

Administrative Discretion Abuse & Bureaucracy In India

Mr. N. Thousif Mohammed,

Assistant Professor, Saveetha School of Law, SIMATS, Chennai, Tamil Nadu

ABSTRACT

Discretion in basic words implies picking among the various options accessible without regard to any foreordained basis, independent of how whimsical that decision might be. Administrative law is dominated by the term discretion. Administrative agencies build several types of choices involving a good form of problems; the resolution of a variety of those issues emerges through the exercise of discretion. The term discretion, then, usually defines the performance of the agency and describes the role of the reviewing court. It's so essential that courts perceive body discretion each to gauge the agency's performance and to know the courts to perform their functions and duties. The objectives of this research are “To find out whether administrative discretion is abused or not”, “To find out whether administrative discretion empowers bureaucracy”. The researcher has followed non doctrinal research with a convenience sampling method. A total of around 350 responses have been taken from the general public Via Online and Social media. From all the analysis part from research it is found that the majority of the people stated that “administrative discretion amounts to bureaucracy” and “administrative discretion is abused”.

KEYWORDS

Administrative, discretion, Agencies, bureaucracy, Abuse.

INTRODUCTION

Administrative discretion is an informal unilateral practice and is accordingly unprotected by the insurance's natural in organized strategy. Discretion in basic words implies picking among the various options accessible without regard to any foreordained basis, independent of how whimsical that decision might be. The administrative discretionary issue is mind boggling. Truly, the public authority cannot work in any escalated type of government without the authorities practicing some discretion.

Discretion in layman's language implies that choosing from among the shifted out there options while not regarding any present basis, independent of any whimsical that option might be. an individual composing his can has such discretion to lose his property in any way, regardless of how indiscreet or whimsical it ought to be. Anyway the term 'discretion'

when qualified by the word 'administrative' has fairly totally various suggestions. 'Discretion' during this sense implies looking over among the different accessible other options yet regarding the establishments of reason and equity and not with regards to individual impulses. Such exercise isn't to be subjective, obscure and whimsical, anyway legitimate and normal.

The downside of administrative discretion is muddled. The facts confirm that in any concentrated sort of government, the government. Can't work while not the activity of some discretion by the authorities. It's vital not only for the individualisation of the leader's power, but also because it is humanly impractical to put down a standard for each possible ultimately inside the unpredictable craft of contemporary government. Anyway it is similarly obvious that supreme discretion might be a brutal expert. it's more of an opportunity than any of man's various developments. In this manner, there has been a consistent clash between the cases of the organization to relate outright discretion and hence the cases of subjects to a reasonable exercise of it. Discretionary force without help from anyone else isn't unadulterated wickedness anyway offers plentiful zones for abuse. Along these lines, cure lies in changing the method and not in cancelling the actual capacity. The aim of the study is to find out whether administrative discretion is abused or not and to find out whether administrative discretion empowers bureaucracy.

OBJECTIVES

The aim of this study is

1. To find out whether administrative discretion is abused or not.
2. To find out whether administrative discretion empowers bureaucracy.

REVIEW OF LITERATURE

Administrative discretion is an informal unilateral practice and is accordingly unprotected by the insurance's natural in organized strategy (Hemalatha Devi 1994). Discretion in basic words implies picking among the various options accessible without regard to any foreordained basis, independent of how whimsical that decision might be.(de Poorter, Ballin, and Lavrijssen 2019) The administrative discretionary issue is mind boggling(Manley-Casimir and Alesha D. Moffat 2012). Truly, the public authority can not work in any escalated type of government without the authorities practicing some discretion.(Council of Europe 1997)

Discretion in layman's language implies that choosing from among the shifted out there options while not regarding any present basis, independent of any whimsical that option might be. an individual composing his can has such discretion to lose his property in any way, regardless of how indiscreet or whimsical it ought to be.(Mendes 2019) Anyway the term 'discretion' when qualified by the word 'administrative' has fairly totally various suggestions. (Hasniati et al. 2020)'Discretion' during this sense implies looking over among the different accessible other options yet regarding the establishments of reason and equity and not with regards to individual impulses. (Oswald 2018)Such exercise isn't to be subjective, obscure and whimsical, anyway legitimate and normal. (McFarland and Vanderbilt 1952)

