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Judicial Activism in India: Some remarks from Polish perspective

[Aktywizm sędziowski w Indiach – kilka uwag z polskiej perspektywy]

Abstract

Judicial activism in India has been a transformative force in the country's legal and social landscape. From its origins in the post-Emergency era to its current manifestations, it has significantly expanded access to justice, protected fundamental rights, and addressed critical socio-economic issues.

The Indian experience of judicial activism demonstrates the potential of an activist judiciary to check executive and legislative excesses, protect marginalized groups and advance constitutional values. However, it also highlights the challenges of balancing judicial activism with the principles of separation of powers and democratic governance.

The perceived lack of contribution of Polish judges to the realization of social justice significantly affects public trust in the judiciary. A combination of political, institutional and social factors has undermined confidence in the judicial system. The politicization of part of the judiciary has led a significant segment of Polish society to believe that this part of the judiciary is no longer an independent arbiter of justice, but rather a tool of the ruling party.

Keywords: judges, courts, activism, judicial activism, judgements.

Introduction

Judicial activism has emerged as a powerful force in shaping India's legal and social landscape since the country's independence. This phenomenon, characterized by the courts' proactive role in interpreting laws and safeguarding constitutional values, has been both praised for its contributions

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to social justice and criticized for potentially overstepping judicial boundaries.

The concept of judicial activism in India can be traced back to the mid-1970s, with justices like V. R. Krishna Iyer, P. N. Bhagwati, O. Chinnappa Reddy, and D. A. Desai laying its foundation.¹ These jurists recognized the need for a more dynamic judiciary that could address the socio-economic challenges facing the nation and protect the rights of marginalized groups.

At its core, judicial activism in India represents the judiciary's proactive stance in promoting social, economic, and political justice for the people, often stepping in where the legislative and executive branches have failed to act effectively.² This approach is rooted in the constitutional framework, particularly Articles 32 and 226, which empower the Supreme Court and High Courts, respectively, to issue writs for the enforcement of fundamental rights.³

The evolution of judicial activism in India has been closely tied to the country's political and social developments. The Emergency period (1975–1977) marked a crucial turning point, as it exposed the vulnerabilities of democratic institutions and highlighted the need for a strong, independent judiciary to safeguard citizens' rights⁴. In the post-Emergency era, the courts began to assert themselves more forcefully, leading to the emergence of Public Interest Litigation (PIL) as a powerful tool for social change.

Public Interest Litigation, introduced in the late 1970s, revolutionized access to justice in India. It allowed any person to approach the Supreme Court under Article 32 or the High Courts under Article 226 for matters concerning public welfare.⁵ This innovation significantly expanded the scope of judicial intervention and made the courts more accessible to disadvantaged sections of society.

The constitutional foundations of judicial activism in India are further strengthened by Article 142 of Constitution of India, which grants the Supreme Court the power to issue any order necessary to ensure complete justice in a case. This provision has been instrumental in allowing the courts to address complex social issues and provide innovative remedies. However, the rise of judicial activism has not been without controversy. Critics argue that it sometimes leads to the judiciary encroaching upon the domains of the legislature and executive, potentially upsetting the delicate balance of powers

¹ See more: M. Abdul Mujeef, R. Mamtha, *Judicial Activism in India: A critical study*, 'International Journal of Research Publication and Reviews' 2024, vol. 5, 4, pp. 187–191, <https://ijrpr.com/uploads/V5ISSUE4/IJ-RPR24523.pdf> [accessed: 07.01.2025]; N. Talwar, *Judicial Activism, IP leaders*, 2022, Aug. 5, <https://blog.ipleaders.in/judicial-activism/> [accessed: 07.01.2025].

² N. Jaswal, L. Singh *Judicial Activism in India*, 'Bharati Law Review' 2017 Jan.–Mar., pp. 1–11, <https://docs.manupatra.in/newsline/articles/Upload/OBD8AAF5-4031-484F-AB92-2B84EFEOABCA.pdf> [accessed: 07.01.2025].

³ S. P. Sathe, *Judicial Activism: The Indian Experience*, 'Washington University Journal of Law & Policy' 2001, 6, 1, pp. 30ff.

⁴ U. Baxi, *The Indian Supreme Court and Politics*, 1980, pp. 79–120.

⁵ M. Rao, *Public Interest Litigation*, Lucknow: Eastern Book Company 2002.

envisioned in the Constitution.⁶ Supporters, on the other hand, contend that judicial activism is a necessary corrective mechanism in a democracy where other institutions may fail to fulfill their constitutional obligations.

