan, *supra* note 1, at 669.

23. Forster & Jivan, *supra* note 1, at 15.

24. Forster & Jivan, *supra* note 1, at 14-15.

25. S.P. Gupta v. President of India & Others, 1982 AIR 149.

26. Divan, *supra* note 1, at 672.

27. Clark D. Cunningham, *Public Interest Litigation in Indian Supreme Court: A Study in the Light of American Experience*, 29 J. Indian L. Inst. 494, 499 (1987).

lawyers and legal academics have been granted representational standing by proving their interest in helping the "underprivileged."[28] This concept built upon a well-established *locus standi* common law exception that allowed a third party to file a habeas corpus writ on the grounds that the injured party could not do so.[29] Representative standing cases in the early days of PIL helped establish better living conditions for female inmates at a protective home and helped release bonded laborers.[30]

Second, through "citizen standing," a concerned citizen or organization can sue in their own right as a member of the public even if they did not suffer an individual injury; anyone with "sufficient interest" may assert "diffuse, collective, and meta-individual rights."[31] Through citizen standing, litigants have been able to check the abuse of power by public officials and challenge government policies (including environmental law violations).[32] For legal scholar Clark D. Cunningham, this transformed the Indian court from bring the mere protector of individual rights to the "guardian of the rule of law" when citizens were threatened by lawlessness on behalf of the government.[33] These modifications of standing also enable social groups to work in tandem in order to bring lawsuits to enforce laws and fundamental rights.[34]

B. PIL in India for Environmental Grievances

A significant and triumphant use of PIL in India focused on guaranteeing the protection of the environment, forests, and natural resources.[35] Here, the courts used the concept of "a collective right to a collective good" to carve out a type of environmental jurisprudence that acknowledges the widespread and depersonalized nature of environmental harms.[36] Using PILs, the Supreme Court of India has centered environmental issues in developmental undertakings and decision-making in India.[37] The Court has halted egregious pollution and illegal mining incidents, and insisted upon strict enforcement of environmental laws.[38] The Court has also created important legal norms in PIL litigation about the environment, such as accepting the "polluter pays" principle in *Indian Council for Enviro-Legal v. Union of India and Ors.* (1996) and other seminal cases.[39]

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28. Forster & Jivan, *supra* note 1, at 15; Dr. B. Wadhera, a lawyer in the Supreme Court of India and a prolific PIL litigator, lodged numerous actions seeking a range of outcomes, including compelling the Municipal Corporation of Delhi to remove and dispose of garbage in the city and ensuring that vendors stop using plastic bags unless they are recyclable. Forster & Jivan, *supra* note 1, at 15.
29. Cunningham, *supra* note 27.
30. Divan, *supra* note 1, at 669.
31. Cunningham, *supra* note 27, at 501.
32. Divan, *supra* note 1, at 670–71.
33. Cunningham, *supra* note 27, at 502.
34. Zachary Holladay, *Public Interest Litigation in India as a Paradigm for Developing Nations*, 19 Ind. J. Glob. Legal Stud. 555, 571 (2012).
35. Divan, *supra* note 1, at 667.
36. Craig & Deshpande, *supra* note 5, at 370–71.
37. Craig & Deshpande, *supra* note 5.
38. Divan, *supra* note 1, at 677.
39. Divan, *supra* note 1, at 676–77.

In *M.C. Mehta v. Union of India*, where the Court addressed the harm caused by an oleum gas leak, the Supreme Court grounded its environmental remedies in Indian constitutional law by stating that Article 32 confers a constitutional obligation upon the Supreme Court to protect the fundamental rights of the people, including the power to form novel remedies and strategies that enforce these rights.[40] The Court found that it was necessary to fashion new principles of law to deal with the increasingly common problem of environmental dangers caused by hazardous and dangerous industries.[41] In fashioning a remedy, the Court ordered that the Delhi Legal Aid and Advice Board should take up cases of victims of the oleum gas escape within the next two months to file and prosecute.[42] The High Courts (State-level appellate courts) were ordered to specifically nominate one or more judges to try these actions expeditiously.[43] Thus, the Court acknowledged the unique and important role of PILs in environmental litigation and created a novel remedy with ongoing court participation to hold the polluter accountable.

Indian courts used remedies such as conservation measures to reverse environmental damage, which is then balanced with economic pragmatism. In 1983, the Rural Litigation and Entitlement *Kendra* (office) sent a letter to the Supreme Court which complained of environmental degradation caused by mining limestone quarries in the Dehradun valley in the Himalayas.[44] The Supreme Court treated this as a writ petition through PIL.[45] In its judgment, the Court appointed a committee to examine the viability of the mines and allowed entities to submit proposals to rectify their mining activities in accordance with mining laws.[46] Using the characteristic flexibility of PIL, the Court directed the federal and state governments to grant priority for any alternate limestone deposits to the lessees who lost mining operations due to this order.[47] The Court's decision also made clear that workers who lost their jobs in the mines should be rehired as much as possible during the reforestation and soil conservation processes that would take place at the closed down mine locations.[48]

