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 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 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 the likelihood 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 with high stakes that are important to the government.[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 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) 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 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 salient cases in favour of the government is positively correlated with whether or not the judge is appointed to prestigious post-Supreme Court jobs. Similar to the results on the nexus between bureaucrats and politicians in India presented in Iyer and Mani (2012), these results suggest that pandering to the government may be a path to a post retirement appointment.

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 examines 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 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, we exploit 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

[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.

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. 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 apex court for the largest common law judicial system in the world (Chandra, Hubbard, and Kalantry 2017). 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 legislature, 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." Unlike the US Supreme Court, which is chiefly concerned with norm elaboration,

Chandra, Hubbard, and Kalantry (2017) show that the Indian Supreme Court also emphasises the goal of correcting errors case-by-case and thus regularly overturns lower court decisions. As such the court is relatively unconstrained in how it decides cases and this discretion potentially creates an opening for other factors, such as pandering incentives, to play a role in decision making.

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 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 composition of the benches in these cases is endogenous to case characteristics and we drop such cases from our analysis. Therefore, our sample is composed solely of cases decided by two-judge benches.[10]

[9] See Robinson (2013) and Chandra, Hubbard, and Kalantry (2017) for an insightful exposition of the institutional background of the Supreme Court of India.

[10] One potential concern is that cases decided during our sample period were actually allocated to benches before

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.[11] 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.[12]

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.[13]

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.

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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.

[11] 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.

[12] 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.

[13] 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[14], 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. This also present the empirical problem of identifying orders with the judges who made them.
- 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).
- As discussed in section 2.1, we only consider cases decided by a two-judge bench since only these cases are randomly assigned to benches. We relax this criterion in section 7.
- 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

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

[15]Examples 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, the Solicitor General of India, or an Additional Solicitor general of India represented the government in the case. We also extracted information on the number of Senior Advocates and the number of lawyers that appeared in the case.

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.[16] 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.[17] 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.

Table 1: Case summary statistics

	Mean	SD	Min	Max
UOI won	0.604	0.490	0	1
Salience 1: Attorney General	0.0242	0.154	0	1
Salience 2: Solicitor General	0.0424	0.202	0	1
Salience 3: Number of Add. Solicitors General	0.461	0.554	0	3
Salience 4: Number of Senior Advocates	1.457	1.952	0	22
Salience 5: Number of Advocates	11.89	16.96	0	186
Salience (principal component)	-0.197	0.681	-0.873	6.771
Number of judges who retired long before	1.396	0.658	0	2
Appeal (1) Petition (0)	0.841	0.366	0	1
UOI appellant/petitioner (1) Respondent (0)	0.404	0.491	0	1
CJI present in case	0.0182	0.134	0	1
Log wordcount	8.200	0.785	6.071	10.96
Observations	661			

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.

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

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

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.[18]

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).

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 11 in appendix A. 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.

[18]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.

Table 2: Judge summary statistics

	Mean	SD	Min	Max
Number of cases decided	18.59	19.70	0	138
Number of cases decided in favour of UOI	4.608	4.277	0	21
Number of cases decided in favour of UOI as author	1.892	2.821	0	14
Obtained a job from government in power at retirement	0.358	0.483	0	1
Tenure (years)	5.209	1.767	3	9.959
Was CJI	0.176	0.383	0	1
Years from retirement until post-SC job	1.189	2.127	-0.885	8.633
Observations	74			

4 Empirical strategy

We focus on corruption in the form of *pandering*, i.e., judges manipulating decisions in 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.[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 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 salient, *and*
2. the judge retires long enough before an election.

Our measure for the *salience* of a case is an index comprising the five following variables: the number of 1) Attorneys General, 2) Solicitors General, 3) Additional Solicitors General, 4) Senior Advocates, and 5) Advocates that appeared in the case. The Attorney and Solicitor General 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. 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. Depending on the importance of a case, it is possible for more than one of the above to represent the government in the same case.

The number of Senior Advocates appearing in a case is our fourth proxy for its salience.[20] Senior Advocates are lawyers who specialise in appearing before the High Courts and the

[19] 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.

[20] Senior Advocate is the Indian designation that is equivalent to Senior Counsel in Commonwealth jurisdictions or Queen's Counsel in the UK.

Supreme Court and "represent the scarcest and priciest legal talent in India" (Chandra, Hubbard, and Kalantry 2017). The government and other litigants often hire them in cases that are important enough to justify their high fees. Finally, we also proxy for salience using the number of advocates appearing in a case. This reveals the importance of the case for the litigants as it measures the amount of resources they are willing to spend on winning it. Hence, the first three variables that proxy for how much the government values the case, whereas the last two variable proxy for the sum of efforts exerted by litigants in a case, and are therefore proxies for the overall value that the litigants place on winning the case.[21]

We also compute the first principal component of these five variables[22] and use that as the index of salience. We expect that pandering, if it exists, will manifest itself in cases with high salience.

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 from the government in power, conditional on securing it at all. 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 variable takes three value: 0, 1, and 2 since every case in our sample is decided by exactly two judges.

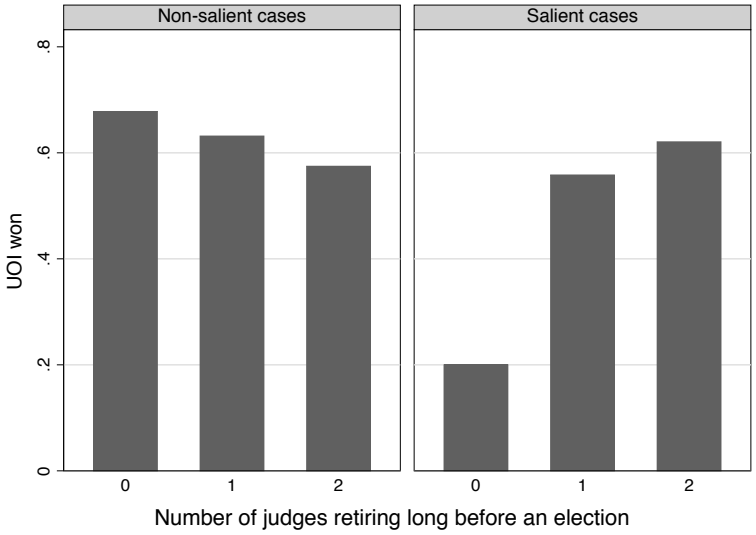
As described in section 2.2 and section 3.2, the date of retirement of judges is mechanically determined by their date of birth, and furthermore, elections occurred at regular five-year intervals. Hence, whether a judge is going to retire long before an election is predictable while he is deciding cases 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. Our identifying assumption is that the difference in the merits between salient and non-salient cases, does not vary based on the composition of the bench deciding the cases, in particular on how many of those judges retire long before an election. This assumption is based on the practice of random allocation of cases to benches

[21] Because of limitations in our data, our measure is the total number of advocates (senior and non-senior) for the government and all other litigants, rather the ideal measure of the number of advocates appearing for the government only. Nevertheless, the number of advocates appearing for the government is very likely to be highly correlated with the total number of advocates for all parties. Hence, our measure is a reasonable proxy for the importance of a case.

