

Jobs for Justice(s): Corruption in the Supreme Court of India

Madhav S. Aney*, Shubhankar Dam†and Giovanni Ko‡

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Abstract

We investigate whether judicial decisions are affected by career concerns of judges by analysing two questions: Do judges respond to pandering incentives by ruling in favour of the government in the hope of receiving jobs after retiring from the Court? Does the government actually reward judges who ruled in its favour with prestigious jobs? To answer these questions we construct a dataset of all Supreme Court of India cases involving the government from 1999 till 2014, with an indicator for whether the decision was in its favour or not. We find that pandering incentives have a causal effect on judicial decision making. The exposure of a judge to pandering incentives in a case is jointly determined by 1) whether the case is politically salient (exogenously determined by a system of random allocation of cases) and 2) whether the judge retires with enough time left in a government's term to be rewarded with a prestigious job (date of retirement is exogenously determined by law to be their 65th birthday). We find that pandering occurs through manipulation of actual decisions in favour of the government, and actively through writing favourable judgements rather than passively being on a bench that decides a case in favour of the government. Furthermore, we find that the government is more likely to give prestigious post-Supreme Court jobs to judges who ruled more often in its favour in politically salient cases. These findings suggest the presence of corruption in the form government influence over judicial decision-making that seriously undermines judicial independence. Keywords: judicial decision-making, corruption, career concerns, public sector incentives¹

*School of Economics, Singapore Management University.

†School of Law, City University of Hong Kong.

‡Division of Economics, School of Humanities and Social Sciences, Nanyang Technological University.

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1 Introduction

The fact that many public servants have careers after their tenure in public service has long been thought to create conflicts of interest.² In response to this concern many countries constrain former public servants by requiring a cooling-off period after retirement before they seek fresh employment. However, such constraints rarely apply to retired judges. In countries with term limits for judges it is common for retired judges to go on to have careers in the public and private sectors. This practice raises the possibility that the prospect of post-retirement appointments influences judicial decision making. If true, this compromises the idea of a fair and independent judiciary,³ a critical feature of a well-functioning representative democracy.⁴ In this paper, we investigate the practice of awarding government jobs to retired judges, and show that the concerns surrounding it are in fact valid.

We examine this practice in the context of India. Over the last 15 years, it has become increasingly common for retiring Supreme Court Justices in India to be appointed to prestigious government positions. This has been criticised as leading to a bias in favour of the government when judges decide cases that are politically sensitive.⁵ In this context, it is alleged that corruption takes the form of the following quid-pro-quo: judges *pander* to the government by ruling in its favour and in exchange, the government *rewards* judges who have done so with jobs. This raises two natural questions that we confront in this paper: first, do judges actually respond to pandering incentives by ruling in favour of the government? Second, does the government actually reward judges who ruled in its favour with prestigious jobs? In this paper, we answer both these questions in the affirmative.

To do so, we constructed a novel dataset of cases decided by the Supreme Court of India between 1999 and 2014 involving the government. We analysed the full text of the judgements and coded whether the government won or lost the case.

The key identification challenge is that a correlation between favourable judicial decisions and government appointments after retirement may be driven simply by characteristics of judges, for example, their suitability for particular appointments or their ideology, rather than by the manipulation of judicial decisions to secure such appointments. As such, judicial decision-making may be invariant to incentives and may merely reveal a judge’s “type” rather than indicate the presence of corruption. To address this concern it is necessary to isolate

²There is an emerging empirical literature that suggests that individuals with government experience derive substantial value as lobbyists from their connections to serving politicians. See for example Bertrand, Bombardini, and Trebbi (2014) and Vidal, Draca, and Fons-Rosen (2012). It is therefore plausible that the prospect of such lobbying roles affects their behaviour when they serve in government. See Bó (2006) for a review of the literature on revolving doors and regulatory capture.

³Judicial independence is typically defined as independence from the parties to the dispute, that is, the judge does not expect his welfare to be affected by whether he decides in favour of one party or the other. More specifically it is also seen as independence from government influence when it comes to judicial decision making. See Ramseyer (1998) for a discussion of the idea of judicial independence and a survey of the literature.

⁴Hamilton in Federalist Papers 78 states “This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the the effects of those ill humors, which . . . have a tendency, . . . to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community.”

⁵We present some of the public discourse surrounding this issue in section 7.

the causal effect of pandering incentives on judicial decision making.

We find that judges who have *pandering incentives* are more likely to rule in favour of the government. The exposure of a judge to pandering incentives in a case is jointly determined by 1) whether the case is politically salient and 2) whether the judge retires with enough time (at least one year) left in a government's term to be rewarded with a prestigious job. The institutional architecture of the Supreme Court of India has two unique features that ensure that these pandering incentives are plausibly exogenous. 1) Political salience, i.e., whether the case is of special importance to the government, is plausibly exogenous because cases are randomly assigned to judges. 2) The time between the retirement of a judge and the date of the next election is exogenous in our sample for two reasons: first, all judges retire on their 65th birthday; second, all governments served their full terms and elections were regularly held at 5-year intervals.

We therefore use a difference-in-differences approach where the two dimensions of variation are the political salience of a case and election-retirement distance of a judge. We can think of judges who retire long before an election as the "treatment group" and those retiring shortly before an election as the "control group". Our identification strategy relies on the assumption that, although there could be differences between salient and non-salient cases due to factors other than pandering incentives, these differences do not vary between judges who retire long before and shortly before an election.

Furthermore, we attempt to characterise the channels through which pandering occurs and find two things. First, pandering occurs through the active channel of actually writing judgements rather than the passive channel of simply being on a bench that decides the case in favour of the government. Second, we find evidence of manipulation of actual decisions in favour of the government rather than an alternative explanation based on the manipulation of judgement authorship. Finally, on the rewards side, we show that deciding more cases in favour of the government is positively correlated with being appointed to prestigious post-Supreme Court jobs, particularly for Congress party lead UPA governments.

A large literature analyses the question of judicial independence. In the context of the US Ashenfelter, Eisenberg, and Schwab (1995) find that there is no effect of the ideology of the president who appoints a judge on judicial decisions in federal trial courts. Ramseyer and Rasmusen (1997) present evidence suggesting that in Japan where judges are appointed to the national judiciary and not to specific courts, deciding against the ruling party leads to worse assignments when judges are transferred. In Argentina Iaryczower, Spiller, and Tommasi (2002) find that although judges do decide against the government, the likelihood of doing so is higher when the government is unlikely to survive. Helmke (2002) also finds similar results that suggest there is a strategic dimension to judicial decision making. In the same vein we show how career concerns play a role in judicial decision. Our paper complements this literature as the institutional setting in India allows us to rule out ideology based explanations of judicial behaviour and isolate the causal effect of incentives on judicial decisions.

Our paper also contributes to the growing literature on how judicial decisions are affected

by factors unrelated to legal reasoning. Lim, Snyder, and Strömberg (2015) show that sentence lengths are increased significantly by newspaper coverage of the case. Chen, Moskowitz, and Shue (2016) document a negative autocorrelation in refugee asylum court cases that is unrelated to merits of the case that suggests that the gambler’s fallacy is at work – judges underestimate the likelihood of sequential streaks occurring by chance. Boyd, Epstein, and Martin (2010) document the existence of systematic differences in decisions of male and female judges. Danziger, Levav, and Avnaim-Pesso (2011) show that the likelihood of a favourable parole decision sharply increases after a judge’s lunch break. Our paper adds economic incentives in the form of career concerns to the list of the factors that may affect judicial decisions and compromise judicial impartiality. In attempting to understand of how career concerns affect outcomes in the public sector, our paper complements the empirical literature on career concerns which focuses mostly on incentives within the firm such as executive compensation.⁶

Finally our paper is related to the empirical literature on identifying and measuring corruption in real-world settings.⁷ One approach, exemplified by Bertrand et al. (2007) in the context of obtaining a driving license in Delhi, and Olken (2007) in the context of road-building projects in Java, is to use field experiments to directly manipulate incentives for corruption and observe the resulting behaviour. Another, exemplified by Fisman (2001), Fisman and Miguel (2007), and Acemoglu et al. (2016) is to use event studies that exploit exogenous changes in the environment. Our paper is different from both of these approaches as it exploits exogenous variation in incentives induced by fixed features of the institutional environment. In this sense our approach is closest to Bobonis, Fuertes, and Schwabe (2016) who document how variation in the time at which a municipal government in Puerto Rico is audited, relative to the date of election, enables voters to identify corruption and select responsive politicians.

