



Judicial panel selection and strategic behaviour in the Indian Supreme Court: Measuring the performance of Chief Justices

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ABSTRACT

Chief justices of India are unique institutional actors. They possess administrative powers that other judges lack. As the Masters of Roster, chief justices appoint panels that adjudicate petitions. How do they exercise this power? Our analysis unmasks Indian chief justices as strategic actors. Data on panel selection over two decades demonstrates how chiefs deploy two strategies as they approach retirement. First, they convene discretionary panels that disproportionately favour governments. Second, they adjudicate more in favour of governments. Indian chief justices, in this context, resemble those of Canada, South Africa, and similar jurisdictions. Besides, they are more likely to secure post-retirement jobs from governments. Cumulatively, this analysis shows why the power to select panels is too awesome – its impact too material – to confine it to lone office holders.

1. Panel selection: India and the world

Chief Justices of India (CJIs) are unique institutional actors. They command an arsenal of discretionary powers that other judges lack. Why? CJIs shepherd India's sprawling Supreme Court. Each year, the court adjudicates thousands of cases.¹ Judges, however, do not assemble *en banc*. Instead, they congregate in panels of two or more. This renders the Indian Supreme Court polyvocal: It speaks through multiple benches and courtrooms (Robinson, 2013). Administering the massive pile of petitions – organising workflow, constituting benches, assigning cases to judges, etc. – is a severe undertaking. As the court's Master of the Roster, CJIs select panels and allocate petitions to judges. Our analysis investigates the CJIs' power to select panels and its impact on judicial outcomes in India.

Panel selection is a burgeoning field of research. Much of the early scholarship focused on the United States, especially the Court of Appeals (Cross and Tiller, 1998; Klein and Hume, 2003; Hettinger et al., 2006; Clark, 2009; Kim, 2009; Westerland et al., 2010; Beim et al., 2016). The literature, however, increasingly has an international and cross-country flavour (Grossman et al., 2016; Kapeliuk, 2012; Engel, 2022). Several countries including Brazil, Canada, Israel, Norway, the United Kingdom, and South Africa endow chief justices with wide-ranging powers to select panels. In Canada, scholarship has unearthed mixed motivations regarding panel selection. Some studies suggest

strategic behaviour. In a descriptive analysis of the *Charter of Rights* cases, Heard (1991) finds that chief justices created panels predisposed to favour *Charter* claims. The claimants subsequently won at a much higher rate. Hausegger and Haynie (2003) conclude that chief justices constructed panels that were ideologically closer to them in salient *Charter* cases. Along similar lines, Ostberg and Wetstein (2007) find that chief justices significantly lowered their own dissent rates to “control” their benches. Other studies, however, emphasise how chiefs summon regional considerations, workload, and case salience rather than political motivations to construct panels (Baar, 1988; Greene et al., 1998; Songer et al., 2012). Despite these disagreements, the research has converged on the point that Canadian chief justices compose larger-sized panels in contentious *Charter* cases (Alarie et al., 2015; McCormick, 2015; Garoupa et al., 2021).

Research on South African and Israeli chief justices too emphasise strategic models of panel selection. Scholarship on the apartheid-era judicial process finds that South African chief justices strategically assigned judges to panels based on their ideology, seniority, and issues involved (Hausegger and Haynie, 2003; Sill and Haynie, 2010). The statistical analysis bolstered a familiar intuition: chief justices design benches for ideological purposes or to ensure government wins (Eilmann, 1992) In Israel, too, the chief justice wields unusual discretion in herding the High Court's 15 judges. Early scholarship indicated

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¹ Since 2000, it has granted full hearings to at least 4000 cases annually. (Supreme Court of India 2023-24, para114). This figure peaked in 2014 when the Supreme Court heard 16,742 cases (Supreme Court of India 2023-24, para114). The court has a practice of disposing multiple cases using a common judgment. Hence, the total number of judgments is significantly smaller than the number of cases the court has fully heard.

how multiple factors including seniority, specialisation, and workload influenced panel formations (Gross and Schacher, 1998; Eisenberg et al., 2011). But Eisenberg et al. (2013) unearthed the Calendar Clerk's (a lawyer) role in selecting most panels. More recently, Givati and Rosenberg (2020) have identified other types of deviations. A unique procedure empowers the weekly Justice on Duty to select the two other panel judges to assess admissibility matters. Analysing data over a two-year period revealed how justices strategised, selecting panels on ideological agreement instead of random assignment or professional expertise.

US Supreme Court chief justices, too, computational simulations in Palmer (2016) suggest, strategically deploy federal judges to specialist courts and panels including the Foreign Intelligence Surveillance Court (FISC). In their analysis, US chief justices between 1978 and 2013 demonstrated a strong preference for appointing *co-partisan* judges to the FISC after accounting for other observable judicial characteristics including age, experience, gender, seniority, and caseload.

A literature on panel selection has also emerged in non-common law systems (Garoupa et al., 2021). Evidence from Brazil (de Mendonca Lopes, 2019), Norway (Skiple et al., 2020) and elsewhere (Skiple et al., 2016; Kelemen, 2018) suggests a range of strategic behaviours on panel selection. But no systematic trend has still emerged. An analysis of panel formation in the Polish Constitutional Court did not find evidence suggesting partisan allocation of judges to adjudication panels. However, in politically sensitive cases, the results supported the idea of strategic selection by the constitutional tribunal's president (Fałkowski and Lewkowicz, 2021). Nonetheless, direct inter-systems comparisons of panel selections and judicial behaviour remain a fraught exercise. Institutional (and cultural) variations regarding court structures and procedures, collegiality, and styles of authorship render it challenging to construct meaningful baselines across common law and civil law systems.

In India, a small corpus of analysis exists on voting patterns in the Supreme Court (Gadbois, 1969; Dhavan, 1977; Dhavan and Jacob, 1978; Gupta, 1995; Gadbois, 2011). Only two pointedly address the CJI's role in selecting panels and its implications for adjudication. Robinson et al. (2011) analysed all large (five judges or more) Supreme Court benches between 1950 and 2009 that engaged with issues in constitutional law. Of the 1532 such benches, 77% included CJIs and they penned the lead opinion in 21% of cases. Only 5.2% of cases had a dissenting opinion, but if the CJI was present, the odds of a dissent fell to 0.8%. The CJI's presence, this suggests, induces reticence among puisne (or associate) Supreme Court judges. The authors found only 10 instances when CJIs authored dissents. Their analysis also identified a sharp decline in the number of large bench cases: CJIs appear increasingly reluctant to summon large benches to resolve legal and constitutional conflicts. Recent analyses have affirmed these trends (Singh, 2018; Chandra et al., 2023).

This cumulative body of research reinforces the dramatic findings on the Indian Supreme Court's nascent decades in Gadbois (1970). Until he became Chief Justice, K Subba Rao, between 1958 and 1966, stridently dissented against the government, especially on right to property and eminent domain matters. He authored more dissenting opinions than any other Supreme Court judge (Gadbois 1970 166). But his dissents disappeared immediately after he became Chief Justice in 1966 (Gadbois, 1970). During his term as the CJI, Subba Rao never authored a dissenting opinion, and his court issued more anti-government verdicts than before. Authorised to select panels, Subba Rao as CJI knew his fellow judges and, it appears, chose his benches carefully.

Our analysis investigates the political economy of the CJI's administrative power to summon benches. We pose two questions. First: Do CJIs strategise in composing – and adjudicating on such – panels? Second: If so, why? We find that CJI-composed (large) benches are more likely to favour governments. We christen this pattern the *administrative* effect. Next, we find that CJIs, as they approach retirement, are

more likely to adjudicate cases to favour governments. We christen this pattern the *adjudicative* effect. A later section speculates on methods and motives underlying these patterns. Why might CJIs strategise as they near the end of their tenure? Exploiting procedural features unique to the Indian Supreme Court, we enumerate how judges may engender these patterns. We also explore potential motives – the why question – and empirically test one possibility, namely, post-retirement jobs. CJIs more likely to secure post-retirement jobs, our investigation reveals, decide more cases in favour of the government in their closing weeks in office.

This analysis unfolds in 5 sections. Section 2 introduces the Indian Supreme Court and its institutional settings. We outline how CJIs are appointed, their tenures, and performance. Section 3 describes the case and judge-level data, our identification strategy, and the main results. It also investigates the baseline results further and offers robustness checks. Section 4 speculates. How – and why – do CJIs strategise? We profile a list of reasons and empirically probe one such possibility, namely, the allure of post-retirement jobs. Section 5, the conclusion, underscores the novelty of these findings and proposes new lines of enquiry.

2. The Supreme Court of India: Institutional details

The Supreme Court has a scopic jurisdiction. Any person alleging a violation of fundamental rights can directly invoke the court's original jurisdiction.² Also, central and state governments can litigate their disagreements directly before the court.³ Others may deploy the court's appellate jurisdiction to challenge orders from any other court in the country.⁴ Blending its constitutional, original, and appellate powers has spawned an exploding docket. Unlike other national courts, the Indian Supreme Court does not limit itself to interpreting laws and expounding doctrines. Instead, it focuses on facts, correcting errors case-by-case, and overturning lower court decisions (Chandra et al., 2017).