Independent scientific expertise often informs courts in adjudicating PILs about the environment. Judges appoint committees of experts to investigate scientific queries and advise the court, and grant these recommendations great deference.[49] In *Vellore Citizens' Welfare Forum v. Union of India*, where a public organization brought a PIL action for a water pollution problem, the Court used expert opinions to create remedies that involved shutting down tanneries that were polluting a river in violation of the law and to fine the polluters.[50]

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40. M.C. Mehta v. Union of India, (1987) 1 SCR 819, 827F–828A (1986) (India).
41. *Id.* at 843A–G.
42. *Id.*
43. *Id.*
44. Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh, (1985) 3 SCR 169 (India).
45. *Id.*
46. *Id.*
47. *Id.*
48. *Id.*
49. Divan, *supra* note 1, at 674.
50. Vellore Citizens Welfare Forum v. Union of India, (1996) 5 SCC 647 (India). In this case, a public organization petitioned the Supreme Court to protect the health of

The use of government support and expert advice allowed the Supreme Court to determine a fair remedy that alleviated the most egregious environmental law violations.

Courts also use expert advice and economic pragmatism to deny PIL relief where it is found to be inappropriate. In *Bombay Environmental Action Group v. State of Maharashtra,* the petitioners brought a PIL case through a writ to the Supreme Court to challenge the permission given by the federal and state governments to construct a thermal power station against environmental norms.[51] According to the petitioner, the power plant's water discharge would affect water temperatures and aquatic life adversely.[52] The Court in its opinion acknowledged the public spirit of the petitioners and appreciated their attempt at environmental care, but dismissed the petition after careful consideration.[53] The company had agreed to pursue a different construction plan, and the Court used the expert opinion of a research station in finding that there would be no negative impacts on aquatic life.[54] The Court found that the authorities and experts had adequately considered environmental concerns while also serving the public need for energy sources, thus balancing the different needs of the community.[55] Aside from using the help of government sources and environmental experts, courts in PIL cases have also awarded fees to petitioners who assisted with research or used their own means to pursue public interest litigation.[56]

Due to the PIL system, environmental law has evolved rapidly in India and has established norms to better implement environmental law and policy.[57] PIL enabled access to the higher constitutional courts in India for all classes of society through either representational standing or citizen standing.[58] The judiciary has proved an important and strategic partner to those seeking

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Tamil Nadu residents from tanneries that were discharging toxic chemicals into the Palar River, leading to the court-ordered closure of some of the tanneries. *Id.* The Court ordered effluent treatment plants to be installed at the tanneries, and non-compliant tanneries were subsequently closed by court orders. *Id.* Significantly, the Court, in this case, relied upon the expert reports of the National Environmental Engineering Research Institute from 1996 to show that the groundwater from nearby wells was polluted beyond drinkable levels. The Court also ordered the formation of a committee headed by a retired judge of the state's High Court to identify families affected by the pollution, determine compensation, and assign the cost of reversing the damage to the polluters. *Id.* Meanwhile, a 10,000 rupee (around 110 dollars, significant by the Indian standard of living) fine was also imposed upon non-compliant tanneries. *Id.* The government was also ordered to fund schemes for restoring the damaged environment as recommended by the committee. *Id.*

51. Bombay Environment Action Group v. State of Maharashtra, (1991) AIR Bom 301 (1990) (India).

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *See, e.g.*, Indian Council for Enviro-Legal Action v. Union of India, (1996) AIR SC 1446 (India).

57. Divan, *supra* note 1, at 677.

58. *See* Hima Kohli, J., High Court of Delhi, Public Interest Litigation in Environmental Cases, Address for Session 7: Public Interest Litigation in Environmental Cases at the 5th ASEAN Chief Justices' Roundtable on Environment 2–3 (Dec. 5, 2015) (transcript available at https://www.ajne.org/sites/default/files/event/7/session-materials/h.-kohli.-session-7-public-interest-litigation-justice-hima-kohli.pdf [https://perma.cc/7QKB-CLQ2]).

better environmental governance by upholding environmental laws and striking a balance between economic need and environmental protection.[59]

II. The Need for the PIL Model in United States Environmental Law

The prevailing notion of constitutional standing in federal courts in the United States severely restricts the nature and scope of the cases brought before the courts and, consequently, the remedies that are shaped by the courts. India's PIL model has proved largely successful in the field of environmental law and thus should be considered worthy of adoption in United States environmental law in the face of pressing environmental concerns.

A. "Reverse Legal Transplantation" from a Successful System in India

The noteworthy accomplishments of the Indian PIL system in the field of environmental jurisprudence exhibit its value as a system worthy of consideration by Western democracies. It may seem far-fetched and even audacious to a reader to propose that a system developed in the Global South, in a notoriously unequal and relatively newly independent country, should influence the functioning of courts in the world's oldest democracy.