As India continues to grapple with complex social, economic, and political challenges, the role of judicial activism remains crucial. It serves as a vital tool for ensuring accountability, protecting fundamental rights, and advancing the constitutional vision of justice, liberty, equality, and fraternity. The ongoing debate surrounding judicial activism reflects the dynamic nature of India's constitutional democracy and the evolving relationship between the judiciary and other branches of government.⁷

Judicial activism in Poland is understood differently and it has significantly influenced the political landscape, particularly in the context of democratic backsliding and the rule of law. Last 8 years some judges have mobilized both on and off the bench to counteract governmental encroachments on judicial independence, demonstrating a strategic approach to activism. This activism manifests through various means, including public protests, and lobbying efforts directed at European institutions, highlighting the judiciary's role as a defender of democratic principles.⁸

Recent developments have seen judges engaging in "judicial resistance", a concept that encompasses actions taken to uphold judicial independence against political pressures. This resistance is viewed as essential for maintaining the rule of law, particularly in light of increasing governmental overreach.⁹ Judicial activism in Poland can be seen as a response to political challenges, critics argue that it risks politicizing the judiciary and undermining its impartiality. This tension highlights the delicate balance between judicial independence and political influence in Poland's evolving democratic framework.

According to Polish Constitution only The Polish Constitutional Tribunal (PCT) has historically acted as a political actor, often restricting parliamentary maneuverability, especially when no clear majority exists. The Tribunal's activism has been characterized by a shift from a "negative legislator" to a more proactive role, sometimes exceeding its constitutional mandate.¹⁰

⁶ A. Chintala, Introduction to Judicial Activism and Judicial Reforms, 2020, Oct. 30, <https://blog.ipleaders.in/introduction-to-judicial-activism-and-judicial-reforms/> [accessed: 07.01.2025].

⁷ See more: S. P. Sathe, *Judicial...*, pp. 43ff, N. Mittal, T. Aggarwal, *Judicial Activism in India*, 'The Indian Journal of Law & Public Policy' (IJLPP) 2014–2015, vol. 1.1, pp. 86–96, https://www.soolegal.com/cdn.dynamic.soolegal.com/document-center/90184/other/ijlpp_1_1.pdf [accessed: 06.01.2025].

⁸ C. Y. Matthes, Judges as Activists: How Polish judges mobilise to defend the rule of law, 'East European Politics' 2022, vol. 38, 3, pp. 468–487, <https://typeset.io/papers/judges-as-activists-how-polish-judges-mobilise-to-defend-the-lzv6e9lt> [accessed: 07.01.2025].

⁹ Ł. Bojarski, Judicial Resistance: Missing Part of Judicial Independence? The case of Poland and beyond, *Oñati Socio-Legal Series* 20.09.2024., doi: 10.35295/osls.iisl.1893.

¹⁰ B. Banaszak, *Constitutional Tribunals' Judicial Review of Public Power in Poland* [in:] R. Arnold, J.I. Martinez-Estay, *Rule of Law, Human Rights and Judicial Control of Power: Some reflections from national and international law*, Springer 2017, vol. 61, pp. 243–257, <https://link.springer.com/book/10.1007/978-3-319-55186-9> [accessed: 06.01.2025].

Common courts and even The Supreme Court judges are not supposed to highlight any judicial activism.

Historical Development of Judicial Activism in India

The evolution of judicial activism in India can be traced through distinct phases, each marked by significant events and landmark cases that shaped the judiciary's role in governance and social justice.

Post-independence era: Initial conservative approach

In the early years after independence, the Indian judiciary adopted a largely conservative and technocratic approach. The courts were primarily concerned with adhering to established procedures rather than actively pursuing broader goals of justice.¹¹ This period was characterized by a reluctance to challenge the executive and legislative branches, reflecting the judiciary's initial deference to the other organs of government in a newly independent nation.

The emergency period (1975–1977): Judiciary's response and limitations

The Emergency period marked a critical juncture in the development of judicial activism in India. Declared by Prime Minister Indira Gandhi in 1975, this period saw significant curtailment of civil liberties and democratic processes. The judiciary's response during this time was mixed and often criticized for its lack of assertiveness in protecting fundamental rights.¹²

A pivotal case during this period was *ADM Jabalpur v. Shivkant Shukla* (1976), also known as the *Habeas Corpus* Case. In this controversial decision, the majority of the Supreme Court bench held that during a declared emergency, even the right to life could be suspended¹³. This judgment is often cited as a low point in the Indian judiciary's history, highlighting the limitations of judicial power in the face of executive overreach.

¹¹ See more: M. Abdul Mujeef, R. Mamtha, *Judicial Activism...* pp. 187–191, N. Talwar, *Judicial activism*, *IPleaders* August 5, 2022, <https://blog.ipleaders.in/judicial-activism/> [accessed: 07.01.2025].

¹² U. Baxi, *The Indian Supreme Court and Politics*, as cited in the search results.

¹³ *ADM Jabalpur v. Shivkant Shukla*, 1976, 2, SCC 521.

Post-emergency era: Emergence of public interest litigation (PIL)

The post-Emergency period witnessed a significant shift in the judiciary's approach, marked by the emergence of Public Interest Litigation (PIL). This innovative legal tool, introduced in the late 1970s, revolutionized access to justice in India.¹⁴ PILs allowed any person to approach the Supreme Court under Article 32 or the High Courts under Article 226 for matters concerning public welfare, significantly expanding the scope of judicial intervention.