Lessig (2013b) defines institutional corruption as “the consequence of an influence within an economy of influence that illegitimately weakens the effectiveness of an institution especially by weakening the public trust of the institution”.⁸ Institutional corruption is limited to contexts that involve “a repeated and regular practice of exchange that produces predictable or tractable incentives within the institution” (Lessig 2013a). In this paper, we appropriate the language of institutional corruption to analyse the functioning of the Indian judiciary. We

⁶Two notable exceptions include Schneider (2005) and Li and Zhou (2005).

⁷Surveys include Banerjee, Hanna, and Mullainathan (2012), Olken and Pande (2012), Pande (2007), and Sukhtankar and Vaishnav (2015)

⁸Originally developed by Dennis Thompson to explain the US Congress deviation from its proper purpose because of the influence of several systemic features of the legislative process, institutional corruption theory now has a global appeal (Thompson 1995). Researchers have deployed the term to a wide range of contexts: corporate-funded think tanks, especially in Washington D.C., that disseminate research to shape public policy that benefits the funders bottom lines (Williams 2013); investment consultants the gatekeepers between large investors, such as private and public retirement funds, and those from Wall Street who design and sell financial products and the murky legal landscape within which they function (Youngdahl 2013); bonds issued by public authorities that offer private entities access to tax-exempt borrowing (Fox 2013); the sale of off-label (FDA unapproved) drugs and the role of incentives that pharmaceutical firms offer to prescribing physicians (Rodwin 2013); judicial independence in Latin America and the role of informal (cultural) norms that undermine the former. See Mendonca (2013) and Laver (2014).

examine an influence (possibility of post-retirement government jobs) on individuals (judges) within an institution (the Supreme Court of India). Such an influence, if present, conflicts with the purposes of the Supreme Court: to decide cases accordingly to law, and without fear of or favour from the government. As such, it is likely to weaken public trust in the institution: the idea that Indian judges are independent, and that the judiciary as an institution is independent. It is important at the outset to state an important caveat to our results – we present evidence of corruption on a statistical level, that is, we find that the existence of corruption is the most parsimonious and compelling explanation that fits the data at an aggregate level. Given the statistical nature of our study we are unable to identify the presence of pandering in a particular case or by a particular judge. Therefore going forward, our use of the term corruption should be understood to refer to institutional corruption rather than to an individual instance of corruption by a particular judge.

Our paper is of interest for three reasons. First, our paper is the first to identify the consequences career concern incentives on judicial decision making. Second, we identify corruption in a very high-profile institution subject to intense public scrutiny, where one would expect it to be subtle and hard to detect. Finally, because the kind of corruption we uncover is systemic in nature and shaped by incentives, we can make clear policy recommendations to combat it. Corruption is often seen as a “type” based phenomenon that is created by bad behaviour of some “rotten apples”. In our setting “type” on its own cannot fully explain the presence of corruption since we show that incentives that are uncorrelated with type, play a crucial role in shaping corrupt behaviour.

The rest of the paper is organised as follows. We describe the institutional background of the Supreme Court of India in section 2, the data in section 3 and the empirical strategy in section 4. In section 5, we present our main results about the presence of pandering, together with robustness checks. In section 6, we explore the channels through which pandering occurs. In section 7, we present evidence that the government rewards pandering with post-Supreme Court jobs. We discuss policy implications in section 8 and provide concluding remarks in section 9.

2 Institutional background

The Supreme Court of India is the highest court in the country. It decides both appeals from lower courts and fresh petitions. Compared to supreme courts in other countries, it has a very high case load. For example, in 2009, 77,151 cases were filed and 71,179 were decided. This makes the Supreme Court of India an outlier when compared to Supreme Courts of other countries, when it comes to access and the number of decisions (Green and Yoon 2016).

In response to perceived inaction by the executive and the legislative, the Supreme Court has expanded its remit to matters traditionally within the purview of those branches of government. It routinely strikes down actions by government agencies at all levels and issues orders on policy matters as diverse as pollution, sexual harassment, etc. As noted by Robinson

(2013), “despite the range of matters, or perhaps partly because of this diverse and heavy workload, the Indian Supreme Court has become well known for both its interventionism and creativity.” As a result, the Supreme Court of India operates under intense public scrutiny.

Since 2008, the Constitution of India provides for up to 31 Supreme Court Justices.⁹ Between 1986 and 2008, the number was limited to 26. However, the actual number of judges has always been less than 31, with the current number being 28. The Chief Justice of India (henceforth CJI) is the most senior Justice of the Court with additional powers in the appointment of Justices and the allocation of exceptional cases, as discussed below.

2.1 Allocation of cases

In the Supreme Court of India, a *bench* is a group of judges who jointly hear and decide a case. Benches are always composed of at least two judges. Ordinarily, a case is heard by a two-judge bench, but in the rare occasions when the two judges disagree or the case is of exceptional importance, the CJI constitutes a larger bench of three or more judges to hear that particular case.

Before 1994, the allocation of cases to benches was at the discretion of the Registry of the Supreme Court. There was widespread suspicion that this discretion led to “bench-hunting”, i.e., collusion between lawyers and the Registry to manipulate the allocation of cases to more favourable benches. In response to this problem, the Supreme Court switched to a system of random computerised allocation of cases to benches. In private correspondence with the authors, Chandresh Bhushan, Registrar General of the Supreme Court when the new system was introduced, described the change as follows:

Computerized system of filing and processing with random system of allocation of petitions to different benches was done with that end that is to save on manual labour, bring more speed and efficiency. [...] At the same time it also eliminated the possibility of “forum shopping” or in other words “bench hunting” by lawyers.

The Handbook of the Supreme Court also emphasises that the allocation of cases to benches by the current system is manipulation-proof, stating that

Since the allocation is made by computer, [...] there is no scope for any Bench-Hunting. (Section VI.A.i)

Since benches composed of three or more judges are constituted by the Chief Justice to hear particular cases, the allocation of cases to these benches is not random and we drop such cases from our analysis.¹⁰ Therefore, our sample is composed solely of cases decided by

⁹See Robinson (2013) for a lively and insightful exposition of the institutional background of the Supreme Court of India.

¹⁰Robinson et al. (2011) shows that, since independence, the CJI has been in dissent in 10 out of more than 1000 cases decided by five or more judges, suggesting that he constitutes benches to ensure that the majority agrees with him.

two-judge benches.¹¹

As pointed by Ashenfelter, Eisenberg, and Schwab (1995) a key concern with the literature on published judgements is the selection bias – judgements may not be a representative sample of all cases since a significant fraction of cases are actually settled before they are decided by the court. The random allocation of cases to judges allows us to avoid this problem since differences in probability of the government winning a case must be due to differences in judicial behaviour rather than unobservable case characteristics.

2.2 Appointment and retirement of judges

Since the mid-1990s, in response to calls for increased judicial independence, the appointment of judges to the Supreme Court has been the exclusive prerogative of the Supreme Court itself.¹² The CJI, heading a panel composed of other Supreme Court Justices, appoints new Justices from a pool of (state-level) High Court judges and, in exceptional cases, eminent Supreme Court lawyers. Therefore, unlike other supreme courts such as the US one, the executive and legislative branches of government play no active role in the appointment process. The appointment of the CJI is mechanical by convention: at any given time, he is the judge with the longest tenure in the Supreme Court.¹³

According to Article 124 of the Indian constitution, Supreme Court Justices must retire from the Court on their 65th birthday. In principle, judges could choose to retire earlier than this, but this has never happened in our sample period. Hence, their retirement date is exogenously determined by their date of birth.

