**Anti-Discrimination Core (ADC) vs Central Organization ECHS & Ors.,2015**

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**BRIEF FACTS OF THE CASE**

The case deals with a question of inequality in the provision of medical services to the ex- servicemen of the Armed Forces at the Ex-servicemen Contributory Health Scheme (ECHS), Polyclinics in India. The Scheme intends to provide medical services to ex-servicemen of all ranks in receipt of pension or disability pension, as also to his / her dependents and the scheme is functioning under the integral staff. However, in practice, certain discriminations arise in the dispensation of the service. It is contended they are often given preferential treatment, even if ex-servicemen of other ranks are seriously ailing. Ex-servicemen of officer cadre are attended to first, given the first allotments, provided separate counters and given medicines of different specifications, when there are no such provisions in ECHS, under which both categories are at par. Thus, a civil writ petition under Article 226 of the Constitution of India was filed, in the name of Anti-Discrimination Core (ADC) vs Central Organization ECHS & Ors, on 11th of December 2015[[1]](#footnote-2).

**ISSUES**The issues according to the petitioner, pertinent to the case, are as follows:

1. Ex-servicemen Contributory Health Scheme (ECHS) is a Society registered as per Article 26, under the Societies Registration Act, 1860 with the aim of eliminating discrimination amongst ex-servicemen by promoting a spirit of unity, camaraderie and concord.
2. As per the policy in place, persons who hold a White Card (War Disabled/Battle Casualty Disabled Veteran/Disabled Beneficiary, as per the respective person’s eligibility) and Senior Citizens (above 75 years in case of male and 70 in case of female) are entitled to be treated in ECHS Polyclinics on a priority basis.
3. However, in ECHS Polyclinics, rather than giving priority to the above stated category, it is being given to ex-servicemen who are of officer rank.
4. Ex-servicemen of the rank of officer are attended first and also issued medicines of different specifications as compared to the prescriptions given for ex-servicemen of other ranks.
5. Ex-servicemen of different cadres are made to wait indefinitely, even if suffering from ailments of serious nature.
6. Some of the assigned Polyclinics have the openly discriminatory practice of having display boards which separates the ex-servicemen who are officers from ex-servicemen of other ranks, and there are separate counters provided for both of them.
7. The above mentioned display boards are objectionable to ex-servicemen of other ranks, when evidently there is no provision as such for the same in ECHS wherein both categories are said to be in par with each other.

**FINDINGS OF THE COURT**

1. The ECH Scheme for the pensioners in the forces has been instituted to dispense comprehensive health care services to all the ex-servicepersons in receipt of his/her pension or disability pension, as also to his/her dependents.
2. It is a scheme in which every retired ex-service person/ retiring after 1st April 2003 compulsorily becomes a member by contributing his or her due share. However, the participation in the scheme is voluntary for those servicemen who retired before April 1 2003. Those persons may become members by giving a payment of their share and fulfilling the requisite legal formalities.
3. The scheme covers all types of diseases and there is no restriction as to the age or medical condition at the time of a person seeking membership into the scheme.
4. The scheme includes no special provision for any category of persons, depending upon their rank or position prior to retirement from the Armed forces. The only such mention is of Senior Citizens, in Clauses 60 and 61 under the heading ‘Special Provisions’ and under subheading ’Treatment for Senior Citizens’[[2]](#footnote-3).

**PECULIARITY OF THE CASE**

The case in hand is not the kind of inequality case law that one would come across every now and then. Equality in services, whether in government sector or private, has always been a huge question of law in a lot of cases. However, this case is set apart from them for the reason that, here the issue of inequality does not come in the formulation of the scheme itself rather, it arises at the way the scheme is implemented, which causes the issue of an inequality. It is a rare kind of discrimination seen in government services.

**SOLUTION GIVEN BY COURT**

The solution given by the High Court of Delhi is to create awareness in these ECHS polyclinics, empanelled hospitals, military hospitals and service hospitals. The doctors, nurses and paramedical staff working in these hospitals are to be given awareness as to attending patients based on a First Come First serve basis thereby not giving any sort of preferential treatment to ex-servicemen of any particular rank. It is only when those ex-servicemen of no specific rank expect no preferential treatment and not been given such treatment, and follow the general norms, will the system be a success. The same can be inculcated by providing requisite information in placards, notice boards, circulars, pamphlets etc. which can be displayed in the hospitals. Yet another solution is that the number of hours in a day be divided in such a manner that a certain number of hours of a given a day be allotted to those who have taken appointment and the rest number of hours to those patients who are to be treated on a first come first serve basis. The solutions are mere probable solutions and there is no hard and fast rule for the same. Hence, the Managing Director of ECHS was directed to look into the concern of the petitioners and address the issue in the best manner possible.