The downside of administrative discretion is muddled. (Gusmano and Thompson 2020)the facts confirm that in any concentrated sort of government, the govt. can't work while not the activity of some discretion by the authorities. it's vital not only for the individualisation of the leader's power however also because it is humanly impractical to put down a standard for each possible ultimately inside the unpredictable craft of contemporary government. (Di Rico et al. 2020)Anyway it is similarly obvious that supreme discretion might be a brutal expert. it's more of an opportunity than any of man's various developments. (Socal et al. 2020)In this manner, there has been a consistent clash between the cases of the organization to relate outright discretion and hence the cases of subjects to a reasonable exercise of it.(Shappell, Klompas, and Rhee 2020) Discretionary force without help from anyone else isn't unadulterated wickedness anyway offers plentiful zone for abuse. Along these lines, cure lies in change the method and not in canceling the actual capacity.(Rhee and Klompas 2020)

Administrative law is dominated by the term discretion administrative agencies build several types of choices involving a good form of problems; the resolution of a variety of those issues emerges through the exercise of discretion. (Chen et al. 2019)The term discretion, then, usually defines the performance of the agency and describes the role of the reviewing court. it's so essential that courts perceive body discretion each to gauge the agency's performance and to know the courts to perform their functions and duties. (Close et al. 2019)

Finally, non-adjudicative, non-rulemaking informal agency action was either exempt from review altogether or subject to review for abuse of discretion. (Pine 2019)The absence of a record demand in informal non- rulemaking selections eliminated review of the sufficiency of the proof. Instead, courts developed Associate in nursing primarily fair review of such agency decision making. (Chapman et al. 2018) If the agency perceived to have acted in smart faith without bias, prejudice, or elementary unfairness-then courts would uphold its discretionary selections while not tight any particular quantum of proof.(Beach 2018)

So where the force is practiced for a reason not the same as that predefined in the resolution, the court will announce the activity of the force as ultra vires. (Coutinho et al. 2018)Where the land is obtained by Municipal Corporation apparently for a public reason however to empower another body to get it thanks to the company for some other reason, the procurement request would be suppressed by the court. (Massey 2018) Likewise, where Municipal Corporation wouldn't support the development of structures with the end goal of compressing the solicitor to give waste to the connecting building, and where the development plan of the candidate doesn't contradict.

METHODOLOGY

The research method followed here is Non-doctrinal research. A total of around 350 responses have been taken from the general public Via Online and Social media . The convenient sampling is used. The sample frame taken by researchers is the public area, college and bus stand. The independent variable taken is Gender and Age. The dependent variable includes ‘ABUSE OF ADMINISTRATIVE DISCRETION’ and “ADMINISTRATIVE DISCRETION BUREAUCRACY”. The statistical tools used for analysis include Graphs, tables, and Chi-square tests.

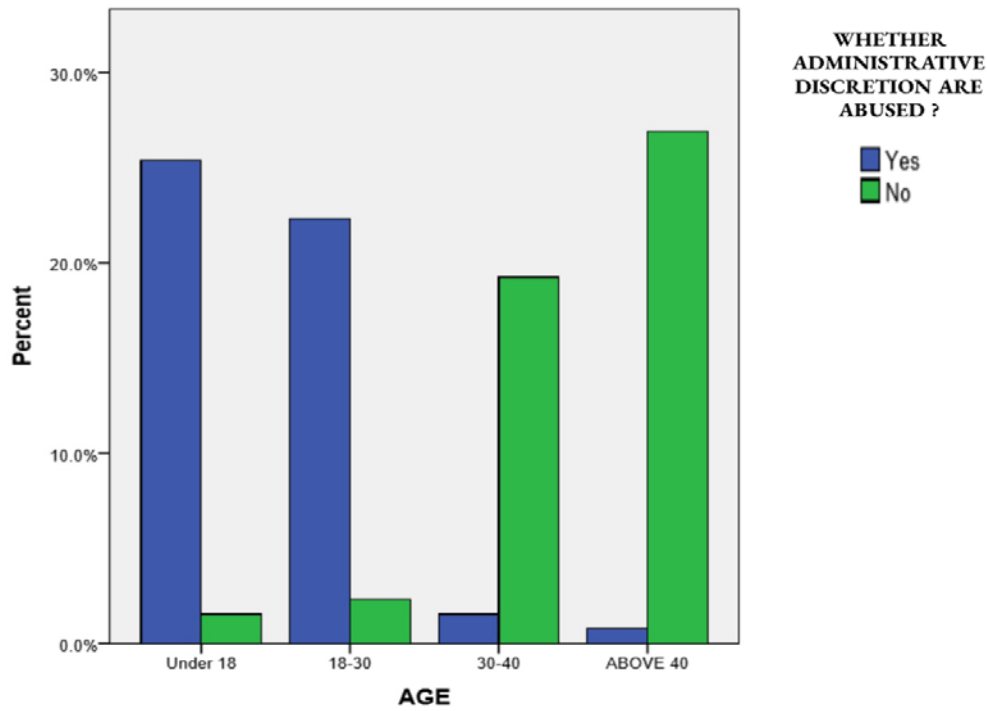
HYPOTHESIS:

