ISSN: 2582-6433

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed JournalMulti Disciplinary
Peer Reviewed6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

 ISSN: 2582-6433

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions ofthe authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

ISSN: 2582-6433

EDITORIAL TEAM

EDITORS

Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

ISSN: 2582-6433

Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India.India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi.Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ISSN: 2582-6433

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

www.ijlra.com
Volume 2 Issue 7 | April 2023

ISSN: 2582-6433

A CRITICAL ANALYSIS OF GREEN LIGHT AND RED LIGHT THEORY UNDER ADMINISTRATIVE LAW

AUTHORED BY - ABHIRAJ VAIDYA

ABSTRACT:

Carol Harlow and Richard Rawling[1] initially proposed the red light green light idea in 1948; it is one of the theories of rule of law. The rule of law is a basic premise of administrative law. This theory was developed to evaluate administrative legislation with the intent of preventing the misuse of authority. The red light hypothesis focuses primarily on the control of government-vested powers and prioritizes judicial oversight. In the green light paradigm, the state obtains a greater role, more authority, and permission to intervene. This philosophy prioritizes politics above the courts. The majority of legal systems in all nations are a blend of these two notions. For governance to be acknowledged as moral, it must fall somewhere between these two views; this style of governance is sometimes referred to as the amber light hypothesis. All of these ideas have their own advantages and disadvantages, and we shall evaluate them in this study.

Keywords: Red light theory, Green light theory, Amber light theory, Administrative Law

INTRODUCTION:

The Red light theory and the Green light theory present contradictory views regarding the scope and purpose of administrative law. According to the Red light theory, the purpose of administrative law is to control state activities in order to protect the rights of individuals. The Green light theory, on the other hand, asserts that administrative law exists to ensure that the state meets certain policy

[1] Harlow & Rawlings (n10) pp.22-23.

ISSN: 2582-6433

goals. Consequently, administrative law grew substantially throughout the 20th century, as legislative bodies around the globe established more government agencies (such as tribunals, boards, and commissions) to control the more complex social, economic, and political domains of human interaction. The law is the system or collection of laws that a given nation or society acknowledges as governing the conduct of its members and which it may enforce by the application of penalties, such as the prohibition against killing birds. The Red Light Theories are those in which the purpose of administrative law is to restrict governmental activity in order to safeguard people. Here, the placement of the court is crucial to the constitution. Different norms and regulations to safeguard the person are ruled by the court. According to the Green Light Theory, an administrative legislation departs the state if it satisfies certain policy goals. It tends to downplay the importance of the courts and the presence of universal principles. It seeks to promote effectiveness in the governance process and policy formulation.

LITERARTURE REVIEW:

Administrative law, according to **(Dicey, 1889)**, is a mix of people's rights and obligations in relation to officials that outlines the process by which the vested rights are enforced. The case of **(Marbury v. Madison, 1803)** was the first to establish judicial supremacy, which has since been acknowledged in many other nations. According to the article **(Dhital, 2020)**, the notion of legal sovereignty is a reflection of the red light theory since the government must operate in accordance with the parliamentary rules and regulations. In the case of **Indira Gandhi v. Raj Narain (1975)**[2], the 39th amendment exempted the election of the Prime Minister from judicial review by included it in the ninth schedule. This obviously demonstrates that the state wants to protect its leader and enacted the amendment in accordance with their wishes, which is an abuse of power on the part of the government. In this case, the Supreme Court correctly determined that the 39th Amendment was invalid. If this case had been decided in favor of the government, state interference would have ensued, and it would have been obvious that tyranny and corruption would ensue. According to **(Stott & Felix, 1997)**, the green light theory may also be referred to as a positivist functionalist theory. According to this idea, the law is only a subject of political debate, and administrative law