**INTERNATIONAL LAW**

The most prominent international law currently in force for the concept of equality is the United Nations Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in its third session, on 10th December 1948. Article 1 of the UDHR states that, ‘All are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood’. Further to this, Article 2 of the UDHR states that ‘Every person is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’. Here, the term ‘other status’ may be used to include any other unreasonable class of difference that is created, which causes discrimination between persons. In the present case, that is the division between ex-servicemen of office cadre, and ex-servicemen of other ranks, extending favored treatment to the former.

The UDHR, 1948 is not just one single exhaustive document which mentions about equality in international law. Other documents present include the multilateral treaties of International Covenant for Civil and Political Rights (ICCPR), 1966 and International Covenant for Economic, Social and Cultural Rights (ICESCR), 1966, both adopted by the United Nations General Assembly. The ICCPR and ICESCR both contain a common non-discrimination clause in its Article 2 which prohibits discrimination in the enjoyment of any of the rights enshrined in each of the covenants. Further, Article 3 of the covenants, which is also common to both of them, stresses on equality between a male and a female.

Apart from these international conventions, there are commissions as well that work towards achieving equality. An example of one such commission is the Equality and Human Rights Commission which works towards redressing issues which infringe upon people’s right to equality. They also update online information on latest world developments that may cause disturbances to the equality and freedoms of people. The Commission works on promoting fundamental human rights ideals in general, across Scotland, Wales and England.

**ARTICLE 14**

Article 14 of the Constitution of India states that, “The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” Here, the term ‘equality before law’ which is derived from the English Common Law means that all of the country’s citizens are equals devoid of any special privilege or favour. The doctrine of ‘rule of law’ was propounded by the constitutional theorist and British Whig jurist, Professor A. V. Dicey. It has 3 constituents:

1. Absence of arbitrary power and supremacy of the law

This means the absolute power of law over the power of the government. Supremacy of law in simple terms indicates that nothing other than the breach of law is a crime.

1. Equality of all before law

It means subjecting of all classes to the ordinary law of the land which is administrated by the regular law courts. This reinstates that all persons are equally the same in the eyes of law.

1. Absence of individual liberty

There are several constitutions in the world that provide individual liberty but do not provide ways to attain the same. But in India such rights are conferred by way of Article 21 (Right to life and personal liberty), Article 19 (Right to freedom of speech and expression) etc.

Secondly, ‘equal protection of law’ comes from the fourteenth amendment of the US Constitution. Every person, whatever may be his rank or position is subject to the jurisdiction of any ordinary court in the country. Every person is equal to one another in the sense that none of them is above the law. Justice Reddy in the case of *Srinivasa Theatre v. State of Tamil Nadu* stated that no person shall be classified as privileged and given a name by which they are allowed to appear as above the law*[[3]](#footnote-4)*. This is so as to ensure the equality of citizens within the country as envisaged by the Preamble enshrined in the Constitution of India.

The term ‘equal protection of law’ mentioned in the Article means that the law shall be applicable to persons equitably, based on each person’s circumstances. The law shall treat only equals to be equals, and the others will be given the benefit of equal protection of law, instead.

Article 14 is the primary law to be applied in this case law to see if there is any violation of a person’s legal right. The Article clearly states that no person is above the law, which means that in this case too, ex-servicemen of all cadres deserve equal treatment, with the exception of positive discrimination, which is explained under ‘equal protection of law’.

**ARTCLE 15**

The Article 15 of the Constitution of India sates that no citizen of India shall be discriminated only on the basis of religion, race, caste, sex or place of birth. Every person shall have equal access to public places like public parks, museums, libraries, gardens, wells, bathing ghats, etc. Although this Article in its direct explanation does not have anything to do with the case law, a relationship can be established on some deep critical analysis. Although the word ‘only’ is used in the sentence, which indicates that only those criteria may be used to constitute an act as discriminatory, in the following lines, it states that access to several public facilities cannot be arbitrarily denied, and everyone has equal access to the same. This means that in the case of ECH Scheme too, the government service cannot be denied to those persons who are ex-servicemen of a different cadre, simply because they were not officers prior to their receipt of pension. In this Article too, it is mentioned that special provisions may be made for the advancements of any socially or educationally backward class or [scheduled](https://en.wikipedia.org/wiki/Scheduled_castes) castes (SCs) or [scheduled tribes](https://en.wikipedia.org/wiki/Scheduled_tribes) (STs) which justifies Clause 60 and 61, but not the practice giving preferential treatment to a certain group of ex-servicepersons.