Legal scholar Alan Watson defined the term "legal transplants" in reference to legal regimes, laws, rules, and policies that travel from one system or jurisdiction to another.[60] Most legal transplants move from economically developed countries to developing countries.[61] The American legal system is among the most influential legal systems in the world. Commentators in the country and around the world have proposed that legal systems globally would come to resemble the American system and become 'Americanized,' while others like Maximo Langer have more cautiously argued that while American influences are noticeable, American legal practice is not being replicated in foreign jurisdictions.[62] Comparatively, there is much lesser literature about whether legal systems in the Global South have influenced those in the Global North.[63]

Legal scholar Sital Kalantry has exhibited such a phenomenon—"reverse legal transplant[ation]"—in her case study of sex-selective abortion statutes that were introduced in multiple United States jurisdictions, which were inspired by India's restrictions on sex-selection.[64] Today's legal transplants are no

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59. *Id.* at 8.

60. *See* Alan Watson, Legal Transplants: An Approach to Comparative Literature 21 (2d ed. 1993). Commentators have also referred to law in legal transplantation as an organ that is chosen based on need and then modified and adapted for incorporation in the new host. *See, e.g.*, Toby S. Goldbach, *Why Legal Transplants?*, 15 Ann. Rev. L. & Soc. Sci. 583, 584 (2019).

61. *See* Sital Kalantry, *Reverse Legal Transplants*, 99 N.C. L. Rev. 49, 55 (2020).

62. *See* Máximo Langer, *From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure*, 45 Harv. Int'l L. J. 1, 3 (2004) (discussing the influence of American-style plea bargaining in Germany, Italy, Argentina, and France while pointing out how these systems also markedly differ from the American model both structurally and normatively).

63. Kalantry, *supra* note 61, at 64.

64. Kalantry, *supra* note 61, at 53. Sex-selection laws prevent a person from terminating their pregnancy if they are aborting solely based on the determined sex of the child. *Id.*

longer unidirectional transfers by imperialist powers to control their colonies; rather, they are led by non-coercive entities like individuals, social groups, lawyers, and organizations.[65] And so laws and policies may and should be transplanted not just on the basis of the economic development of the transplanting nation but also on the basis of similar concerns and needs of the two systems, in order to find workable solutions.[66] Indeed, the late Justice Ginsburg of the United States Supreme Court suggested that nations hoping to write a modern democratic constitution should look to the South African Constitution as a model, not the United States Constitution.[67] If a country in the Global South has developed a system that may not fit perfectly within the prevailing legal culture of a country in the Global North, and yet represents an innovative creation that deals with time-pressured and important problems, its contributions are worth examining even if they are ultimately adopted in a modified form.

B. Urgent and Widespread Environmental Need

India has encountered challenges like those of the United States, such as structural inequality, free speech concerns, and so on. However, the problems of environmental degradation, climate change, and their disproportionate effects on low-income and marginalized communities are among the most pressing issues being faced by the entire planet. A leader within the Intergovernmental Panel on Climate Change warns that it is "now or never" to limit global warming.[68] With rising global temperatures, crop and fishery industries will collapse, thousands of species will disappear, and entire communities in the United States will become inhabitable.[69] In the United States, the brunt of environmental degradation is borne by low-income communities and communities of color, who are often impacted most acutely by polluted air and water.[70] Climate scientists predict a dire future characterized by water wars, mass diseases, and collapsed economies.[71]

The United States provides funds for the poor and disadvantaged to improve access to the justice system.[72] However, this system does not adequately address the chilling and restrictive effects created by cumbersome legal procedures. Neither does it acknowledge the diffused nature of environmental

65. Kalantry, *supra* note 61, at 64.

66. Kalantry, *supra* note 61, at 63–64.

67. Joshua Keating, *Why Does Ruth Bader Ginsburg Like the South African Constitution So Much?*, Foreign Pol'y (Feb. 6, 2012, 6:07 PM), https://foreignpolicy.com/2012/02/06/why-does-ruth-bader-ginsburg-like-the-south-african-constitution-so-much/ [https://perma.cc/784L-ACRU]. Note that there is also a thread of scholarship that argues for a universalist approach to legal systems in the field of human rights, calling for the same laws to deal with similar problems around the world. Kalantry, *supra* note 61, at 54.

68. Press Release, IPCC, The Evidence Is Clear: The Time for Action Is Now. We Can Halve Emissions by 2030, IPCC, (Apr. 4, 2022) https://www.ipcc.ch/2022/04/04/ipcc-ar6-wgiii-pressrelease/ [https://perma.cc/ZYA9-RVSP].

69. Courtney Lindwall, *What Are the Effects of Climate Change?*, Nat'l Res. Def. Council (Oct. 24, 2022) https://www.nrdc.org/stories/what-are-effects-climate-change [https://perma.cc/94JK-2STK].

