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

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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 through the more active channel of writing favourable judgements rather than passively being on a bench that decides a case in favour of the government. Furthermore, we find that deciding in favour of the government is positively associated with both the likelihood and the speed with which judges are appointed to prestigious post-Supreme Court jobs. 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 incentives[1]

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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.[3] 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,[4] a critical feature of a well-functioning representative democracy. 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, alleged 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 such as, for example, their suitability for particular appointments or their ideology, rather than by 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

[2]There 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 Dal Bó (2006) for a review of the literature on revolving doors and regulatory capture.

[3]See chapter 3 of Garupa and Ginsburg (2015) for an extensive discussion of the practice of awarding jobs to judges across different countries.

[4]Judicial 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.

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

to isolate the causal effect of pandering incentives on judicial decision making.

In our framework, 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.

Using this methodology, we find that judges who have *pandering incentives* are more likely to rule in favour of the government. We interpret this result as the causal effect of pandering incentives on judicial behaviour

Furthermore, we attempt to characterise the channel through which pandering incentives work and find that the mechanism consists of actually writing judgements rather than simply being on a bench that decides the case in favour of the government. On the "rewards" side, we show that authoring decisions in politically salient cases in favour of the government is positively correlated with whether or not the judge is appointed to prestigious post-Supreme Court jobs, and the speed with which the appointment is made.

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. Our paper complements this literature by using the combination of random allocation of cases and fixed retirement dates 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 empirical literature on legal realism that exam-

ines 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 unrelated to their merits, suggesting 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. 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, Djankov, 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 is neither a field experiment nor an event study, instead, 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.

Rather than attempting to identify individual acts of corruption, the literature above and our paper identify corruption statistically at an aggregate institutional level. 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). We 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

[6]Notable exceptions are Schneider (2005) and Li and Zhou (2005). For an insightful discussion of incentive reforms in the public sector, see Mookherjee (1997).

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

[8]The notion of institutional corruption was originally developed by Thompson (1995) to explain the US Congress' deviation from its proper purpose because of the influence of several systemic features of the legislative process. Applications include Williams (2013) in the context of dissemination of research for the benefit of funders; Youngdahl (2013) and Fox (2013) in the context of misalignment of incentives in the design and sale of financial products; Rodwin (2013) in the context of the interaction between pharmaceutical firms and prescribing physicians; Mendonca (2013) and Laver (2014) in the context of judicial independence in Latin America.

cases accordingly to law, and without fear of or favour from the government. This 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. In line with the empirical literature on corruption, we present *statistical* evidence of corruption, 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 corruption in a particular case or by a particular judge. Therefore, our use of the term corruption should be understood to refer to institutional corruption and not 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 of 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, the kind of corruption we uncover is systemic in nature and shaped by incentives, rather than being a "type"-based phenomenon that is created by bad behaviour of some "rotten apples". Hence, our findings suggest a clear role for institutional reform in addressing the problem.

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 provide concluding remarks in section 8.

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]

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

Between 1986 and 2008, the number was limited to 26. However, the actual number of judges has always been less than 31, with the number in January 2017 being 23. 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 uncommon 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., colllusion 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, a former Registrar General of the Supreme Court who was in service 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 two-judge benches.[11]

[10] Robinson 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.

[11] One 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.

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. Hence, their retirement date is exogenously determined by their date of birth.[14]

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 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.

[12]This 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.

[13]Since 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.

[14]In principle, judges could choose to retire earlier than this, but this only happened for one judge in our sample period. We discuss our treatment of this case in section 3.

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.

3.1 Case data

Using the SCC Online database[15], 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.[16] 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. This also present the empirical problem of identifying orders with the judges who made them.
- 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 (although we test for robustness of our results to varying this criterion).
- This leaves us with a sample of 667 cases. We further restrict our sample to cases where only one of the two judges wrote a judgement (although our results remain unchanged to varying this criterion since there are only 6 cases with 2 judgments). Our sample is composed of the 661 cases that satisfy these criteria.

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 or respondent, the names of judges deciding the case, the name of the judge who wrote the

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

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

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.[17]

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.[18] 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.[19] 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. The summary statistics for these case level variables is are reported in table 1.

[17]There are also several (seven as of 2016) 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.

[18]Screenshots of the online platform and instructions to the RAs are available upon request.

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

	(1) Non-salient mean/sd	(2) Salient mean/sd	(3) Difference b/se
UOI won	0.593	0.750	-0.157*
	(0.492)	(0.438)	(0.076)
Number of judges who retired long before	1.384	1.568	-0.184
	(0.667)	(0.501)	(0.103)
Appeal (1) Petition (0)	0.861	0.568	0.292***
	(0.347)	(0.501)	(0.056)
UOI appellant/petitioner (1) Respondent (0)	0.412	0.295	0.116
	(0.493)	(0.462)	(0.077)
CJI present in case	0.013	0.091	-0.078***
	(0.113)	(0.291)	(0.021)
Log wordcount	8.168	8.653	-0.485***
	(0.775)	(0.804)	(0.121)
Observations	617	44	661

Table 1: Case summary statistics

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 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.[20]

The tenures of all judges in our sample are depicted in fig. 2 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).