Null: There is no significant relationship between the administrative discretion and administrative discretion bureaucracy.

Alternate: There is a significant relationship between the administrative discretion and administrative discretion bureaucracy.

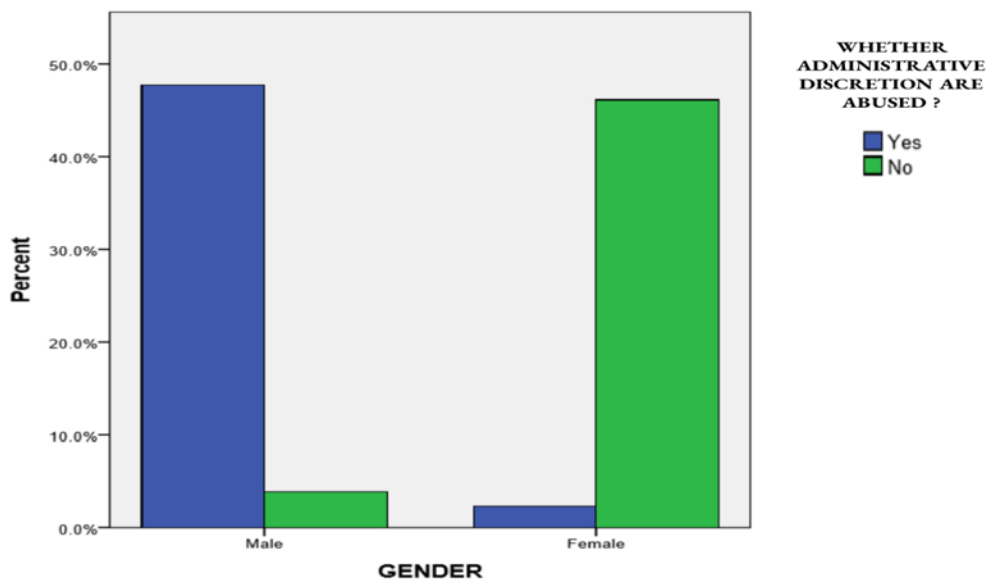
ANALYSIS:

TABLE: 1



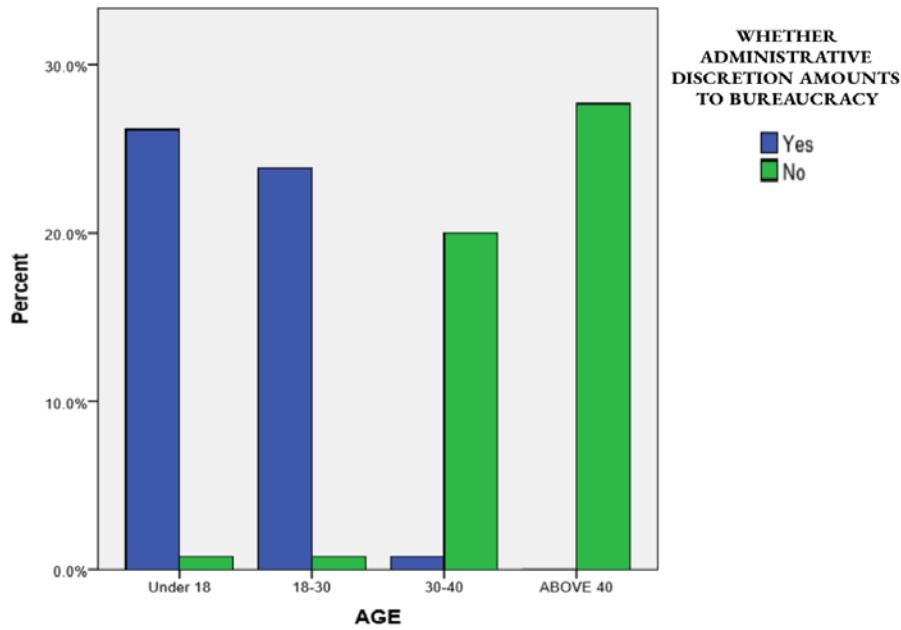
Legend: Figure 1 shows the Age distribution and opinion on the ‘ABUSE OF ADMINISTRATIVE DISCRETION’.