[22] We show the robustness of our results to using the proxies separately in table 13 in appendix B. These results are discussed in section 5.3.3.

Figure 1: Probability of case being decided in favour of UOI by salience and number of judges retiring long before an election



described in 2.1.

The basic idea behind the identification strategy is illustrated by the simple two-by-three bar chart in Figure 1. The first three bars show the proportion of non-salient cases (bottom 75% in terms of the salience index) decided in favour of the government by benches with 0, 1 and 2 judges retiring long before an election respectively. Similarly the last three bars show the proportion of salient cases (top 25% of cases in terms of the salience index) decided in favour of the government by benches with 0, 1 and 2 judges retiring long before an election respectively. We see that the difference in the likelihood of the government winning a salient relative to a non-salient case is increasing as we increase the number of judges retiring long before an election.

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:

$$\begin{aligned} won_{ijt} = \alpha + \beta\, salience_i + \gamma\, num\ retiring\ long\ before_j \\ + \lambda\, salience_i \times num\ retiring\ long\ before_j + \mathbf{X}_i'\eta + \varepsilon_{ijt} \end{aligned} \tag{1}$$

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

Table 3: Effect of pandering incentives on decisions.

	(1)	(2)	(3)	(4)	(5)
Salience	-0.262***	-0.262***	-0.262***	-0.212***	-0.217**
	(0.0660)	(0.0651)	(0.0654)	(0.0814)	(0.0853)
Number of judges who retired long before	0.0118	0.0117	0.00672		
	(0.0313)	(0.0310)	(0.0330)		
Salience × Number of judges who retired long before	0.168***	0.164***	0.165***	0.132**	0.139**
	(0.0446)	(0.0451)	(0.0446)	(0.0562)	(0.0582)
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	0.020	0.023	0.045	0.193	0.211

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. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

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. We cluster the standard errors at the bench level to account for possible correlation of the error term across cases decided by the same bench. 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 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 salient *and* the judge retires long before an election.

In columns (2)–(5) we control for case characteristics such as 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 in-

centives 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 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). Note that there are two judge dummies that are active in every case since the bench deciding a case has two judges. 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:

$$won_{ijt} = \alpha_j + \delta_t + \beta\, salience_i + \lambda\, salience_i \times num\ retiring\ long\ before_j + \mathbf{X}_i'\eta + \varepsilon_{ijt} \qquad (2)$$

The results of estimating eq. (2) are reported in columns (3)–(5). Note that we cannot estimate the effect of the number of judges retiring long before since this variable is a sum of the two judge-specific dummies that indicate whether each judge retires long before the election. Therefore this variable is fully determined by judge characteristics and is subsumed in the judge dummies. The estimate of the key parameter of interest, namely, the coefficient of salient interacted with "retired long before", continues to be positive and significant.

The salience index has been normalised by subtracting its mean and dividing it by its standard deviation. Hence the estimated values for the interaction term from columns (1)–(5) indicate that for a one standard deviation increase in the salience of a case, the probability of the government winning is between 13-17% higher when we replace one judge on the bench who retires shortly before an election with one who retires long before an election. Given the pivotal role played by the Supreme Court of India in deciding matters of policy, this suggests very serious welfare consequences of this form of corruption.

5.2 Potential sources of bias

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

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

lower bounds of the effect of pandering incentives on judicial decisions.

5.2.1 Random allocation of cases

We assume that two-judge bench cases, which constitute our sample, were randomly allocated to benches. As stated in section 2.1, this is the Supreme Court's stated policy and is confirmed by practitioners. Nevertheless, one may be concerned that benches were allocated in a non-random way for some cases in our sample. The question that arises then is the direction of the bias introduced by potentially non-random allocation. We argue that non-random allocation is likely to attenuate rather than inflate our estimates of λ. To test this, we run our main specifications on a sample where bench allocation is definitely not random, namely cases decided by benches of three or more judges.

In cases where a two-judge bench cannot reach a conclusion because the judges disagree, or in cases involving points of law where there are conflicting Supreme Court judgements, the Chief Justice specially constitutes a bench with three or more judges to hear them. Consequently, the allocation of these cases to the bench that decides them is not random. The results from running our specifications from (1) and (2) are reported in table 12 in appendix B.

We observe that the estimates of λ are close to zero, insignificant, and don't have a consistent sign across all columns. Since large-bench cases tend to be more salient than two-judge cases, we would expect pandering incentives to be stronger in former. Therefore, the likely explanation for the near-zero estimates of λ is the non-randomness of the allocation of cases.

For instance, their allocation may covary with the characteristics of the case and the pandering incentives of judges who decide them. In particular, it is possible that salient cases that are less favourable to the government (on merits) are allocated to benches composed of judges that have stronger pandering incentives. Conversely, cases that are favourable to the government may be allocated to judges with weaker pandering incentives since they would anyway be decided in favour of the government (on merits). As a result, we might fail to see a difference in these salient cases between benches with fewer or more judges retiring long before an election.

On the whole, this result suggests that deviations from random allocation of cases bias the estimates of λ towards zero, if anything.

5.2.2 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.

5.2.3 Greater scrutiny for salient cases

One possibility is that 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 salient cases, again, making our estimates lower bounds.

5.2.4 Settlement of cases

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.

5.2.5 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. 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 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.[24]

Another possibility is that judges retiring shortly before an election systematically decide 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

[24]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.

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.

To be precise, our estimates are based on the following two assumptions: 1) judges who retire long before an election (treatment group) pander to the *government in power at the time of their retirement* in all cases they decide on throughout their tenure, even before that government's term; 2) judges who retire shortly before an election (control group) do not pander to the *government in power at the time of their retirement* in all cases they decide on throughout their tenure, even before that government's term. Any deviation from these assumptions, e.g., if a treatment group judge sometimes does not pander to the government in power at the time of his retirement or a control group judge sometimes does, will lead to an attenuation of the difference between treatment and control judges. Therefore, the effect of pandering incentives are bounded below by the positive and significant estimates in table 3.