[20]The only exception was Justice Dalveer Bhandari, who retired on the day he was elected to the International Court of Justice (ICJ), six months before his 65th birthday. We code his "retirement date" as his 65th birthday, as his appointment to the ICJ was unforeseen during almost all of his tenure on the Supreme Court. In any case, we repeat our analysis excluding the 64 cases decided by him in our sample and our results remain unchanged. Another exception was Justice M. Srinivasan who died on 25 February 2000 before his 65th birthday but did not decide any cases 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 12. 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. The summary statistics for judge level variables are reported in table 2.

	(1) Retired shortly before mean/sd	(2) Retired long before mean/sd	(3) Difference b/se
Number of cases	37.214	24.183	13.031
	(36.787)	(19.543)	(7.007)
Proportion of salient cases	0.102	0.192	-0.090
	(0.071)	(0.197)	(0.054)
Any job	0.643	0.517	0.126
	(0.497)	(0.504)	(0.149)
PCT job	0.429	0.350	0.079
	(0.514)	(0.481)	(0.145)
Speed of appointment	0.356	0.359	-0.003
	(0.425)	(0.418)	(0.138)
Speed of appointment (PCT)	0.292	0.264	0.028
	(0.416)	(0.395)	(0.122)
Tenure (years)	5.493	5.143	0.351
	(1.607)	(1.808)	(0.526)
Was CJI	0.214	0.167	0.048
	(0.426)	(0.376)	(0.114)
Years from retirement until post-SC job	1.527	1.118	0.409
	(2.553)	(2.065)	(0.894)
Observations	14	60	74

Table 2: Judge 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 decide in favour of the government when, based on the merits of the case, the opposite decision should have been made.[21] 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 benches composed of judges who have stronger incentives to pander to those who have weaker incentives to pander. We use the following definition: a judge has incentives to pander in a case if *both*

1. the case is politically salient, *and*

[21] We 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.

Whether a judge retired long before an election or not is captured by whether the judge retired 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.[22] 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. To transform this variable into pandering incentives at the bench level, we simply use the number of judges on the bench who retire long before an election. This bench level variable that takes three value: 0, 1, and 2 since every case in our sample is decided by exactly two judges.

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. Consequently the number of judges on the bench who retire long before an election is also 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.[23]

[22] We discuss the robustness of our results to varying this threshold in section 5.2.

[23] Our regression specification is a variation of this same idea as we use the number of judges on the bench who retire long before an election.

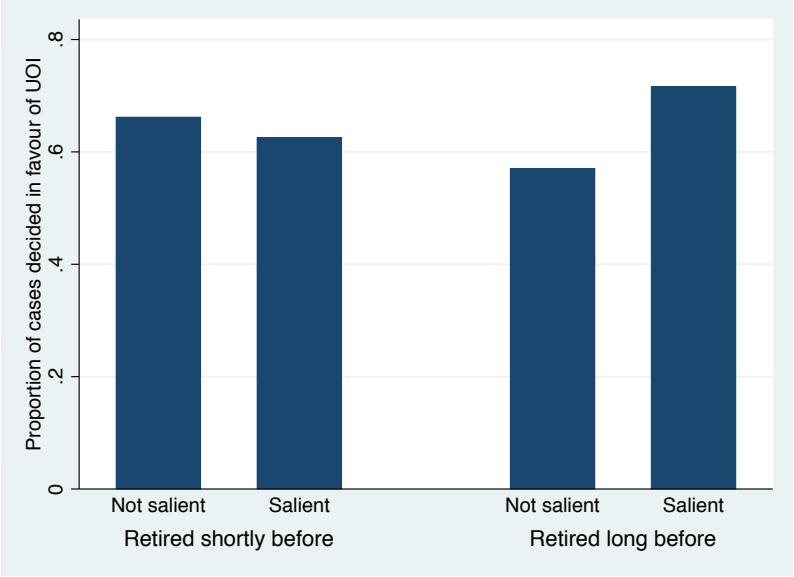

Figure 1: Differences in probability of case being decided in favour of UOI by salience and retirement distance

5 Pandering incentives and judicial decisions

In this section, we present our main results about the presence of pandering. We also test them for robustness and we address potential concerns. We implement our empirical strategy through the following regression specification:

$$\begin{aligned} \text{won}_{ijt} = \alpha + \beta\,\text{Salient}_i + \gamma\,\text{Number of judges retiring long before}_i \\ + \lambda\,\text{Salient}_i \times \text{Number of judges retiring long before}_i + \mathbf{X}'\eta + \varepsilon_{ijt} \end{aligned} \tag{1}$$

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 change in the difference in the probabilities of deciding in favour of the government in salient versus non-salient cases, when we replace a judge who retired shortly before an election with one who retired long an election. 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 based on the number of judges retiring long before an election on the bench. Therefore, we interpret a positive and significant estimate of λ as evidence of the behavioural response to pandering incentives.