After retiring from the Supreme Court, judges are constitutionally barred from practising law in any Indian court. Many continue to work as arbitrators in private disputes or as members of government commissions. The largest employer of ex-Supreme Court judges is the Union government of India (henceforth government). Appointments to government positions are considered prestigious and desirable by judges, as these enable them to continue influencing policy. Due to their prestige, competition for these positions is fierce. These appointments are made by the executive and are consequently politically driven. This appointment process is not transparent and is widely believed to be subject to lobbying by judges and internal machinations within the government.

Hence, although the government has no active role in appointing judges to the Supreme Court, it wields substantial influence over them by controlling their post-Supreme Court job prospects, as we demonstrate in later sections. This is in contrast to the US, where the

¹¹One potential concern is that cases decided during our sample period were actually allocated to benches before the randomisation system was introduced in 1996. This is not a concern for our sample since, in every case, at least one judge was appointed after 1996, so that the bench must have been constituted after the change.

¹²This change was enacted by the Supreme Court itself in its decision on the Supreme Court Advocates-on Record Association vs Union of India case of 1993.

¹³Since the Supreme Court Advocates-on Record Association vs Union of India case of 1993, there has been no deviation from this convention. Note that although there have been female Supreme Court Justices, we use masculine pronouns throughout when referring to judges since the court has been overwhelmingly composed of men.

appointment process to the Supreme Court is heavily politicised but the government wields little influence over judges once their appointment is finalised. The two systems differs in how the government tries to influence the Supreme Court: in the US, it does so by manipulating the *type* of judges who are appointed to the Court; in India, it does so by incentivising judges to manipulate their *actions* through control of post-retirement job prospects.

3 Data

In this section, we describe the sources and features of the data we use in this paper. We use three kinds of data: information about cases decided by the Supreme Court, information about judges’ tenures in the Court and information on the jobs they received after retirement from the Court. We provide summary statistics for the main variables in table 1.

3.1 Case data

Using the SCC Online database¹⁴, we collected the full text of all 2605 decisions written by judges of the Supreme Court between 1999 and 2014 where the “Union of India” appears as one of the parties. The phrase “Union of India” is how the Union government of India is identified in court cases.

Our sample is composed of the subset of cases satisfying the following criteria:

- We only use cases officially classified as *judgements*, not orders. This is because it is difficult to pander through orders for two reasons. First, a judgement is a decision on a point of law whereas an order is a procedural or summary decision. As such, orders are of minor importance relative to judgements and are unlikely to be noticed by the government.¹⁵ Second, the name of the judge writing a judgement is always explicitly identified but this is almost never the case for orders. Hence, in most cases, it is not possible for the government to pinpoint the judge who wrote a favourable order.
- As discussed in section 2.1, we only consider cases decided by a two-judge bench.
- We only consider cases where both judges retired before May 2014, i.e., at least one year before the beginning of data collection. This is because, as we show in section 3.3, it takes on average one year for a retired judge to secure a post-SC job.
- We only include cases where the decision was unambiguously for or against the government, as described below.

For each case, we wrote a computer program to parse the full text of the judgement to extract information on the date of the judgement, word count of the judgement, whether the case was an appeal or a fresh petition, whether the government was an appellant/petitioner

¹⁴SCC Online is widely acknowledged to be the most comprehensive database of Supreme Court of India cases, used by lawyers and legal scholars.

¹⁵Examples of orders are joining several cases into one, remanding a case to a lower court, etc.

or respondent, the names of judges deciding the case, the name of the judge who wrote the judgement, whether the CJI was one of the judges, and whether the Attorney General of India or the Solicitor General of India represented the government in the case.

We coded a case as being *politically salient* if the Attorney or Solicitor General of India (or both) represented the government in the case. They are the primary and secondary lawyers of the government, respectively. Both appointments are political, with the Attorney General being a constitutional position equivalent in rank to a cabinet minister. As such, these lawyers only appear in cases of great importance to the government in power.¹⁶

Finally, a key case-level variable is whether the government won or lost. We hired second- and third-year law students as research assistants (RAs). Their task was to read the full text of each judgement and input whether the government won or lost. Data entry was carried out through an online platform we designed.¹⁷ The interface allowed for three options, namely, the government won, the government lost or the winner was not unambiguously identifiable. Each case was initially randomly assigned to two RAs. If the two RAs disagreed in their coding, the case was randomly assigned to a third RA.¹⁸ This happened in less than 10% of the cases. The interface also allowed RAs to rate their confidence (high/low) in their own coding of each case. This was consistently high except for those cases with disagreements.

3.2 Judge data

For each Justice of the Supreme Court, we collected information on their date of birth, date of appointment to the Supreme Court, date of retirement from the Court and date of elevation to the office of Chief Justice, if ever.

Using this information, we define the variable “*retired long before*” as a dummy that takes value 1 if the judge retired at least one year before the next general election, 0 otherwise. During our sample period 1999–2014, elections occurred at regular five-year intervals as all governments served their full term. Since, as discussed in section 2.2, the retirement date of all judges in our sample is their 65th birthday, the “*retired long before*” variable is mechanically determined by their date of birth and the date of the next election after retirement.

The tenures of all judges in our sample are depicted in fig. 3 in appendix A. The black bars represent the tenures of judges who retired long before an election, while the hatched ones represent the tenures of judges who retired shortly before an election. The vertical lines represent general election dates, with the blue lines representing elections won by the UPA (2004 and 2009) and saffron representing the NDA (1999 and 2014).

¹⁶There are also several (currently 7) Additional Solicitors General who represent the government in the Supreme Court, who appear in around half of the cases involving the government. Given the large number of such cases, we do not consider their presence as meaning that the case is of great importance to the government, unlike the presence of the Attorney General or Solicitor General.

¹⁷Screenshots of the online platform and instructions to the RAs are available upon request.

¹⁸Since there were three options, it is possible that disagreements persist even with three RAs, but this never occurred in our sample.

3.3 Jobs data

We collected information on government positions taken up by Supreme Court Justices after their retirement from the Court. In particular, we collected information on the position and the date of appointment to that position. Whenever possible, we obtained this information from notifications published in the official Gazette of India. However, as the archives of the Gazette are incomplete, we supplemented this with an extensive search of newspaper reports and of the archives of bodies to which ex-Supreme Court Justices are commonly appointed. Since these are prominent positions, we are confident that our search was exhaustive.

We define a *post-Supreme Court (post-SC) job* as one awarded by the Union government to a retired Supreme Court Justice. Examples include Chairman or Member of the National Human Right Commission, Competition Appellate Tribunal, Law Commission of India and Press Council of India. We provide a full list in table 9. For a judge who is appointed to several post-SC jobs over time, we consider the first job as his post-SC job, since appointment to later jobs is likely to be affected by his performance in previous post-SC jobs rather than pandering while being an active judge.

From time to time, the Supreme Court constitutes committees to investigate issues that arise in specific cases and appoints ex-SC judges to these committees. We exclude these jobs since they are not awarded by the executive and are therefore unrelated to the type of corruption we investigate here.

Variable	Mean	Std. dev.	Min	Max
<i>Case-level (666 cases)</i>				
Govt won	0.62	0.49	0.00	1.00
Salient	0.13	0.34	0.00	1.00
Appeal(0)/Petition(1)	0.24	0.43	0.00	1.00
CJI present	0.14	0.35	0.00	1.00
Log of wordcount	8.34	0.84	6.07	11.33
<i>Judge-level (68 judges)</i>				
Retired long before	0.83	0.38	0.00	1.00
Tenure	6.83	10.34	3.01	65.53
Ever CJI	0.11	0.32	0.00	1.00
Years between retirement and post-SC job	1.27	2.25	-0.88	8.63
Post-SC job	0.86	0.36	0.00	1.00
Post-SC job (NDA)	0.23	0.43	0.00	1.00
Post-SC job (UPA)	0.63	0.49	0.00	1.00
Number of salient cases	0.86	1.38	0.00	6.00
Number of salient cases (NDA)	0.31	0.76	0.00	4.00
Number of salient cases (UPA)	0.54	1.12	0.00	5.00
Number of favourable decisions in salient cases	0.63	1.06	0.00	4.00
Number of favourable decisions in salient cases (NDA)	0.31	0.76	0.00	4.00
Number of favourable decisions in salient cases (UPA)	0.31	0.72	0.00	3.00

Table 1: Summary statistics

4 Empirical strategy

We focus on corruption in the form of *pandering*, i.e., judges manipulating decisions in politically salient cases in favour of the government in order to increase the likelihood of obtaining a post-SC job. At the case level, pandering occurs if the judges decides in favour of the government when, based on the merits of the case, the opposite decision should have been made.¹⁹ Unfortunately, as any assessment of the merits of a case is inherently subjective, it is practically infeasible to use this approach to identify pandering in our sample of more than 600 cases.

