

Judicial Activism: When Judges Rewrite the Constitution

Jun Goto ¹ Sultan Mehmood ² Daniel Chen ³

¹National Graduate Institute for Policy Studies (GRIPS)

²New Economic School (NES)

³Toulouse School of Economics (TSE)

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 - A court in Pakistan ordered the creation of a climate change authority in 2024
 - India's Supreme Court established anti-sexual harassment guidelines and forced the legislature to pass Sexual Harassment Act in 2013
 - South Africa's Constitutional Court mandated government provision of anti-AIDS drugs to pregnant women
 - The list goes on...

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We study the impacts of judicial activism on **judicial independence** and **economic development** using a unique natural experiment in India.

Research Questions

- ① What is the effect of judicial activism on judicial independence?
 - Specifically, how does it influence pro-government rulings and decision quality?
- ② Beyond the court itself, how does judicial activism have a downstream impact on economic development, and what are the mechanisms that connect judicial activism to the economy?

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- The role of the President becomes merely notional in signing into law what the panel of judges led by Chief Justice selects.

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Outcomes

- Judicial independence:
 - How does it affect anti-government rulings and rulings on case merits?
- Economic development:
 - What happens to private investment in the property sector?

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- We exploit this staggered arrival of judges and mandatory retirement age law to investigate the impacts on judicial decisions and economic outcomes.
- For instance, a fraction of judges in one high court reached their mandatory retirement age at 62 in 1992, and the replacement was chosen by the President (control), while a fraction of judges in another high court reached their mandatory retirement age in 1993, and the replacement was chosen by SC judges (treatment).

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- In both cases, there is a new judicial appointment following a mandatory retirement at age 62, but in one high court, the replacement is chosen by the President, and in another high court, it is by a panel of judges.

Summary of the Main Findings

- High courts more exposed to mandatory retirements after 1993 see a reduction in pro-government rulings and better enforcement of cases involving property rights laws as measured by decisions on case merits.
- Judicial activism is also correlated with better economic development outcomes such as housing and building constructions.

The Second Judge Case (Oct 6, 1993)

Background:

- Prior to this case, the executive branch (led by the President on the advice of the Prime Minister) had primacy in judicial appointments.

SC Advocates-on-Record Association vs. Union of India

- It interpreted Constitutional provisions to give the judiciary primacy in appointments, effectively reducing the executive's role to that of a consultative one.
- The case led to the creation of the "Collegium System".

Peer selection in judicial organizations:

- The Collegium System essentially instituted a method of peer selection for judicial appointments.
- Senior judges, rather than politicians or bureaucrats, became responsible for selecting new judges.

Land Acquisition and Expropriation

Historical Context:

- Land acquisition and expropriation have been contentious issues in India since independence in 1947.
- The Land Acquisition Act of 1894 (a colonial-era law) was still in effect in 1993, giving the government broad powers to acquire land for "public purposes."

Prevalence of Land Expropriation:

- Land expropriation by the government was common around 1993.
- The economic liberalization policies initiated in 1991 led to increased demand for land for industrial and infrastructural projects, often resulting in government acquisitions with inadequate compensation.

The Data

Judgment texts:

- Scraped from Indian Kanoon (<https://indiankanoon.org/>)
- We use a subsample: 15,392 cases in high courts
 - Involving the government and citizens
 - Citing at least one property rights-related law
 - Period: Jan 1, 1992 to Dec 31, 1994

High court judge data:

- The Indian Judiciary Dataset (TCPD-IJD)
- A collection of information on judicial appointments to India's 25 High Courts and Supreme Court, collectively known as the Upper Judiciary.

How to Measure Outcomes?

The key outcome variable:

- In cases where citizens vs the state or the state vs. citizens
- State win dummy
- Case merits dummy

Measurement:

- We ask a law firm to code state victories as 1 and state defeats as 0. Similarly, we also ask them to code case merits decisions.

Empirical Methodology

Diff-in-diff with more versus less mandatory retirements pre- and post-1993:

$$y_{cjsst} = \alpha + \beta \left(\frac{\text{Mandatory Retirement}_{s,1993}}{\text{Total Judges}_{s,1993}} \times \text{Post1993}_t \right) + \tau_s + \lambda_t + \epsilon_{cjsst}$$

- c, j, s, t : case, judge, State high court, and disposal date
- Post1993: a post-reform dummy
- τ_s and λ_t are high court and time fixed effects
- Standard errors clustered at the high court level

Identification and the Assumption

- In one extreme case, a majority of judges reached her mandatory retirement age say in 1992, and the replacement was chosen by the Prime Minister (control group), and in another extreme case, a majority of judges reached their mandatory retirement age and the replacement was chosen by SC judges themselves (treatment group).
- The parallel trend assumption should hold.