The Supreme Court currently has 38 judges: the CJI and 37 puisne (or associate) judges. The CJI is the court's senior-most judge. In India, seniority is a function of experience, not age. So, the longest serving judge at any given point becomes the CJI. This seniority norm is a convention, not a constitutional mandate. The emphasis on seniority has saddled India with a system of rotating CJIs without fixed terms. Fig. 1 chronologically presents the tenures of all CJIs in our sample. On average, CJIs held office for 1.17 years. Variations exist. In our sample, Rajendra Babu and G.B. Pattanaik held office for unusually short durations (29 and 40 days respectively). In contrast, K.G. Balakrishnan and A.S. Anand served as CJIs for the longest durations (1213 and 1117 days respectively).

CJIs perform a dual role: They adjudicate cases and administer the court. (Thus far, CJIs have all been men.) In his judicial capacity, the CJI is *primus inter pares*: first among equals. He is an equal, if the senior-most, member of the court.⁵ In his administrative capacity, however, the CJI is without any equal. He is the court's "sole and supreme authority", its *pater familias*.⁶ The Constitution and its conventions endow CJIs with vast administrative powers.⁷ They include

² Constitution of India Article 32.

³ Constitution of India Article 131.

⁴ Constitution of India Articles 132, 133, 134. The court also has a jurisdiction to review its own judgments (Article 137) alongside an advisory jurisdiction (Article 143). Besides, the court also commands a discretionary jurisdiction: it may grant special leave to appeal "any cause or matter...by any court or tribunal" in India. Such special leave petitions, intended as an exception, now clog the court's pipeline (Hemrajani and Agarwal, 2019).

⁵ Asok Pande v. Supreme Court of India, (2018) 5 SCC 341.

⁶ Shanti Bhushan v. Supreme Court of India and Anr., (2018) 8 SCC 396, para 25.

⁷ State of Maharashtra v. Narayan Shamrao Puranik, (1982) 2 SCC 440.

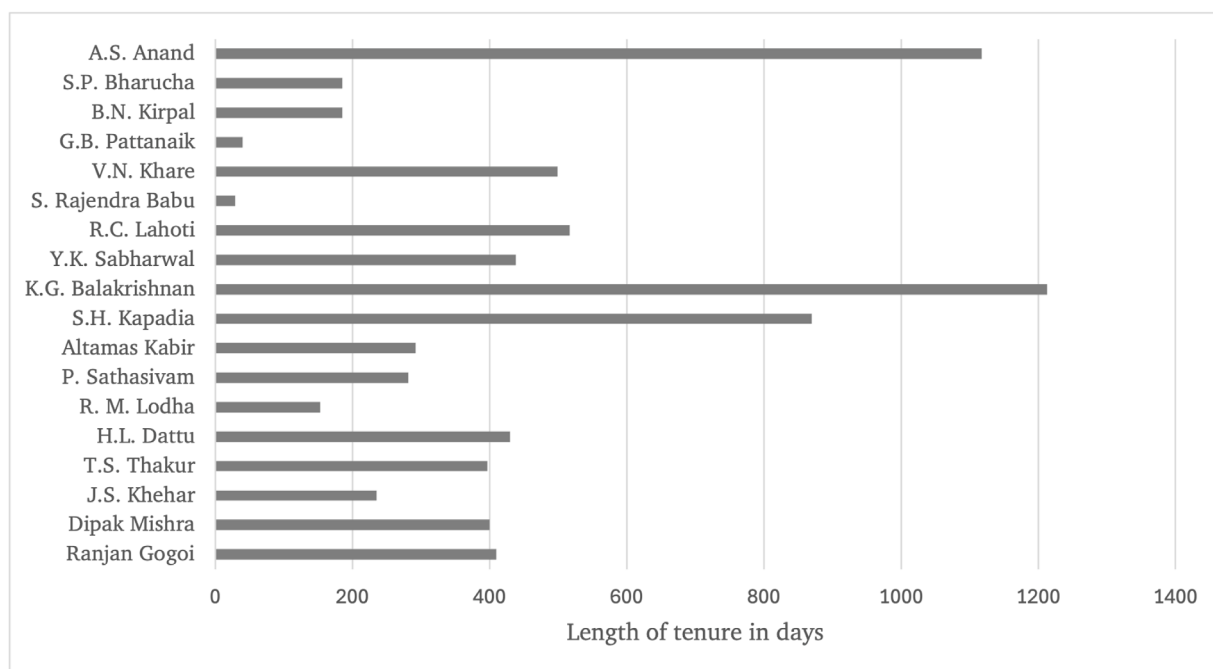


Fig. 1. CJI tenure measured in days.

The figure presents the tenures of Chief Justices of the Supreme Court of India who were active during our sample period. The y-axis presents the CJIs chronologically, from top to bottom. The x-axis is the number of days that the corresponding judge was the CJI.

the power to recommend judges for appointment,⁸ recommend *ad hoc* judges,⁹ transfer (High Court) judges,¹⁰ appoint the court's officers and servants,¹¹ and frame rules for its daily administration.¹² One especially contentious administrative power is the CJI's role as the "Master of the Roster"—his power to select panels (or benches).¹³

In India, allocation takes two forms: general and specific. With general allocation, the CJI assembles multiple pairs of judges ("division" benches), but an algorithm assigns specific cases to those pairs (Supreme Court of India, 2010). Here, the chief's discretion, ordinarily, is restricted to composing benches. Specific petitions usually reach benches via a randomised system.¹⁴ This is the Supreme Court's most regular work pattern.¹⁵ Ethnographic and empirical research suggest that CJIs weigh ideological affinity, subject-matter expertise, seniority, and other factors to assemble these benches (Gadbois, 2011; Gupta, 1995; Ashok, 2017). In contrast, with specific allocation, a CJI assembles benches and distributes *specific* cases to them. Benches involving three or more judges arise from specific allocations. The CJI summons them, and they stand dissolved once an assigned matter is adjudicated. These large (or discretionary) benches resolve disagreements

among the court's two-judge benches, conflicting opinions among the country's 25 High Courts, reevaluate precedents, or decide complex legal issues.¹⁶ The next section investigates the political economy of the CJI's power to constitute – and adjudicate on – large benches.

3. Data, identification strategy, results

Our analysis extends the data from Aney et al. (2021). We extend it in two ways. First, the previous data was between 1999–2014 and we extend the period. Second, Aney et al. only analysed two-judge (or division) bench decisions. We extend the data to include large bench cases. Indeed, performance of these discretionary benches forms the core of our analysis. This section describes the case and judge-level data and introduces our main findings.

3.1. Case-level data

The case data comprises of the universe of Supreme Court judgments between October 10, 1998, and November 17, 2019, from the SCC Online database. October 10, 1998, is the date on which the first CJI in our sample, A.S. Anand, began his tenure as CJI and November 17, 2019, is the date on which the last CJI in our sample, Ranjan Gogoi, concluded his tenure as CJI.

During this period, SCCOnline, India's leading law database, logged 1850 judgments from the Supreme Court involving the Union of India and its agencies.¹⁷ The dependent variable is an indicator for whether the Union of India (UOI) won or lost the case. Research Assistants (RAs) who were second- or third-year law students hand coded this variable. At least two RAs handled each case. A third RA redid the coding in

⁸ Supreme Court Advocates-on-Record Association and another v Union of India (2015) 13 SCC 1.

⁹ Constitution of India, Art. 127(1).

¹⁰ Constitution of India, Art. 222(1).

¹¹ Constitution of India, Art. 146(1).

¹² Constitution of India, Art. 145(1).

¹³ Constitution of India, Art. 145(1).

¹⁴ The rota of judge pairs alters every few months or with such frequency the CJI may decide. For examples of judge-pair rota, see Roster of The Work for Fresh Cases, Supreme Court of India, November 11, 2024, available at <https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024112148.pdf> (Last visited January 14, 2025).

¹⁵ The court's Handbook, it should be noted, recognises the CJI's discretion even regarding general allocation in "sensitive" matters. However, in interviews conducted in 2018, several retired CJIs protested the claim that they interfered with the court's randomised approach to allocation with regards to division benches. One retired CJI, for example, insisted that he directed matters to specific benches "only once or twice" in his entire term.

¹⁶ The Constitution of India, 1950, Art. 145(3).

¹⁷ Apart from judgments, the Supreme Court also speaks through "orders". They are almost always short, interim, and procedural in nature. They are used, for example, to set the next dates of hearing, summon documents, summarise a given day's hearing, condoning delay, etc. The volume of such orders is so vast that collecting and coding all of them is infeasible.

Table 1
Summary statistics.