Instead, we can *statistically* identify the presence of pandering by comparing judges who have incentives to pander to those who don't. We use the following definition: a judge has incentives to pander in a case if *both*

1. the case is politically salient, *and*

¹⁹We use this dichotomous definition as we only observe whether the government has won or lost a case, without any information on how favourable the judgement was for the government.

2. the judge retires long enough before an election.

The political salience of a case is captured by whether or not the Attorney General or Solicitor General of India appears in the case. The presence of the Attorney General or Solicitor General indicates that the case is one that is particularly important for the government. We expect that pandering, if it exists, will manifest itself in these cases. Since cases are randomly allocated to judges, as described in section 2.1, we believe that the variable capturing the salience of a case is exogenous to judge specific characteristics that may influence the outcome of the case. Furthermore, in appendix B.1 we show that the allocation of salient cases is unrelated to observable characteristics of judges.

Whether a judge retires long before an election or not is captured by whether the judge retires from the Supreme Court at least one year before an election. We choose a threshold of one year because, as seen in the summary statistics, it takes on average a little over one year to secure a post-SC job, conditional on securing it at all.²⁰ Judges who retire less than one year before the next election have much weaker incentives to pander to the government in power at the time of their retirement, as they are unsure about whether that government will still be in power after the election.²¹

As described in section 2.2 and section 3.2, the date of retirement of judges is mechanically determined by their date of birth, and furthermore, elections occurred at regular five-year intervals. Hence, whether a judge is going to retire long before an election is predictable while he is deciding cases and, moreover, exogenous.

We identify pandering using difference-in-differences, where the two dimensions of variation are the salience of a case and whether the judge retired long before an election. We can think of judges who retire long before an election as the “treatment group” and those retiring shortly before an election as the “control group”. We compare the salient–non-salient difference in decisions between these treatment and control groups to obtain our estimate of the effect of pandering incentives.

The basic idea behind the identification strategy is illustrated by the simple two-by-two bar chart in Figure 1: judges who retire long before an election are indeed more likely to decide in favour of the government in salient cases than in non-salient cases, whereas this is not the case for judges who retire shortly before an election.

²⁰As we show in section 5.2, our results are robust to varying this threshold.

²¹We address concerns about re-election beliefs in section 5.3.

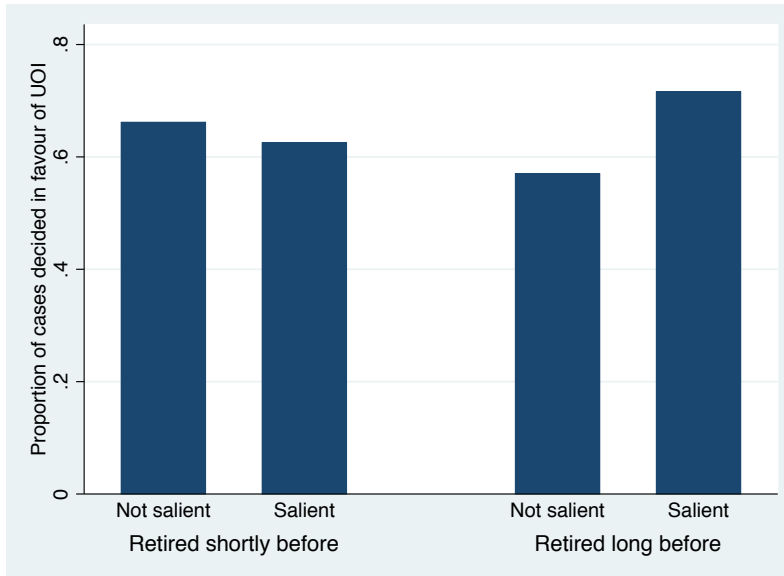


Figure 1: Differences in probability of case being decided in favour of UOI by salience and retirement distance

We implement our empirical strategy through the following regression specification:

$$\begin{aligned} \text{won}_{ijt} = & \alpha + \beta \text{salient}_i + \gamma \text{retired long before}_j \\ & + \lambda \text{salient}_i \times \text{retired long before}_j + \mathbf{X}'\eta + \varepsilon_{ijt} \end{aligned} \quad (1)$$

The variables on the right-hand side of eq. (1) capture pandering incentives, while the dependent variable captures the behaviour induced by them. The key parameter of interest is λ , the difference between judges who retire long and shortly before an election in the difference in the probabilities of deciding in favour of the government in salient versus non-salient cases. Our identification strategy relies on the assumption that, although there could be differences between salient and non-salient cases based on factors other than pandering incentives, this difference does not vary between judges who retire long before and shortly before an election. Therefore, we interpret a positive and significant estimate of λ as evidence of the behavioural response to pandering incentives.

5 Results

In this section, we present our main results about the presence of pandering. We also test them for robustness and we address the role of beliefs in shaping pandering incentives.

5.1 Main results

The results from regressing our main specification eq. (1) using OLS are reported in columns (1)–(5) of table 5.²² As discussed in section 4, the key parameter of interest is the coefficient of the interaction of salient and “retired long before”, i.e., the difference-in-differences parameter. This captures the effect of incentives to pander, i.e., both the case being politically salient and the judge retiring long before an election. We observe that this coefficient is positive and stable in all specifications, indicating that judges do engage in corruption by favouring the government when the case is politically salient *and* the judge retires long before an election.

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	OLS	OLS	OLS	OLS	OLS	Logit	Probit
Salient	-0.0640 (0.112)	-0.0474 (0.113)	-0.0553 (0.112)	0.00916 (0.122)	0.00373 (0.119)	0.00696 (0.510)	0.00840 (0.307)
Retired long before	-0.0427 (0.0294)	-0.0370 (0.0295)	-0.0397 (0.0294)				
Salient × Retired long before	0.234** (0.103)	0.225** (0.103)	0.246** (0.102)	0.184 (0.112)	0.198* (0.110)	0.967** (0.488)	0.568** (0.289)
Case controls	No	Yes	Yes	Yes	Yes	Yes	Yes
Judge dummies	No	No	No	Yes	Yes	Yes	Yes
Year dummies	No	No	Yes	No	Yes	Yes	Yes
Observations	1441	1441	1441	1441	1441	1424	1424
R^2	0.007	0.010	0.034	0.097	0.117		

Table 2: Average effect of pandering incentives on decisions.

Two observations per case, one for each judge. Dependent variable is whether government won. Case controls are type of case (appeal/petition), whether CJI was one of the judges, whether government was appellant/petitioner, log of wordcount. Standard errors are shown in parentheses and are clustered at the case level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

In columns (2)–(7) we control for case characteristics such as log word count of the judgement, whether the case was an appeal or fresh petition, whether the government was the appellant/petitioner or respondent, and whether the CJI appeared in the case. The sign and significance of our coefficient of interest is unaffected by the inclusion of these case controls.

To establish the presence of pandering, that is to show that there’s a causal effect of incentives on judicial decisions, we need to rule out the possibility that our results are driven by

²²Note that an observation is a case-judge pair. Moreover, there are some cases where one of the judges has not retired during our sample period. In such cases, the corresponding case-judge pair is then excluded.

ideological alignment of judges with political parties. For example, judges who are ideologically aligned with the ruling party could be more likely to decide in favour of the government. Although undesirable, we do not consider this pandering. Instead, we define pandering as behaviour that arises in response to extrinsic incentives rather than intrinsic motivations such as ideology or innate characteristics.