5.1 Main results

The results from regressing our main specification eq. (1) using OLS are reported in columns (1) and (2) of table 3. 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)
Salient case	-0.384	-0.333	-0.384	-0.199	-0.236
	(0.248)	(0.250)	(0.254)	(0.257)	(0.259)
Number of judges who retired	-0.0496*	-0.0413	-0.0477		
long before	(0.0294)	(0.0298)	(0.0335)		
Salient case × Number	0.351**	0.329**	0.365**	0.246	0.272*
of judges who retired long before	(0.151)	(0.152)	(0.155)	(0.160)	(0.162)
Case controls	No	Yes	Yes	Yes	Yes
Year dummies	No	No	Yes	No	Yes
Judge dummies	No	No	No	Yes	Yes
Observations	661	661	661	661	661
R^2	0.017	0.023	0.047	0.193	0.211

Standard errors in parentheses

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

Table 3: Effect of pandering incentives on decisions.
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. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

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 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 2.1, the allocation of cases to judges is 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.[24]

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:

$$\begin{aligned}\text{won}_{ijt} = \alpha_j + \delta_t + \beta\,\text{Salient}_i + \lambda\,\text{Salient}_i \times \text{Number of judges retiring long before}_i \\ + \mathbf{X}'\eta + \varepsilon_{ijt}\end{aligned} \tag{2}$$

The results of estimating eq. (2) are reported in columns (3)–(5).[25] 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.[26]

We now discuss possible sources of bias in our results. We show that these sources either lead to no bias or a downward bias in our estimates. As such, the estimates we presented are lower bounds of the effect of pandering incentives on judicial decisions.

Incentives for the "control" group It is possible that the "control" group of judges that retire shortly before an election have *some* rather than *no* incentives to pander. In that case, the comparison between "treatment" and "control" judges is not a comparison between judges with and without incentives, but rather a comparison between judges with stronger and weaker incentives to pander. Therefore, our estimates of this difference are lower bounds on the true effect of pandering incentives on judicial decisions.

Greater scrutiny for politically salient cases One possibility is that politically salient cases receive more scrutiny and therefore judges are less likely to decide in favour of the government when such cases favour the other litigant on merits, relative to non-salient cases. If true, this will only make the difference-in-differences smaller as it reduces the difference between "treatment" and "control" judges in how they decide politically salient cases, again, making our estimates lower bounds.

[24] In our sample period, elections occurred regularly every five years.

[25] The "retired long before" variable is dropped from these specifications as it only varies by judge.

[26] Our 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.

Non-random appearance of AG or SG A possibility is that the Attorney General (AG) or Solicitor General (SG) may be more likely to appear in cases where the government is more likely to win. If true, this would simply be differenced out if it affects both "treatment" and "control" judges. Another possiblity is that the AG or SG are more likely to appear before judges in the "treatment" group. This is ruled out by the fact that AG or SG are equally likely to appear before judges in the "treament" and "control" groups, as shown in table 2.

A further possibility is that the AG or SG are more likely to appear before judges who are more likely to decide in favour of the government. This is unlikely, as we see in table 2 that the proportion of cases that are politically salient is the same across judges in our "treatment" and "control" groups. Moreover, since cases are randomly assigned to judges, such behaviour would only occur if the AG or SG systematically believe that they are more likely to win before "treatment" group judges. Therefore, this is simply another form in which pandering incentives affect the likelihood of a decision in favour of the government.

Settlement of cases Similar to the point above, 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. In fact, there may be differences in the likelihood of out-of-court settlement between cases assigned to benches with "treatment" group judges and cases assigned to benches with "control" group judges. As pointed out by Ashenfelter, Eisenberg, and Schwab (1995), random allocation of cases to judges means that any differences in the probability of the government winning a case must be due to differences in judicial behaviour rather than unobservable case characteristics. As such, the observed differences reflect the effect of pandering incentives on judicial decisions.

Beliefs about elections It is possible that pandering incentives are affected by a judge's beliefs about elections. For example, a judge retiring shortly before an election may pander if he believes that the government in power will be reelected and he would be rewarded after election. It is also possible that a judge retiring long before an election only begins to pander after the last election in his tenure before his retirement.[27] Note in any of these scenarios where a particular configuration of beliefs leads to pandering by judges who retire shortly before an election, or leads to weaker pandering by 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 for at least some part of their tenure there

[27] One way of testing this would be to interact pandering incentives with whether the case in question was filed after the government in power at the time of a judge's retirement was elected. We would expect the effect of pandering incentives to be particularly strong in the final part of a judge's term. Unfortunately we do not observe the date of filing of a case. The date of the decision that we do observe is not a satisfactory proxy for this as it can take years for a case to be decided. Moreover, the date of decision is likely to be endogenous since judges with pandering incentives could expedite or delay certain cases based on how this affects their post-SC appointment prospects.

will be little difference between our "treatment" and "control" groups, i.e., judges who retire long and shortly before an election, in their pandering incentives.[28] Therefore, the effect of pandering incentives are bounded below by the positive and significant estimates in table 3.