**ARTICLE 16**

The Article 16 of the Constitution of India deals with equality in matters of public employment. The Article in the Constitution does lay down firmly that the government shall not discriminate between persons while providing employment. All citizens have equal right to a job, which is subject only to the following restrictions:

1. The Parliament may enact so, that a particular post may be reserved specifically for persons residing in a certain place. This is so as to be aware of the local language and culture, which may be essential to the smooth working in a post.
2. The Parliament may also bring in force, an enactment for reserving certain number of seats of a job for socially and economically backward classes as they are not adequately represented in the social sphere.
3. The other requirement for such reservation may be that the head of a religious institution need to be from that particular religion which the religious institution professes.

These are the only exceptions mentioned while assigning posts in jobs to job seekers. This means that the law does not intend to treat employees differently whether in workspace, or otherwise. No special preference is given to any person unless they are from a class of people who need a thrust to enable their social and economic uplift.

**ARTICLE 18**

The Article 18 of the Constitution of India deals with the abolition of all forms of titles, within the territory of the country. Article 18 prevents the state from conferring any title to any person, except any military and academic distinction. The Article prohibits citizen of India from receiving titles from any foreign state. Receiving any emoluments, special favours, or holding any office by virtue of such titles is also legally wrong in nature. However, the foreign nationals holding the office of profit under the state may accept titles from the foreign government with the prior consent of the President. In a true democracy, there is absolutely no room for artificial distinctions among persons within the same society.

Article 18 has a special significance with respect to this case law. When the officer ex-servicemen are receiving special treatment as against the treatment received by ex-servicemen of other ranks under ECHS, the officer ex-servicemen are given the unseen title of being ‘favored ex-servicemen’. Although in its technical sense it does not amount to an actual title, the aim of having all forms of titles abolished, was to eliminate any kind of special or preferential treatment to any person within the territory. All such titles however, are abolished under Article 18 of the Constitution of India. Yet, with this case in hand, it can be seen that in practice this abolition has not borne much effect, even after 70 years of its existence in the Constitution.

**THE U.S. CASE LAW**

The Nasty Gal Pregnancy Discrimination lawsuit is a famous case law in which Nasty Gal, a clothing company in California of United States of America., was sued by four of its employees three pregnant women, and one a father who was about to take a paternity leave from work[[4]](#footnote-5). The company’s rules of termination were strictly based on disobedience to organization rules and non-performance of work, and they applied equally to all employees. In that case, in the present scenario, it is utmost unfair to terminate employees who require a leave after childbirth, while giving preferential treatment in employment and better job security to those employees who do not bear children during their term of holding an office in the firm. The case was rightly adjudged in favour of the claimants. Damages worth 6.2 million Dollars were paid by the management of the firm for the loss suffered by the claimants due to loss of suitable work.

**THE DOMESTIC CASE LAWS**

D.S. Nakara v Union of India is a famous Indian case law which deals with the question of equality in government schemes[[5]](#footnote-6). As per the case facts, the Government issued an office memorandum announcing a liberalized pension scheme for retired government servants but made it applicable to those who had retired after 31 March 1979. Upon review of the case, the Supreme Court held that the fixing of the cutoff date is discriminatory as it is violating Article 14. The division of pensioners into two distinct classes on the basis of the date of retirement was not based on any rational principle because a difference of two days in the matter of retirement could have a totally traumatic effect on the pensioner. Such a classification was held to be arbitrary and illogical as there was no acceptable or persuasive reason in its favour. This classification had no rational link with the

Madhu Limaye v. Superintendent of Tihar Jail, Delhi is another case in which the court had found unreasonable classification[[6]](#footnote-7). There were both Indian and European prisoners in Tihar jail. Both were treated differently. The European prisoners got a better diet too. Court held that the difference between Indian and European prisoners in the matter of treatment and diet violates right to equality of the prisoners as laid down under Article 14. All of them are prisoners irrespective of their race or ethnic background.

Sanaboina Sathyanarayan v Govt. of A.P. is another case with the same issue of unequal treatment posed[[7]](#footnote-8). In Andhra Pradesh, a scheme was formulated for prevention of crimes committed against women. As a result, prisoners in prison too were divided into two-first category was prisoners charged with crimes against women and second category was prisoners who were not guilty of crimes committed against women. Prisoners who were guilty of crimes against women stated that their right to equality was violated. However, the court gave the reply that certain classifications may be made to achieve the intended objective. But these are definitely in consonance with the object to be met.

