Judicial Activism and Overreach:
Indian Supreme Court Since the Emergency

By Professor TN Srinivasan

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ABSTRACT
Primarily in cases relating to corruption but in other cases as well, India's Supreme Court and also lower courts have rendered verdicts in the last two years that cross the boundaries set in Article 50 of the Constitution on separation of powers of the executive, legislatures and the judiciary. Since the end of Emergency Rule of 1975-77 during which the constitutionally guaranteed fundamental rights remained suspended, the Court has used its prerogative of judicial review and through opening the door for Public Interest Litigations the Court successfully ensured that the unconditional fundamental rights as enumerated in the Part III of the Indian Constitution are not violated. The Constitution in its Part IV on Directive Principles of State Policy enumerated a set of primarily economic and social rights of citizens not enforceable through courts and also conditional on the state of economic development of the country and the resource position of the state. But the Court read the enforcement of parts of Part IV as necessary for the mandatory enforcement of Part III. Such a reading of the Constitution however calls for judicial restraint to ensure that it does not implicitly amend the Constitution rather than just interpret it. The Court has exhibited a disturbing trend of using its powers to render judgments that in effect seem to amend the Constitution by intruding into the powers of the executive and the legislature explicitly specified in the Constitution. We analyze the Court’s activism in encroaching upon functions of the executive and legislatures including those relating to constitutional amendments as well as its term its socio-economic-political spill-overs. We find that justices to be incapable of conceptualizing these spillovers and incorporating them in their decisions. The intersections of the intellectual disciplines of law and economics seem absent in the bench, bar and in the teaching and training of lawyers in India.

ABOUT THE SPEAKER
T N Srinivasan is the Yong Pung How Chair Professor at the Lee Kuan Yew School of Public Policy. He has been teaching and doing research at academic institutions in India and United States since his doctorate in economics from Yale in 1962. He was Professor of Economics at the Indian Statistical Institute, New Delhi during 1964-77, Special Adviser at the World Bank’s Development Research Center during 1977-80 and from 1980 until his retirement in mid-2011 he was Samuel C. Park Jr. Professor of Economics and Professor of International and Area Studies at Yale University. He joined the LKY School in January 2011. He holds a B.A (Hons) degree in Mathematics from University of Madras and Two Year Professional Training in Statistics from the Indian Statistical Institute, Calcutta. His teaching and research publications have covered a broad range of areas in economics from micro-economic theory and the theory of optimal growth early in his career to international trade, multilateral institutions and economic development in the last couple of decades.

Professor Srinivasan received the Padma Bhushan, the third-highest civilian decoration of the Indian Government, from the President of India in 2007. He is a Foreign Associate of the National Academy of Sciences, USA, Fellow of the American Academy of Arts and Sciences, the Econometric Society and the American Philosophical Society.

REGISTRATION
There is no registration fee for this seminar but seats are limited. To register, please click here and you will receive an automated message upon submission. For enquiries, please contact Ms Poova at Tel: 6516 3644.

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