Another possibility is that judges retiring shortly before an election systematically decide politically salient cases against the government in power at the time of retirement. This could happen if these judges believe that the government at the time of retirement will lose the next election and the opposition party at the time of retirement would reward them once they form the next government. Although this is unlikely to be the full story since the incumbent lost only one of two elections that occured in our sample period, this is certainly consistent with our results. Note that such behaviour is nonetheless an effect of pandering incentives on judicial decision making, albeit one where the judges retiring shortly before an election pander to a potential future government rather than the current one.

5.2 Robustness

In this section we test the robustness of our results to perturbing different elements of baseline specification.

Using factor variables In the specification presented in equations (1) and (2), we have used the number of judges that retire long before an election as our interacting variable with political salience of the case. As discussed before, since there are two judges deciding each case, this variable takes three values: 0, 1, and 2. This forces the marginal effect of pandering incentives on decisions to be constant. We now estimate the following specification:

$$\begin{aligned}\text{won}_{ijt} = \alpha &+ \beta\,\text{Salient}_i \\ &+ \gamma_0\,\text{Neither judge retired long before}_i \\ &+ \gamma_2\,\text{Both judges retired long before}_i \\ &+ \lambda_0\,\text{Salient}_i \times \text{Neither judge retired long before}_i \\ &+ \lambda_2\,\text{Salient}_i \times \text{Both judges retired long before}_i \\ &+ \mathbf{X}'\eta + \varepsilon_{ijt} \end{aligned} \tag{3}$$

Our baseline specification in eq. (1) is a special case of eq. (3) as it forces the restrictions $-\gamma_0 = \gamma_2$ and $-\lambda_0 = \lambda_2$. The specification in eq. (3) allows the effect of a change in pandering incentives going from a bench with no judges who retire long before an election to a bench with one judge who retires long before an election, to be different from the effect as we go from a bench with one judge who retires long before an election to a bench with both judges retiring long before an election.

The results are reported in table 4. The estimates for λ_2 are stable and positive across

[28] This 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.

all specifications. We find that regression cannot estimate λ_0 because there are no politically salient cases in our sample that are assigned to a bench where neither judge retired long before an election. This implies that the variation used for estimating λ in specifications eq. (1) and eq. (2) comes from politically salient cases decided by benches with one or two judges retiring long before an election.

	(1)	(2)	(3)	(4)	(5)
Salient case	-0.0441	-0.0152	-0.0206	0.0372	0.0287
	(0.116)	(0.118)	(0.119)	(0.119)	(0.120)
Neither judge retired long before	0.0176	0.00903	0.0428	-0.0631	-0.0467
	(0.0681)	(0.0684)	(0.0721)	(0.109)	(0.113)
Both judges retired long before	-0.0649	-0.0566	-0.0500		
	(0.0416)	(0.0419)	(0.0447)		
Salient case × Both judges retired long before	0.366**	0.344**	0.367**	0.259	0.280*
	(0.154)	(0.155)	(0.157)	(0.162)	(0.163)
Case controls	No	Yes	Yes	Yes	Yes
Year dummies	No	No	Yes	No	Yes
Judge dummies	No	No	No	Yes	Yes
Observations	661	661	661	661	661
R^2	0.017	0.024	0.047	0.194	0.212

Standard errors in parentheses

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

Table 4: Factor variables 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. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Logit and probit Next we rerun our baseline specification using logit and probit instead of the linear probability model. We observe that the coefficient estimates of λ remain positive and significant.[29] The results are reported in table 5.

[29]Note that there are fewer observations in the logit and probit regressions. This is because in two years, all salient cases were decided in favour of the government, so that when we include year dummies, those observations are dropped. Similarly, for six judges, all salient cases were decided either all in favour of or all against the government.

	(1) Logit	(2) Logit	(3) Logit	(4) Logit	(5) Probit	(6) Probit	(7) Probit	(8) Probit
Salient case	-2.022*	-1.812	-1.492	-1.620	-1.191*	-1.060	-0.897	-0.968
	(1.131)	(1.145)	(1.325)	(1.343)	(0.675)	(0.683)	(0.770)	(0.782)
Number of judges who retired long before	-0.208*	-0.173			-0.129*	-0.108		
	(0.125)	(0.127)			(0.0770)	(0.0783)		
Salient case × Number of judges who retired long before	1.882**	1.795**	1.690*	1.770*	1.105**	1.053**	1.012*	1.052*
	(0.781)	(0.787)	(0.952)	(0.964)	(0.442)	(0.447)	(0.539)	(0.545)
Case controls	No	Yes	Yes	Yes	No	Yes	Yes	Yes
Year dummies	No	No	No	Yes	No	No	No	Yes
Judge dummies	No	No	Yes	Yes	No	No	Yes	Yes
Observations	661	661	644	641	661	661	644	641
R^2								