5.3 Robustness

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

5.3.1 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 the 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. Based on fig. 1 it appears that the effect may larger going from 0 to1 judges compared to 1-2 judges retiring long before an election. To test this we now estimate the following specification:

$$\begin{aligned} won_{ijt} = \alpha &+ \beta\, salience_i \\ &+ \gamma_0\, neither\ retired\ long\ before_j \\ &+ \gamma_2\, both\ retired\ long\ before_j \\ &+ \lambda_0\, salience_i \times neither\ retired\ long\ before_j \\ &+ \lambda_2\, salience_i \times both\ retired\ long\ before_j \\ &+ \mathbf{X}_i'\eta + \varepsilon_{ijt} \end{aligned} \tag{3}$$

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

Table 4: Factor variables for retired long before

	(1)	(2)	(3)	(4)	(5)
Salience	-0.0736**	-0.0765***	-0.0744**	-0.0555	-0.0506
	(0.0305)	(0.0284)	(0.0292)	(0.0362)	(0.0372)
Neither judge retired long before	-0.111	-0.112	-0.0820	-0.136	-0.119
	(0.0814)	(0.0808)	(0.0747)	(0.101)	(0.109)
Both judges retired long before	-0.0123	-0.0122	-0.00716		
	(0.0430)	(0.0427)	(0.0465)		
Neither judge retired long before × Salience	-0.346***	-0.353***	-0.343***	-0.326**	-0.346***
	(0.103)	(0.107)	(0.108)	(0.128)	(0.132)
Both judges retired long before × Salience	0.137***	0.131***	0.130***	0.0928	0.0942
	(0.0482)	(0.0485)	(0.0490)	(0.0604)	(0.0620)
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	0.023	0.026	0.047	0.196	0.214

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. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

from a bench with one judge who retires long before an election to a bench with both judges retiring long before an election.

The benches with only 1 judge retiring long before an election form the omitted category. The results are reported in table 4. The estimates for λ_2 are stable and positive across all specifications. As expected, the estimates for λ_0 are negative whereas the estimates for λ_2 are positive. Moreover, the estimates for λ_0 appear larger in magnitude suggesting that the change in favour of the government is larger when going from 0-1 judges rather than going from 1-2 judges retiring long before an election.

5.3.2 Disaggregated effects of election-retirement distance

The regression specifications in (1), (2), and (3) assumes that pandering incentives are active when a judge retires more than one year before the next election and inactive otherwise. It is possible however that even among judges retiring more than one year before the next election, pandering incentives vary based on how long before the next election they retire. In this section, instead of imposing the restriction that pandering incentives are equally strong for all judges in the treatment group, we estimate the effect of pandering incentives separately

for five groups of judges based on how long before the next election they retire. More precisely, we estimate

$$won_{ijt} = \sum_{k=1}^{4} \gamma_k \, num\ retiring\ k\ to\ k+1\ years\ before_j + \sum_{k=1}^{4} \lambda_k \, salience_i \times num\ retiring\ k\ to\ k+1\ years\ before_j + \beta \, salience_i + \mathbf{X}_i'\eta + \varepsilon_{ijt} \quad (4)$$

The estimates are reported in table 5. Benches where both judges retired with less than one year to the next election form the omitted category. Hence we can interpret the coefficient estimate for an interaction term, for example λ_4, as the change in the probability that the government wins when

1. we substitute one judge retiring close to the election (less than one year from the next election) with a judge who retires between 4-5 years from the next election, *and*
2. we increase salience by one standard deviation.

We observe that the coefficient estimates for all four interaction terms are positive, indicating that pandering incentives are indeed weaker for judges retiring shortly before an election relative to all other judges.

The disaggregated effects estimated in table 5 paint a more nuanced picture of pandering incentives. They suggest that the strength of pandering incentives may have an inverted U shape in the election-retirement distance. In particular, pandering incentives seem to have the strongest effect in the middle of a government's term. One reason why this may occur is that judges retiring soon after a government comes to power may realise that they do not have sufficient time to pander to the current government before they retire. Consequently, these judges may not try as hard as judges retiring near the middle of a government's term, since the latter have both the opportunity to pander for a sufficiently long period, and the opportunity to be rewarded with a post-SC job in the government's term.

5.3.3 Different proxies for salience

In this section we test the robustness of the results with respect to varying the proxy for salience. So far, we have used the first principal component of the five different proxies presented in section 4 as our index for salience.

We first present results using the different proxies that make up our salience index. Results are reported in table 13 in appendix B. To begin with, we use the presence of Attorney or Solicitor General as a proxy for salience.[25] We see in columns (1) and (2), that the estimates for the interaction term are positive and significant. In columns (3) and (4), we construct a variable that takes value 2 for cases where the Attorney or Solicitor General appear, 1 for

[25]In principle, we could run separate regressions for these. However, the results using only Attorney General are insignificant probably because there are only 17 cases in our sample where only the Attorney General appeared.

Table 5: Disaggregated effects of election-retirement distance

	(1)	(2)	(3)	(4)	(5)
Salience	-0.263***	-0.264***	-0.253***	-0.204**	-0.200**
	(0.0704)	(0.0702)	(0.0697)	(0.0895)	(0.0893)
Retired between 1-2 yrs	0.0620	0.0595	0.0450		
	(0.0447)	(0.0452)	(0.0450)		
Retired between 2-3 yrs	-0.0480	-0.0487	-0.0797*		
	(0.0421)	(0.0421)	(0.0425)		
Retired between 3-4 yrs	-0.00196	-0.000575	0.00469		
	(0.0606)	(0.0602)	(0.0710)		
Retired between 4-5 yrs	0.0393	0.0392	0.0480		
	(0.0376)	(0.0374)	(0.0414)		
Salience × Retired between 1-2 yrs	0.121*	0.116*	0.113*	0.0686	0.0707
	(0.0620)	(0.0639)	(0.0628)	(0.0787)	(0.0804)
Salience × Retired between 2-3 yrs	0.185***	0.186***	0.170***	0.133	0.114
	(0.0617)	(0.0624)	(0.0603)	(0.0831)	(0.0804)
Salience × Retired between 3-4 yrs	0.446***	0.445***	0.423***	0.370***	0.364***
	(0.0911)	(0.0927)	(0.102)	(0.0978)	(0.102)
Salience × Retired between 4-5 yrs	0.137***	0.135***	0.147***	0.132**	0.153**
	(0.0506)	(0.0509)	(0.0476)	(0.0582)	(0.0595)
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	0.046	0.048	0.071	0.200	0.219

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. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

cases where one or more Additional Solicitors General appear, and 0 for all other cases.[26] We do this to capture the qualitative difference between the appearance of the Attorney and/or Solicitor General and the appearance of Additional Solicitors General in a case. We see that the coefficient estimates for the interaction for Attorney and/or Solicitor General continues to be significant but the one for Additional Solicitors General is not. This may be because the number of cases in which the latter appear is quite large (more than 40%) and as such, their presence may not indicate high salience.

In columns (5) and (6), we use the number of Senior Advocates appearing in the case as a proxy for its salience. Finally, in columns (7) and (8) we use the number of advocates (that, is junior advocates with no special designation) as our proxy for salience. We observe that the estimates for the interaction term remain positive and significant across these specifications. We observe that the results are qualitatively similar regardless of the particular proxy used. These results support our strategy of collapsing these five variables into one index using the first principal component.