70. *Id.*

71. *Id.*

72. *See* Boddie v. C.T., 401 U.S. 371, 374 (1971).

harms—felt primarily by disadvantaged communities even while controlling for income.[73] For example, studies suggested that Black Americans carry a higher burden of exposure than other racial groups to the most potent form of air pollution, fine particulate matter, regardless of income levels, and people of color are 2.4 times more likely to be exposed to air pollution.[74] It is also worth noting the prevailing debate about legislative inertia. Like India, the United States' legislature is frequently gridlocked and often fails to pass critical laws about environmental law and justice.[75]

The Indian judiciary looked instead towards fashioning a new system where the judiciary attained the role of ensuring justice without inefficient formalities and expense, which acknowledges the inaccessibility of traditional standing remedies for historically disadvantaged communities.[76] Context-sensitive legal transplantation that empowers more people to bring action against those who fail to comply with environmental regulations, and that provides a concrete way to hold them legally accountable, seems a worthy cause to pursue for the United States.

III. Standing Doctrine in the United States

In the United States, standing doctrine is based on Article III of the US Constitution, stating that federal courts have the power to adjudicate disputes over "cases" or "controversies."[77] The United States Supreme Court's precedent has held that a threshold question for whether a dispute constitutes a "case" or "controversy" was whether the plaintiff had standing or *locus standi* to bring a claim before the Court.[78] To satisfy this requirement, a plaintiff has to allege an injury-in-fact that is both (a) particularized and concrete, and (b) actual and imminent, aside from being causally traceable and judicially redressable.[79] These requirements ensure that cases in federal court are adversarial in nature. When the plaintiff is not the one directly harmed by the government

73. In South Camden Citizens in Action v. New Jersey Dep't of Environmental Protection, 274 F.3d 771, 790 (3d Cir. 2001), the Third Circuit Court of Appeals held that unless Congress explicitly created a private right of action in the environmental justice provisions of Article 602 of Title VI, individual citizens could not sue to enforce the law by claiming disparate impact on their larger community. U.S. Commission on Civil Rights, *Environmental Justice Litigation and Remedies: The Impact of Sandoval and South Camden*, *in* Not in My Backyard: Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice 1, 79, 86 (2012), https://www.usccr.gov/files/pubs/envjust/ch4.htm [https://perma.cc/L838-AA6Q]. The case concerned the granting of an air pollution permit to a cement factory in a minority-dominated and low-income area. *Id.*

74. Lisa Friedman, *White House Takes Aim at Environmental Racism, but Won't Mention Race*, N.Y. Times (Feb. 15, 2022) https://www.nytimes.com/2022/02/15/climate/biden-environment-race-pollution.html [https://perma.cc/P3XE-BWTV].

75. Holladay, *supra* note 34. *See generally* Barton E. Lee, *Gridlock, Leverage, and Policy Bundling*, 212 J. Pub. Econ. 1 (2022).

76. Cunningham, *supra* note 27, at 522–23.

77. U.S. Const. art. 3, § 2, cl. 1.

78. Lujan v. Def. of Wildlife, 504 U.S. 555, 559–60 (1992).

79. *Id.* at 560–61.

action or inaction being challenged, standing becomes "substantially more difficult" to establish.[80]

A. Restrictions Imposed by the Standing Doctrine for Environmental Law in the United States

Courts will deny standing if a plaintiff asserts an injury to the public in general, finding it necessarily too abstract for judicial resolution.[81] This becomes a challenge in environmental law cases where the harm is diffused across areas and communities. In the Supreme Court case *Lujan v. Defenders of Wildlife*, Justice Scalia clarified that a plaintiff bringing a claim with a general grievance on his and other citizens' behalf, based on their interest in the proper application of the Constitution and laws, lacked Article III standing.[82] An organization may be granted representational standing only in the limited context when 1) its members would otherwise have standing in their own right, 2) the interests sought to be protected are germane to the organization's own purpose, and 3) the claim and relief do not require individual members in the lawsuit.[83]

Aside from the traditional way to obtain standing in court, the legislature has stepped in to create a tier of citizens who are empowered to have standing based on statutory rights. Their injuries are considered redressable as long as they fall within the "zone of interests" for which the statute was intended.[84] Congress has used this tool to elevate interests to the standard of concrete injuries before, by statutorily broadening the categories for standing, like the interest of an individual in living in a racially integrated community.[85] In this vein, Congress created the concept of the "citizen suit" for various environmental statutes, including the Clean Air Act, the Clean Water Act, the Safe Water Drinking Act, and the Endangered Species Act, among others.[86] According to these statutes, "any citizen" possesses the right to sue an alleged polluter in federal court for violating the law and to seek remedies such as injunctions, civil penalties, and attorney fees.[87] When public agencies have

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80. *Id.* at 562.

81. Timothy Belevetz, *The Impact on Standing Doctrine in Environmental Litigation of the Injury in Fact Requirement in Lujan v. National Wildlife Federation*, 17 Wm. & Mary J. Env't. L. & Pol'y Rev. 103, 112 (1992). This implicates questions of the separation of powers because often, courts and legal commentators in the United States believe that issues with such widespread impact are best left to the legislature, while the judiciary is the protector of individual rights.