[2] Indira Gandhi v. Raj Narain AIR 1976 (2) SCR 347

should not only concentrate on reducing harmful government behaviors but also on easing administration. According to the article **(Said, 2020)**, no one is above the law, which implies that no individual, government, or its officials are above the law. Since the law enforces the government, it is the responsibility of the courts to adhere to the law without prejudice. Thus, we might conclude that courts are superior than administration, making them largely accountable for the administration's correct operation. (**Citizens to Preserve Overton Park v. Volpe)** In this case, the plaintiffs challenged a decision by the Secretary of Transportation to approve the construction of a highway through a park in Memphis, Tennessee. The plaintiffs argued that the Secretary had failed to comply with certain procedural requirements under the Administrative Procedure Act (APA), which they claimed amounted to a "red light theory" of administrative law. The court agreed, stating that the APA imposed certain procedural requirements that agencies must follow in order to ensure meaningful public participation and transparency in the decision-making process. (**Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.)** In this case, the plaintiffs challenged a decision by the National Highway Traffic Safety Administration (NHTSA) to rescind a regulation requiring automatic seat belts in passenger cars. The plaintiffs argued that the NHTSA had failed to provide a sufficient explanation for its decision, which they claimed violated a "green light theory" of administrative law. The court agreed, stating that agencies must provide a reasoned explanation for their decisions in order to ensure accountability and transparency.

RESEARCH QUESTION:

1. What is Green light, Red light and Amber light theory?
2. How Green light, Red light and Amber light theories developed?
3. What are the variations between these theories?

RED LIGHT THEORY:

This argument presumably evolved from the laissez-faire political tradition prevalent throughout the industrial revolution of the 19th century. This idea was primarily intended to limit excessive government interference. It essentially distrusts governments, and according to this theory, granting the government more authority leads to the loss of the rights and freedoms of the people.

For this reason, it seeks to manage affairs via courts, where courts and the law are deemed superior.[3] The Red Light Theories are those in which the purpose of administrative law is to restrict governmental activity in order to safeguard people. Here, the placement of the court is crucial to the constitution. Different norms and regulations to safeguard the person are ruled by the court. It is claimed that the red light hypothesis came from the laissez-faire political heritage of the nineteenth century. This tradition had a profound mistrust of executive authority and tried to limit the state's intrusion into individual rights (particularly property rights). Dicey's explanation of "legal sovereignty" effectively illustrates the notion of red light theory, since he argues that the government must operate in conformity with the legal standards established by Parliament. In situations when the government does not adhere to these standards, the courts have the authority to regulate it and guarantee that it complies with the law. The red light theory is strongly related to the'self-correcting democracy' notion, in which the rule of law remains a central concept. The law is seen as an independent and consistent body of knowledge that serves a vital regulatory role ("checks and balances"). The essential premise of this approach is that judicial involvement serves as a penalty when public entities or administrative authorities abuse their authority. This is due to the fact that unfettered bureaucratic and executive authority of the state and its institutions poses a danger to the liberty of every person. Consequently, judicial oversight is essential inside the political structure of a state. In analyzing the constitutionality of executive action, red light theorists also argue that the court contains its own criteria of independence and impartiality and may be relied upon. Consequently, it may be used as an efficient mechanism for checks and balances in a state system.

IJLRA

GREEN LIGHT THEORY:

This thesis asserts that a monopoly on power is problematic. It states that in addition to individual rights, collective rights must exist, and that the state must become absolutist while ensuring that collectivism is constantly fostered and the welfare of the people is at its highest. Essentially, this idea contradicts the red light theory. According to this idea, the law is only a subject of political

[3] David Stott & Alexandra Felix, Principles of administrative law, Cavendish Publishing Limited, London, United Kingdom, 1997.

ISSN: 2582-6433

debate, and administrative law should not only concentrate on reducing harmful government behaviors but also on easing administration. The primary goal of the green light theory is to reduce the influence of the courts on the administration, since the courts are seen as a barrier. According to the Green Light Theory[4], an administrative legislation departs the state if it satisfies certain policy goals. It tends to downplay the importance of the courts and the presence of universal principles. It seeks to promote effectiveness in governance and policy formulation. Between the two world wars, as many criticisms and challenges to the red light theory proliferated, an alternate tradition emerged. This tradition established the "green light theory" in opposition to the "red light theory." This view asserts that the use of executive authority to deliver services for the community's benefit is fully justified. Consequently, judicial oversight of executive conduct is a problematic duty. However, it does not support unrestrained or arbitrary governmental activity. The Green light theory, often known as functionalist theory, is optimistic towards the state. It thinks that the government is affable[18] and cannot be accused of engaging in illegal activity. Thus, the green light approach stresses the need for administrative law to promote government activity, as opposed to interfering via judicial or political supervision. It describes how the law may be used as an enabling mechanism so that it can be used as a weapon against administrative authorities. This idea, which is motivated by the utilitarian theory associated with Jeremy Bentham and John Stuart Mill, maintains that the greatest benefit for the greatest number of people in a state may be achieved by promoting governmental participation with less control or involvement. It asserts that common societal objectives may be attained within the democratic system. Therefore, the purpose of this theory is not to undermine individual rights or undermine the fundamental ideals and standards of a democratic society. This pertains to the notion that the common (public) objectives may be achieved by providing the Executive broad powers and removing it from judicial constraints.