Main Results: State Win

	Outcome: State Wins			
	(1)	(2)	(3)	(4)
Retirement Ratio in 1993 × Post Dummy	-0.243*** (0.0604)	-0.228*** (0.0503)	-0.226*** (0.0525)	-0.237*** (0.0554)
Case Controls	No	Yes	Yes	Yes
High Court FEs	No	No	Yes	Yes
Judge FEs	No	No	No	Yes
Mean of dependent variable	0.58	0.58	0.58	0.58
R-squared	0.117	0.121	0.143	0.248
Observations	15,392	15,392	15,392	15,392

Main Results: Case Merits

	Outcome: Decision Based on Case Merits			
	(1)	(2)	(3)	(4)
Retirement Ratio in 1993 $\times$ Post Dummy	0.269*** (0.0493)	0.253*** (0.0534)	0.265*** (0.0412)	0.274*** (0.0456)
Case Controls	No	Yes	Yes	Yes
High Court FEs	No	No	Yes	Yes
Judge FEs	No	No	No	Yes
Mean of dependent variable	0.82	0.82	0.82	0.82
R-squared	0.173	0.181	0.201	0.225
Observations	15,392	15,392	15,392	15,392

Over-time Impact of Judicial Activism

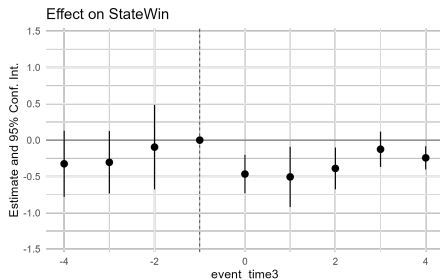


Figure: State Wins

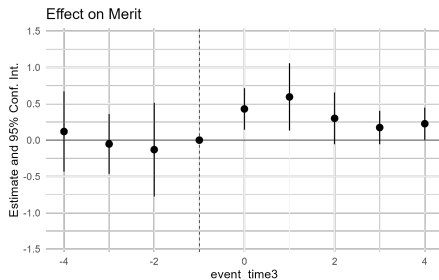


Figure: Merits-based Decision

Economic Consequences of Judicial Activism

What we found so far

- Judicial activism → anti-government rulings ↑, specifically in land disputes
- Judicial activism → even improves decision quality ↑ as measured by case merits (a priori unclear)

Economic consequences:

- **Hypothesis:** Judicial activism not only enhances judicial independence from the government but also promotes economic development because...
 - when property rights are secured and well-protected, individuals and businesses are more likely to invest in long-term projects.

ML-based Methodology

Measuring Economic Development

Data Source:

- DMSP Nighttime Lights (1992 - 2013)

Analysis Approach:

- Grid cell size: 100km × 100km
- Time period: 1993 to 2013
- AI-powered analysis:
 - We trained and developed the original "ChatGPT" to identify the private housing and building constructions using GPT-4 via OpenAI API.

Key Methods:

- Using individually tailored AI to identify new construction from nighttime lights
- Calculating probabilities of new house/building construction per grid cell through our model.

The Land Use Map

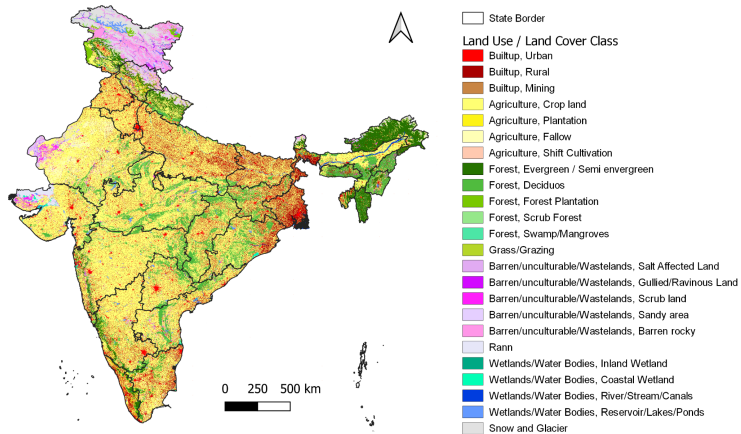


Figure: Land Use Types based on Nighttime Lights

Main Results: Economic Impacts

	Private Investment	Public Goods	
	House or Building Constructions (1)	Street Light Construction (2)	Large-scale Infrastructures (3)
Retirement Ratio in 1993 $\times$ Post Dummy	0.0589*** (0.00621)	0.00145 (0.00241)	0.00182 (0.00869)
Additional Controls	No	Yes	Yes
State FEs	No	No	Yes
R-squared	0.102	0.122	0.134
Observations	1,251,431	1,251,431	1,251,431

Other Economic Measures

Economic Census: 1990, 1998

- No. of enterprises (District level):
 - Agricultural enterprises
 - Non-agricultural enterprises

NSS: 1990, 1994

- No. of manufacturing enterprise (District level)
 - Organized
 - Unorganized

Additional Results: Economic Impacts

	Economic Census		NSS	
	Agricultural (1)	Non-agricultural (2)	Organized (3)	Unorganized (4)
Retirement Ratio in 1993 $\times$ Post Dummy	0.00612 (0.0598)	0.634*** (0.0237)	0.201*** (0.0683)	0.00298 (0.00741)
Additional Controls	Yes	Yes	Yes	Yes
State FEs	Yes	Yes	Yes	Yes
R-squared	0.115	0.127	0.142	0.109
Observations	886	886	886	886

Conclusion

Judicial Activism and Judicial Decisions:

- Judicial activism increases judicial independence from the government
- It also increases decision quality

Judicial Activism and Economic Development:

- Judicial Activism increases economic development as measured by nightlights
- Regions where more judges are appointed under the collegium system **also** experience new construction of houses and buildings: investment in real estate increases.
- Consistent with the result on the better application of property rights laws from judicial decisions data.

Thank You for Your Attention

- Email for more detailed questions/feedback: ju-goto@grips.ac.jp
- More information on my work:
<https://sites.google.com/site/jungotoswebsite/home>