Ideological alignment or other unobservable time-invariant judge characteristics are unlikely to introduce bias in our regressions because they are unlikely to be correlated with our regressors. First, as discussed in section 6.2, the allocation of cases to judges is completely random, so that whether a judge is assigned a politically salient case or not is uncorrelated with his personal characteristics. Second, whether a judge retires long before an election or not is decided solely by his date of birth and the date of the next election, both of which are exogenous.²³

Nonetheless, to rule out the possibility of any bias caused by unobservable judge characteristics, we include judge dummies in eq. (1). Moreover, to control for time-specific effects we also include dummies for the year in which the case was decided. These would absorb any changes in the decisions induced by political and institutional changes over time, e.g., the increase in the number of judges in 2008. We therefore use the following regression equation:

$$\begin{aligned} \text{won}_{ijt} = & \alpha_i + \delta_t + \beta \text{salient}_i + \gamma \text{retired long before}_j \\ & + \lambda \text{salient}_i \times \text{retired long before}_j + \mathbf{X}'\eta + \varepsilon_{ijt} \end{aligned} \quad (2)$$

The results of estimating eq. (2) are reported in columns (3)–(5).²⁴ The estimate of the key parameter of interest, namely, the coefficient of salient interacted with “retired long before”, continues to be positive and significant in all the specifications except for the one reported in (4) even though the point estimate in column (4) is similar to the other OLS estimates. Moreover the logit and probit results with judge and year dummies reported in columns (6) and (7) are strongly significant.²⁵

5.2 Robustness

Recall that the variable “retired long before” takes value 1 if the judge retires at least one year before an election. We pick one year as the threshold because on average it takes a little over one year for a judge to be appointed to a post-SC job, as shown in table 1. To ensure that our results are robust to different thresholds for the “retired long before” variable, we repeat the regressions with thresholds of 6 and 18 months. We report these results in table 3. The coefficient of the interaction term remains positive and significant, indicating that the estimated effect of pandering incentives is robust.

²³In our sample period, elections occurred regularly every five years.

²⁴The “retired long before” variable is dropped from these specifications as it only varies by judge.

²⁵Our sample is not a panel as there is one observation per case. Hence the incidental parameter problem does not apply and we can estimate logit and probit with judge and year dummies.

	(1)	(2)	(3)	(4)	(5)	(6)
	OLS	OLS	Logit	Logit	Probit	Probit
Threshold (months)	6	18	6	18	6	18
Salient	-0.346*	-0.0796	-1.591*	-0.418	-0.989*	-0.240
	(0.182)	(0.138)	(0.850)	(0.572)	(0.516)	(0.354)
Salient × Retired long before	0.546***	0.290*	2.604***	1.501**	1.608***	0.903**
	(0.194)	(0.164)	(0.928)	(0.745)	(0.559)	(0.451)
Case controls	Yes	Yes	Yes	Yes	Yes	Yes
Judge dummies	Yes	Yes	Yes	Yes	Yes	Yes
Year dummies	Yes	Yes	Yes	Yes	Yes	Yes
Observations	742	742	709	709	709	709
R^2	0.183	0.179				

Standard errors in parentheses

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 3: Robustness checks with different thresholds for retired long before.

Dependent variable is whether government won. Case controls are type of case (appeal/petition), whether CJI was one of the judges, whether government was appellant/petitioner, log of wordcount. Standard errors are shown in parentheses. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

5.3 Beliefs about future governments

In our analysis so far, we consider pandering incentives to be present when a case is politically salient and the judge retires long before an election. However, it is possible that judges’ beliefs about the re-election prospects of the government in power also play a role in determining pandering incentives. For example, consider a judge deciding a politically salient case who will retire shortly before the next election. We currently treat such a judge as not having pandering incentives because there isn’t enough time for the current government to reward him by appointing him to a post-SC job. However, such a judge may still have strong pandering incentives if he strongly believes that the government will be re-elected so that he will be rewarded after the election.

Note that if judges who retire shortly before an election have pandering incentives similar to those of judges who retire long before one, there will be *downward* bias in the difference-in-differences estimator. The reason why the effect of pandering incentives will be underestimated is that there is little difference between our “treatment” and “control” groups, i.e., judges who retire long and shortly before an election, in their pandering incentives.²⁶ Therefore, the effect of pandering incentives are bounded below by the positive and significant

²⁶This downward bias is even stronger in the unlikely event that judges who retire shortly before an election have *stronger* pandering incentives than those retiring long before, as this would lead to a negative estimate of the effect.

estimates in section 5.1.

Nonetheless, we address the issue of re-election beliefs by using the subsample of cases decided in the judge's final government. That is, we exclude all cases decided prior to the last election before the judge retires as beliefs about elections prior to retirement play no role whatsoever. Figure 2 illustrates this with a hypothetical scenario. Elections occur at times 1, 2, 3 and 4. Judge A retires long before election 4 while Judge B retires shortly before election 3. The bars represent their tenures. Judge A's beliefs about elections 2 and 3 could affect his decisions in cases decided between elections 1 and 3 (black portion of the bar for Judge A). Similarly, judge B's beliefs about election 2 could affect his decisions in cases decided between elections 1 and 2 (black portion of the bar for Judge B). Therefore, we drop all these cases, leaving a sample consisting only of cases decided during the government at retirement (white portions of the bars). Note that this approach is the most restrictive way of addressing the issue of beliefs, as the role of all beliefs about all elections other than a judge's last one is eliminated.

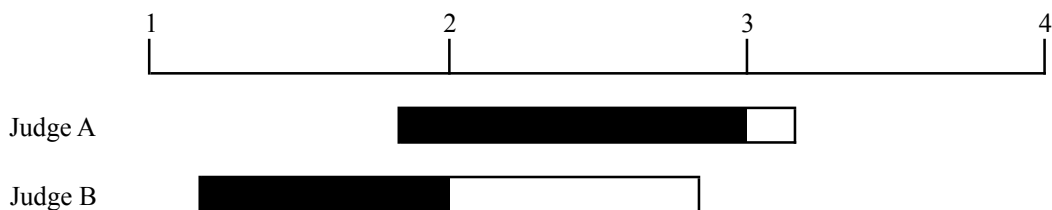


Figure 2: Restricted sample of cases decided during final government prior to retirement

The results of estimating eq. (1) and eq. (2) using this subsample are reported in table 4. All estimates of the coefficient of the interaction term are positive and significant. Moreover, we note that the magnitude has increased (by at least 10 percentage points). Consistent with the above discussion, this suggests that our estimates in section 5.1 are indeed lower bounds on the effect of pandering incentives.

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	OLS	OLS	OLS	OLS	OLS	Logit	Probit
Salient	-0.361** (0.161)	-0.345** (0.163)	-0.359** (0.163)	-0.260 (0.178)	-0.328* (0.180)	-1.643** (0.838)	-1.001** (0.496)
Retired long before	-0.0992* (0.0510)	-0.0886* (0.0526)	-0.0585 (0.0589)				
Salient × Retired long before	0.578*** (0.190)	0.578*** (0.190)	0.618*** (0.192)	0.664*** (0.222)	0.729*** (0.221)	4.020*** (1.203)	2.439*** (0.698)
Case controls	No	Yes	Yes	Yes	Yes	Yes	Yes
Judge dummies	No	No	No	Yes	Yes	Yes	Yes
Year dummies	No	No	Yes	No	Yes	Yes	Yes
Observations	381	381	381	381	381	331	331
R^2	0.025	0.031	0.097	0.236	0.295		

Table 4: Restricted sample of cases decided during final government prior to retirement. Dependent variable is whether government won. Only observations for judgement writers included. Case controls are type of case (appeal/petition), whether CJI was one of the judges, whether government was appellant/petitioner, log of wordcount. Standard errors are shown in parentheses. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

6 Pandering mechanisms

In this section we explore different mechanisms that could explain our results so far. In particular, we show two things; first, that pandering occurs through actually writing the judgement rather than simply sitting on the bench and second, that it results in potentially harmful manipulation of actual decisions.