	Mean	SD	Min	Max
UOI Won	0.586	0.493	0	1
CJI on the bench	0.121	0.327	0	1
Appeal (1) or Petition (0)	0.765	0.424	0	1
UOI Appellant/Petitioner (1) or Respondent (0)	0.342	0.474	0	1
Attorney/Solicitor General	0.114	0.318	0	1
Constitutional matter (1)	0.528	0.499	0	1
Tax matter (1)	0.055	0.228	0	1
Service matter (1)	0.248	0.432	0	1
Administrative matter (1)	0.144	0.351	0	1
Coram	2.248	0.602	1	9
Large bench	0.195	0.397	0	1
CJI tenure Left	0.865	0.794	0	3.312
CJI in last month	0.111	0.314	0	1
Observations	1715			

This table summarises the our key variables. Our case sample spans Oct 10 1998 to Nov 17 2019, the dates on which the first CJI in our sample was appointed and the CJI retired. Subject matter variables, that is, constitutional, tax, service, and administrative indicate whether the associated words indicating the matter type appear in the short notes of the case. All the "tenure" variables are measured in years.

Table 2
CJI summary statistics.

	Mean	SD	Min	Max
Number of cases	95.28	77.68	4	334
Number of cases UOI won	55.83	50.56	1	214
Number of cases in last month	10.56	5.659	3	22
Number of cases UOI won in last month	6	3.481	1	11
Number of large bench cases	18.61	14.27	0	48
Number of large bench cases UOI won	10.33	9.368	0	36
Number of large bench cases in last month	4.056	3.506	0	14
Number of large bench cases UOI won in last month	2.556	2.382	0	8
Number of cases (CJI present)	11.56	10.34	1	42
Number of cases UOI won (CJI present)	5.889	5.378	0	18
Number of cases in last month (CJI present)	3.222	3.474	0	13
Number of cases UOI won in last month (CJI present)	1.833	2.176	0	7
Number of large bench cases (CJI present)	9.944	9.490	0	41
Number of large bench cases UOI won (CJI present)	5.056	4.795	0	17
Number of large bench cases in last month (CJI present)	2.944	3.404	0	13
Number of large bench cases UOI won in last month (CJI present)	1.722	2.164	0	7
Tenure as CJI in years	1.170	0.911	0.0795	3.321
Obtained job post-retirement	0.389	0.502	0	1
Observations (Number of CJIs in the sample)	18			

This table summarises CJI-related summary statistics. The first 8 variables are measured over cases decided in the tenure of CJIs regardless of whether they were present on the bench deciding the case. The next 8 variables are measured over cases where the CJI was present on the bench deciding the case.

case disagreements arose between the first two. (This happened in less than 10% of the cases). The cases were coded as UOI won, UOI lost, or not identifiable. In 1715 cases, UOI had a clear winner or loser.¹⁸ 135 instances lacked a clear winner. We dropped these judgments from the analysis.

Finally, we parsed these 1715 judgments to extract information on the date of the decision, whether the case was an appeal or a fresh petition, whether the government was an appellant/petitioner or respondent, whether the government was represented by the Attorney General or Solicitor General, the names of judges deciding the case, and whether the CJI was one of the judges. Table 1 describes the case data. See Table 8 in Appendix A for a more detailed breakdown of judgments by government.

3.2. Judge-level 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

¹⁸ To ensure correctness, the authors also coded a random sample of cases as an additional check.

Justice, if ever. Using this data, we identified two variables for each case. First, how close was the CJI to retirement? Second, was the CJI part on the bench? The summary statistics for CJI level variables are reported in Table 2.

3.3. Identifying administrative and adjudicative effects

We adopt a difference-in-differences approach to compare a CJI's use of discretionary powers just before retirement with the rest of their tenure. The identification assumption is that unobservable judge characteristics such as judicial ideology may vary across CJI but are invariant within the tenure of each CJI. Indian chief justices enjoy short tenures: 1.17 years on average. This anchors our assumption that CJIs' ideology in office remains constant. Standing on that assumption, we attribute disproportionate use of discretionary power just before retirement to strategic behaviour.

CJIs command two types of discretionary power: one administrative, the other adjudicative. First, a CJI may affect case outcomes through bench composition. Because only a CJI can compose large benches, they may influence the outcomes by empanelling judges who are more likely to favour the government. We call this the administrative effect. The key assumption here is that CJIs can reasonably predict behaviours and preferences of associate judges. Scholarship we

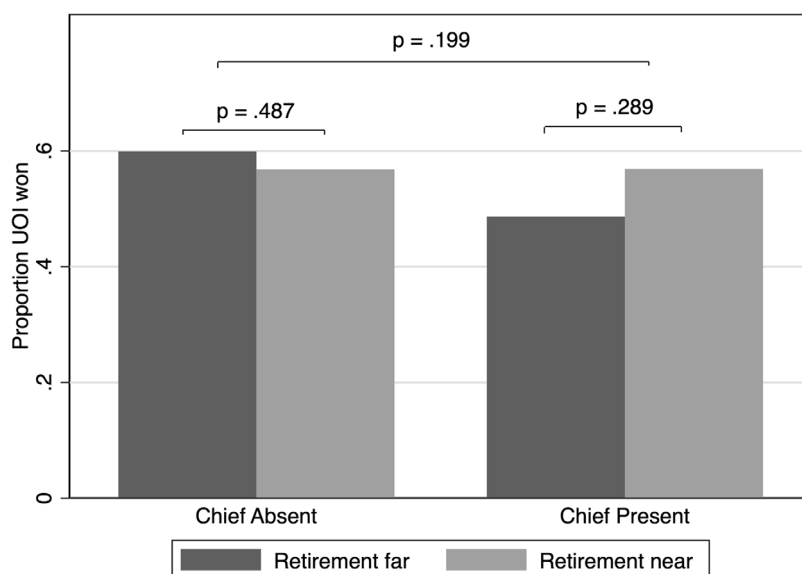


Fig. 2. Identifying the adjudicative effect.

The figure presents the proportion of cases won by the Union of India (UOI) for all UOI cases between Oct 10 1998 and Nov 17 2019. These are broken down by (a) whether the CJI was one of the judges on the bench, and (b) whether the case was decided in the last month of his tenure. The *p*-value over each set of two bars is the *p*-value for the test in differences of the means for cases decided close and far from retirement. The *p*-value spanning all four bars is the *p*-value for the difference in differences between the four bars.

discussed previously, especially those produced by Gadbois, suggests that CJIs do this well. Fig. 3 illustrates how we identify this in the data. We interpret the difference between cases along two dimensions: One: Did a large (> 2) bench decide the case? Two: Was the CJI was close to – or far from – retirement when the case was decided? We attribute any increase in the likelihood of a government win in discretionary bench cases when the CJI was close to retirement as evidence of strategic behaviour.

Second, like any other judge, a CJI can influence the outcome of a case if they are part of the bench. We call this the adjudicative effect. Fig. 2 illustrates how we identify this empirically. We interpret the difference between cases along two dimensions: One: Was the CJI present on a large bench? Two: Was the CJI close to – or far from – retirement when the case was decided? Again, we attribute any increase in the likelihood of a government win in cases decided by the CJI when he was close to retirement as evidence of strategic behaviour.

Notice that we measure both administrative and adjudicative effects “close to” retirement. Closeness to retirement, however, lacks definitional precision. A degree of authorial discretion is inevitable. Our baseline results employ a one-month frame as seen in Figs. 2 and 3. However, in Section 3.6 we disaggregate our specification and demonstrate that only the one-month cutoff is empirically relevant. In other words, CJIs, our analysis suggests, are more likely to behave differently as they approach retirement.

3.4. Measuring the administrative effect

To identify if CJIs compose benches strategically closer to retirement, we regress

$$\begin{aligned}
 uoiwon_{ijt} = & \sum_j \gamma_j b_{ij} + \mu_t + \delta_s t + \alpha_1 \text{ chief in last month}_{ijt} + \alpha_2 \text{ large bench}_i \\
 & + \alpha_3 \text{ chief in last month}_{ijt} \times \text{large bench}_i + \mathbf{X}'_i \eta + \varepsilon_{ijt}. \quad (1)
 \end{aligned}$$

The dependent variable $uoiwon_{it}$ is an indicator for whether the Union of India won case i . Subscript t refers to the date on which the case was decided and j identifies the judge who was the CJI when the case was decided. The variable large bench_i is an indicator for whether the case was decided by a bench of three or more judges. The variable

$\text{chief in last month}_{ijt}$ indicates whether the chief is in his last month before retirement at the time the case was decided.¹⁹

The administrative effect may remain active even in cases where the chief does not place himself on the bench. To operationalise this, $\text{chief in last month}_{ijt}$ indicates the chief’s last month at the time the case was decided even if the chief is not part of the bench that decided that case.

The administrative effect is captured by $\alpha_2 + \alpha_3 * \text{chief in last month}_{ijt}$. The coefficient α_3 captures how the likelihood of the government winning a large bench case change as the CJI approaches retirement. Table 3 reports the results. The estimates for α_2 are close to zero. The estimate for α_3 is positive and significant. At 0.25, the estimate suggests that when a CJI is in their last month before retirement, a large bench decision is about 25 percentage points more likely to favour the government.