82. Lujan, 504 U.S. at 573–74. *See also* Whitmore v. Arkansas., 495 U.S. 149, 160 (1990) (finding that the plaintiff in a citizens' suit lacked standing to allege a general Eighth Amendment injury based on the generalized interest of all citizens in constitutional governance).

83. Hunt v. Wash. State Apple Advert. Comm'n, 432 U.S. 333, 343 (1977).

84. *See generally Bennett v. Spear, 520 U.S. 154 (1997)*; Trafficante v. Metro. Life Ins. Co., 409 U.S. 205 (1972).

85. *Id.* at 212.

86. Scott Strand, *At Risk: Citizen Suits and the Doctrine of Standing*, Env't L. & Pol'y Ctr. (June 21, 2023), https://elpc.org/blog/citizen-suits-and-the-doctrine-of-standing/ [https://perma.cc/HDJ3-XW8W]. The Clean Air Act was amended by Congress in 1970 to include the "citizen suit" provisions. *Id.*

87. *Id.*

neither the inclination nor the resources to pursue these cases, citizen suit provisions allow concerned non-profits and community organizations to fill their shoes and demand enforcement of federal law.[88]

The Environmental Protection Agency (EPA) and other public agencies are primarily tasked with enforcement of these laws, and citizens have to provide sixty days' notice to these agencies to bring their lawsuits.[89] Only then can citizens participate in the lawsuits as full parties.[90] This creates a grace period where the state agency can file its own different suit or the polluter can come into compliance, thereby precluding citizen suits that may have addressed issues being faced by communities more accurately.[91] Citizen suits are also restrictive in nature because a person or group must still satisfy certain standing requirements, such as having a concrete personalized stake as a citizen in seeing the specific law enforced.[92] Additionally, citizen suit provisions are only available for certain environmental laws.[93]

B. The Unpredictability of Standing Doctrine for Environmental Law in the United States

The difficulty of meeting generalized and statutory standing requirements varies over time as the composition of the United States Supreme Court and the bent of federal courts change. In *Friends of the Earth v. Laidlaw* in 2000, members of the Friends of the Earth organization succeeded in establishing standing in the Supreme Court by alleging that they were injured concretely and personally by a polluted river that "looked and smelled polluted" and were thus seeking to sue the polluting corporation.[94]

Additionally, in *Massachusetts v. EPA*, the Justices found that the State of Massachusetts's injury, of having parts of its coastline submerged by the phenomenon of global warming, was particularized and concrete enough for the State to be granted standing.[95] Similar to the courts in the PIL system, the Court here used scientific data to note that motor vehicles emit greenhouse

88. *Id.*
89. *Id.*
90. *Id.*
91. *The Role of Citizen Enforcement*, Nat'l Env't L. Ctr., https://www.nelc.org/get-involved/citizen enforcement/#:~:text=The%20citizen%20suit%20provisions%20of,violations%2C%20payable%20to%20the%20government [https://perma.cc/Y8LR-BLJ7] (last visited July 5, 2025).
92. *Id.*
93. *See* Dylan Bruce, *Analysis: A Closer Look at Environmental Justice Citizen Suits*, Bloomberg L. (Mar. 29, 2021), https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-a-closer-look-at-environmental-justice-citizen-suits [https://perma.cc/G4G2-N9MU].
94. Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167, 181–82. (2000). Justice Antonin Scalia, who authored *Lujan*, dissented in *Friends of the Earth*, stating that the decision made the requirement of a particularized and concrete injury a "sham." *Id.* at 201. He dismissed the plaintiff's concerns about the environment as vague and unjustified. *Id.* (Scalia, J., dissenting).
95. Mass. v. EPA, 549 U.S. 497, 526 (2007). However, the Court noted that it was of special relevance that the state of Massachusetts is a sovereign state, not a private individual or entity, and thus, it was given special status in the standing test. *Id.* at 518–20. It is not clear how much this distinction drove the Court's ultimate opinion. *Id.* at 536–37.

gases contributing to 6% of global carbon dioxide emissions.[96] Thus the regulation of motor emissions was an adequate remedy, reducing some harm from global warming to the state of Massachusetts.[97] On remand, the EPA even found other greenhouse gases that may contribute to global warming and issued regulations to control their emission.[98] So in *Massachusetts v. EPA*, the Court found injuries caused by global warming to be adequate for standing, found causality with greenhouse gas emissions, and created creative remedies to redress the harm by channeling the EPA's regulatory ability to mitigate environmental harm.[99]

Recently in *Exxon*, the Fifth Circuit Court of Appeals found that plaintiffs, who were Maine citizens living, working, and recreating near the area of Exxon's unauthorized emissions, had alleged injuries particularized enough to satisfy standing requirements.[100] Though Exxon argued that their activities were not the but-for cause of the injury, the court stated that but-for causation was not the standard; rather, simple traceability of the act to the injury—less than the causation expected in tort law—was enough.[101] So, in *Friends of the Earth, Massachusetts v. EPA*, and *Exxon*, the courts were inclined to extend standing to environmental litigants in different ways.