6.1 Writing judgements vs sitting on the bench

The judgement is almost always delivered by one of the two judges deciding the case.²⁷ The name of the judge writing the judgement is always identified when a judgement is delivered. Generally, the choice of judge writing the judgement is idiosyncratic and is decided between the two judges deciding the case.

We expect that rather than simply *sitting on a bench* that decides in favour of the government, pandering may manifest itself in actually *writing* judgements that are favourable to the government. There are two reasons for this. First, being the author of a favourable

²⁷There were only 10 cases where both judges wrote a judgement.

judgement is more visible, and consequently more likely to be rewarded, compared to just sitting on the bench in a case that is decided in favour of the government. Conversely, the judge not writing the judgement is less likely to be noticed and therefore less likely to be rewarded for favourable judgements and punished for unfavourable ones. Second, the literature on signalling shows that costly actions are an effective form of communication in environments where talk is cheap. Since a judge’s reputation depends on the judgements he has written, committing to written judicial reasoning for favouring the government may be a more credible way for a judge to signal his willingness to conform to the government’s preferences in his role after retirement in case he receives a post-SC appointment.

If this is true, we expect judges who respond to pandering incentives to be over-represented in the sub-sample of judgement writers. As such we would expect pandering incentives to be a stronger predictor of a case being decided in favour of the government in the sub sample of judgement writers compared to the sub sample of judge on the bench who did not write the judgement. To test this hypothesis, we run the specification in equation (1) and (2) using the characteristics such as “retired long before” and judge dummies, of the judge who wrote the judgement and report the results in table table 5.

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	OLS	OLS	OLS	OLS	OLS	Probit	Logit
Salient	-0.283*	-0.273*	-0.321*	-0.175	-0.241	-1.113	-0.682
	(0.158)	(0.159)	(0.169)	(0.164)	(0.165)	(0.680)	(0.425)
Retired long before	-0.116***	-0.111***	-0.124***				
	(0.0386)	(0.0395)	(0.0416)				
Salient × Retired long before	0.483***	0.483***	0.550***	0.385**	0.459**	2.232***	1.367***
	(0.178)	(0.179)	(0.187)	(0.188)	(0.188)	(0.835)	(0.514)
Case controls	No	Yes	Yes	Yes	Yes	Yes	Yes
Judge dummies	No	No	No	Yes	Yes	Yes	Yes
Year dummies	No	No	Yes	No	Yes	Yes	Yes
Observations	742	742	742	742	742	709	709
R^2	0.020	0.021	0.050	0.150	0.183		

Table 5: Effects on judgement writers.

Dependent variable is whether government won. Case controls are type of case (appeal/petition), whether CJI was one of the judges, whether government was appellant/petitioner, log of wordcount. Standard errors are shown in parentheses. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

We observe that the estimates of the coefficient on the interaction term are positive and

significant across all specifications. We also observe that they are larger than the estimates in table 2. To test this hypothesis further we run the same specifications on the sub sample composed only of judges who were on the bench but did not write the judgement. As expected, the estimated coefficient of the interaction term, i.e., the estimate of the effect of pandering incentives, is smaller than in the main results and is statistically insignificant. This is reported in table 6.

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	OLS	OLS	OLS	OLS	Logit	Probit	OLS
Salient	0.152 (0.140)	0.174 (0.145)	0.205 (0.132)	0.237 (0.153)	0.268* (0.141)	1.296* (0.732)	0.827* (0.435)
Retired long before	0.0422 (0.0433)	0.0438 (0.0432)	0.0538 (0.0459)				
Salient × Retired long before	-0.0119 (0.160)	-0.0261 (0.163)	-0.0524 (0.155)	-0.0990 (0.182)	-0.134 (0.176)	-0.608 (0.951)	-0.458 (0.533)
Case controls	No	Yes	Yes	Yes	Yes	Yes	Yes
Judge dummies	No	No	No	Yes	Yes	Yes	Yes
Year dummies	No	No	Yes	No	Yes	Yes	Yes
Observations	699	699	699	699	699	677	677
R^2	0.007	0.014	0.036	0.157	0.174		

Table 6: Effects for judges not writing the judgement.

Dependent variable is whether government won. Case controls are type of case (appeal/petition), whether CJI was one of the judges, whether government was appellant/petitioner, log of wordcount. Standard errors are shown in parentheses. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

The results in this section indicate that the estimated effects seen in the main results seen in table 2 are the average effect over those judges who write judgements, and those who do not. Naturally, the effect of pandering incentives is stronger when we focus on the sub sample of judges who write judgements as judges responding to incentives are over-represented in this sub sample.

6.2 Manipulating judgements vs allocating judgement writing

Although the allocation of a case to a bench is randomised, the authorship of the judgement, as discussed in the previous section, is not. The two judges on the bench jointly decide which one of the two writes the judgement. Therefore, it is possible that one of the channels through

which pandering occurs is through the manipulation of judgement authorship. In this section we explore this further to clarify the mechanism through which pandering occurs.

One possible mechanism that could explain our main results is the following. Rather than manipulating the actual decision in favour of the government, it is possible that judges merely manipulate the allocation of who writes the judgement. For example, consider a bench where one of the judges retires long before an election and the other doesn't. In a politically salient case where the "correct" decision is in favour of the government, these judges could decide to allocate the writing of the judgement to the judge who retires long before an election, to increase the latter's cachet with the government. Systematic manipulation of the *allocation* of judgement writing of this kind could explain the positive estimates in the main results, as judges who retire long before an election would be more likely to write judgements in favour of the government in politically salient cases. Although this could be considered pandering, this type of manipulation has very different welfare implications from the kind where the actual decision is changed in favour of the government.

We therefore consider the characteristics of the whole bench rather than just those of the judge writing the judgement. In particular, for each case, we use a variable measuring the number of judges on the bench who retire long before an election, taking values 0, 1 and 2. Now, the strength of pandering incentives is captured by the interaction of "salient" and the number of judges on the bench "retiring long before". The results reported in table 7 show that the estimated effect of pandering incentives remains positive and significant, across all specifications.

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	OLS	OLS	OLS	OLS	OLS	Logit	Probit
Salient	-0.447** (0.190)	-0.433** (0.195)	-0.458** (0.197)	-0.312 (0.229)	-0.326 (0.217)	-2.311* (1.246)	-1.368** (0.682)
Retired long before (bench)	-0.0624** (0.0271)	-0.0602** (0.0273)	-0.0654** (0.0310)				
Salient × Retired long before (bench)	0.384*** (0.108)	0.378*** (0.110)	0.400*** (0.111)	0.320** (0.135)	0.325** (0.128)	2.314** (0.930)	1.374*** (0.484)
Case controls	No	Yes	Yes	Yes	Yes	Yes	Yes
Judge dummies	No	No	No	Yes	Yes	Yes	Yes
Year dummies	No	No	Yes	No	Yes	Yes	Yes
Observations	764	764	764	764	764	705	705
R^2	0.018	0.021	0.048	0.267	0.290		

Table 7: Effects for whole bench.

Dependent variable is whether government won. Case controls are type of case (appeal/petition), whether CJI was one of the judges, whether government was appellant/petitioner, log of wordcount. Standard errors are shown in parentheses. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

The coefficient of the interaction term now represents the increase in the difference between salient and non-salient cases in the probability of the government winning when we replace one judge who retires shortly before an election with one who retires long before an election.

If all benches only manipulate the allocation of who writes the judgement and not the actual decision, then the strength of pandering incentives at the bench level ought not to have any effect on the likelihood of a decision in favour of the government, since all benches make the “correct” decisions. The results in table 7 show that this is not the case. Therefore, our main results cannot be driven solely by manipulation of who writes the judgement. This implies that judges are manipulating the actual decisions in response to pandering incentives.

7 Rewards for pandering

Having identified the presence of corruption on the “supply” side in the form of pandering by judges, we now focus on the “demand” side in the form of rewards by governments. In principle, there could be many ways in which the government rewards judges who rule in its favour. We explore whether there is any evidence that pandering is actually rewarded by the government in a particular form, namely post-SC jobs.