So far we have assumed that pandering incentives increase linearly with salience. However, its plausible that the true specification is non-linear: It may be that pandering incentives are absent for cases below a certain threshold of salience and only become active for cases with high salience. To check this we disaggregate our salience measure into quintiles. Results are reported in table table 6. The lowest quintile cases (0-20 percentile of salience) form the omitted category. We observe that the estimates of the interaction term for the cases in 20-40 and 40-60 percentile are small and insignificant. This suggests that there does not appear to be an effect going from 0 to 60th percentile of salience. On the other hand, the estimates for 60-80 and 80-100 percentiles are significant. This is consistent with the idea that pandering incentives are active in only the more important cases. This is not surprising since we would expect the government to keep track of favourable decisions in only the most important cases.

5.3.4 Controlling for other interactions

One concern with our results is that the interaction term that captures pandering incentives is potentially proxying for some other variables that affect the outcome of the case. In this section, we consider a few competing explanations and attempt to rule them out.

In the first two columns, we consider characteristics of a case other than its salience that have a differential effect on the likelihood that the government wins mediated by the number of judges retiring long before. In particular, in column (1) we consider whether judges retiring long before are likely to rule on appeals differently relative to fresh petitions. This is motivated by the fact that in our sample, it so happens that judges retiring long before are more likely to decide appeals. In column (2), we also consider whether the role of the government in the case, namely whether it was the appellant/petitioner or the respondent,

[26]It is possible for the Attorney or Solicitor General and an Additional Solicitor General to appear in the same case. For columns (3) and (4), the Additional Solicitors General variable takes value 1 as long as at least one Additional Solicitor General appears *and* no Attorney or Solicitor General appears.

Table 6: Disaggregated effects by quintiles of salience

	(1)	(2)	(3)	(4)	(5)
Salience 20-40 percentile	-0.0870	-0.0848	-0.0904	-0.0899	-0.0945
	(0.122)	(0.122)	(0.122)	(0.130)	(0.132)
Salience 40-60 percentile	-0.123	-0.118	-0.133	-0.113	-0.135
	(0.103)	(0.102)	(0.103)	(0.0944)	(0.0997)
Salience 60-80 percentile	-0.383***	-0.377***	-0.352***	-0.325**	-0.326**
	(0.135)	(0.135)	(0.131)	(0.132)	(0.131)
Salience 80-100 percentile	-0.462***	-0.470***	-0.480***	-0.348*	-0.363*
	(0.169)	(0.171)	(0.171)	(0.188)	(0.188)
Number of judges who retired long before	-0.143**	-0.138**	-0.143**		
	(0.0586)	(0.0582)	(0.0568)		
Salience 20-40 percentile × Number of judges who retired long before	0.0218	0.0199	0.0288	0.0110	0.0216
	(0.0803)	(0.0804)	(0.0806)	(0.0856)	(0.0864)
Salience 40-60 percentile × Number of judges who retired long before	0.0981	0.0935	0.0973	0.0771	0.0914
	(0.0652)	(0.0649)	(0.0664)	(0.0625)	(0.0667)
Salience 60-80 percentile × Number of judges who retired long before	0.261***	0.253***	0.239***	0.216***	0.224***
	(0.0837)	(0.0835)	(0.0813)	(0.0798)	(0.0790)
Salience 80-100 percentile × Number of judges who retired long before	0.297***	0.294***	0.299***	0.200*	0.211*
	(0.106)	(0.107)	(0.106)	(0.121)	(0.121)
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	0.026	0.028	0.048	0.197	0.215

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. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

has a differential effect based on the number of judges retiring long before an election. Based on the estimates of the coefficient of the new interaction terms in columns (1) and (2) of table 7, we fail to reject the null hypothesis of no differential effect.

Next, we consider whether the interaction term for pandering incentives is in fact capturing some kind of seniority effect. It is possible that judges decide cases differently as they gain more experience on the Supreme Court. This is unlikely to be a cause of concern since length of tenure ought not to be systematically correlated with whether a judge retires close to an election. Nonetheless, we can test for this possibility by introducing the remaining fraction of tenure at the time the case is decided. Since there are two judges in each case, we try using the sum and the product of the fraction of their tenures left. In columns (3) and (4), we interact these with the number of judges retiring long before an election to see whether there is a differential effect of experience based on whether a judge retires long before an election. In columns (5) and (6), we explore whether there's a differential effect of salience based on the experience of the judges on the bench. The estimated coefficients of all these interactions are insignificant.

Moreover, the coefficient on pandering incentives continues to be robust to the inclusion of these interactions, and the coefficient estimates in table 7 are very similar in magnitude to our baseline specification, suggesting that the results are unlikely to be driven by the alternative explanations considered in this section.

5.3.5 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 14 in appendix B. 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.

Table 7: Controlling for other interactions

	(1)	(2)	(3)	(4)	(5)	(6)
Salience	-0.238***	-0.220**	-0.212**	-0.210**	-0.315*	-0.280**
	(0.0871)	(0.0846)	(0.0846)	(0.0845)	(0.168)	(0.118)
Salience × Number of judges who retired long before	0.153***	0.141**	0.138**	0.132**	0.149**	0.153**
	(0.0586)	(0.0580)	(0.0582)	(0.0578)	(0.0602)	(0.0613)
Appeal or Petition	-0.179					
	(0.145)					
Appeal or Petition × Number of judges who retired long before	0.0783					
	(0.0941)					
Appellant/Petitioner or Respondent		-0.00348				
		(0.106)				
Appellant/Petitioner or Respondent × Number of judges who retired long before		0.0118				
		(0.0677)				
Sum fraction tenure			0.0394		0.0382	
			(0.0748)		(0.0499)	
Sum fraction tenure × Number of judges who retired long before			-0.00538			
			(0.0347)			
Product fraction tenure				0.00931		-0.0104
				(0.0313)		(0.0188)
Product fraction tenure × Number of judges who retired long before				-0.0172		
				(0.0177)		
Sum fraction tenure × Salience					0.0236	
					(0.0278)	
Product fraction tenure × Salience						0.0133
						(0.0122)
Observations	661	661	661	661	661	661
R^2	0.212	0.211	0.212	0.213	0.213	0.213

Dependent variable is whether government won. All specifications include judge dummies, year dummies and the following case controls: type of case (appeal/petition), whether CJI was one of the judges, whether government was appellant/petitioner. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

5.3.6 Alternative functional forms

So far we have used the linear probability model. Next we rerun our baseline specification using logit and probit instead. We observe that the coefficient estimates of λ remain positive and significant. Note that 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. The results are reported in table 16 in appendix B.