Standard errors in parentheses

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

Table 5: Logit and probit.
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. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Retirement threshold 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 2. 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 24 months. We report these results in table 6. The coefficient of the interaction term remains positive and significant, for the 6 month threshold. The coefficient declines in size and significance as the threshold is increased to 18 and 24 months although the coefficient remains positive. The decline in size and significance with an increase in the threshold window is not altogether unexpected as more and more judges in the "treatment" group, that is judges with incentives to pander, are assigned to the "control" group. As such we expect the difference-in-differences to decline with an increase in the threshold.

	(1)	(2)	(3)	(4)	(5)	(6)
	6	6	18	18	24	24
Salient case	-0.549*	-0.384	-0.216	-0.120	-0.0549	0.0270
	(0.308)	(0.326)	(0.227)	(0.246)	(0.206)	(0.220)
Number of judges who retired	-0.139***		-0.0331		-0.0602**	
long before	(0.0346)		(0.0282)		(0.0266)	
Salient case × Number	0.412**	0.324*	0.268*	0.213	0.172	0.118
of judges who retired long before	(0.171)	(0.182)	(0.152)	(0.167)	(0.148)	(0.162)
Case controls	No	Yes	No	Yes	No	Yes
Year dummies	No	Yes	No	Yes	No	Yes
Judge dummies	No	Yes	No	Yes	No	Yes
Observations	661	661	661	661	661	661
R^2	0.034	0.212	0.012	0.210	0.015	0.208

Standard errors in parentheses

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

Table 6: 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. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Continuous distance from retirement to election So far we have constructed the number of judges retiring long before an election using a dummy variable to indicate whether each judge on the bench retires long before or shortly before an election. We believe that this is the correct way to proxy for incentives to pander since these ought to decline sharply around the one-year threshold since it takes on average that long to secure a post-SC appointment.

Nonetheless, we substitute the number of judges retiring long before an election with the sum of the log of distance from retirement to next election for the two judges on the bench. Results are reported in table 7. We find that our results are robust to using this continuous measure of the time from retirement to next election.

	(1)	(2)	(3)	(4)	(5)
Salient case	-0.183	-0.154	-0.177	-0.181	-0.193
	(0.217)	(0.217)	(0.218)	(0.226)	(0.227)
Sum years from retirement to election	0.0000985	0.000104	0.0000655		
	(0.000177)	(0.000177)	(0.000183)		
Salient case × Sum years from retirement to election	0.0677*	0.0661	0.0719*	0.0724*	0.0751*
	(0.0401)	(0.0402)	(0.0406)	(0.0428)	(0.0430)
Case controls	No	Yes	Yes	Yes	Yes
Year dummies	No	No	Yes	No	Yes
Judge dummies	No	No	No	Yes	Yes
Observations	661	661	661	661	661
R^2	0.011	0.020	0.042	0.194	0.212

Standard errors in parentheses

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

Table 7: Continuous variable 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. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Cases with no clear winner In our data collection interface, we gave three options for coding the outcome of a case: government won, government lost, and winner not identifiable. The last option was to allow for cases where it was not clear if the government won or lost. This could happen when, for example, some of the points in dispute in a case were decided in favour of the government but others were decided against the government. There were only 20 cases where the outcome of a case was coded as not identifiable, and as described in section 3.1, these were dropped from our analysis.

We now include these 20 cases and code them in different ways to see whether our results are robust to their inclusion. Results are reported in table 8. In columns (1) and (2) we include these cases among the ones that the government lost. In columns (3) and (4) we do the opposite and include these cases among the ones that the government won. Finally in columns (5) and (6), to allow for the possibility that the decision in these cases was partly in favour of the government and partly against it, we construct a dependent variable that takes value 1 for the cases where the government won, -1 for the cases where the government lost, and 0 for these 20 cases where the winner was not identifiable. The estimates of our coefficient of interest remain positive and significant indicating that the inability to determine clearly whether the government won or lost in a subset of cases does not affect our results.

	(1)	(2)	(3)	(4)	(5)	(6)
	Lost	Lost	Won	Won	Ternary	Ternary
Salient case	-0.346	-0.233	-0.346	-0.233	-0.751	-0.498
	(0.249)	(0.260)	(0.249)	(0.260)	(0.488)	(0.510)
Number of judges who retired	-0.0362		-0.0362		-0.0916	
long before	(0.0290)		(0.0290)		(0.0568)	
Salient case × Number	0.337**	0.292*	0.337**	0.292*	0.694**	0.573*
of judges who retired long before	(0.152)	(0.162)	(0.152)	(0.162)	(0.297)	(0.317)
Case controls	No	Yes	No	Yes	No	Yes
Year dummies	No	Yes	No	Yes	No	Yes
Judge dummies	No	Yes	No	Yes	No	Yes
Observations	681	681	681	681	681	681
R^2	0.016	0.208	0.016	0.208	0.017	0.207

Standard errors in parentheses

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

Table 8: Including cases with no clear winner.
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. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

6 Pandering incentives and judgement authorship

Although the allocation of a case to a bench is randomised, the authorship of the judgement is not. Once the two judges decide on the outcome of the case, they also jointly decide which one of the two writes the judgement.[30] The name of the judge writing the judgement is always identified when a judgement is delivered. In this section we explore the choice of judgement writing to shed more light on the mechanism through which pandering occurs.