And yet, the rigid procedural requirements of standing doctrine have frustrated and complicated the goals of environmental litigation at other points where the harm to the plaintiffs was deemed to be less direct and tangible by courts. In *Sierra Club v. Morton*, members of the Sierra Club failed to allege that its members would be affected by the government approval of a vast skiing development in Sequoia National Forest.[102] To obtain standing, the Court made the organization submit individual plaintiff affidavits saying they had specifically used the area in question and the development would destroy their enjoyment.[103]

In *Lujan*, by contrast, the procedural obstacles were not overcome as easily. The government had decided to lift protective restrictions on federal land, opening it up to private mining companies.[104] The Supreme Court of the United States granted summary judgment against the plaintiffs, the National Defenders of Wildlife, because the affidavits of their members failed to show

96. *Id.* at 524.

97. *Id.* at 526.

98. The states of Texas and Alabama, among others, appealed this determination in the D.C. Circuit Court of Appeals, and their appeal was dismissed. Texas v. EPA, 726 F.3d 180, 182 (D.C. Cir. 2013).

99. Marisa Martin & James Landman, *Standing: Who Can Sue to Protect the Environment?*, A.B.A. (Oct. 9, 2020), https://www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-19/insights-vol--19---issue-1/standing--who-can-sue-to-protect-the-environment-/ [https://perma.cc/NN7Z-KP5H].

100. Env't Tex. Citizen Lobby, Inc., v. ExxonMobil Corp., 47 F.4th 408, 416 (5th Cir. 2023).

101. *Id.* at 417–18. Exxon's petrochemical plant allegedly caused a variety of pollution-related injuries, and citizens brought suit under the citizen suit provision of the Clean Air Act. *Id.* at 413. Exxon argued that the relaxed standing requirement under the act violated the separation of powers principle. *Id.* at 417.

102. Sierra Club v. Morton, 405 U.S. 727, 739–41 (1972).

103. *Id.* at 735.

104. *Lujan*, 504 U.S. at 558–59.

that their members were "actually affected" by the government agencies in question.[105] Their personal use and enjoyment of federal land was simply not vast enough to extend to the entire federal land area in question.[106] So environmental plaintiffs must show their use and enjoyment of the land or environmental resources in question has been affected; if they do not do so specifically enough, they will lack standing to bring their environmental law claims.

The traditional way to show an injury has been through economic harm or other tangible and identifiable harm. However, several environmental harms have no observable economic or tangible injury to one individual—such as preserving clean air, protecting water quality, and preventing species extinction. This, unfortunately, also means that "The bigger the harm and the more impacts, the more difficult it is for parties to establish standing."[107] When polluters create non-particularized harms that hurt larger segments of society, they can avoid accountability to the community if citizens lack clear access to courts to ensure their compliance.[108]

C. Rooting Relaxed Standing Requirements in United States Law

The restrictions imposed by the narrow standing doctrine on environmental litigation in the United States exhibit the need for a relaxed standing requirement like the one presented by the Indian PIL model. By enabling representational and citizen standing, the United States judicial system would open its doors to concerned citizens and community representatives who wish to sue to enforce environmental laws and thus could protect the environment in the face of legislative and executive inertia. These litigants could also represent those who traditionally lack access to the federal courts of the country due to a dearth of resources or for other structural reasons. This would likely lead to better environmental governance, as in India, and the courts would ideally be able to fashion appropriate remedies by striking a balance between economic need and environmental protection.

It is entirely possible and desirable to root a relaxed standing requirement in United States constitutional law and policy. Standing doctrine is judge-made, born of the Supreme Court's judicial interpretations of the United States Constitution. It has been fluid enough to broaden and narrow in different periods of United States constitutional history, and the legislature has often provided for different standing allowances through specially enacted laws. In fact, *Marbury v. Madison*, the case that represents the birth of the doctrine of judicial review in the United States, concerned a citizen-initiated review of agency action.[109]

As discussed earlier regarding environmental statutes such as the Clean Air Act, Congress enacted multiple other statutes in the twentieth century

105. Belevetz, *supra* note 81, at 118.
106. Belevetz, *supra* note 81, at 118.
107. Pamela King, *Inside a Legal Doctrine That Could Silence Enviros in Court*, GREENWIRE (July 19, 2021), https://subscriber.politicopro.com/article/eenews/2021/07/19/inside-the-legal-doctrine-could-silence-enviros-in-court-179999 [https://perma.cc/J8LQ-U7YX].
108. *Id.*
109. *See generally* Marbury v. Madison, 5 U.S. 137 (1803).