The practice of awarding post-SC jobs has been widely criticised.²⁸ For example, Indira Jaising, former Additional Solicitor General of India, commenting on the appointment of former Chief Justice of India (CJI) H. L. Dattu to Chairperson of the National Human Rights Commission, said that “Independence can be undermined in different ways and one of them is offering post retirement benefits immediately upon retirement.”²⁹ Arun Jaitley, current Finance Minister, while in opposition, said that “Pre-retirement judges are influenced by a desire for a post-retirement jobs.”³⁰ Even R. M. Lodha, a former CJI, on the day of his retirement from the Supreme Court, said “I hold the view that the CJI, judges of the Supreme Court, Chief Justice of High Courts and judges of High Courts should not accept any constitutional position or assignment with government.”³¹ and “The idea is to insulate judges from the lure of post-retirement jobs. Judges don’t have to run after politicians for lucrative posts after retirement if they get a salary.”³²

We contribute to this discourse by showing that deciding more cases in favour of the political party in power is positively correlated with the judge being appointed to a prestigious post-SC job. We show this by estimating

$$\begin{aligned} \text{job}_j = & \alpha + \beta_1 \text{decisions in favour of NDA} + \beta_2 \text{decisions in favour of UPA} \\ & + \gamma_1 \text{total decisions during NDA} + \gamma_2 \text{total decisions during UPA} + \mathbf{Z}'\zeta + \varepsilon_j. \end{aligned} \quad (3)$$

The variables “decisions in favour of NDA or UPA” measure the number of politically salient cases decided in favour of an NDA or UPA government by judge j . The variables “total decisions during NDA or UPA” measure the number of politically salient cases decided during an NDA or UPA government by judge j . The dependent variable job_j can take three values: 0 if judge j was not appointed to a post-SC job; 1 if a UPA government appointed him to a post-SC job; -1 if an NDA government appointed him to a post-SC job. Table 1 reports the summary statistics for these variables.

Column (1) of table 8 reports the results of estimating eq. (3) by OLS. We find that the estimate of β_2 , the effect of the number of decisions in favour of a UPA government, is positive and significant, indicating that deciding more cases in favour of a UPA government increases the probability of a UPA government appointing the judge to a post-SC job.

The estimate of β_1 , the effect of the number of decisions in favour of an NDA government, is statistically insignificant in all specifications. One could interpret the difference in significance between the estimates of β_1 and β_2 as suggesting that only UPA governments participate in

²⁸See for example Sangai et al. (2016), a report by an independent Indian think tank that highlights, among other challenges, the issue of post-retirement jobs.

²⁹Live Law, 27 Nov 2015, *CJI Dattu may be offered the post of NHRC Chairperson; Ms. Indira Jaising says independence of judiciary undermined by post retirement benefits*

³⁰NDTV, 1 Oct 2012, *Judges’ verdicts are influenced by post-retirement jobs: Arun Jaitley*

³¹Live Law, 27 Sep 2014, *There should be a cooling off period of 2 years for judges to accept any appointment after retirement; Justice Lodha*

³²Indian Express, 25 Oct 2015, *As CJI, I told PMs of way to insulate judges from lure of post-retirement jobs: Lodha*

this form of corruption. Alternatively, this difference could arise because the practice of giving post-SC jobs may have strengthened over time with the number of commissions and tribunals increasing³³ since during our sample period of 1999–2014, NDA was in power until 2004 and UPA thereafter.

To investigate this further, we categorise post-SC jobs into *high-profile* and *low-profile*. We define high-profile jobs to be appointments to policy positions that survive both a) the current appointee and b) the government in power. We provide a complete categorisation of jobs into these two groups in table 9. Their characteristics mean that the high-profile jobs according to our definition attract a much greater level of interest than the low-profile ones. The OLS results for high- and low-profile jobs only are reported in columns (2) and (3). The fact that the estimate of β_2 is significant for all jobs and high-profile jobs but not for low-profile ones, indicates that pandering is rewarded with the more prestigious high-profile jobs.

We also repeat the analysis using ordered logit and report the results in columns (4)–(6), confirming our previous results.

These results run contrary to the expectation that corruption at such a high-level, under such intense public scrutiny, is subtle and surreptitious. Moreover, it is striking that this form of corruption can be detected statistically using a sample of only 68 observations.

Although suggestive, note that on its own this need not be causal evidence of corruption. Even though we control for observable judge characteristics, this correlation could be explained by the unobservable “type” of judges, e.g., political ideology or pro-/anti-government bias, driving both their rulings and their likelihood of obtaining a post-SC job. However, since we have established the existence of pandering by judges, at least part of the correlation must be driven by rewards for actual pandering.

³³Several were created but none were dissolved during the sample period.

	(1)	(2)	(3)	(4)	(5)	(6)
Profile of jobs	All	High	Low	All	High	Low
Num. cases in favour of NDA	-0.140 (0.486)	0.242 (0.404)	-0.382 (0.328)	-0.427 (1.443)	1.065 (1.655)	-1.808 (1.563)
Num. cases in favour of UPA	0.524** (0.250)	0.424** (0.208)	0.101 (0.169)	1.590* (0.834)	1.809** (0.877)	0.599 (0.984)
Num. cases under NDA	0.220 (0.486)	-0.150 (0.405)	0.370 (0.328)	0.673 (1.448)	-0.680 (1.657)	1.718 (1.557)
Num. cases under UPA	-0.286 (0.174)	-0.206 (0.145)	-0.0802 (0.117)	-0.832 (0.578)	-0.906 (0.604)	-0.484 (0.705)
Constant	0.172 (0.256)	-0.00392 (0.213)	0.176 (0.173)			
Observations	68	68	68	68	68	68
R^2	0.206	0.191	0.083			

Table 8: Correlation between favourable decisions and post-SC job. Dependent variable is -1 if judge obtained post-SC job from NDA, 1 if judge obtained job from UPA, 0 if no job. All specifications include the following controls: party at time of retirement, retired long before an election, tenure in the Supreme Court, whether they were ever CJI.

8 Policy implications

There are a number of policy recommendations that could attenuate the incentives for judges to pander to the government.³⁴ The most obvious one is to discontinue the practice of appointing ex-SC judges to government positions. This is problematic because currently several key positions are statutorily required to be filled by ex-SC judges or even an ex-CJI.

Another widely mooted suggestion is to introduce a cooling-off period of at least two years before ex-SC judges can be appointed to a government position. The idea behind this measure is to weaken both the memory of pre-retirement pandering for the government and the value of post-retirement rewards for judges. In addition to this, our analysis suggests that this cooling-off period would be more effective for those judges retiring less than two years before an election, as it would introduce uncertainty about the identity of the government that rewards them.

Former CJI R. M. Lodha suggested a policy of continuing to pay ex-SC judges their salary or an equivalent pension to reduce the attraction of post-SC jobs. However, the effectiveness of this measure might be limited by the fact that the attraction of these jobs may be largely due to the influence the holders continue to wield on policy matters, rather than the salary and

³⁴See Mookherjee (1997) for an insightful discussion of incentive reforms in the public sector.

perks. In any case, judges for whom monetary incentives are very important opt for much more lucrative opportunities as arbitrators in private disputes.

A further suggestion is to increase the retirement age of judges. The current retirement age is too low since many judges are still in their prime at 65. Such a policy change would reduce the number of judges seeking post-SC jobs, as fewer would choose to continue working at a more advanced age. Reducing the supply of candidates would reduce competition for these posts, and would consequently reduce the perceived need to pander.

Lastly, making appointments to post-SC jobs mechanically could also reduce pandering incentives. This could be implemented most easily by making appointments based solely on the date of retirement or length of tenure on the court. This would uncouple post-retirement prospects from behaviour while deciding cases.

9 Conclusion

In this paper we find that, first, judges respond to pandering incentives by ruling in favour of the government and, second, the government rewards judges who ruled in its favour with prestigious jobs. Furthermore, we characterise two channels through which pandering occurs. First, pandering occurs through actively writing favourable judgements rather than passively being on a bench that decides the case. Second, pandering works through potentially harmful manipulation of actual decisions in favour of the government rather than through more benign means, such as manipulating judgement authorship. Our results are not driven by “rotten apples”, i.e., *type* differences in the integrity of judges, but rather by a rational *behavioural response* to perverse institutional incentives in the form of career concerns.