TABLE: 2



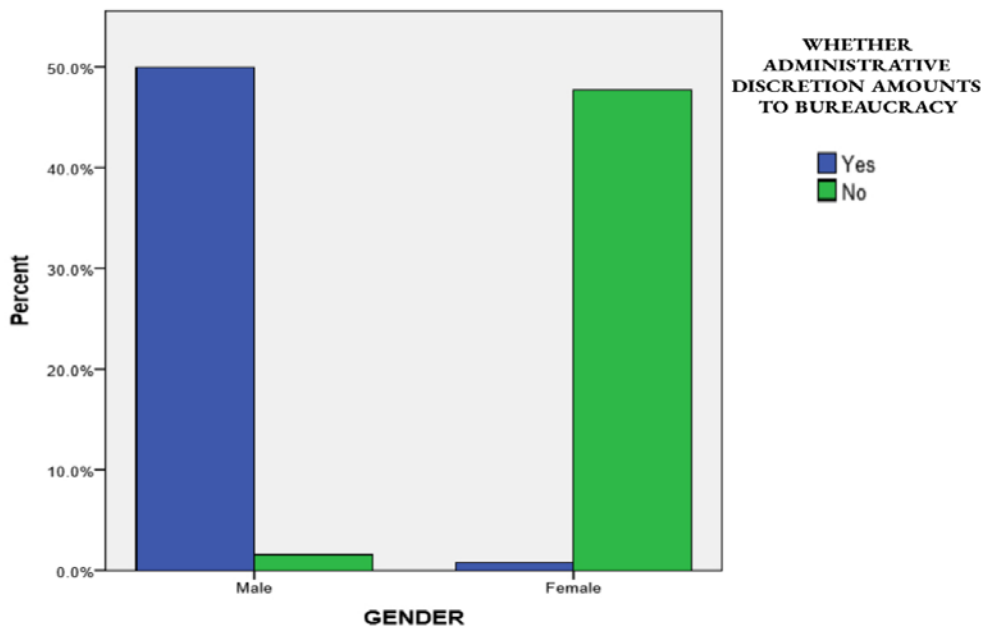
Legend: Figure 2 shows the gender distribution and opinion on the ‘ABUSE OF ADMINISTRATIVE DISCRETION’.

TABLE: 3



Legend: Figure 3 shows the Age distribution and opinion on the “ADMINISTRATIVE DISCRETION BUREAUCRACY”.

TABLE: 4



Legend: Figure 4 shows the gender distribution and opinion on the “ADMINISTRATIVE DISCRETION BUREAUCRACY”

RESULT:

- In figure 1, According to the following question , “Whether administrative discretion is abused” majority people’s views are considered to be “Yes” and their least reason are considered to be “No” . According to the Age group - the majority People with age groups of 18-30 and under 18 consider that answers as ‘yes’ and the majority of people with age groups of 30-40 and above 40 consider the answers as ‘No’. But however most of the people in the overall age category consider that “administrative discretion is abused” .
- In figure 2 , According to the following question , “Whether administrative discretion is abused” majority people’s views are considered to be “Yes” and their least reason are considered to be “No” . According to the Gender group - it is found that mostly the female considers answering as ‘No’ and also the minority of Male said ‘No’ BUT majority said ‘yes’. But however most of the people in both gender categories consider that “administrative discretion is abused”.
- In figure 3, According to the following question , “whether administrative discretion amounts to bureaucracy ” majority people’s views are considered to be “yes” and their least reason are considered to be “no” . According to the Age group - the majority People with age groups of 18-30 and under 18 consider that answer as ‘yes’ and the majority of people with age groups of 30-40 and above 40 consider the answer as ‘No’. But however most of the people in the overall age category consider that “administrative discretion amounts to bureaucracy” .
- In figure 4, According to the following question , “whether administrative discretion amounts to bureaucracy ” majority people’s views are considered to be “yes” and their least reason are considered to be “no” . According to the Gender group - it is found that mostly the female considers answering as ‘No’ and also the minority of Male said ‘No’ and majority said ‘yes’. But however most of the people in both gender categories consider that “administrative discretion amounts to bureaucracy”.