Key figures in shaping this new era of judicial activism included Justices P. N. Bhagwati and V. R. Krishna Iyer. Their judgments laid the foundation for a more proactive judiciary that sought to address social injustices and governance failures.¹⁵

Landmark cases and expanding judicial role

Several landmark cases during this period exemplify the expanding role of judicial activism:

1. *Hussainara Khatoon v. State of Bihar* (1979): Often regarded as the first PIL case in India, this judgment recognized the right to speedy trial as a fundamental right and led to the release of thousands of undertrial prisoners.¹⁶
2. *Maneka Gandhi v. Union of India* (1978): This case expanded the interpretation of Article 21 (right to life and personal liberty), incorporating principles of reasonableness and fairness in governmental actions.¹⁷
3. *S. P. Gupta v. Union of India* (1981): Known as the "Judges' Transfer Case", this decision further expanded the concept of *locus standi*, allowing greater public access to the courts for matters of public importance.¹⁸

Evolving phases of judicial activism

The evolution of judicial activism in India can be broadly categorized into three phases:

1. 1950–1970: The period of classical judiciary with minimal activism.
2. 1970–2000: The era when judicial activism was established and gained popularity.

¹⁴ S. P. Sathe, *Judicial...*, pp. 43ff.

¹⁵ V. Jain, *Judicial Activism*, as referenced in the search results.

¹⁶ *Hussainara Khatoon v. State of Bihar*, 1980, 1, SCC 81, <https://testbook.com/landmark-judgements/hussainara-khatoon-vs-state-of-bihar> [accessed: 06.01.2025].

¹⁷ *Maneka Gandhi v. Union of India*, 1978, 1, SCC 248.

¹⁸ *S. P. Gupta v. Union of India*, AIR, 1982, SC 149.

3. 2000–present: A period of flourishing judicial activism, albeit with concerns about potential overreach.¹⁹

This historical development reflects the Indian judiciary's transformation from a conservative institution to an active participant in governance and social reform, significantly shaping the country's legal and social landscape.²⁰

Public Interest Litigation as a Tool of Judicial Activism

Public Interest Litigation (PIL) emerged as a powerful instrument of judicial activism in India during the post-Emergency era. This innovative legal mechanism revolutionized access to justice and significantly expanded the scope of judicial intervention in matters of public importance.

Origin and development of PIL

The concept of PIL was introduced in the late 1970s, primarily through the efforts of Justices P. N. Bhagwati and V. R. Krishna Iyer.²¹ It was conceived as a means to provide access to justice for marginalized and disadvantaged sections of society who were unable to approach the courts due to poverty, ignorance, or social and economic disabilities.²²

PIL marked a departure from traditional *locus standi* requirements, allowing any person to approach the Supreme Court under Article 32 or the High Courts under Article 226 for matters concerning public welfare.²³ This relaxation of procedural technicalities enabled courts to address a wide range of social issues and human rights violations.

¹⁹ Information derived from the search results provided, specifically the iPleaders blog on judicial activism.

²⁰ See more [in:] M. Mate, *The Rise of Judicial Governance in the Supreme Court of India*, <https://www.bu.edu/ilj/files/2015/01/Mate-Rise-of-Judicial-Governance.pdf> [accessed: 06.01.2025]; N. Mittal, T. Aggarwal, *Judicial Activism in India*, 'The Indian Journal of Law & Public Policy' (IJLPP) 2014–2015, vol. 1.1, pp. 86–96, https://www.soolegal.com/cdn.dynamic.soolegal.com/documentcenter/90184/other/ijlpp_1_1.pdf [accessed: 06.01.2025]; Landmark PIL Cases of India: Changing the Course of History, <https://legalstixlawschool.com/blog/Landmark-PIL-Cases-of-India:-Changing-the-Course-of-History> [accessed: 06.01.2025]; A. Sethi, *The Justiciability Of Economic, Social And Cultural Rights In India* [in:] A. Nussberger, D. Landau (eds), *The Justiciability of Economic, Social and Cultural Rights*, pp. 483–503, 25 pages posted: 23 Feb 2024 [accessed: 06.01.2025].

²¹ S. P. Sathe, *Judicial...*, pp. 30ff.

²² U. Baxi, *Taking Suffering Seriously: Social action litigation in the Supreme Court of India*, 'Third World Legal Studies' 1985, 4, pp. 107–132.

²³ S. P. Gupta v. Union of India, AIR, 1982, SC 149.