We include judge dummies $\sum_j \gamma_j b_{ij}$, that is one dummy for each of the judge on the bench b_{ij} that decided the case. This controls for time-invariant judge characteristics such as his ideology, length of tenure, and productivity. We include a linear time trend $\delta * t$ to account for any temporal drift in the way the Supreme Court treats government cases. We use robust standard errors in all our regressions. The results are more statistically significant if we instead cluster the standard errors at the CJI level. However, with only 18 CJIs in our sample, we eschew this approach.²⁰

The nature of the case or its importance may affect the likelihood of UOI win. This may introduce a bias if it is correlated with the kind of cases CJIs decide in their last month in office. To address this, we include \mathbf{X}_i , a vector of case level characteristics. This includes three kinds of controls. First, we include dummies for the type of case (appeal or petition or neither), dummies for union role (appellant/petitioner or respondent or neither), and dummies for bench size. Second, we

¹⁹ Ideally, we would want to use a variable that measures the CJI’s expectation about the date of decision at the time of bench composition rather than the actual date of decision. For now we assume that the CJI’s expectation is aligned with the actual date of decision. We address the measurement error induced by this in Section 3.9.

²⁰ These results are available upon request.

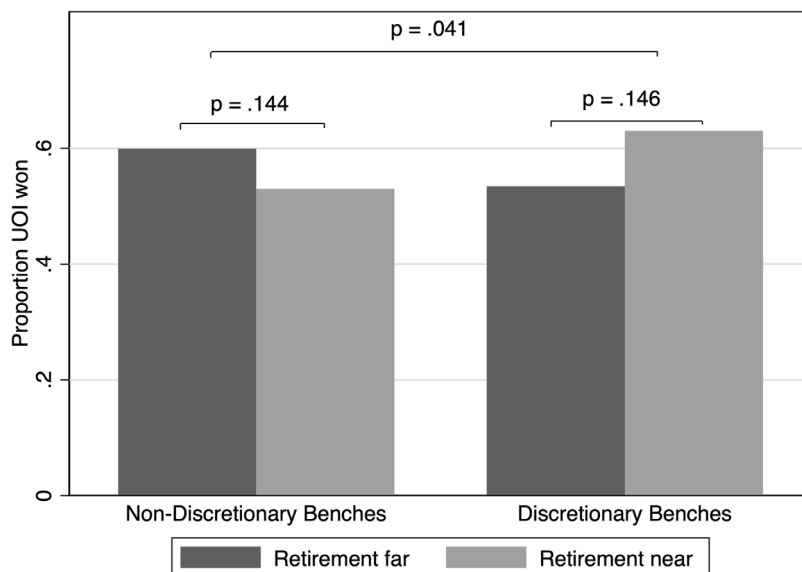


Fig. 3. Identifying the administrative effect.

The figure presents the proportion of cases won by the Union of India (UOI) for all UOI cases between Oct 10 1998 and Nov 17 2019. These are broken down by (a) whether the bench was composed at the discretion of the CJI (three or more judges), and (b) whether the case was decided in the last month of his tenure. The p-value over each set of two bars is the p-value for the test in differences of the means for cases decided close and far from retirement. The p-value spanning all four bars is the p-value for the difference in differences between the four bars.

Table 3
Administrative effect.

	(1)	(2)	(3)	(4)	(5)
Chief in last month	-0.069 (0.048)	-0.043 (0.050)	-0.039 (0.050)	-0.039 (0.050)	-0.039 (0.050)
Large bench	-0.065* (0.034)	-0.064 (0.063)	-0.028 (0.063)	-0.035 (0.064)	-0.029 (0.064)
Chief in last month × Large bench	0.165** (0.080)	0.276*** (0.087)	0.268*** (0.086)	0.274*** (0.086)	0.281*** (0.085)
Constant	0.599*** (0.014)	0.560*** (0.078)	0.486*** (0.088)	0.480*** (0.089)	0.263 (0.204)
Judge dummies	No	Yes	Yes	Yes	Yes
Case controls	No	No	Yes	Yes	Yes
Linear time trend	No	No	No	Yes	Yes
Govt dummies	No	No	No	No	Yes
Observations	1715	1715	1715	1715	1715

The dependent variable is an indicator for whether the government won the case. Case controls include dummies for type of case (appeal or petition or neither), dummies for union role (appellant/petitioner or respondent or neither), dummies for subject matter (constitution, tax, service, administrative), and dummies that indicate the presence, absence, or unavailability of data for the presence of the Attorney and/or Solicitor General. Robust standard errors reported in the parentheses. * p < 0.1, ** p < 0.05, *** p < 0.01.

construct a factor variable that takes 3 values based on whether the Attorney and/or Solicitor General is present, absent, or the data is missing. Third, we try to identify the subject matter of the case. We rely on SCC Online which extracts key words and phrases from a case and publishes these as “short notes”. We parsed these notes for each case to identify four broad areas of subject matter. We classified cases as constitutional if the words “constitution” and “constitutional” appeared in the short notes. Similarly, we classified cases as tax, service or administrative if the phrases “tax” or “taxation”, “service law” or “service rules”, and “administrative law” appeared in the short notes respectively. We observe that the results remain similar across the different specifications.

3.5. Measuring the adjudicative effect

To identify the adjudicative effect, we regress

$$\text{uoiwon}_{ijt} = \sum_j \gamma_j b_{ij} + \mu_t + \delta * t + \beta_1 \text{chief in last month}_{ijt} + \beta_2 \text{chief present}_{ijt} + \beta_3 \text{chief present}_{ijt} \times \text{chief in last month}_{ijt} + \mathbf{X}'_i \eta + \epsilon_{ijt}. \tag{2}$$

The variable $\text{chief present}_{ijt}$ indicates whether the chief was one of the judges on the bench deciding the case. The variable $\text{chief in last month}_{ijt}$, is an indicator for whether the CJI is in the final month of his tenure.

The adjudicative effect for the chief is $\beta_2 + \beta_3 * \text{chief in last month}_{ijt}$. The coefficient β_3 captures how the decisions made by CJIs change in the last month of their tenure. Table 4 reports the results. We

Table 4
Adjudicative effect.

	(1)	(2)	(3)	(4)	(5)
Chief present	-0.113*** (0.043)	-0.050 (0.068)	-0.043 (0.070)	-0.048 (0.070)	-0.040 (0.071)
Chief in last month	-0.031 (0.045)	-0.003 (0.048)	-0.003 (0.048)	-0.002 (0.048)	-0.002 (0.048)
Chief present × Chief in last month	0.113 (0.089)	0.195** (0.097)	0.205** (0.097)	0.210** (0.096)	0.215** (0.097)
Constant	0.599*** (0.013)	0.572*** (0.063)	0.009 (0.340)	-0.045 (0.348)	-0.273 (0.394)
Judge dummies	No	Yes	Yes	Yes	Yes
Case controls	No	No	Yes	Yes	Yes
Linear time trend	No	No	No	Yes	Yes
Govt dummies	No	No	No	No	Yes
Observations	1715	1715	1715	1715	1715

The dependent variable is an indicator for whether the government won the case. Case controls include dummies for type of case (appeal or petition or neither), dummies for union role (appellant/petitioner or respondent or neither), dummies for bench size, dummies for subject matter (constitution, tax, service, administrative), and dummies that indicate the presence, absence, or unavailability of data for the presence of the Attorney General and/or Solicitor General. Robust standard errors reported in the parentheses. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

observe that β_3 is positive and significant. This suggests that CJIs are more likely to decide a case in favour of the government as they approach retirement. An estimate of 0.20 for β_3 suggests that a chief is 20 percentage points more likely to decide the case in favour of the government in the final month of his tenure.

Interestingly, we observe that the estimates for β_2 are negative. Although statistically insignificant in the more saturated specification, this appears to suggest that a CJIs presence on the bench reduces the likelihood of a pro-government decision. Perhaps this indicates that CJIs are more likely to include themselves on benches that require delivering “unpleasant” opinions to governments.²¹ However, the estimate for β_3 suggests that this tendency attenuates as retirement approaches.

Our results are robust to a battery of robustness checks. Results using Logit or Probit instead of OLS and are reported in Tables 18 and 19 in Appendix B and Tables 16 and 17 in Appendix B. While our dataset includes 18 CJIs, none of them are outliers. Rerunning relevant regressions on sub-samples discarding cases decided in the tenure of each of the 18 CJIs in our sample, one by one, shows that our results are not driven by the behaviour of any one outlier CJI Fig. 7.

3.6. Only the last month matters

Our baseline results deploy a one-month cutoff to measure a chief’s proximity to retirement. Is the last month unique? In this section, we relax this restriction and estimate the administrative effect using the following specification:

$$\begin{aligned}
 uoiwon_{ijt} = & \sum_j \gamma_j b_{ij} + \mu_t + \delta * t + \sum_{t=1}^6 \alpha_{1t} \\
 & \text{chief between } t - 1 \text{ and } t \text{ months of retirement}_{ijt} \\
 & + \sum_{t=1}^6 \alpha_{3t} \text{ large bench}_i \\
 & \times \text{chief between } t - 1 \text{ and } t \text{ months of retirement}_{ijt} \\
 & + \alpha_2 \text{ large bench}_i + X'_i \eta + e_{ijt}.
 \end{aligned} \tag{3}$$

This specification estimates the interaction between each of the last 6 months before retirement with whether the case was decided by a large

²¹ We investigated this further but found that the statistical significance of β_2 is fragile, it disappears even when minimal case level controls are included. As such, the drop in significance does not appear to arise because of overspecification. These results are available upon request.

bench. The coefficients are reported in Panel A of Fig. 4. The reference category is composed of cases decided more than 6 months before retirement. We observe that the last month before retirement is the only month where the coefficient estimate is significant. The coefficients for the other months are insignificant and not consistently positive. This suggests that the behaviour of chiefs changes sharply as they come close to retirement. We replicate the disaggregated specification for the adjudicative effect and report the results in Panel B of Fig. 4. Once again, we find that the last month matters more than the previous ones.²²

Notice that the findings remain robust when measured using a continuous measure. We substitute the indicator for the last month in office with a continuous measure of the time left to retirement. This measures the time to retirement as the number of days left to retirement divided by 365. Tables 11 and 12 in Appendix B report the results for the administrative and adjudicative effects respectively. We also find that the results are robust to proportion of tenure left as the measure of distance to retirement. These results are reported in Tables 13 and 14 in Appendix B.