6 Pandering: A closer look

In this section, we examine pandering more closely and explore the channels through which pandering occurs. In particular, we investigate four things. First, in section 6.1, we examine how pandering manifests itself through writing favourable judgements rather than simply being on a bench that decides in favour of the government. Second, in section 6.2, we examine whether pandering occurs through strategically delaying unfavourable decisions and/or expediting favourable ones. Third, we explore whether litigants respond to pandering incentives by allocating fewer or greater resources when a case is being decided by a bench with more judges retiring long before an election. Finally, in section 6.4 we investigate whether there is a disproportionate effect of pandering incentives of the senior judge on the bench, relative to that of the junior judge.

6.1 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.[27] 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 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

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

Table 8: Pandering incentives and judgement authorship

	(1)	(2)	(3)	(4)	(5)
Salience	-0.0134	-0.0412	-0.0458	-0.0196	-0.0104
	(0.0647)	(0.0626)	(0.0636)	(0.0629)	(0.0606)
UOI won	-0.114*	-0.126*	-0.135**	-0.0306	-0.0194
	(0.0652)	(0.0648)	(0.0645)	(0.0659)	(0.0666)
UOI won × Salience	0.241***	0.246***	0.227***	0.208***	0.225***
	(0.0782)	(0.0715)	(0.0768)	(0.0787)	(0.0804)
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	0.072	0.159	0.229	0.494	0.526

Standard errors in parentheses

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

Dependent variable is an indicator for whether the judge retiring long before wrote the judgement. Case controls are type of case (appeal/petition), whether CJI was one of the judges, whether government was appellant/petitioner, and whether the senior judge on the bench retired long before an election. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

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 salient and where the government wins. To test this we run the following specification:

$$\textit{author retired long before}_{ijt} = \alpha + \beta\, \textit{salience}_i + \gamma\, \textit{won}_i + \lambda\, \textit{salience}_i \times \textit{won}_i + \mathbf{X}_i'\eta + \varepsilon_{ijt}. \tag{5}$$

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. To control for the possibility that

the senior judge's retirement-election distance may affect who write's the judgement, because there may be a seniority norm in judgement writing, we include an indicator for whether the senior judge on the bench retires long before an election among our case controls.

The results are reported in table 8. 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 salient cases that the government wins, the judgement is more likely to be authored by a judge who retired long before an election.

6.2 Strategic delay or hastening of decisions

In this section, we examine whether there is any evidence that pandering occurs through judges delaying unfavourable decisions and/or expediting favourable ones. A possible pandering mechanism is that judges retiring long before an election pander by strategically delaying those decisions that are unfavourable the government. This strategic behaviour would lead to our sample being censored since treatment judges would delay making unfavourable decisions in salient cases. Once they retire, such cases would then be reassigned to other judges. Although this mechanism is consistent with the idea of pandering incentives having an effect on judicial behaviour, it nonetheless may have different welfare implications from the channel where the actual decision in the case is affected by pandering incentives.

Unfortunately, we cannot directly observe cases that judges never decide on, if the case is delayed beyond retirement. However, we can test whether pandering incentives affect how quickly judges decide cases that are in our sample. In our data, we observe the year in which the case was filed in the Supreme Court. Subtracting this from the date on which the case was decided, we can measure how long it took for the case to be decided.[28] To test whether judges in the treatment group delay salient cases where the government loses we run

$$\begin{aligned} delay_{ijt} = \alpha &+ \beta\, salience_i + \gamma\, won_i + \psi\, num\ retiring\ long\ before_j \\ &+ \lambda_0\, salience_i \times won_i + \lambda_1\, salience_i \times num\ retiring\ long\ before_j \\ &+ \lambda_2\, won_i \times num\ retiring\ long\ before_j \\ &+ \lambda_3\, won_i \times salience_i \times num\ retiring\ long\ before_j \\ &+ \mathbf{X}_i'\eta + \varepsilon_{ijt}. \end{aligned} \tag{6}$$

If judges in the treatment group strategically delay unfavourable decisions in salient cases, we would expect λ_1 to be negative. This would be a test of the hypothesis described above under the assumption that judges in the treatment group attempt to delay unfavourable

[28] Unlike the exact date of decision, which we observe, we only observe the year in which the case was filed. We therefore treat all cases as being filed on the 1st of January of the year in which they are filed. This measurement error in the dependent variable is likely to increase our standard errors.

decisions in salient cases but not all such cases are delayed beyond their retirement. This is a reasonable assumption since our sample does contain salient cases that were decided against the government by treatment group judges. The estimates for λ_1 essentially test for the presence of delay in these cases.

The results are reported in table 17 in appendix B. All estimates of λ_1 are insignificant and show no pattern across the columns. Moreover, this specification also allows us to test whether the judges in the treatment group strategically expedite decisions that are in favour of the government. If this occurs we would expect the estimates for λ_3 to be positive. We find no such effect. Strategic delay or hastening of decisions does not appear to be the channel through which pandering occurs.

6.3 Endogenous litigant response

We have seen that judges in the treatment group tend to favour the government in salient cases. This leads to the natural question of whether litigants are aware of this and alter their behaviour in response. For instance, it is possible that the expectation of pandering leads to the government spending less effort when a case is listed before a bench composed of judges retiring long before an election. In this section, we test for this possibility.

In our framework, the index for salience captures the intensity of effort exerted by litigants in a case. Given random allocation of cases to benches, we should expect that there are no systematic differences in the "true salience", that is the characteristics that make a case important to a litigant, based on the composition of the bench deciding the case. However, if litigants choose their litigation effort after observing bench composition, then the observed salience will also be a function of the composition of the bench. We can test for this possibility by regressing our salience index on the number of judges retiring long before an election.

The results are reported in table 15 in appendix B. We observe that the coefficient on the number of judges retiring long before does not seem to be related to salience. In columns (5) and (6), we collapse salience into an indicator for whether the case is in the top 90% and the top 75% of salience, respectively. We see no evidence that litigant behaviour responds to pandering incentives of judges. It is possible that this is simply because litigants, and the government in particular, are unaware of this behaviour. Although, as we see in section 7, judges appear to be rewarded for pandering, the government may be unaware of the deeper relationship between election-retirement distance and pandering. Therefore, the resources spent in litigation may not respond to the pandering incentives of the bench that decides the case.