The findings we report are important because this kind of corruption potentially constitutes a very serious miscarriage of justice, with far-reaching welfare implications. However, we note that the welfare implications depend on whether the “correct” rulings, i.e. the ones judges would make in the absence of pandering incentives, are welfare-maximising. For instance, pandering could lead to a welfare gain if the Supreme Court is otherwise biased against the government, and pandering incentives help steer the Court towards “better” decisions. This is related to the idea, found in Huntington (1968) and Bardhan (1997), that the presence of corruption can improve outcomes in a second-best world with many distortions already present. Evaluating whether pandering reduces or increases welfare faces two problems. First, identifying anything about the “correctness” of a ruling requires deep textual analysis, which is infeasible on a large scale. Second, there is no natural way of identifying the welfare-maximising ruling when it requires taking sides between, for example, a pro-free speech Court and a pro-security government.

Nevertheless, regardless of the welfare implications, the presence of pandering in the Supreme Court undermines notions of judicial integrity and independence. The importance of confidence in the impartiality of the judiciary is captured by the maxim “justice must not only be done but must be seen to be done”. Frequent allegations of pandering suggest that

clearly justice is not seen to be done. Moreover, our results documenting the presence of such pandering suggest that justice is in fact not always done.

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A Data appendix

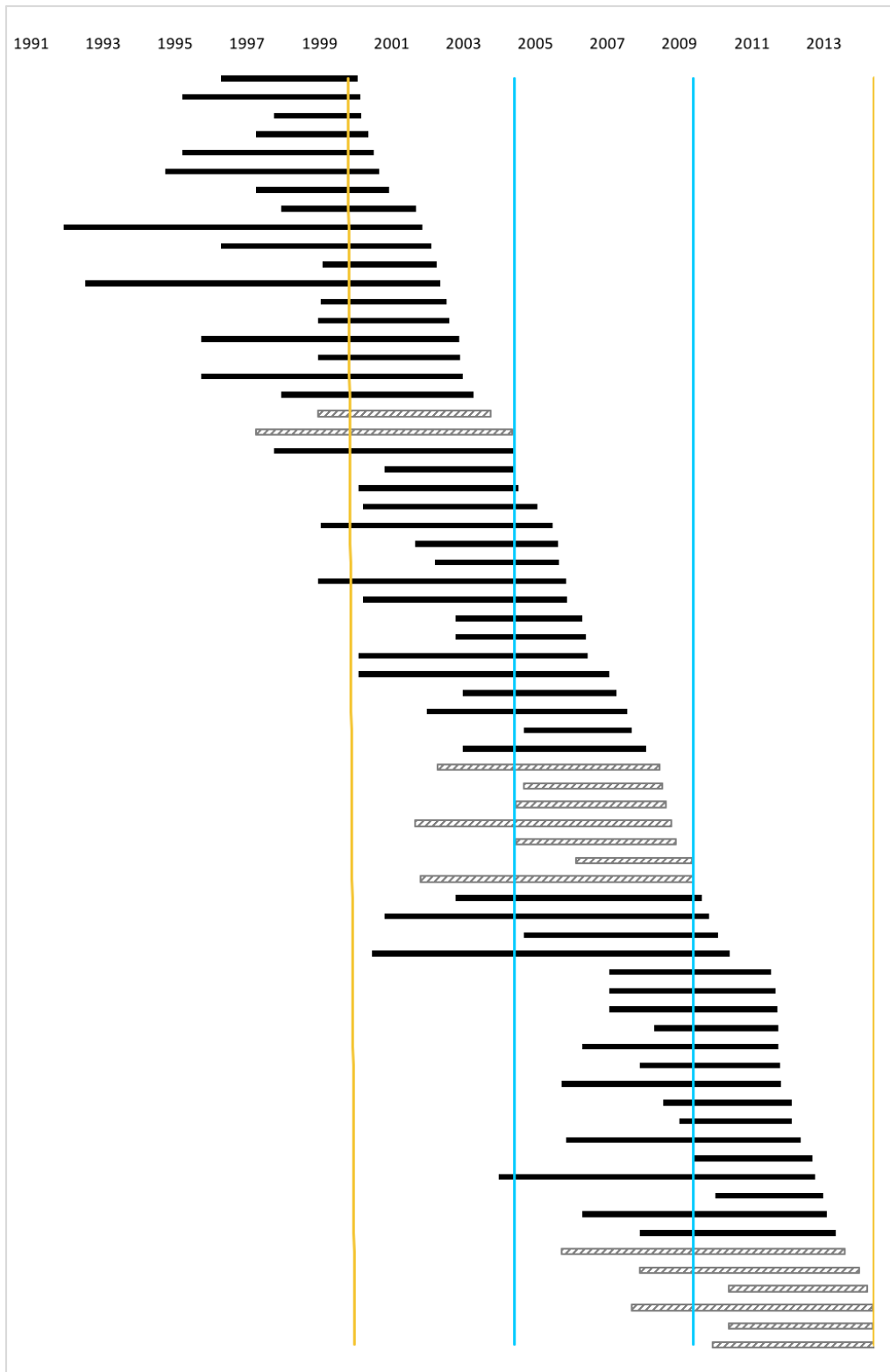


Figure 3: Judge tenures.

Each bar represents the tenure of a judge. Solid bars are for judges who retire at least one year before an election, while hatched bars are for judges who retire less than one year before an election. The saffron line represent elections won by the NDA while the light blue lines represent elections won by the UPA.

Position	Institution	Frequency
<i>High-profile jobs</i>		
Chairperson	Appellate Tribunal for Electricity	1
Chairperson	Armed Forces Tribunal	1
Chairperson	Competition Appellate Tribunal	3
Governor	Government of Kerala	1
President	National Consumer Disputes Redressal Commission	2
Chairperson	National Forest Commission	1
Chairperson	National Green Tribunal	2
Chairperson/Member	National Human Rights Commission	5
Chairperson	Press Council of India	2
Chairperson	Telecom Disputes Settlement and Appellate Tribunal	4
<i>Low-profile jobs</i>		
Chairperson	Cauvery Water Dispute Tribunal	1
Chairperson	Krishna Water Disputes Tribunal	1
Chairperson	Mahadayi Water Disputes Tribunal	1
Chairperson	Vamsadhara Water Disputes Tribunal	1
Chairperson	Law Commission of India	4
Chairperson	Pay Commission	1
Chairperson	M. B. Shah Commission of Inquiry on Illegal Mining	1
Chairperson	Nanavati Commission	1
Chairperson	S. Saghir Ahmed Commission	1
Chairperson	U.C Banerjee Commission on the Godhra riots	1
Chairperson	Central University of Jharkhand	1
Professor	National University of Juridical Sciences	2
Chancellor	Sikkim University	1

Table 9: Post-SC jobs and frequencies

B Supplementary results

B.1 Testing randomness of case allocation

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Dependent var.	Number	Number	Number	Number	Fraction	Fraction	Fraction
Retired long before	-0.0536 (0.368)	0.430 (0.305)	0.432 (0.308)	0.484 (0.306)	0.0572 (0.0570)	0.0579 (0.0573)	0.0575 (0.0581)
Non-salient cases		0.0426*** (0.00697)	0.0427*** (0.00703)	0.0427*** (0.00695)			
Tenure in SC			-0.00282 (0.0152)	-0.00470 (0.0151)		-0.00171 (0.00294)	-0.00170 (0.00297)
Chief justice				0.474 (0.307)			-0.00390 (0.0603)
Constant	0.750** (0.334)	-0.0887 (0.301)	-0.0731 (0.315)	-0.182 (0.319)	0.0326 (0.0517)	0.0424 (0.0546)	0.0433 (0.0567)
Observations	68	68	68	68	68	68	68
R^2	0.000	0.365	0.366	0.389	0.015	0.020	0.020

Table 10: Allocation of salient cases to judges.

The dependent variable in columns 1–4 is the number of politically salient cases allocated to a judge. The dependent variable in columns 5–7 is the fraction of cases allocated to a judge that are politically salient.