3.7. Are salient cases systematically delayed?

Our results may provoke an objection. Cases that CJIs decide early in their tenure may systematically vary from those decided close to retirement. Complex or politically sensitive cases, it is possible, get delayed and get decided late in the tenure as CJIs face pre-retirement pressure to clear their roster. If such cases, on merits, unusually favour the government, a larger proportion of government wins as CJIs approach retirement would not indicate any form of strategic behaviour. To address this, we use the presence of the Attorney General or Solicitor General to proxy political salience. We interact this indicator with whether the bench was large. The results are reported in column (2) of Table 9 in Appendix B. We find that this interaction is insignificant. Instead, our coefficient of interest remains the same as in column (1) which replicates our baseline result for comparison.

We also attempt an additional proxy for salience by using an indicator for whether the case has constitutional content. This is reported in column (3) of Table 9 in Appendix B. Once again, the inclusion of the new interaction has no effect on our coefficient of interest.

²² Although the results in Fig. 4 support the use of the one-month cutoff in our baseline specification, nothing turns on this choice of a cutoff. The findings are robust to using the last three quarters before retirement. These are presented in Figure 6 in Appendix B.

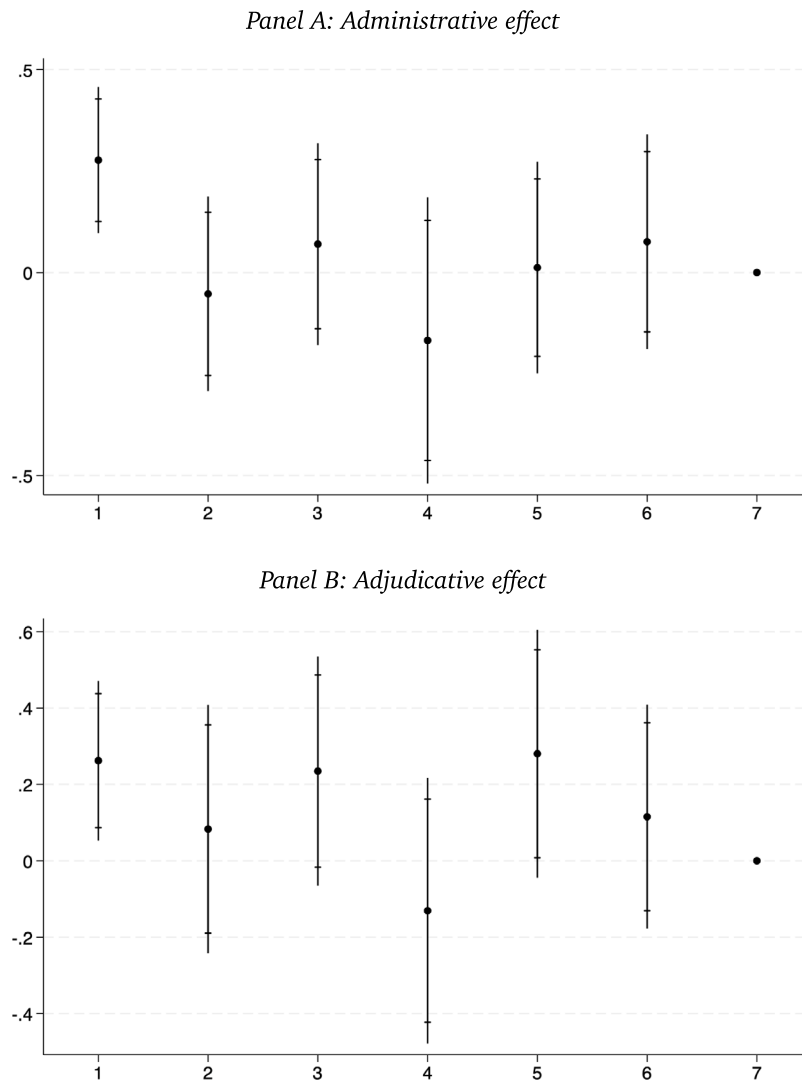


Fig. 4. Disaggregating the effects close to retirement. The x -axis is the month to retirement. For example, 1 on the x -axis is the last month before retirement. Panel A presents α_{3t} from the administrative effect regression in Eq. (3), that is, the coefficients of the interaction term between whether the case was decided by a large bench and the month to retirement. Panel B presents β_{3t} from the analogous adjudicative effect regression, that is, the coefficients of the interaction term between whether the chief was present in the case and the month to retirement. In both regressions, the reference category 7 on the x -axis is composed of cases decided more than 6 months before retirement. Both regressions are the saturated specifications with judge dummies, a linear time trend, dummies for type of case (appeal or petition or neither), dummies for union role (appellant/petitioner or respondent or neither), dummies for subject matter (constitution, tax, service, administrative), and dummies that indicate the presence, absence, or unavailability of data for the presence of the Attorney and/or Solicitor General. Confidence intervals are computed using robust standard errors. The whiskers and the hatches indicate the 95% and 90% confidence intervals, respectively.

Finally, we interact large bench with whether the case was an appeal or fresh petition (column (4)) and whether the government was an appellant/petitioner or respondent (column (5)). We see that the results match our baseline without these interactions. These results suggest an absence of evidence for the claim that our measurement of the administrative effect is linked to case characteristics such as the type of case, the subject matter, or its political salience.

Next, we repeat this exercise for the adjudicative effect. The results presented in Table 10 in Appendix B are analogous to the results for the administrative effect presented in Table 9 discussed earlier. We observe that our coefficient of interest (the third row) remains qualitatively similar across the different columns.

3.8. The two effects: Are they complementary?

Table 5 summarises our empirical strategy and results. We derived the adjudicative effect by comparing Groups 1 and 3 to Groups 2 and

4. We compared the two sets of cases to assess if the difference in their mean outcomes changes as any CJI came close to retirement. Similarly, we compare the outcomes in Groups 1 and 2 to Groups 3 and 4 as any CJI approaches retirement to derive the administrative effect.

Does adjudicative effect vary with whether the administrative effect is present or absent? That is, is the adjudicative effect stronger in large bench cases? We investigate this by examining if the adjudicative effect is as strong in the comparison between Group 2 vs. Group 1 as it may be between Groups 4 vs. Group 3. To identify the heterogeneity in the adjudicative effect we regress

$$\begin{aligned}
 uoiwon_{ijt} = & \sum_j \gamma_j b_{ij} + \delta * t + \mu_i + \alpha_1 \text{ chief present}_{ij} + \alpha_2 \text{ large bench}_i \\
 & + \alpha_3 \text{ chief in last month}_{ijt} + \alpha_4 \text{ chief in last month}_{ijt} \times \text{ chief present}_i \\
 & + \alpha_5 \text{ chief in last month}_{ijt} \times \text{ chief present}_{ij} \times \text{ large bench}_i + \mathbf{X}'_i \boldsymbol{\eta} + \varepsilon_{ijt}.
 \end{aligned}
 \tag{4}$$

Table 5
Adjudicative and administrative discretion.

	Cases with chief absent	Cases with chief present
Small bench cases	Group 1: 1351 cases	Group 2: 29 cases
	Neither administrative nor adjudicative	Only adjudicative
Large bench cases	Group 3: 156 cases	Group 4: 179 cases
	Only administrative	Both administrative and adjudicative

The adjudicative effect in Section 3.5 is derived from comparing 2 U 4 and 1 U 3. The administrative effect in Section 3.4 is derived from comparing 3 U 4 and 1 U 2.

The adjudicative effect in small benches is captured by α_4 whereas the effect in large benches is captured by $\alpha_4 + \alpha_5$.

Table 20 in Appendix B reports the results. We observe that the estimates for α_4 are consistently insignificant and negative. This suggests a lack of the adjudicative effect in small bench cases. On the other hand, the estimates for $\alpha_4 + \alpha_5$ are positive and mostly significant as seen in the p -values reported in the last row. This suggests that as they approach retirement, CJIs tend to reserve the use of their adjudicative power to favour the government in large bench cases.