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 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 lit-

[30]In principle both of them could write separate judgements. This rarely occurs – we only observe this happening in 6 of the 667 cases.

erature 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. As such we believe that writing favourable judgement may be more important than simply deciding in favour of the government when it comes strengthening the prospects of receiving post-SC appointments. This hypothesis is supported by the results in section 7 where we will see that writing favourable judgements rather than simply deciding in favour of the government is positively associated with securing post-SC appointments.

If this is true, we expect to see a pattern in judgement writing. In particular judges in our "treatment group", that is the ones that retire long before an election, should be more likely to write judgements in cases that are politically salient and where the government wins. To test this we run the following specification:

$$\text{Author retired long before}_i = \alpha + \beta\,\text{Salient}_i + \gamma\,\text{Won}_i + \lambda\,\text{Salient}_i \times \text{Won}_i + \mathbf{X}'\eta + \varepsilon_{ijt}. \quad (4)$$

We restrict our attention to the subsample of cases where one of the judges on the bench retired long before an election and the other retired shortly before an election. Our dependent variable is an indicator of whether the author of the judgement retires long before an election. If judges with pandering incentives want to be noticed by the government when they decide in its favour in salient cases, we would expect λ to be positive.

The results are reported in table 9. We observe the estimates for λ are positive and significant across all specifications even after controlling for case characteristics, and judge and year dummies. Note that the sample size drops compared to our main results as we focus on the sub-sample of cases where one of the two judges retired long before an election and the other retired shortly before an election. The coefficient estimates indicate that in politically salient cases that the government wins, the judgement is more likely to be authored by a judge who retired long before an election.

	(1)	(2)	(3)	(4)	(5)
Salient case	-0.172	-0.243	-0.264	-0.283	-0.231
	(0.178)	(0.180)	(0.190)	(0.177)	(0.183)
UOI won	-0.210***	-0.198***	-0.203***	-0.105*	-0.0877
	(0.0630)	(0.0632)	(0.0635)	(0.0627)	(0.0644)
Salient case × UOI won	0.562**	0.543**	0.577**	0.566**	0.472**
	(0.234)	(0.237)	(0.246)	(0.227)	(0.235)
Case controls	No	Yes	Yes	Yes	Yes
Year dummies	No	No	Yes	No	Yes
Judge dummies	No	No	No	Yes	Yes
Observations	271	271	271	271	271
R^2	0.055	0.078	0.139	0.484	0.511

Standard errors in parentheses

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

Table 9: Pandering incentives and judgement authorship.
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. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

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.

Before discussing our results we note that practice of awarding post-SC jobs has been widely criticised.[31] 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."[32] Arun Jaitley, current Finance Minister, while in opposition, said

[31]See for example Sangai et al. (2016), a report by an independent Indian think tank that highlights, among other challenges facing the Indian judiciary, the issue of post-SC jobs.

[32]Live 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*

that "Pre-retirement judges are influenced by a desire for a post-retirement jobs."[33] 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."[34] 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."[35]

We contribute to this discourse by exploring the relationship between post-SC appointments and the number favourable decisions in salient cases. We do so by estimating

$$\begin{aligned} \text{job}_j = \pi_0 + \pi_1 \,&\text{number of salient cases in favour of UOI as author}_j \\ &+ \pi_2 \,\text{number of salient cases in favour of UOI}_j + \mathbf{Z}_j'\zeta + \varepsilon_j \,. \end{aligned} \tag{5}$$

The dependent variable is an indicator for whether the judge received a post-SC appointment from the government.[36] The two independent variables of interest in this specification are the number of salient cases that the judge decided in favour of the government and the subset of these where he was the author. If pandering has no effect on the post-SC appointments we would expect $\pi_1 = \pi_2 = 0$. On the other hand $\pi_1 > 0$ and/or $\pi_2 > 0$ would be consistent with the presence of rewards for pandering. In particular, if as we argued in section section 6, we find that $\pi_1 > 0$, this would suggest that over and above deciding in favour of the government, it is writing favourable judgements that is rewarded with a post-SC appointment.

The results are reported in table 10. The estimates for π_1 are positive and significant while the estimates for π_2 are negative. This is consistent with governments rewarding judges who author judgements in favour of the government in politically salient cases. In column (2) we control for the length of the judge's SC tenure, whether he was ever CJI, and the a set of dummies for indicating the judge's religion. The coefficient estimates remain stable.