Landmark PIL cases and their impact

Several landmark PIL cases have had a profound impact on Indian jurisprudence and social reform:

1. *Hussainara Khatoon v. State of Bihar* (1979): Often regarded as the first PIL case in India, this judgment recognized the right to speedy trial as a fundamental right and led to the release of thousands of undertrial prisoners.²⁴
2. *M. C. Mehta v. Union of India* (Oleum Gas Leak Case, 1987): This case led to the development of the principle of absolute liability for industries engaged in hazardous activities.²⁵
3. *Vishaka v. State of Rajasthan* (1997): The Supreme Court issued guidelines to prevent sexual harassment of women at the workplace, which later formed the basis for legislative action.²⁶

Expansion of access to justice

PIL has significantly expanded access to justice for marginalized groups by: relaxing procedural requirements for filing cases; allowing courts to take *suo motu* cognizance of issues; appointing fact-finding commissions and *amicus curiae* to assist the court; developing innovative remedies and monitoring mechanisms. As Upendra Baxi notes, “PIL led to pro-people renovation of judicial process and led to the rejuvenation of a special kind of confidence in the judiciary in its unequal battle with administrative deviance and crystallization of informed consensus on the need for fundamental reform of the legal system.”²⁷

Criticisms and challenges

Despite its successes, PIL has faced criticism and challenges:

- a. **Misuse for private interests:** Some PILs are filed to fulfill private agendas rather than genuine public interest.²⁸
- b. **Judicial overreach:** Critics argue that PIL sometimes leads to the judiciary encroaching upon the domains of the legislature and executive.²⁹

²⁴ *Hussainara Khatoon v. State of Bihar*, 1980, 1, SCC 81.

²⁵ *M. C. Mehta v. Union of India*, AIR, 1987, SC 1965.

²⁶ *Vishaka v. State of Rajasthan*, 1997, 6, SCC 241.

²⁷ U. Baxi, *Law, Struggle and Change: An agenda for activists*, ‘Social Action’ 1985, 35, pp. 65–89.

²⁸ S. Deva, *Public Interest Litigation in India: A critical review*, ‘Civil Justice Quarterly’ 2009, 28, 1, pp. 19–40.

²⁹ A. Bhuvania, *Courting the People: Public interest litigation in post-emergency India*, ‘Comparative Studies of South Asia, Africa and the Middle East’ 2014, 34, 2, pp. 314–335.

- c. Strain on judicial resources: The large number of PILs filed can lead to delays in the justice system.³⁰
- d. Selective activism: There are concerns that courts may prioritize popular cases over equally important but less publicized issues.³¹

In conclusion, while PIL has been a powerful tool for judicial activism and social change in India, it requires careful balancing to maintain its effectiveness and legitimacy within the constitutional framework.

The Supreme Court's Role in Judicial Activism

The Supreme Court of India has played a pivotal role in shaping judicial activism through landmark judgments that have expanded the scope of fundamental rights and addressed critical socio-economic issues.

Expansion of fundamental rights through interpretation

One of the most significant contributions of the Supreme Court has been the expansive interpretation of Article 21 (Right to Life and Personal Liberty). In the landmark case of *Maneka Gandhi v. Union of India* (1978), the Court held that the right to life encompasses not merely animal existence, but the right to live with human dignity.³² This judgment paved the way for reading various unenumerated rights into Article 21, including the right to health, education, and a clean environment.

The Court further expanded the scope of fundamental rights in *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi* (1981), where it held that the right to life includes the right to live with human dignity and all that goes along with it, including the bare necessities of life such as adequate nutrition, clothing, and shelter.³³

The doctrine of basic structure: Kesavananda Bharati Case

The landmark judgment in *Kesavananda Bharati v. State of Kerala* (1973) established the “basic structure doctrine,” which asserts that while Parliament

³⁰ N. Robinson, *Expanding Judiciaries: India and the rise of the good governance court*, ‘Washington University Global Studies Law Review’ 2009, 8, 1, pp. 1–70.

³¹ V. Gauri, *Public Interest Litigation in India: Overreaching or underachieving?* ‘The World Bank Policy Research Working Paper’ 2009, 5109.

³² *Maneka Gandhi v. Union of India*, 1978, 1, SCC 248.

³³ *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*, 1981, 1 SCC 608.

has the power to amend the Constitution, it cannot alter its basic structure.³⁴ This doctrine has been instrumental in preserving the core principles of the Constitution and has served as a check on legislative overreach.

Activism in socio-economic rights

The Supreme Court has been particularly active in the realm of socio-economic rights, often issuing directives to the government to implement policies and programs. In *People's Union for Civil Liberties v. Union of India* (2001), the Court recognized the right to food as a fundamental right and issued orders for the implementation of food security schemes.³⁵

Similarly, in *Mohini Jain v. State of Karnataka* (1992) and *Unni Krishnan J. P. v. State of Andhra Pradesh* (1993), the Court interpreted the right to education as a fundamental right, which eventually led to the enactment of the Right to Education Act, 2009.³⁶

Environmental protection

The Supreme Court has been at the forefront of environmental protection through judicial activism. In *M. C. Mehta v. Union of India* (1987), also known as the Oleum Gas Leak Case, the Court developed the principle of absolute liability for industries engaged in hazardous activities.³⁷ This judgment significantly strengthened environmental jurisprudence in India.