Next, we pose the analogous question for the administrative effect: Does it vary across cases where the chief is present or absent? We investigate this by examining whether the administrative effect is as strong in the comparison between Group 3 vs. Group 1 as it may be between Groups 4 vs. Group 2. To answer this, we regress

$$\begin{aligned}
 uoiw_{ijt} = & \sum_j \gamma_j b_{ij} + \delta * t + \mu_i + \beta_1 \text{ chief present}_{ijt} + \beta_2 \text{ large bench}_i \\
 & + \beta_3 \text{ chief in last month}_{ijt} + \beta_4 \text{ chief in last month}_{ijt} \times \text{large bench}_i \\
 & + \beta_5 \text{ chief in last month}_{ijt} \times \text{large bench}_i \times \text{chief present}_{ijt} + \mathbf{X}'_i \eta + \epsilon_{ijt}.
 \end{aligned}
 \tag{5}$$

Table 15 in Appendix B reports the results. The administrative effect is now captured by $\beta_4 + \beta_5 * \text{chief present}_{ijt}$. This simplifies to β_4 when the CJI is absent and $\beta_4 + \beta_5$ when he is present. The p -values reported at the bottom of Table 15 confirm that the administrative effect is strong in the cases where the chief is present. However, we observe that the estimates for β_4 are consistently large in magnitude and sometimes significant whereas the estimates for β_5 are not. The administrative effect arises in both Groups 3 and 4, that is, in all discretionary benches composed by the CJIs not just the ones on which they place themselves.

We observe an asymmetry in two effects. The adjudicative effect (the effect on cases where the CJI is close to retirement and present on the bench) seems confined to large bench cases. The adjudicative effect only appears to be active in discretionary bench cases. Perhaps this suggests that it is easier for a CJI to engineer outcomes favourable to governments when he selects judges to share the bench with him. In contrast, the administrative effect (the effect on cases where the CJI is close to retirement and composed the bench deciding the case) appears in all large bench cases, even those where the CJI is absent. This suggests that the presence of the CJI on discretionary benches is not as vital in securing an outcome that is aligned with his strategic interest—he can engineer as effectively by placing judges who will deliver an outcome the CJI wants.

These results point to a difference in the salience of large and small bench cases. As they approach retirement, CJIs may find it more worthwhile to secure outcomes in large bench cases. Often, they are high stakes matters. Consequently, governments may observe judicial behaviour in such cases more keenly. However, it should be noted that the results in Tables 20 and 15 rely on more conditionals than our baseline estimates and should not be interpreted too strongly.

3.9. Measuring inherited cases and bench formations

We map each case to the CJI in whose tenure the case was decided to identify the administrative effect. Moreover, a case is classified as being in the month of the CJI's retirement based on the date of decision of the case. However, this is problematic as it is inevitable that there would be cases decided in the tenure of a CJI for which the bench was constructed by a previous CJI who retired. The new CJI would inherit such cases and benches, not composed them. Similarly, it is also possible that a CJI composes a bench early in his tenure, expecting the case to conclude early, but the case is only decided when he is close to retirement. Once again, in such cases we would misidentify whether the case falls in the “treatment group”, that is, whether the CJI expected to be close to retirement when the case was decided when he composed the bench.

This would bias our estimates for the administrative effect. To address this, we need data on the time at which the bench for each case was constructed and whether the CJI expected to be close to retirement when the case was finally decided. This would allow us to attribute each case correctly to the CJI who composed the bench and his retirement incentives. However, the information on when the bench was composed and first began hearing the matter is not easily available. In some instances, it is not at all available. Besides, the time and labour necessary to identify this piece of information for each case makes it a challenging endeavour. Moreover, the subjective perception of a CJI on when the case would conclude is also unobservable. We are therefore unable to address this concern directly. Note that no such bias arises for our estimates of the adjudicative effect: it only relies on whether the CJI was on the bench deciding the case, and this is fully observable.

The bias in our estimates for the administrative effect arises from mis-measured treatment. The observed treatment group is made up of cases that were decided when the CJI was close to retirement. On the other hand, the true treatment group is made up of cases that the CJI expected would be decided close to his retirement, when he composed the bench. Similarly, the observed control group is made up of cases that were decided when the CJI was far from retirement, whereas the true control group is made up of cases that the CJI expected would be decided far from his retirement, back when he composed the bench. We are left with a problem of mis-measured treatment with some true treatment cases being classified as control and some true control cases being classified as treatment.

This type of measurement error leads to a downward bias in a difference in differences setting such as ours if the mismeasurement of treatment is exogenous. The formal argument for this is presented in Negi and Negi (2025). To map the standard two-period difference-in-differences setup to our setting we can think of non-discretionary and discretionary benches as being period one and two, respectively. The assumption of exogeneity in our setting implies that the observed treatment contains no information on whether the case is decided in favour of UOI, conditional on the CJI's true retirement incentives, that is, whether he expected the case to be decided close to his retirement. Here's the intuition for why classifying some treatment cases as control or vice versa leads to an underestimate of the true effect. Incorrectly classifying some true control cases as treatment leads to a lower mean outcome for the treatment group. Similarly, classifying some true treatment cases as control leads to a higher mean outcome for the control group. In both these cases the observed difference between treatment and control would be attenuated relative to the true difference. Consequently, our estimates for the administrative effect would be lower than the true effect.

The same argument for attenuation bias applies for when the bench is composed by a previous CJI. The incorrect inclusion of such cases into the treatment group would lead to a lower mean for the treatment group if the earlier CJI expected the case to be decided early in his tenure when he composed the bench. Similarly, the incorrect inclusion

of such cases into the control group would lead to a higher mean for the control group if the earlier CJI expected the case to be decided late in his tenure when he composed the bench. The other two scenarios where we correctly classify cases into treatment and control but based on the retirement incentives of an earlier CJI, will not cause any bias as such cases would correctly contribute to the average effect of treatment.²³

4. How—and why—do CJIs strategise?

CJIs strategically employ administrative and adjudicative powers to secure specific outcomes. As they approach retirement, they are more likely to compose discretionary benches and deliver judgments that favour governments. Our analysis, in other words, suggests a “crowding” phenomenon. CJIs crowd their final weeks in office with actions – and decisions – that favour governments. This section speculates. How might CJIs achieve such crowding? Why might they do so?

4.1. Methods

The judicial process is slippery in India, discretion drips at every turn. This is especially so in the Supreme Court. Consider bench formations and the delivery of judgments. In administering large panels, CJIs can exert four types of discretion. First, *inaction*. CJIs decide whether to convene large panels. Often, large benches hear salient – politically-sensitive – cases. CJIs may decline to convene benches to hear them.²⁴ Consequently, “inconvenient” cases may go unheard for years or decades (Abeyratne and Karwa, 2025).²⁵ Second, *selection*. If CJIs choose to summon panels, they alone decide whom to include. These choices, our analysis suggests, impacts outcomes. Third, *persuasion*. If CJIs include themselves on large panels, they may persuade other judges to deliver unanimous or majority verdicts. As mentioned previously, scholarship suggests that CJIs rarely dissent; they are usually in the majority. Our analysis demonstrates that CJIs are more likely to favour governments as they approach retirement. Fourth, *acceleration*. As presiding judges, CJIs can vary the pace of judicial proceedings to delay or hasten case outcomes. Because the Indian Supreme Court lacks a well-defined calendar, the discretion regarding timing rests with presiding judges. With respect to large benches, presiding judges decide when a case is heard, for how long (days/weeks) it is heard, and when the judgment is delivered. Retirement dates impose the only constraint. Judges assigned to a large bench must deliver a judgment before any member of the bench retires. Else, a CJI must summon a new bench to relitigate the case. This absence of a work calendar empowers presiding judges, including CJIs, to control the proceedings and time the delivery of verdicts.

These mechanisms – especially, selection, persuasion, and acceleration – can explain how crowding occurs. Imagine a CJI composes a

²³ We acknowledge, however, that the assumption of exogeneity of the mismeasurement of treatment has concerns. Consider the following. Some cases (more complex or contentious cases, for example) often take longer to decide *and* may favour the government on merits. If true, the difference between the date of bench construction and the date of decision may be correlated with the outcome of the case if our controls for importance of the case are inadequate. The results in Table 9 suggest that this is unlikely.

²⁴ CJI HL Dattu, for example, explained his refusal to constitute large benches claiming judges’ workload on regular benches. Business Standard, Chief Justice Dattu Refuse to be Drawn into Intolerance Debate, available at https://www.business-standard.com/article/news-ians/chief-justice-dattu-refuse-to-be-drawn-into-intolerance-debate-115120101483_1.html (Last visited January 15, 2025).

²⁵ Pradeep Thakur, Constitution benches pendency: 29 cases, oldest one on for 31 years, Times of India, July 31, 2023, available at <https://timesofindia.indiatimes.com/india/constitution-benches-pendency-29-cases-oldest-one-on-for-31-years/articleshow/102255570.cms> (Last visited January 15, 2025).

few large benches close to retirement, concludes hearings, and rushes to deliver judgments. That will engender crowding. Conversely, a CJI may summon such benches and conclude hearings only to let the cases languish. Because calendars do not apply, a CJI may choose to deliver verdicts and clear the court’s docket only as they approach retirement. That, too, will induce crowding. Indeed, a CJI may combine both approaches. They may hasten the delivery of some verdicts and delay others. This time dimension – the absence of a calendar – is a unique feature of Indian courts in general, and the Supreme Court in particular.²⁶ It impacts when judges deliver verdicts but remains neglected in the scholarship. We hope that our findings will provoke greater attention to the time dimension of judgment delivery in India.