DISCUSSION

From the survey in figure 1 it is found that the majority of the people stated that “administrative discretion is abused”. According to the Age group - the majority People with

age groups of 18-30 and under 18 consider that answer as 'yes' and the majority of people with age groups of 30-40 and above 40 consider the answer as 'No'. But however most of the people in the overall age category consider that "administrative discretion is abused".

By observing figure 2 it is found that the majority of the people stated that "administrative discretion is abused". According to the Gender group - it is found that mostly the female considers answering as 'No' and also the minority of Male said 'No' BUT majority said 'yes'. But however most of the people in both gender categories consider that "administrative discretion is abused".

By observing figure 3 it is found that the majority of the people stated that "administrative discretion amounts to bureaucracy". According to the Age group - the majority People with age groups of 18-30 and under 18 consider that answer as 'yes' and the majority of people with age groups of 30-40 and above 40 consider the answer as 'No'. However the majority responses in the overall age category stated the answers as 'Yes' that is "administrative discretion amounts to bureaucracy".

By observing figure 4 it is found that the majority of the people stated that "administrative discretion amounts to bureaucracy". According to the Gender group - it is found that mostly the female considers answering as 'No' and also the minority of Male said 'No' and majority said 'yes'. But however most of the people in both gender categories consider that "administrative discretion amounts to bureaucracy".

SUGGESTION

Administrative discretion is vital for administrative authorities, but it should be exercised properly. The suggestions to prevent the abuse of power and To establish a mechanism which regulates the discretion of administrative authorities. An independent judicial body should be established specially, and judicial officers should regulate such body, and they should give advice to administrative authority while exercising discretion and if such body finds any abuse of discretion, it may impose penalty and take certain actions against the administrative authorities. There should be a grievance cell available to citizens of India in every administrative organisation and office, where citizens of India can lodge complaints against authorities for abuse of their discretion and power.

LIMITATIONS:

- **SAMPLE SIZE:** Sample size is one of the limitations in this research. Thus the research topic is about “**ADMINISTRATIVE DISCRETION ABUSE & BUREAUCRACY IN INDIA**”. However here the only conducts a study with a total of around 350 people and responses have been taken from the general public Via Online and Social media. Considering the results among them there are some challenges faced on the details and perception of the topic, so here we can’t generalize the results accurately as the sample size is small.
- **ACCESS:** If any study depends on having access to organisations, people or documents and, for whatever reason, access is denied or limited in how the explanations for this got to be described. Here during this research because of lockdown and social distancing, most responses and their depth view about those concepts concerning study is restricted and denied someway.

CONCLUSION:

Administrative law is dominated by the term discretion administrative agencies build several types of choices involving a good form of problems; the resolution of a variety of those issues emerges through the exercise of discretion. From all the analysis part from research it is found that the majority of the people stated that “administrative discretion amounts to bureaucracy” and “administrative discretion is abused”.

REFERENCES

1. Beach, William R. 2018. “Editorial Commentary: Where’s the Respect? Physical Exam of the Shoulder.” *Arthroscopy: The Journal of Arthroscopic & Related Surgery: Official Publication of the Arthroscopy Association of North America and the International Arthroscopy Association*.
2. Chapman, Cole G., Sarah Bauer Floyd, Charles A. Thigpen, John M. Tokish, Brian Chen, and John M. Brooks. 2018. “Treatment for Rotator Cuff Tear Is Influenced by Demographics and Characteristics of the Area Where Patients Live.” *JB & JS Open Access* 3 (3): e0005.
3. Chen, Zhi Qin, Ernest Hung Yu Ng, Miao Xin Chen, Mei Zhao, Jia Ping Pan, Hong