Public interest litigation and access to justice

The Court's activism has been particularly evident in its approach to Public Interest Litigation (PIL). In *S.P. Gupta v. Union of India* (1981), the Court relaxed the traditional rules of *locus standi*, allowing any member of the public to approach the Court for the enforcement of constitutional rights.³⁸ This has greatly enhanced access to justice for marginalized sections of society.

While the Supreme Court's activism has been praised for addressing governance gaps and protecting citizens' rights, it has also faced criticism for potentially overstepping its constitutional boundaries. The balance between

³⁴ *Kesavananda Bharati v. State of Kerala*, 1973, 4, SCC 225.

³⁵ *People's Union for Civil Liberties v. Union of India*, 2001, 5, SCALE 303.

³⁶ *Mohini Jain v. State of Karnataka*, 1992, 3, SCC 666; *Unni Krishnan J.P. v. State of Andhra Pradesh*, 1993, 1, SCC 645.

³⁷ *M. C. Mehta v. Union of India*, 1987, 1, SCC 395.

³⁸ *S. P. Gupta v. Union of India*, AIR, 1982, SC 149.

judicial activism and restraint remains a subject of ongoing debate in India's constitutional jurisprudence.³⁹

High Courts and Judicial Activism

The High Courts of India have played a significant role in shaping judicial activism, often complementing and sometimes even leading the efforts of the Supreme Court. Their powers under Article 226 of the Constitution have been instrumental in this regard.

Powers under Article 226 of the Indian Constitution

Article 226 of the Indian Constitution empowers High Courts to issue writs for the enforcement of fundamental rights and for any other purpose. This provision has been liberally interpreted by the courts to expand their jurisdiction and address a wide range of issues affecting public interest.

The scope of Article 226 is wider than that of Article 32 (which applies to the Supreme Court), as it allows High Courts to issue writs not only for the enforcement of fundamental rights but also for “any other purpose”.⁴⁰ This expansive interpretation has enabled High Courts to intervene in matters of administrative action, environmental protection, and social justice.

Notable High Court decisions influencing policy and governance

High Courts across India have delivered several landmark judgments that have significantly influenced policy and governance:

- a. **Environmental Protection:** In the *M. C. Mehta v. Union of India* case (Oleum Gas Leak Case), the Delhi High Court's proactive approach led to the development of the principle of absolute liability for industries engaged in hazardous activities.⁴¹
- b. **Women's Rights:** High Courts have been instrumental in advancing women's rights. For instance, in *Vishaka v. State of Rajasthan*, the Rajasthan High Court's guidelines on sexual harassment at the workplace

³⁹ See also: M. Khosla, *Addressing Judicial Activism in the Indian Supreme Court: Towards an evolved debate*, 32 *Hastings Int'l & Comp. L. Rev.* 2009, 55, pp. 55–99, https://scholarship.law.columbia.edu/faculty_scholarship/3344 [accessed: 06.01.2025]; N. Mittal, T. Aggarwal, *Judicial...*, pp. 86–96.

⁴⁰ S. P. Sathe, *Judicial...*, pp. 43ff.

⁴¹ *M. C. Mehta v. Union of India*, AIR, 1987, SC 1965.

were later adopted by the Supreme Court, eventually leading to legislative action.⁴²

- c. **Public Interest Litigation:** High Courts have been at the forefront of expanding the scope of Public Interest Litigation (PIL). In many cases, they have taken *suo motu* cognizance of issues affecting public welfare, demonstrating a high degree of judicial activism.⁴³

Interaction between High Courts and Supreme Court in activism

The relationship between High Courts and the Supreme Court in the context of judicial activism has been characterized by both cooperation and occasional tension:

- a. **Complementary Roles:** Often, High Courts have complemented the Supreme Court's efforts in judicial activism. For instance, in environmental cases, both the Supreme Court and various High Courts have issued directives to protect the environment and wildlife.⁴⁴

- b. **Pioneering Judgments:** In some cases, High Courts have delivered pioneering judgments that were later affirmed or expanded upon by the Supreme Court. This has been particularly evident in cases related to social justice and human rights.⁴⁵

- c. **Jurisdictional Issues:** Occasionally, there have been instances of jurisdictional overlap between High Courts and the Supreme Court, especially in matters of national importance. In such cases, the Supreme Court's decisions generally prevail.⁴⁶

- d. **Diversity in Approaches:** Given India's diverse socio-cultural landscape, different High Courts have sometimes adopted varying approaches to similar issues. This diversity has contributed to the richness of India's jurisprudence, though it has also occasionally led to conflicting judgments.⁴⁷

In conclusion, the High Courts have been vital partners in India's journey of judicial activism. Their proximity to local issues, combined with their constitutional powers, has enabled them to address a wide range of social, economic, and environmental concerns, often complementing and sometimes even leading the efforts of the Supreme Court.

⁴² Vishaka v. State of Rajasthan, 1997, 6, SCC 241.