Notice that CJIs and CJI-composed panels, according to our analysis, do not merely crowd verdicts closer to retirement. Rather, they crowd *pro-government* judgments closer to retirement. Why might they do so? The next section speculates about potential motives.

4.2. Motives

A range of motives impact why chief justices, in India and elsewhere, form panels. Chiefs may deploy their administrative powers to enhance the court’s institutional legitimacy, maintain internal collegiality, or sculpt their personal legacies. A rich body of scholarship has investigated these themes (often in the US context), both normatively and empirically (Johnson, 2018; Ura and Flink, 2016; Goldstein, 2011; Danelski, 2005; Morrison and Stenhouse, 1984; Steamer, 1986). These choices demonstrate the complex ways in which chiefs manage their courts, internally and externally. The Canadian literature discussed previously, for example, suggests that chief justices consider regional representation, jurisprudential preferences, etc in constructing panels. Panels with balanced regional representation may enhance the court’s institutional legitimacy while jurisprudential homogeneity may achieve better bench management and internal collegiality. It may help benches reach specific outcomes, as the Canadian evidence on *Charter* cases suggest. In India, too, chief justices have occasionally used jurisprudential homogeneity to construct panels and reduce the likelihood of dissenting opinions (Gadbois, 2011). Given India’s massive docket, this is also a hidden form of workload management.

These motives, however, are poor candidates for explaining the patterns we document here. Consider institutional and personal legitimacy. Delivering a tranche of *pro-government* decisions as a CJI approaches retirement is neither unlikely to increase the Supreme Court’s legitimacy nor enhance a judge’s personal legacy. Instead, such actions are likely to invite allegations of a “compromised” court. And rather than enhance a judge’s personal legacy, such patterns are more likely to stain their careers. Any explanation for motives, therefore, must lie somewhere else. We suggest one possibility: the allure of post-retirement jobs.

Judges respond to incentives like anyone else (Posner, 1993; Kang and Shepherd, 2015; Pellegrina et al., 2024). In India, retirement jobs act as powerful incentives. Indian Supreme Court judges retire on their sixty-fifth birthday.²⁷ Resignations are rare. Only one judge (Dalveer Bhandari) resigned between 1999 and 2019, having secured an appointment to the International Court of Justice. One other judge (Madhavachari Srinivasan) died in office. Everyone else retired, and many secured post-retirement jobs. Six types of careers await retired judges (Dam, 2023). A few of them pursue careers in academia and authorship. Some others, especially in the Supreme Court’s early decades,

²⁶ The Supreme Court has directed High Courts and trial courts to maintain a judicial calendar and delivery judgments within 3 months of hearing a case. Courts routinely flout this direction. Importantly, the Supreme Court has refused to apply the same standard to itself. Anil Rai v. State of Bihar, (2001) 7 SCC 318.

²⁷ Constitution of India Article 124(2).

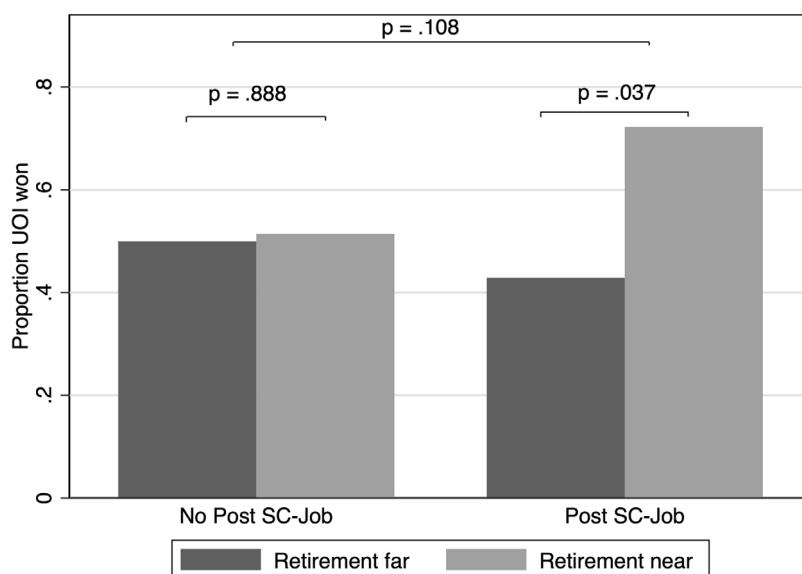


Fig. 5. Adjudication, administration, and post retirement jobs.

The figure presents the outcomes for 179 cases in our sample where both the adjudicative and administrative effects are active — that is, large bench cases where the CJI was on the bench. These are broken down by (a) whether the CJI went on to receive a post-retirement job, and (b) whether the case was decided in the last month of his tenure. The *p*-value over each set of two bars is the *p*-value for the test in differences of the means for cases decided close and far from retirement. The *p*-value spanning all four bars is the *p*-value for the difference in differences between the four bars.

returned to the bench as ad hoc judges for limited durations. Others build lucrative careers as legal consultants and arbitrators. A handful of them have attempted careers in electoral (party) politics. More controversially,²⁸ some judges secure appointments in statutory tribunals (e.g. National Human Rights Commission, National Company Law Tribunal, National Green Tribunal) or in discretionary posts (e.g. governors, enquiry commissions, nominated members of Parliament).²⁹ In our sample of 117 retired judges, 47 secured such jobs. The full list of jobs in our sample is presented in Table 7.

This system risks nurturing an incestuous relationship between the judicial and the executive branch: judges favouring governments in office and securing sinecures out of office. In effect, judges remain in public office, with perks and protection, and influence public policy. Some classify the system as “corrupt” (Aney et al., 2021; Dam, 2021). Others, especially the court, extol its virtues, insisting that only retired judges can protect tribunals’ functional independence.³⁰

Can the allure of post-retirement jobs explain the crowding phenomenon? This section investigates the correlation between pro-government judgments in the final weeks and the likelihood of securing post-retirement jobs. To explore this, we collapse our data at the judge level by aggregating cases involving the government decided by each judge.

Our case level analysis suggests that the effect of retirement incentives is strongest for cases where CJIs have both adjudicative as well as administrative discretion. As discussed in Table 5 these are large bench cases with the CJI as the presiding judge. In Fig. 5 we present the outcomes for these cases. We observe no evidence of strategic behaviour for CJI who did not receive post-retirement jobs. On the

other hand, the governments appear significantly more likely to win if cases are decided close to retirement for judges who then secure jobs. A similar figure for all large bench cases is presented in Figure 8 in Appendix B.

To investigate further we regress

$$Post\ SC\ job_j = \lambda_0 + \lambda_1 \text{Num cases UOI won in last month}_j + \lambda_2 \text{Num cases UOI won before}_j + \mathbf{Z}'_j \boldsymbol{\eta} + \varepsilon_j. \quad (6)$$

The dependent variable is an indicator for whether the judge received a government job post-retirement. For the analysis in this section, we drop the judges who retired after November 2019, our sample period for the case-level analysis. Our key independent variable “Num cases UOI won in last month” is the number of cases that the judge decided in favour of UOI in his last month in office. We also control for “Num cases UOI won before” which is the number of cases that the judge decided in favour of UOI in his during his tenure prior to the last month in office.

The results are reported in columns (2)–(6) in Table 6. First, column (1) presents the effect of total cases decided in favour and this, we find, is positive. Subsequent columns break down the effect based on the decision date and the closeness to retirement. We observe that controlling for the total cases decided in the last month, each additional pro-government verdict is significantly correlated with securing a post-retirement job. An estimate of 0.16 for λ_1 suggests that one additional pro-government decision increases the likelihood of a post-retirement job by 16 percentage points. Interestingly, the estimates for λ_2 are also positive but insignificant. Moreover, the estimates appear smaller in magnitude. The last row presents the *p*-value of the hypothesis that the two coefficients are equal which is rejected across specifications. This suggests that pro-government cases closer to retirement impact a judge’s prospects more strongly. Restricting our analysis to judges who decided at least 10 cases involving the government during their tenure generates equally robust results. These are reported in Tables 24 in Appendix B. Crowding the calendar with pro-government decisions, in other words, increases the likelihood of CJIs and other judges securing post-retirement jobs.

Recently, the Supreme Court has acknowledged this phenomenon. In December 2025, a district judge – a member of the lower judiciary – approached the court challenging his suspension barely 10 days

²⁸ See also Apoorva Mandhani, ‘Ranjan Gogoi RS seat made big news in 2020. But he is among 70% SC judges with retirement gigs’, The Print (online, 4 January 2021) <https://theprint.in/judiciary/ranjan-gogoi-rs-seat-made-big-news-in-2020-but-he-is-among-70-sc-judges-with-retirement-gigs/576154/>.

²⁹ See Table 7 for the full list of jobs that judges in our sample received.

³⁰ SP Sampath Kumar v Union of India & Ors [No 1] (1985) 4 SCC 458; SP Sampath Kumar v Union of India & Ors [No 2] (1987) 1 SCC 124; Union of India v R. Gandhi (2010) 11 SCC 1; Madras Bar Association v Union of India (2014) 10 SCC 1; Madras Bar Association v Union of India (2015) 8 SCC 583.