6.4 Pandering incentives and seniority

In some of our conversations with lawyers, we were told that there exists a seniority norm in the Supreme Court. According to this norm, the senior judge on the bench has more power when it comes to deciding a case. Seniority in the Supreme Court is based purely

Table 9: Disaggregated effects of pandering incentives based on judge seniority

	(1)	(2)	(3)	(4)	(5)
Salience	-0.259***	-0.260***	-0.265***	-0.213***	-0.222***
	(0.0671)	(0.0665)	(0.0663)	(0.0798)	(0.0827)
Senior retired long before	0.0212	0.0219	0.0277	-0.0712	-0.0236
	(0.0415)	(0.0411)	(0.0476)	(0.0761)	(0.0746)
Junior retired long before	-0.00168	-0.00185	-0.0153		
	(0.0490)	(0.0487)	(0.0485)		
Salience ×	0.153**	0.156***	0.173***	0.145**	0.164**
Senior retired long before	(0.0595)	(0.0594)	(0.0585)	(0.0669)	(0.0685)
Salience ×	0.179***	0.170***	0.158***	0.119*	0.117*
Junior retired long before	(0.0508)	(0.0521)	(0.0516)	(0.0674)	(0.0691)
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	0.021	0.023	0.046	0.194	0.212

Standard errors in parentheses

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

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. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

on the tenure on the Court which, as discussed in section 2.2, is determined by the date of appointment to the Court. In this section, we attempt to test whether there is a differential effect of the senior judge's pandering incentives on judicial decisions relative to that of the junior judge. We run

$$\begin{aligned} won_{ijt} = \alpha + \beta\, salience_i + \gamma_1\, senior\ retiring\ long\ before_j + \gamma_2\, junior\ retiring\ long\ before_j \\ + \lambda_1\, salience_i \times senior\ retiring\ long\ before_j \\ + \lambda_2\, salience_i \times junior\ retiring\ long\ before_j + \mathbf{X}_i'\eta + \varepsilon_{ijt} \end{aligned} \tag{7}$$

Results are reported in table 9. Note that in columns (4) and (5) we cannot estimate the effect of the junior judge retiring long before an election since the sum of the dummies for senior and junior judge retiring long before are equal to the number of judges retiring long before. This in turn is fully determined by judge characteristics and hence perfectly collinear with the judge dummies. The estimates for λ_1 and λ_2 are positive and significant across all specifications. This suggests that the pandering incentives of both the senior and the junior judge have an effect on the decision in the case. The estimates for λ_1 and λ_2 are similar in magnitude suggesting that there is no differential effect of pandering incentives of the senior judge. This suggests that a seniority norm, even if it exists, does not appear to mediate the effect of pandering incentives on judicial decision making.

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.[29] 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."[30] Arun Jaitley, current Finance Minister, while in opposition, said that "Pre-retirement judges are influenced by a desire for a post-retirement jobs."[31] 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

[29]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.

[30]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*

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

Table 10: Rewards for pandering

	(1) OLS	(2) OLS	(3) OLS	(4) OLS	(5) OLS	(6) OLS	(7) OLS
Retired between	0.0190		-0.0236	-0.0177		0.0261	0.0175
1-2 yrs	(0.182)		(0.173)	(0.178)		(0.182)	(0.189)
Retired between	0.233		0.240	0.314*		0.235	0.321*
2-3 yrs	(0.171)		(0.162)	(0.162)		(0.170)	(0.172)
Retired between	0.108		0.0477	0.0921		0.101	0.143
3-4 yrs	(0.215)		(0.204)	(0.210)		(0.211)	(0.218)
Retired between	0.102		0.0418	0.0798		0.0698	0.0976
4-5 yrs	(0.169)		(0.161)	(0.161)		(0.168)	(0.168)
Number of salient cases		-0.0563**	-0.0560**	-0.0506*	-0.0939*	-0.0871*	-0.0719
decided in favour of UOI		(0.0229)	(0.0232)	(0.0261)	(0.0478)	(0.0493)	(0.0532)
Number of salient cases decided		0.107***	0.112***	0.110***	0.161**	0.165**	0.167*
in favour of UOI as author		(0.0347)	(0.0353)	(0.0351)	(0.0796)	(0.0813)	(0.0838)
Controls	No	No	No	Yes	No	No	Yes
Observations	74	74	74	74	74	74	74
R^2	0.033	0.119	0.161	0.248	0.058	0.089	0.176

Dependent variable is 1 if the judge obtained post-SC job from the government that was in power when he retired. In columns (2) – (4) the number of salient cases is measured by the number of cases in the top 25 percent of the salience index and in columns (5) – (7) it is the number of cases in the top 10 percent. Controls are 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. Standard errors reported in the parentheses.

any constitutional position or assignment with government."[32] 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."[33]

In this section, we investigate this issue by examining whether post-SC job prospects of a judge vary with his judicial behaviour. We do so by estimating

$$job_j = \pi_0 + \sum_{k=1}^{4} \gamma_k \, retired\ k\ years\ before_j + \pi_1 \, num\ salient\ cases\ UOI\ won_j + \pi_2 \, num\ salient\ cases\ UOI\ won\ as\ author_j + \mathbf{Z}_j'\zeta + \varepsilon_j \, . \quad (8)$$

The dependent variable is an indicator for whether the judge received a post-SC appointment in the term of the government in which he retired. The results are reported in table 10. To begin with, we investigate whether our definition of pandering incentives in terms of retirement-election distance is consistent with the data. In particular, we test our premise that judges retiring long before an election are more likely to be receive a job from the government in power. Judges retiring with less than a year to the next election form the omitted category. We observe that most estimates of γ_k are positive (although mostly insignificant), indicating that judges retiring in years other than two years before an election are more likely to get a post-SC job. Moreover, consistent with our results from table 5, the coefficient estimates suggest an inverted U shaped relationship between election-retirement distance and job prospects. This implies that judges that retire in the middle of a government's term are most likely to receive jobs. Since our case-level results suggest that these judges are also the ones most likely to pander, we control for pandering by controlling for the number of cases decided in favour of the government by the judge, and the subset of these cases where the judge was the author. The all estimates of γ_k remain consistently positive except for judges retiring between 1-2 before the next election.

Moreover, this specification allows us to test how judicial decisions affect post-SC prospects. We broaden our sample to all salient cases, including the ones a judge decided when he was part of bench of 3 or more judges. The two independent variables of interest 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. A salient case is one that is in the top 75% of the salience index in columns (2)-(4) and top 90% in column (5)-(7).

We find that the estimates for π_2 are positive and significant while the estimates for π_1 are negative. Recall that in section 6.1 we observed that that pandering occurs through writing favourable judgements in salient cases. Here we find that such a mechanism is indeed consistent with how pandering is rewarded – over and above deciding in favour of the government, it is writing favourable judgements that is positively associated with a post-SC appointment.

[32]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*

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

The results continue to hold after controlling 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. These results are robust to using logit and profit estimation (results available on request). This suggests that there is indeed a "demand side" pull from the government that incentivises judges to pander.

We attempt to explore this relationship further by interacting the retirement distance dummies with favourable judicial decisions in salient cases. We do this to see whether in equilibrium, pandering by judges retiring long before an election is disproportionally associated with post SC appointments. Results are reported in table 18 in appendix B. The standard errors increase markedly in this specification and we are unable to discern any consistent pattern.

It striking that rewards for pandering can be detected statistically using a sample of only 74 observations. This is surprising because we would expect any corruption at such a high level to be subtle and hard to detect. However, although suggestive, the relationship between post-SC jobs and authoring favourable decisions 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 previously 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.