⁴³ U. Baxi, *Taking Suffering Seriously: Social action litigation in the Supreme Court of India*, 'Third World Legal Studies' 1985, 4, pp. 107-132.

⁴⁴ L. Rajamani, *Public Interest Environmental Litigation in India: Exploring issues of access, participation, equity, effectiveness and sustainability*, 'Journal of Environmental Law' 2007, 19, 3, pp. 293-321.

⁴⁵ S. P. Sathe, *Judicial Activism in India: Transgressing borders and enforcing limits*, New Delhi: Oxford University Press, 2002, pp. 25ff.

⁴⁶ N. Robinson, *Structure Matters: The impact of court structure on the Indian and U.S. supreme courts*, 'American Journal of Comparative Law' 2013, 61, 1, pp. 173-208.

⁴⁷ M. Mate, *The Rise of Judicial Governance in the Supreme Court of India*, 'Boston University International Law Journal' 2015, 33, pp. 169-224.

Key Areas of Judicial Activism

The Indian judiciary has demonstrated activism in several crucial areas, significantly impacting policy and governance. Three key areas where judicial activism has been particularly prominent are:

Environmental protection

The Supreme Court has played a pivotal role in environmental protection through judicial activism. In the landmark *M. C. Mehta v. Union of India* case, also known as the Oleum Gas Leak Case, the Court developed the principle of absolute liability for industries engaged in hazardous activities.⁴⁸ This judgment significantly strengthened environmental jurisprudence in India and set a precedent for holding industries accountable for environmental damage.

Women's rights and gender justice

Judicial activism has been instrumental in advancing women's rights in India. In the case of *Vishaka v. State of Rajasthan*, the Supreme Court issued guidelines to prevent sexual harassment of women at the workplace, which later formed the basis for legislative action.⁴⁹ Another significant case was *Mohd. Ahmed Khan v. Shah Bano Begum*, where the Court overruled Muslim personal law to extend the period of maintenance for divorced Muslim women.⁵⁰

Governance reforms and anti-corruption measures

The judiciary has also been active in promoting governance reforms and combating corruption. Through Public Interest Litigation (PIL), the courts have intervened in matters of public administration and policy implementation. For instance, in *S. P. Gupta v. Union of India*, the Court expanded the scope of judicial review to include the appointment process of judges, thereby promoting transparency in the judiciary itself.⁵¹

⁴⁸ *M. C. Mehta v. Union of India*, AIR, 1987, SC 1965.

⁴⁹ *Vishaka v. State of Rajasthan*, 1997, 6, SCC 241.

⁵⁰ *Mohd. Ahmed Khan v. Shah Bano Begum*, 1985, 2, SCC 556.

⁵¹ *S. P. Gupta v. Union of India*, AIR, 1982, SC 149.

Impacts and Criticisms of Judicial Activism in India

Positive impacts

Judicial activism has had several positive impacts on Indian society which are: advancement of social justice and human rights; enhanced accountability of the executive and legislature; strengthening of constitutional values and the rule of law.

As Upendra Baxi notes, “PIL led to pro-people renovation of judicial process and led to the rejuvenation of a special kind of confidence in the judiciary in its unequal battle with administrative deviance and crystallization of informed consensus on the need for fundamental reform of the legal system.”⁵²

Criticisms

However, judicial activism has also faced criticism: allegations of judicial overreach and encroachment on legislative and executive domains; concerns about the separation of powers; issues of judicial accountability and subjectivity in decision-making.

Critics argue that excessive judicial activism may lead to the judiciary stepping beyond its constitutional role, potentially upsetting the delicate balance of powers envisioned in the Constitution.⁵³

Balancing Judicial Activism and Restraint

The need for balancing judicial activism with judicial restraint is a crucial consideration in India’s constitutional framework. While judicial activism has played a vital role in advancing social justice and protecting fundamental rights, there are concerns about potential overreach and its impact on the separation of powers.

⁵² U. Baxi, *Law, Struggle...*, pp. 65–89.

⁵³ A. Chintala, Introduction to judicial activism and judicial reforms, <https://blog.ipleaders.in/introduction-to-judicial-activism-and-judicial-reforms/>.

The need for judicial self-restraint

Judicial self-restraint is essential to maintain the delicate balance of power between the judiciary, legislature, and executive. Critics argue that excessive judicial activism may lead to the judiciary stepping beyond its constitutional role, potentially upsetting this balance.⁵⁴ The courts must be cautious not to encroach upon the domains of the other branches of government, particularly in matters of policy-making and governance.

Strategies for maintaining constitutional balance

To maintain a constitutional balance while engaging in judicial activism, courts can adopt several strategies:

- a. Adhering to the doctrine of constitutional avoidance, where courts refrain from deciding constitutional questions unless absolutely necessary.
- b. Respecting legislative intent and giving due deference to the expertise of administrative agencies.
- c. Ensuring that judicial interventions are based on sound legal principles and constitutional interpretations.
- d. Limiting the scope of Public Interest Litigation (PIL) to genuine cases of public importance and preventing its misuse for private interests.