- Chen, and Xiao Ming Teng. 2019. “Comparison of the Ongoing Pregnancy Rate of in Vitro Fertilisation Following Tubal Occlusion by Microcoil Placement versus Laparoscopic Tubal Ligation for Hydrosalpinges.” *Human Fertility*, December, 1–7.
4. Close, James, Ben Fosh, Hannah Wheat, Jane Horrell, William Lee, Richard Byng, Michael Bainbridge, et al. 2019. “Longitudinal Evaluation of a Countywide Alternative to the Quality and Outcomes Framework in UK General Practice Aimed at Improving Person Centred Coordinated Care.” *BMJ Open* 9 (7): e029721.
 5. Council of Europe. 1997. *Administrative Discretion and Problems of Accountability: Proceedings : 25th Colloquy on European Law, Oxford (United Kingdom), 27-29 September 1995*. Council of Europe.
 6. Coutinho, Anna D., Kavita Gandhi, Rupali M. Fuldeore, Pamela B. Landsman-Blumberg, and Sanjay Gandhi. 2018. “Long-Term Opioid Users with Chronic Noncancer Pain: Assessment of Opioid Abuse Risk and Relationship with Healthcare Resource Use.” *Journal of Opioid Management* 14 (2): 131–41.
 7. Di Rico, Rehana, Dhanya Nambiar, Belinda Gabbe, Mark Stoové, and Paul Dietze. 2020. “Patient-Specific Record Linkage between Emergency Department and Hospital Admission Data for a Cohort of People Who Inject Drugs: Methodological Considerations for Frequent Presenters.” *BMC Medical Research Methodology* 20 (1): 283.
 8. Gusmano, Michael K., and Frank J. Thompson. 2020. “The Administrative Presidency, Waivers, and the Affordable Care Act.” *Journal of Health Politics, Policy and Law* 45 (4): 633–46.
 9. Hasniati, Nurul Uswatun Hasanah, Badu Ahmad, Andi Rahmat Hidayat, Amril Hans, and Andi Ahmad Yani. 2020. “Discretion in Health Service Delivery: A Case Study of the Kassi-Kassi Health Community Centre in Makassar.” *Enfermeria Clinica* 30 Suppl 2 (March): 130–32.
 10. Hemalatha Devi, P. 1994. *Administrative Discretion & Judicial Review*. Mittal Publications.
 11. Manley-Casimir, Michael, and Med Alesha D. Moffat. 2012. *Administrative Discretion in Education*. Brush Education.
 12. Massey, I. P. 2018. *Administrative Law*.
 13. McFarland, Carl, and Arthur T. Vanderbilt. 1952. *Cases and Materials on Administrative Law*.
 14. Mendes, Joana. 2019. *Eu Executive Discretion and the Limits of Law*. Oxford

University Press, USA.

15. Oswald, Marion. 2018. “Algorithm-Assisted Decision-Making in the Public Sector: Framing the Issues Using Administrative Law Rules Governing Discretionary Power.” *Philosophical Transactions. Series A, Mathematical, Physical, and Engineering Sciences* 376 (2128). <https://doi.org/10.1098/rsta.2017.0359>.
16. Pine, Kathleen H. 2019. “The Qualculative Dimension of Healthcare Data Interoperability.” *Health Informatics Journal* 25 (3): 536–48.
17. Poorter, Jurgen de, Ernst Hirsch Ballin, and Saskia Lavrijssen. 2019. *Judicial Review of Administrative Discretion in the Administrative State*. Springer.
18. Rhee, Chanu, and Michael Klompas. 2020. “Sepsis Trends: Increasing Incidence and Decreasing Mortality, or Changing Denominator?” *Journal of Thoracic Disease* 12 (Suppl 1): S89–100.
19. Shappell, Claire N., Michael Klompas, and Chanu Rhee. 2020. “Surveillance Strategies for Tracking Sepsis Incidence and Outcomes.” *The Journal of Infectious Diseases* 222 (Supplement_2): S74–83.
20. Socal, Mariana P., Kelly E. Anderson, Aditi Sen, Ge Bai, and Gerard F. Anderson. 2020. “Biosimilar Uptake in Medicare Part B Varied Across Hospital Outpatient Departments and Physician Practices: The Case of Filgrastim.” *Value in Health: The Journal of the International Society for Pharmacoeconomics and Outcomes Research* 23 (4): 481–86.