AMBER LIGHT THEORY:

The theory strikes a balance between the red light theory and the green light theory, taking the middle way. It does not refute the rigidity of the red light theory, but it argues that excessive

[4] Anjana Dhital, Red, Green and Amber light theories of administrative law, IPLEADERS, (November 04, 2020) https://blog.ipleaders.in/red-green-amber-light-theories administrative-law/#_ftn7

ISSN: 2582-6433

transparency may also result in greater issues. Some items may be very sensitive in nature, which might lead to internal problems, thus they must not all be made public. Additionally, the idea says that law is superior to politics and that politics must always be subordinate to law. Consequently, we may conclude from this idea that a state's power can be effectively constrained by the judiciary, and that the judiciary must also permit competent management.[5] This idea seeks to preserve human rights within a given framework. In administrative law, the red and green light theories represent two opposite perspectives, but the amber light theory tends to represent a middle ground. According to the amber light theory, administrative law should include the beneficial aspects of both theories. This idea captures the core of both "fire observation" and "firefighting." Administrative law may perform both "fire-watching" and "fire-fighting" by nullifying erroneous administrative decisions via judicial rulings. Amber light theorists think that good public administration requires a balance between both exterior and internal control systems. The amber aspect between the two ideas has also been recognized by proponents of the green light theory. As acknowledged by Harlow and Rawlings, the green light theory does not intend to imply that it supports unrestrained or arbitrary state activity. In reality, it does not completely refute the rigidity of red light theory.

VARIATIONS IN THE RED AND GREEN LIGHT THEORIES:

Although the two ideas cannot exist independently and complement one another in a number of ways, there are a number of fundamental distinctions between them.[6] These distinctions are stated below:

[5] Peter Leyland & Gordon Anthony, *Textbook on Administrative Law*, Oxford University Press, United Kingdom, 2013, p.5

[6] Robert Franklin, The Red Light Theory and The Green Light Theory Portray Contrary Views as to the Extent and Object of Administrative law, THE LAWYERS AND JURISTS, (February 27, 2018), https://www.lawyersnjurists.com/article/the-red-light-theory-and-the-green-light-theory-portray-contrary-viewsas-to-the-extent and-object-of-administrative-law-2/

ISSN: 2582-6433

1. The red light theorists support for an interventionist stance by the court in reviewing administrative decisions, while the green light theorists doubt the role of courts in monitoring executive activities.
2. The red light hypothesis is distrustful of government acts, while the green light theory views the government as amicable.
3. The red light theory largely depends on the courts for administrative oversight, while the green light theory favors other feasible choices.
4. The red light theory views judicial control over administration as an instrument of effective administration, while the green light theory views such supervision as an impediment to the administrative process.
5. The red light theory views judicial review as a device for restricting administrative activities, but the green light theory recognizes the occasional need for judicial review to promote administrative actions.
6. The red light theory claims that law is superior to politics, while the green light theory maintains that law is not superior to politics or administration.
7. The red light hypothesis seems politically conservative, while the green light theory seems politically progressive.
8. For red light theorists, all solutions lie in the courts and the rule of law, but for proponents of the green light theory, the legal profession and the rule of law are archaic.

THE LANDMARK CASE OF *MARBURY V. MADISON*:

Marbury v. Madison[7], decided by the Supreme Court of the United States in 1803 A.D., was the first decision to acknowledge judicial supremacy and its exercise via judicial review. This was eventually recognised by nations with a Common legal system, including as Canada, Australia, New Zealand, India, and Nepal, whose courts began to review the government's plans, programs, and actions using the concepts of administrative law. This sparked a number of key concerns throughout the world such as:

[7] Marbury v. Madison 5 U.S. 137 (1803)

1. What is the role of the law? What is the function of the judiciary?
2. Should courts be primarily responsible for administration?
3. Who is to be entrusted with the ultimate power – government or the judiciary?
4. Would it be appropriate to borrow the model of private legal adjudication in settling administrative (public) disputes?
5. Should individual rights gain primacy over public interests?