Polish Perspective About Judicial Activism

While judicial activism has been a significant feature of the Indian legal system, it is instructive to briefly compare it with judicial activism in Poland.

1. In Poland, judicial activism has taken a different trajectory compared to India. The Polish Constitutional Tribunal, established in 1982, has played a crucial role in shaping the country's legal landscape, particularly during the post-communist transition.⁵⁵ However, the scope and nature of judicial activism in Poland have been more limited compared to India, primarily due to differences in constitutional structures and historical contexts. Unlike India's expansive fundamental rights provisions, Poland's constitution provides a more limited scope for judicial interpretation. Indian courts have

⁵⁴ A. Chintala, *ibid*.

⁵⁵ L. Garlicki, *Constitutional Courts vs. Supreme Courts*, 'International Journal of Constitutional Law' 2007, 5, 1, pp. 44–68.

been more proactive in enforcing socio-economic rights, whereas Polish courts have generally shown greater deference to the legislature in such matters.⁵⁶ Both countries have faced challenges to judicial independence, albeit in different forms and contexts. Despite these differences, both Indian and Polish judiciaries have played important roles in safeguarding constitutional values and promoting the rule of law in their respective countries.

2. India's constitution provides expansive fundamental rights provisions, allowing for broader judicial interpretation. The Indian Supreme Court has the power to issue writs for the enforcement of fundamental rights under Articles 32 and 226, which has been instrumental in shaping its activist approach. In contrast, Poland's constitution offers a more limited scope for judicial interpretation.
3. Indian courts have been notably proactive in enforcing socio-economic rights. The Indian Supreme Court has been particularly active in areas such as environmental protection, women's rights, and governance reforms. Polish courts, in contrast, have generally shown greater deference to the legislature in matters of socio-economic rights, reflecting a more restrained approach to judicial activism.
4. The trajectory of judicial activism in both countries has been shaped by their respective historical and political contexts. In India, judicial activism emerged prominently in the 1980s, pioneered by justices like P. N. Bhagwati and Krishna Iyer. In Poland, the CT's activism has evolved through distinct periods, with significant changes occurring after the 2015 constitutional crisis. The Polish judiciary's activism has been more focused on institutional independence and the preservation of democratic norms.
5. While both judiciaries have engaged in law-making activities to some extent, their approaches differ. The Indian Supreme Court has been more assertive in its interpretative role, often expanding the scope of fundamental rights through innovative judicial reasoning. The Polish CT has shown varying degrees of judicial activism over time, influencing the existing legal order through its judgments. This includes clarifying the effects of its judgments and addressing the scope of legislative freedom in regulating the CT's position.
6. Both countries have faced challenges to judicial independence, albeit in different forms and contexts. In Poland, recent years have seen attempts to limit the CT's powers and influence its composition, leading to concerns about its independence. In India, while the judiciary has maintained a strong independent stance, it has faced criticism for alleged overreach in certain cases.

⁵⁶ W. Osiatyński, *Paradoxes of Constitutional Borrowing*, 'International Journal of Constitutional Law' 2003, 1, 2, pp. 244–268.

Conclusion

In conclusion, while both India and Poland have experienced judicial activism, the scope, nature, and impact of this activism have been shaped by their unique historical, political, and constitutional contexts. The Indian experience demonstrates a more expansive and interventionist approach, particularly in socio-economic matters, while the Polish judiciary has shown a more restrained form of activism within the constraints of its constitutional framework.

Judicial activism in India has been a transformative force in the country's legal and social landscape. From its origins in the post-Emergency era to its current manifestations, it has significantly expanded access to justice, protected fundamental rights, and addressed critical socio-economic issues.

The Indian experience of judicial activism demonstrates the potential of an activist judiciary to act as a check on executive and legislative excesses, protect marginalized groups, and advance constitutional values. However, it also highlights the challenges of balancing judicial activism with the principles of separation of powers and democratic governance.

As India continues to grapple with complex social, economic, and political challenges, the role of judicial activism remains crucial. The ongoing debate surrounding judicial activism reflects the dynamic nature of India's constitutional democracy and the evolving relationship between the judiciary and other branches of government.

The perceived lack of contribution to social justice by Polish judges significantly impacts public trust in the judiciary. This perception is shaped by a combination of political, institutional, and social factors that have eroded confidence in the judicial system. The politicization of the part of judiciary, has led some part of Polish society to a belief that this part of the judiciary is no longer an independent arbiter of justice but rather a tool of the ruling party.