that ultimately provided for broad legislative standing for citizens, like the Administrative Procedure Act (APA) of 1946.[110] In *Associated Industries of N.Y. v. Ickes*, the Second Circuit invented the term "private attorneys general" to describe citizens who were granted authority to bring a suit under the APA to enforce its provisions against an officer. The Court held that where a citizen-plaintiff only sought to vindicate public interest overall, the Article III requirement of "case" or "controversy" would be satisfied.[111] In *NAACP v. Button*, the Supreme Court of the United States recognized the need for citizen-suits to protect public rights which may not necessarily be economic or even adversarial in nature.[112] Litigation that advances the objectives of groups like the NAACP, the Court stated, was "not a technique of resolving private differences; it is a means for achieving the lawful objectives of equality of treatment by all government. . . for the members of the [Black] community. . ."[113]

Class action attorneys present another existing parallel to the kind of standing the PIL system provides. A natural comparison to the class action plaintiff may emerge while considering representational standing. Yet while United States law requires the class representative to have suffered the typical class injury,[114] class action attorneys carry out a fiduciary duty to the entire class and essentially control the litigation and thus are in reality closer to the PIL representational plaintiff.[115] The attorney is almost an "ideological plaintiff" who may act contrary to the individual class representative's wishes if it is the best interests of the overall class.[116] A class action still faces the difficulties of standing and class certification, making the procedure increasingly more complicated.[117] Some supporters of social reform litigation in the United States support injunctive relief to a broad group instead of going through the difficult process of class certification.[118]

There are other, less direct, parallels to PIL-like litigation in the United States. Different rules of standing and flexible remedies have been employed by federal courts and the United States Supreme Court. Defendants' conduct towards non-parties has often been bound by injunctions, and these structural injunctions have seen a recent resurgence.[119] When plaintiff groups represent a broad segment of society, the remedies can often be just as expansive.[120] In the landmark desegregation case of *Brown v. Board of Education,* which was a class action, courts maintained an active role in formulating decrees for desegregation in their jurisdictions to suit their respective local conditions.[121]

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110. Belevetz, *supra* note 81, at 105.
111. Belevetz, *supra* note 81, at 105.
112. NAACP v. Button, 371 U.S. 415 (1963).
113. *Id.* at 429; Belevetz, *supra* note 81, at 107.
114. *See* Fed. R. Civ. P. 23.
115. Cunningham, *supra* note 27, at 503.
116. *See* Fed. R. Civ. P. 23(g)(1)(B) advisory committee's note to 2003 amendment.
117. Cunningham, *supra* note 27, at 503.
118. Cunningham, *supra* note 27, at 503.
119. Amanda Frost & Samuel Bray, *One for All: Are Nationwide Injunctions Legal?*, 102 Judicature 70 (2018), https://judicature.duke.edu/articles/one-for-all-are-nationwide-injunctions-legal/ [https://perma.cc/AVY3-WLUJ].
120. *Id.*
121. Brown v. Bd. of Educ., 347 U.S. 483, 495 (1954).

Additionally, public interest litigation often ends in settlement, where settlement remedies often go beyond what may be granted according to the corresponding right in the courtroom.[122] So some litigants in the United States may be finding similar flexible remedies and broader standing requirements in the law, through settlement, statutory rights, or amenable courts, rather than through a formal system like PIL. It is far from unimaginable that such rights should become formalized in the walls of a courtroom for environmental litigants.

IV. Addressing Legal Realist Critiques

First, with the current bent of United States constitutional law and public policy, commentators may rightly express concern about whether a PIL-like system would ever realistically be accepted in the United States. Yet judges, scholars, and legal commentators in the United States were not always averse to Public Interest Litigation. In 1976, Harvard Law professor Abram Chayes outlined the fundamental role of the American courts in what he termed "Public Law Litigation" or PLL.[123] He identified the factors defining this now scarcely-recognizable phenomenon: flexible remedies like prospective decrees, polycentric lawsuits affecting diffused parties, continuous judicial involvement, and grievances about public policy replacing private adversarial disputes.[124] According to Chayes, PLL was on the rise.[125] In 1974, Congress created a Legal Services Corporation to fund legal aid for low-income individuals; under President Carter, the Corporation was headed by former public interest lawyers who encouraged local legal aid offices to litigate public interest cases on behalf of litigants.[126]

In the 1960s, citizens concerned about the environment used qui tam and public nuisance actions to protect environmental resources; these were met with disfavor and skepticism by courts and became increasingly cumbersome.[127] The costs of litigation seemed to outweigh the victories. Then, a few months after the first Earth Day was celebrated, and Ralph Nader published his ground-breaking report *Vanishing Air*, Congress created private enforcement clauses in the Clean Air Act among a public feeling that the government was not doing enough to enforce environmental (specifically, anti-pollution) laws.[128]

However, the trend later reversed. Commentators, skeptical about judicial activism, turned to norms that supported private litigation models.[129] Crucially, private organizations that had financially supported PLL litigation