In the early 1990s, a global discussion erupted over the governance reform ideas of "New Public Administration" in England and "Reinventing Government" in the United States. The traditional school of public administration favored the rule of law and the significance of legal rules and directives for the operation of administration, whereas the new school favored the concept of governance reform, which aimed to make administration more result-oriented by deviating from rigid legal rules and directives.

Hence, these political conflicts led to the emergence of a variety of new ideas and ideologies within the scope of administrative law. One of these ideas created the important topic of whether executive acts should be placed under rigorous judicial oversight, left independent of judicial control, or a compromise between the two should be chosen. The answer to this issue was then derived from the basis of traffic light ideas. Originally, just the red and green light ideas were conceived. In 2004, however, two experts, Wade and Forsyth, illuminated the amber link between the two ideas. Hence, various hypotheses were developed.

CONCLUSION:

All of these theories were proposed at different times in attempt to identify the aims of administrative law and the degree to which public administration may use its powers and tasks with discretion. The red light hypothesis says that administrative discretion should not be unrestricted. If granted unfettered discretion, there is a strong likelihood that it would abuse its authority. Thus, the purpose of administrative law must be to maintain strong supervision over the government in order to safeguard the freedoms of all persons.

ISSN: 2582-6433

In contrast, the green light hypothesis asserts that public administration cannot operate effectively when subject to stringent judicial oversight. It does not completely reject the importance of law, but suggests that if the legal process is used to public administration, it should be facilitative as opposed to restrictive or regulating.

The amber light hypothesis seeks a point of agreement or reconciliation between the two hypotheses and maintains that neither view is superior. In reality, both systems' tenets have beneficial features. And the objective of administrative law should be to extract the beneficial aspects of both theories and apply them within the framework of the state. If we are to evaluate the value of any of these ideas, the amber light theory should be deemed the most important since it attempts to link the red and green light theories without diminishing their distinct nature.

After reading all of these beliefs, it can be deduced that public administration must be allowed to use a certain amount of discretion while carrying out their duties. The administration should not, however, be allowed unchecked. There must be certain restrictions on their abilities in order to avoid their possible misuse or abuse. In order to secure individual liberty, it is essential that the supremacy of law prevail.

REFERENCES:

1. A. V. Dicey, Introduction to the Study of the Law of the Constitution, MacMillan & Co, Third Edition, 1889
2. Marbury v. Madison 5 U.S. 137 (1803)
3. Anjana Dhital, Red, Green and Amber light theories of administrative law, IPLEADERS, (November 04, 2020) https://blog.ipleaders.in/red-green-amber-light-theories administrative-law/#_ftn7
4. Indira Gandhi v. Raj Narain AIR 1976 (2) SCR 347
5. David Stott & Alexandra Felix, Principles of administrative law, Cavendish Publishing Limited, London, United Kingdom, 1997.
6. Mark Said, No one is above the law, TIMES MALTA, (February 1, 2022), https://timesofmalta.com/articles/view/no-one-is-above-the-law-mark-said.931456

ISSN: 2582-6433

7. Robert Franklin, The Red Light Theory and The Green Light Theory Portray Contrary Views as to the Extent and Object of Administrative law, THE LAWYERS AND JURISTS, (February 27, 2018), https://www.lawyersnjurists.com/article/the-red-light-theory-and-the-green-light-theory-portray-contrary-viewsas-to-the-extent and-object-of-administrative-law-2/
8. Keshav Raj Pandey, *Administrative Law*, Ramesh Silwal, Chitwan, Nepal, 2017, p. 50.
9. Peter Leyland & Gordon Anthony, *Textbook on Administrative Law*, Oxford University Press, United Kingdom, 2013, p.5
10. Carol Harlow & Richard Rawlings, *Law and Administration*, Cambridge University Press, New York, USA, 2009, p.25.
11. Harlow & Rawlings (n10) pp.22-23.