Aktywizm sędziowski w Indiach – kilka uwag z polskiej perspektywy

Abstrakt

Aktywizm sędziowski w Indiach okazał się nader istotny dla prawa i warunków społecznych w tym kraju. Znacznie rozszerzył on dostęp do wymiaru sprawiedliwości, chronił prawa podstawowe i zajął się ważnymi kwestiami społeczno-gospodarczymi. Indyjskie doświadczenie aktywizmu sędziowskiego ukazuje potencjał aktywistycznego sądownictwa w zakresie kontroli nadużyć władzy wykonawczej i legislacyjnej, ochrony grup marginalizowanych i wspierania wartości konstytucyjnych. Podkreśla się również wyzwania związane z równoważeniem działalności sądów z uwagi na zasady podziału władzy i demokratycznych rządów.

Zauważalny brak wkładu polskich sędziów w urzeczywistnianie sprawiedliwości społecznej znacząco wpływa na zaufanie społeczne do wymiaru sprawiedliwości. Połączenie czynników politycznych, instytucjonalnych i społecznych podważyło zaufanie do systemu sądownictwa. Upolitycznienie części wymiaru sprawiedliwości doprowadziło znaczący odłam polskiego społeczeństwa do przekonania, że ta część sądownictwa nie jest już niezależnym arbitrem sprawiedliwości, ale narzędziem partii rządzącej.

Słowa kluczowe: sędziowie, sądy, aktywizm, aktywizm sędziowski (sądowy), orzeczenia.

BIBLIOGRAPHY

Abdul Mujeeb M., Mamtha R., *Judicial Activism in India: A Critical study*, 'International Journal of Research Publication and Reviews' 2024, vol. 5, 4.

Arnold R., Martinez- Estay J.I., *Rule of Law, Human Rights and Judicial Control of Power: Some reflections from national and international law*, Springer 2017, vol. 61.

Baxi U., *The Indian Supreme Court and Politics*, 1980.

Baxi U., *Taking Suffering Seriously: Social action litigation in the Supreme Court of India*, 'Third World Legal Studies' 1985, 4.

Baxi U., *Law, Struggle and Change: An agendum for activists*, 'Social Action' 1985, 35.

Bhuwania A., *Courting the People: Public interest litigation in post-emergency India*, 'Comparative Studies of South Asia, Africa and the Middle East' 2014, 34, 2.

Bojarski Ł., *Judicial Resistance: Missing Part of Judicial Independence? The case of Poland and beyond*, *Oñati Socio-Legal Series* 20.09.2024, . doi: 10.35295/osls.iisl.1893.

Chintala A., *Introduction to Judicial Activism and Judicial Reforms 2020*, Oct. 30, <https://blog.ipleaders.in/introduction-to-judicial-activism-and-judicial-reforms/>.

Deva S., *Public Interest Litigation in India: A Critical Review*, 'Civil Justice Quarterly' 2009, 28, 1.

Garlicki L., *Constitutional Courts vs Supreme Courts*, 'International Journal of Constitutional Law' 2007, 5, 1.

Gauri V., *Public Interest Litigation in India: Overreaching or underachieving?*, 'The World Bank Policy Research Working Paper' 2009, 5109.

Jaswal N., Singh L., *Judicial Activism in India*, 'Bharati Law Review' 2017, Jan.–March.

Khosla M., *Addressing Judicial Activism in the Indian Supreme Court: Towards an evolved debate*, 32 *Hastings Int'l & Comp. L. Rev.* 2009, 55.

Mate M., *The Rise of Judicial Governance in the Supreme Court of India*, 'Boston University International Law Journal' 2015, 33, <https://www.bu.edu/ilj/files/2015/01/Mate-Rise-of-Judicial-Governance.pdf> [accessed: 06.01.2025].

Matthes C. Y., *Judges As Activists: How Polish judges mobilise to defend the rule of law*, 'East European Politics' 2022, vol. 38, 3.

Mittal N., Aggarwal T., *Judicial Activism in India*, 'The Indian Journal of Law & Public Policy' (IJLPP) 2014–2015, Vol.1.1.1.

Nussberger A., Landau D. (eds), *The Justiciability of Economic, Social and Cultural Rights*, 2023.

Osiatyński W., *Paradoxes of Constitutional Borrowing*, 'International Journal of Constitutional Law' 2003, 1, 2.

Rajamani L., *Public Interest Environmental Litigation in India: Exploring issues of access, participation, equity, effectiveness and sustainability*, 'Journal of Environmental Law' 2007, 19, 3.

Rao M., *Public Interest Litigation*, Lucknow: Eastern Book Company 2002.

Robinson N., *Expanding Judiciaries: India and the rise of the good governance court*, 'Washington University Global Studies Law Review' 2009, 8, 1.

Robinson N., *Structure Matters: The impact of court structure on the Indian and U.S. Supreme Courts*, 'American Journal of Comparative Law' 2013, 61, 1.

Sathe S. P., *Judicial Activism: The Indian experience*, 'Washington University Journal of Law & Policy' 2001, 6.

Sathe S. P., *Judicial Activism in India: Transgressing borders and enforcing limits*, New Delhi: Oxford University Press 2002.

Talwar N., *Judicial activism*, Ipleaders August 5, 2022.