Table 6
Judicial decisions and post-SC jobs.

	(1)	(2)	(3)	(4)	(5)	(6)
Num cases UOI won	0.022** (0.010)					
Num cases UOI won in last month (λ_1)		0.184** (0.075)	0.185** (0.075)	0.186** (0.076)	0.174** (0.082)	0.207** (0.091)
Num cases UOI won before (λ_2)		0.017 (0.010)	0.017 (0.011)	0.017 (0.011)	0.017 (0.012)	0.016 (0.012)
Total cases	-0.013* (0.007)					
Total cases last month		-0.108** (0.051)	-0.105** (0.052)	-0.102* (0.052)	-0.095* (0.056)	-0.090 (0.056)
Total cases before		-0.010 (0.007)	-0.010 (0.007)	-0.011 (0.008)	-0.011 (0.008)	-0.011 (0.008)
Was CJI			-0.059 (0.141)	-0.122 (0.188)	-0.114 (0.196)	-0.044 (0.214)
Tenure				0.022 (0.044)	0.018 (0.046)	0.020 (0.046)
Num cases UOI won in last month \times Was CJI						-0.070 (0.083)
Constant	0.455*** (0.086)	0.456*** (0.085)	0.462*** (0.087)	0.377** (0.188)	0.400* (0.226)	0.378 (0.228)
Govt Dummies	No	No	No	No	Yes	Yes
Observations	96	96	96	96	96	96
$\hat{\lambda}_1 - \hat{\lambda}_2 =$		0.167	0.168	0.169	0.157	0.191
p -value $H_0 : \lambda_1 - \lambda_2 = 0$		0.032	0.031	0.031	0.063	0.042

The dependent variable is an indicator for whether the judge got a post-retirement job from the union government. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

before his mandatory retirement. Reacting to the petition, CJI Surya Kant bemoaned the “unfortunate trend” of judges attempting to “hit sixes” just before retirement.³¹ Hitting sixes is a cricketing metaphor. Often, batters attempt big shots to close their innings on a high note. Applied to the judicial context, it suggests judges delivering noteworthy judgments just before retirement, arguably for extraneous considerations. Commenting on the petition, CJI Surya Kant reportedly said: The “petitioner just before retirement started hitting sixes. It is an unfortunate trend”, but refused to expound on the matter. “I do not want to elaborate on it”, he added. The national media reported the CJI’s comments as a “rare acknowledgement . . . of judicial corruption”.³² Our analysis offers empirical evidence for CJI Surya Kant’s intuition. Some judges are indeed more likely to deliver pro-government verdicts as they approach retirement and secure post-retirement jobs. The trend, however, is not limited to the lower judiciary. Instead, evidence suggests that it impacts the behaviour of Supreme Court judges too, most notably, CJIs themselves.

This analysis extends Aney et al. (2021) in novel ways. First, it focuses on CJIs and their administrative power to compose benches. Second, Aney et al.’s analysis excluded discretionary bench cases. Those cases constitute the core of our analysis. Third, our analysis involves a larger period (1999–2019). The timeline, therefore, includes both minority (1999–2014) and majority governments (2014–2019) in India. These extensions, cumulatively, underscore the allure of post-retirement jobs in shaping judicial behaviour in the Indian system. Small or only large bench cases, all Supreme Court judges or only CJIs, during their whole term in office or only close to retirement, minority governments or majority ones, too. No matter the variables,

³¹ Nupur Dogra, “Hitting Sixes Before Retirement”: Chief Justice Surya Kant Flags Unfortunate Judicial Trend, NDTV. December 18, 2025, <https://www.ndtv.com/india-news/hitting-sixes-before-retirement-supreme-court-flags-unfortunate-judicial-trend-9837761>.

³² Dhananjay Mahapatra, SC: Growing trend of judges ‘hitting sixes’ before retiring, Times of India, December 18, 2025, <https://timesofindia.indiatimes.com/india/sc-growing-trend-of-judges-hitting-sixes-before-retiring/articleshow/126048015.cms>.

retirement jobs remain a powerful predictor of judicial performance. Read alongside Aney et al. (2021), this analysis spotlights the impact of such jobs on CJIs’ “hidden” administrative powers, not just public, adjudicatory ones.

5. Conclusion

Judges do not just decide, they also lead. Across jurisdictions, judiciaries confer multiple leadership roles on chief justices. Scholars broadly categorise judicial leadership along “administrative”, “adjudicatory”, and “social” dimensions (Paterson, 2013; Shepard, 2009; Murphy, 1966). While some of these facets apply to all judges (Hunter and Rackley, 2018), others apply uniquely to chief justices (Delaney et al., 2025; Morrison and Stenhouse, 1984; Steamer, 1986). However, differences persist regarding the contours of these categories and their precise content. Unlike Delaney et al. our analysis casts the CJIs’ power to form benches as a facet of administrative power. Interacting this with their adjudicatory power demonstrates that CJIs and the large, discretionary benches they constitute are more likely to deliver pro-government verdicts as CJIs approach retirement. We interpret this as evidence of strategic behaviour. Our analysis also suggests that CJIs who secure post-retirement jobs are particularly prone to this behaviour.

In India, chief justices deploy their power to select panels without accountability. Despite public disquiet and calls for reform, the court has remained unmoved³³ In *Ashok Pande v Supreme Court of India*,³⁴ judges admonished the petitioner for demanding constraints on the CJI’s power: “In the allocation of cases and the constitution of benches the Chief Justice has an exclusive prerogative. As a repository of constitutional trust, the Chief Justice is an institution in himself. . . The

³³ Shubhankar Dam, Resetting the system: Technology can bring greater transparency to India’s Supreme Court, Qz, 22 April 2018, available at <https://scroll.in/article/876325/resetting-the-system-technology-can-bring-greater-transparency-to-indias-supreme-court> (Last visited January 15, 2025).

³⁴ (2018) 5 SCC 341.

Table 7
Post-SC jobs for judges who retired from the Supreme Court between Oct 1999–Nov 2019.

Position	Institution	Frequency
Chairperson	Appellate Tribunal for Electricity	2
Chairperson	Armed Forces Tribunal	1
Chairperson	Cauvery Water Dispute Tribunal	1
Chairperson	Competition Appellate Tribunal	3
Governor	Government of Kerala	1
Judge	International Court of Justice	1
Chairperson	Law Commission of India	4
Chairperson	Mahadayi Water Disputes Tribunal	1
Chairperson	Nanavati Commission	1
President	National Consumer Disputes Redressal Commission	3
Chairperson	National Forest Commission	1
Chairperson	National Green Tribunal	3
Chairperson/Member	National Human Rights Commission	7
Chairperson	Pay Commission	1
Chairperson	Press Council of India	3
Member	Rajya Sabha	1
Chairperson	S. Saghir Ahmed Commission	1
Chairperson	Telecom Disputes Settlement and Appellate Tribunal	5
Chairperson	U.C Banerjee Commission on the Godhra riots	1
Chairperson	Vamsadhara Water Disputes Tribunal	1

Table 8
Joint distribution of bench sizes and government in power.

Bench size	Govt in power				Total (Won)
	Vajpayee	Singh 1	Singh 2	Modi	
Total	339	462	438	559	1798
(Won)	(216)	(289)	(258)	(288)	(1051)
1	0 (0)	0 (0)	1 (0)	0 (0)	1 (0)
2	230 (142)	385 (247)	336 (208)	428 (222)	1379 (819)
3	73 (49)	53 (30)	60 (26)	105 (57)	291 (162)
5	14 (9)	4 (3)	10 (8)	15 (4)	43 (24)
9	0 (0)	0 (0)	0 (0)	1 (0)	1 (0)
Total	317	442	407	549	1715
(Won)	(200)	(280)	(242)	(283)	(1005)

This table breaks down the total number of cases where UOI was a party and the number UOI won (in brackets) by bench size and the government in power from Oct 10 1998 to Nov 17 2019. The Vajpayee and Modi government bins cover a little over one term of their governments to align with the date of appointment of CJI A.S. Anand and date of retirement of CJI Ranjan Gogoi, respectively.

[prerogative] is necessary for the efficient transaction of the administrative and judicial work of the Court". Entrusting this role to CJIs secures "the position of the Supreme Court as an independent safeguard for the preservation of personal liberty", the court preached. "There cannot be a presumption of mistrust. The oath of office demands nothing less". Our analysis suggests otherwise: a presumption of mistrust is justified. Without greater transparency, such mistrust will metastasise. Avoiding that outcome requires paying closer attention to how chief justices form discretionary benches, why they refuse to do so at times, the judges who are appointed to such benches, what they decide, and how they time the delivery of verdicts. This universe of micro decisions, a key component of the CJI's administrative powers, deserves a closer scrutiny—a task future scholarship in Indian public law should pursue.

Appendix A. Data description

Table 7 offers a breakdown of all statutory and discretionary jobs retired judges have accepted in our sample.

Appendix B. Supplementary data

Supplementary material related to this article can be found online at <https://doi.org/10.1016/j.irl.2026.106342>.

Data availability

Data will be made available on request.

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