To investigate further, we categorise post-SC jobs into *high-profile* and *low-profile*. We define high-profile jobs to be appointments to permanent commissions and tribunals (PCT): 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 12. 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 fact that the estimates of π_1 remain significant for all jobs and high-profile jobs but not for low-profile ones (not reported), indicates that pandering is rewarded with the more prestigious high-profile jobs.

[33] NDTV, 1 Oct 2012, *Judges' verdicts are influenced by post-retirement jobs: Arun Jaitley*

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

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

[36] The potential measurement error in our dependent variable, caused by the possibility that some of the judges who haven't received a job in our sample period ending in May 2014 may receive them later, is not a major concern since we have tracked post-SC appointments of the judges in our sample till January 2017.

	(1) Any job	(2) Any job	(3) PCT job	(4) PCT job	(5) Any job	(6) Any job	(7) PCT job	(8) PCT job
Number of salient cases in favour of UOI (author)	0.111*	0.120**	0.0839	0.0956*				
	(0.0561)	(0.0556)	(0.0544)	(0.0550)				
Number of salient cases in favour of UOI	-0.0539	-0.0539	-0.0236	-0.0297				
	(0.0371)	(0.0398)	(0.0360)	(0.0394)				
Number of salient or large bench cases in favour of UOI (author)					0.0726**	0.0672**	0.0688**	0.0629**
					(0.0296)	(0.0299)	(0.0285)	(0.0293)
Number of salient or large bench cases in favour of UOI					-0.0344**	-0.0315*	-0.0241	-0.0211
					(0.0162)	(0.0184)	(0.0156)	(0.0180)
Controls	No	Yes	No	Yes	No	Yes	No	Yes
Observations	74	74	74	74	74	74	74	74
R^2	0.053	0.147	0.046	0.106	0.078	0.149	0.083	0.123

Standard errors in parentheses

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

Table 10: Dependent variable is an indicator for whether the judge received a post-SC job.
All specifications include the following controls: tenure in the Supreme Court, whether they were ever CJI, and religion dummies for Muslim, Christian and Parsi (with hindu as the omitted category).

	(1) Any job	(2) Any job	(3) PCT job	(4) PCT job	(5) Any job	(6) Any job	(7) PCT job	(8) PCT job
Number of salient cases in favour of UOI (author)	0.0757	0.0875*	0.0520	0.0645				
	(0.0474)	(0.0463)	(0.0450)	(0.0451)				
Number of salient cases in favour of UOI	-0.0330	-0.0355	-0.0131	-0.0184				
	(0.0315)	(0.0329)	(0.0298)	(0.0322)				
Number of salient or large bench cases in favour of UOI (author)					0.0721***	0.0638**	0.0601**	0.0534**
					(0.0258)	(0.0258)	(0.0238)	(0.0241)
Number of salient or large bench cases in favour of UOI					-0.0332**	-0.0264*	-0.0223*	-0.0166
					(0.0144)	(0.0158)	(0.0131)	(0.0147)
Controls	No	Yes	No	Yes	No	Yes	No	Yes
Observations	68	68	73	73	68	68	73	73
R^2	0.040	0.170	0.029	0.112	0.107	0.200	0.090	0.151

Standard errors in parentheses

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

Table 11: Dependent variable is the speed of post-SC job (defined in eq. (6)).
All specifications include the following controls: tenure in the Supreme Court, whether they were ever CJI, and religion dummies for Muslim, Christian and Parsi (with hindu as the omitted category).

So far we have only used the number of politically salient cases decided in two-judge benches. In columns (5) – (8), we broaden our definition of salience to also include all cases large bench cases decided in favour of the government, that is cases decided by three or more judges. These cases tend to be important and we would expect governments to be favourably disposed towards judges that decide these cases in their favour. We observe that the estimates for π_1 continue to be positive and significant suggesting once again that judgement authorship in salient cases that are decided in favour of the government tend to be rewarded. Interestingly the estimates for π_2 are negative and significant suggesting that merely deciding in favour of the government although necessary, is not sufficient to increase the prospects of post-SC jobs. Indeed, the estimates suggest that for a judge it is the proportion of salient winning cases for the government where he is the judgement author that matter for a post-SC appointment.

Finally, we explore whether pandering is associated with the speed with which judges are appointed to post-SC jobs. To do so we construct

$$\text{Speed}_j = \begin{cases} 0 & \text{if no post-SC job} \\ \frac{1}{1+\text{time}_j} & \text{if time}_j \geq 0 \\ 1 & \text{if time}_j < 0 \end{cases} \tag{6}$$

where time_j are the years from retirement to appointment to a post-SC job. Since speed is a more continuous form of the indicator variable for whether a judge obtained a post-SC job, it may be a more fine-grained measure of the government's desire to reward a judge. Results are reported in table table 11. The same pattern discussed earlier emerges, with authorship of favourable decisions in salient cases being positively associated with the speed with which a judge is appointed to a post-SC job.