Moreover, we should emphasise that we cannot observe the motives of the government: It is possible that awarding post-SC jobs to judges who pander is simply a way of selecting those judges who will comply with the government's preferences in their post-SC job. Nonetheless, regardless of whether the government intends to reward judges or whether it simply uses favourable decisions as a mechanism to identify compliant judges, award of post-SC jobs will have the same effect on judicial behaviour. Hence our use of the phrase "rewards for pandering" should be seen as how these jobs are perceived by the judges rather than representing the intention of the government that hands them out.

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 strategic delay of unfavourable decisions. 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 suggests the possibility of a 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 on litigants, our results have implications on institutional design. Separation of powers, foundational to modern democratic institutions, is not as clear in practice as it is in theory. Our analysis suggests that the prospect of being appointed to goverment positions after retirement could be a way in which the executive exercises control over an otherwise independent judiciary, in countries with judicial term limits.

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A Data appendix

Position	Institution	Frequency
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
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 11: Post-SC jobs and frequencies

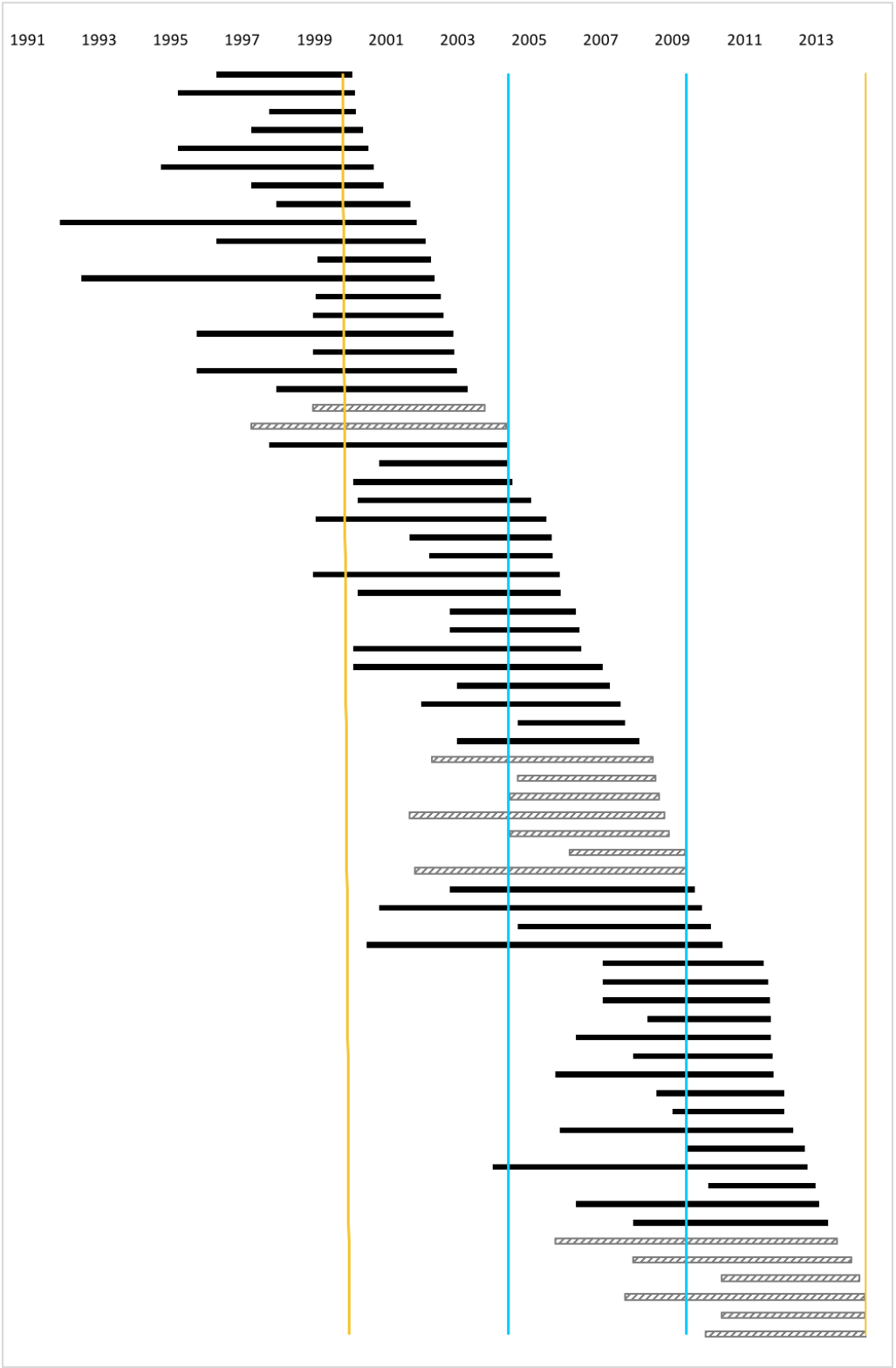

Figure 2: Judge tenures.
Each bar represents the tenure of a judge. Solid bars are for judges who retire at least one year before an election, while hatched bars are for judges who retire less than one year before an election. The saffron line represent elections won by the NDA while the light blue lines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

B Additional results

Table 12: Cases that were allocated non-randomly to benches

	(1)	(2)	(3)	(4)	(5)
Salience	0.00508	0.00882	0.0124	0.0386	0.0523
	(0.0480)	(0.0499)	(0.0541)	(0.0568)	(0.0799)
Number of judges who retired	0.0460	0.0457	0.0396		
long before	(0.0360)	(0.0355)	(0.0438)		
Salience × Number of	0.000838	0.00160	-0.000683	-0.0140	-0.0169
judges who retired long before	(0.0187)	(0.0191)	(0.0210)	(0.0265)	(0.0306)
Case controls	No	Yes	Yes	Yes	Yes
Year dummies	No	No	Yes	No	Yes
Judge dummies	No	No	No	Yes	Yes
Observations	199	199	199	199	199
R^2	0.012	0.023	0.060	0.330	0.373

Sample composed of cases decided by 3 or more judges. 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. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 13: Using different proxies for salience

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
AG or SG	-0.384	-0.245						
	(0.244)	(0.260)						
Number of judges who retired long before	-0.0496		-0.0643		-0.0930**		-0.0894**	
	(0.0356)		(0.0481)		(0.0452)		(0.0427)	
AG or SG × Number of judges who retired long before	0.351**	0.271*						
	(0.136)	(0.148)						
Add. SG			0.00772	-0.00457				
			(0.0898)	(0.105)				
AG or SG			-0.378	-0.248				
			(0.253)	(0.269)				
Add. SG × Number of judges who retired long before			0.0375	0.0199				
			(0.0567)	(0.0645)				
AG or SG × Number of judges who retired long before			0.365**	0.281*				
			(0.141)	(0.154)				
Number of Senior Advocates					-0.0907***	-0.0646**		
					(0.0283)	(0.0322)		
Number of Senior Advocates × Number of judges who retired long before					0.0524***	0.0405*		
					(0.0179)	(0.0222)		
Number of Advocates							-0.0102***	-0.0105***
							(0.00216)	(0.00323)
Number of Advocates × Number of judges who retired long before							0.00538***	0.00539**
							(0.00164)	(0.00210)
Case controls	No	Yes	No	Yes	No	Yes	No	Yes
Year dummies	No	Yes	No	Yes	No	Yes	No	Yes
Judge dummies	No	Yes	No	Yes	No	Yes	No	Yes
Observations	661	661	661	661	661	661	661	661
R^2	0.017	0.211	0.021	0.211	0.018	0.208	0.020	0.218