122. Cunningham, *supra* note 27, at 522.
123. Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 Harv. L. Rev. 1281, 1297–98 (1976).
124. *Id.* at 1302.
125. *Id.* at 1288.
126. Cunningham, *supra* note 27, at 495.
127. Belevetz, *supra* note 81, at 107.
128. Belevetz, *supra* note 81, at 108.
129. Cunningham, *supra* note 27, at 495.

reduced their funding of such cases in the 1980s, drying up resources.[130] The government reduced the Legal Services Corporation's funding and put in place administrators who opposed federal funding of Public Interest Litigation.[131] It appears that the turn away from relaxed standing rules and flexible remedies is a policy choice which did not always dominate public thought. It is not unrealistic to argue for the resurgence of a PLL-like system for environmental law. In fact, even in the current political climate, conservative legal scholars like Adrian Vermeule argue that standing doctrine as articulated in *Lujan* was too narrow and restrictive for courts to genuinely serve the goals of public interest.[132]

Second, it is also worth considering whether the judicial system would be inundated with a barrage of cases if the rules of standing were relaxed for all environmental public interest litigation. In India, fear of the deluge of cases that would flood a judicial system with relaxed standing and initiation requirements has come to fruition through a huge number of petitions. The Indian Supreme Court established a separate cell to vet PIL claims.[133] Supporters of PIL have pushed back by arguing that the increase in petitions shows the democratic and proactive engagement of citizens in the welfare of their fellow citizens.[134] The high volume is also testament to the fact that the victims of human rights and environmental violations may not have the time, resources, or expertise to launch traditional private legal complaints.[135] There are other ways to address frivolous claims, like discretionary sanctions by the court or vetting complaints. In the Clean Air Act, for example, Congress gave courts the power to make fee awards against any party in the lawsuit "where appropriate" to discourage frivolous or harassing lawsuits.[136]

Conclusion

By exploring the efficacy and theoretical underpinnings of the relaxed standing doctrine in environmental PIL litigation in India, this Note argued that India developed a successful model to deal with non-particularized harms that are deeply problematic and yet evade traditional legal responsibility. This model is worthy of emulation in the United States' constitutional system, which currently espouses a narrow, privatized view of standing that blocks accessibility to the court for those who lack abundant resources and cannot show personalized environmental harm. The constitutional and legislative history of the United States shows that such expansion of the standing doctrine is possible, and the dire need for environmental protection shows that giving environmental litigants their day in court is desirable.

130. Cunningham, *supra* note 27, at 495.
131. Cunningham, *supra* note 27, at 495.
132. Adrian Vermeule, *Supreme Court Justices Have Forgotten What the Law Is for*, N.Y. Times (Feb. 3, 2022), https://www.nytimes.com/2022/02/03/opinion/us-supreme-court-nomination.html [https://perma.cc/9BEW-X6RJ].
133. Forster & Jivan, *supra* note 1, at 26.
134. Forster & Jivan, *supra* note 1, at 26.
135. Forster & Jivan, *supra* note 1, at 27.
136. Belevetz, *supra* note 81, at 109.

Such a proposal necessarily implicates questions about the separation of powers and the role of courts in a democracy. Should judges intervene in public wrongs that do not have specific harm to individuals in the interest of justice, or is such quasi-lawmaking best left to the legislature? What is a democratic court's duty when the legislature is inefficient and exhibits inertia about urgent problems like climate change and environmental degradation? My argument also raises fascinating questions about the viability and desirability of broad-based remedies like structural or nationwide injunctions; there is a thriving legal debate about the constitutionality of such injunctions in the United States, which is worth exploring.[137]

This Note also seeks to contribute to the scarce body of literature that argues for the merits of "reverse legal transplant[ation]" where it serves a useful purpose. In a post-colonial and increasingly globalizing world, the merit of adopting legal ideas and systems between nations should depend upon need and suitability. Kalantry's work demonstrates "reverse legal transplant" in practice; such a rich yet unstudied field demands further exploration.[138]

Ultimately, this Note is also an attempt to center environmental issues in litigation and to argue that we should use all possible tools at our disposal, including the judiciary and constitutional interpretation, to serve the crucial goal of environmental justice. Climate change and environmental degradation demand solutions from all nations, whether they are part of the Global South or Global North, and our window of time to avoid irreversible environmental damage is running out.[139]

137. Amanda Frost, *Academic Highlight: The Debate over Nationwide Injunctions*, SCOTUSblog (Feb. 1, 2018), https://www.scotusblog.com/2018/02/academic-highlight-debate-nationwide-injunctions/#:~:text=Professors%20Samuel%20Bray%2C%20Michael%20Morley,set%20policy%20for%20the%20nation [https://perma.cc/B3C2-SNF2].

138. *See generally* Kalantry, *supra* note 61, at 49.

139. Sambhav Sankar, *The Supreme Court Is Pursuing a Very Dangerous Strategy for the Environment*, N.Y. Times (June 5, 2022), https://www.nytimes.com/2022/06/05/opinion/climate-change-supreme-court.html [https://perma.cc/TS4T-QUVP].