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 striking that this type of arrangement can be detected statistically using a sample of only 74 observations. However, 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. Nonetheless, since we have established that judges respond to pandering incentives by ruling in favour of the government, the correlations presented in this section would seem, at least in part, to be driven by rewards for actual pandering.

8 Conclusion

We find that, first, judges respond to pandering incentives by ruling in favour of the government and, second, the government rewards judges who have authored favourable judgements 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

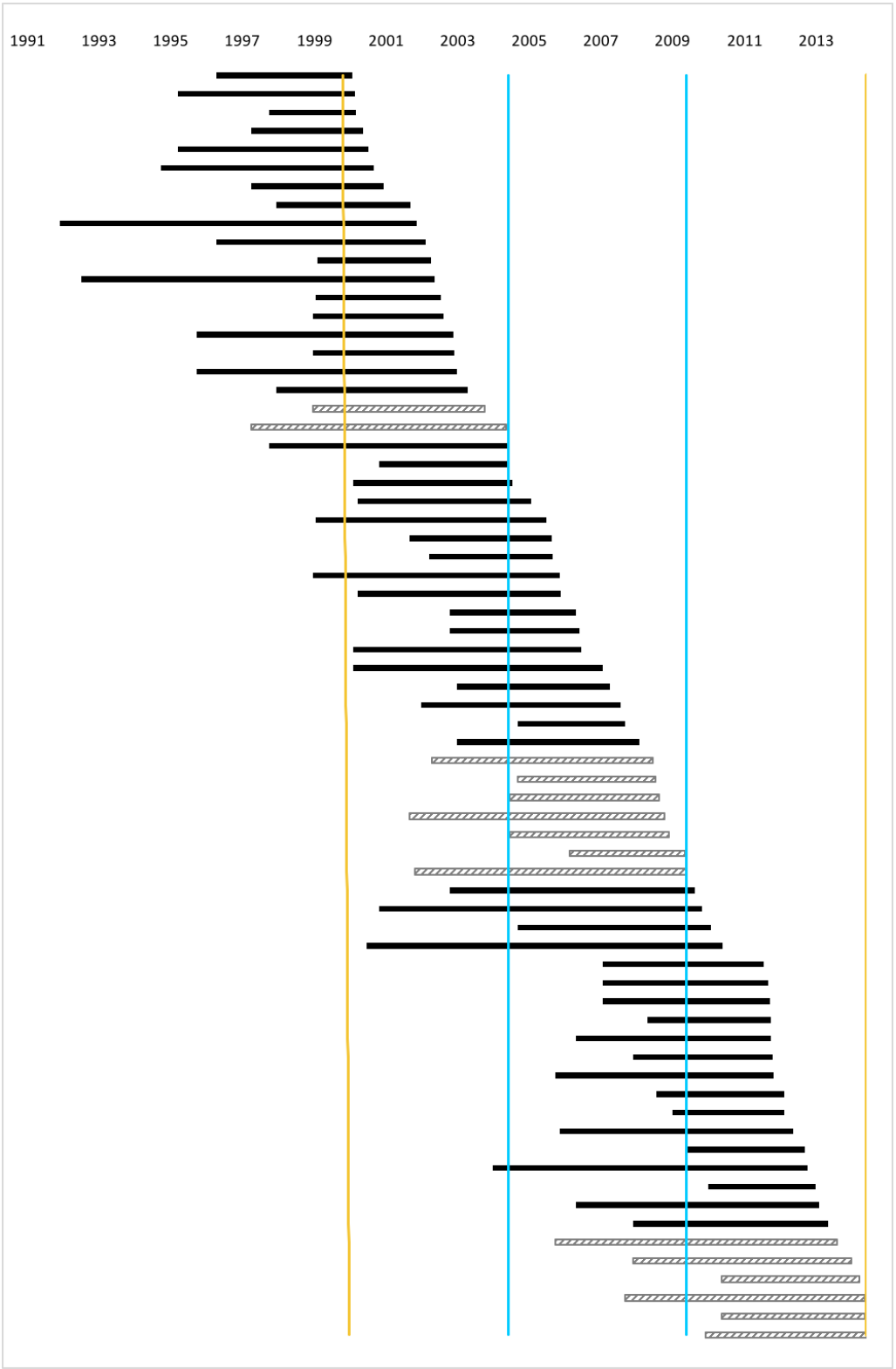

Figure 2: Judge tenures.
Each bar represents the tenure of a judge. Solid bars are for judges who retire at least one year before an election, while hatched bars are for judges who retire less than one year before an election. The saffron line represent elections won by the NDA while the light blue lines represent elections won by the UPA.

Position	Institution	Frequency
Permanent commissions and tribunals		
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
Judge	International Court of Justice	1
Other jobs		
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 Commision 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 12: Post-SC jobs and frequencies