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. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 14: Including cases with no clear winner

	(1) Lost	(2) Lost	(3) Won	(4) Won	(5) Ternary	(6) Ternary
Salience	-0.217***	-0.191***	-0.131**	-0.108**	-0.349***	-0.299***
	(0.0351)	(0.0500)	(0.0519)	(0.0476)	(0.0770)	(0.0854)
Number of judges who retired long before	0.0113		-0.0179		-0.00656	
	(0.0336)		(0.0383)		(0.0710)	
Salience × Number of judges who retired long before	0.136***	0.122***	0.0945***	0.0769**	0.231***	0.199***
	(0.0295)	(0.0408)	(0.0353)	(0.0364)	(0.0599)	(0.0713)
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	0.020	0.208	0.011	0.200	0.015	0.204

Dependent variable is whether government won except in columns (5) and (6) where it takes three values: government won (1), government lost (-1), and no clear winner (0). Case controls are type of case (appeal/petition), whether CJI was one of the judges, whether government was appellant/petitioner. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 15: Endogenous litigant response

	(1)	(2)	(3)	(4)	(5)	(6)
Number of judges retiring long before	0.0520	0.0194	0.0624	0.0310	-0.00930	0.0346
	(0.0426)	(0.0377)	(0.0483)	(0.0454)	(0.0125)	(0.0239)
Case controls	No	Yes	No	Yes	Yes	Yes
Year dummies	No	No	Yes	Yes	Yes	Yes
Observations	661	661	661	661	661	661
R^2	0.003	0.101	0.045	0.130	0.094	0.146

Dependent variable in columns 1-4 is the salience index. The dependent variable in columns 5 and 6 is an indicator for whether the case was in the top 90th or top 75th percentile of salience, respectively. Case controls are type of case (appeal/petition), whether CJI was one of the judges, whether government was appellant/petitioner. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 16: Logit and probit

	(1) Logit	(2) Logit	(3) Logit	(4) Logit	(5) Probit	(6) Probit	(7) Probit	(8) Probit
Salience	-1.195***	-1.214***	-1.047**	-1.178**	-0.735***	-0.744***	-0.626**	-0.703**
	(0.382)	(0.379)	(0.452)	(0.494)	(0.228)	(0.226)	(0.268)	(0.292)
Number of judges who retired long before	0.0617	0.0617			0.0359	0.0343		
	(0.141)	(0.140)			(0.0862)	(0.0855)		
Salience × Number of judges who retired long before	0.770***	0.759***	0.641**	0.726**	0.469***	0.460***	0.375**	0.431**
	(0.252)	(0.251)	(0.312)	(0.325)	(0.148)	(0.148)	(0.178)	(0.190)
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								

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. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 17: Pandering incentives and delay or hastening

	(1)	(2)	(3)	(4)	(5)
UOI won	-140.6	-160.7	-62.64	-29.85	-4.581
	(203.7)	(204.7)	(188.4)	(169.2)	(169.7)
Salience	-202.7	-226.8	-168.3	-366.3*	-317.4
	(184.0)	(192.6)	(178.3)	(203.4)	(218.5)
UOI won × Salience	11.58	-33.50	15.58	35.89	30.82
	(323.1)	(320.4)	(309.8)	(370.3)	(373.9)
Number of judges who retired	-86.69	-100.3	-166.6		
long before	(123.5)	(121.3)	(122.6)		
UOI won × Number of	98.08	106.7	37.30	28.27	22.87
judges who retired long before	(136.5)	(134.4)	(124.0)	(112.5)	(111.4)
Salience × Number of	57.64	39.67	-17.84	50.67	17.63
judges who retired long before	(160.2)	(158.0)	(134.3)	(129.0)	(132.4)
UOI won × Salience	-11.84	17.15	-5.443	58.35	56.87
× Number of judges who retired long before	(219.2)	(213.9)	(196.3)	(216.8)	(220.8)
Case controls	No	Yes	Yes	Yes	Yes
Year dummies	No	No	Yes	No	Yes
Judge dummies	No	No	No	Yes	Yes
Observations	660	660	660	660	660
R^2	0.008	0.019	0.078	0.241	0.266

Dependent variable is time taken for the case to be decided. Case controls are type of case (appeal/petition), whether CJI was one of the judges, whether government was appellant/petitioner. Standard errors reported in the parentheses are clustered at the bench level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 18: Rewards for pandering (with interactions)

	(1) OLS	(2) OLS
Retired between 1-2 yrs	-0.134	-0.272
	(0.304)	(0.319)
Retired between 2-3 yrs	0.134	0.248
	(0.291)	(0.296)
Retired between 3-4 yrs	-0.792	-0.620
	(0.565)	(0.702)
Retired between 4-5 yrs	-0.251	-0.167
	(0.274)	(0.273)
Number of cases decided in favour of UOI	-0.0942	-0.0704
	(0.0606)	(0.0629)
Number of cases decided in favour of UOI as author	0.103	0.0498
	(0.0823)	(0.0856)
Retired between 1-2 yrs × Number of cases decided in favour of UOI	0.000575	-0.000503
	(0.0845)	(0.0954)
Retired between 1-2 yrs × Number of cases decided in favour of UOI as author	0.0624	0.126
	(0.129)	(0.144)
Retired between 2-3 yrs × Number of cases decided in favour of UOI	0.00968	-0.0110
	(0.0822)	(0.0836)
Retired between 2-3 yrs × Number of cases decided in favour of UOI as author	0.0310	0.0605
	(0.151)	(0.158)
Retired between 3-4 yrs × Number of cases decided in favour of UOI	0.367	0.233
	(0.230)	(0.305)
Retired between 3-4 yrs × Number of cases decided in favour of UOI as author	-0.396	-0.168
	(0.292)	(0.397)
Retired between 4-5 yrs × Number of cases decided in favour of UOI	0.0704	0.0358
	(0.0705)	(0.0719)
Retired between 4-5 yrs × Number of cases decided in favour of UOI as author	-0.0108	0.0548
	(0.0964)	(0.102)
Controls	No	Yes
Observations	74	74
R^2	0.231	0.309

Dependent variable is 1 if the judge obtained post-SC job from the government that was in power when he retired. Controls are 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. Standard errors reported in the parentheses.