It is the same rationale as used in the above three cases that is to be used in the case of ADC v ECHS. No reasonable classification was established when there was a distinction made between ex-servicemen, based on their cadres, when the objective to be met was to provide medical services to the sick.

**IMPLEMENTATION OF OTHER WELFARE SCHEMES FORMULATED FOR EX-SERVICEMEN**

The Armed forces has initiated several welfare and rehabilitation schemes for its ex-servicepersons, apart from the ECH Scheme. They may be divided into two types, under the context of the present case- schemes that are specifically designed for a certain category of ex-servicemen and schemes which are equally applicable to all retired personnel. Examples of the former type may be Children Education Concession which is permitted only to the offspring of those ex-service personnel who is killed/disabled in operations/missing. An example of the latter could be Armed Forces Flag Day Fund (AFFDF), which is a financial assistance scheme allowed to all ex-servicepersons for treatment of certain serious/potentially fatal diseases, irrespective of the rank of the pensioner prior to retirement. ECHS is also a scheme which is in the nature of the second category. The only difference here is in its approach of implementation in reality, which is challenged in the High Court. At this point of the analysis, it becomes very clear of the discrimination that the members of the ECH scheme face

**WHITE CARD HOLDERS AND SENIOR CITIZENS**

White card holders are persons who are given a white card to distinguish themselves as persons who are war disabled or physically disabled. Such a person is given special status in terms of offering healthcare services because they are physically disadvantaged as compared to other ex-serviceman. Senior citizens according to the scheme in case of male are persons above the age of 75 and in case of females, persons above 70 years of age. Senior ex-servicepersons are also given special status because old age may cause difficulties as well as severity to the health issues that they face. In this regard, it is a positive discrimination, as giving preferential treatment to senior citizens and disabled persons help in achieving the noble object of providing comfortable health services to the less advantaged.

**REASONABLE CLASSIFICATION**

The Article 14 of the Constitution of India states the concept of reasonable classification. Reasonable classification means that intelligible differentia must be used to classify items of a certain group, into different categories, and such classification and further different treatment shall be based on such differentia made by keeping the object of such classification in view. In the present case, the petitioners contend that the special treatment given to officer ex-servicemen is unlawful because such classification is not consonant with the object of the scheme.

**RAWLS’ DIFFERENCE PRINCIPLE**

The 20th century American moral and political philosopher John Bordley Rawls propounded the Rawls’ Difference principle[[8]](#footnote-9). The principle states that equality also means treating different persons differently so as to undo the existing inequalities in society. Without that, the concept of equality would hold no good. It helps in lifting the materially disadvantaged persons from the current state of inequality, which would, however, continue to persist if strict equality were to be followed in all cases. In the present case, the ECHS provides for separate treatment of disabled persons a well as senior citizens who are in need of separate, special care owing to their physical and mental restraints. This is an apt application of Rawls’ difference principle. However, providing special treatment to a group of persons simply because they worked in a different cadre prior to retirement, does not qualify to be given preferential medical care services, as there is no inequality between an officer ex-serviceperson and an ex-serviceperson of a different rank. This principle is preceded by another principle known as the Greatest Equality Liberty Principle. It states that each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

**EGALITARIANISM THEORY**

The egalitarianism theory is a popular philosophical thought founded on the base that all human beings of the world are fundamentally and morally equal in nature. This infamous theory was hugely publicized by the works of philosopher Karl H. Marx and eminent economist John Locke FRS. It is a theory that seeks to confer to all the citizens of a country with exactly equal measure of all rights. In the given present case, egalitarianism may be applied with respect to the problem in question which is, whether officer ex-servicemen deserve distinguished healthcare treatment over ex-servicemen of other cadre. The simple solution is that they don’t, reasoning out with the aforementioned principles and reasons. However, this theory can be absolutely struck out in case of its application between senior or disabled citizens and the healthier populace, as here, there is no question of an equal space on an unequal ground. It can hence, be seen that a critical analysis of Rawls' Difference Principle and the theory of egalitarianism bring to light the required, befitting solution to the case in hand. Thus, it is understood that the judgment in this case is fair in its nature.

**CONCLUSION**

From the analysis made, it can be concluded that the Delhi High Court gave the right judgement in this case. The following reasons may be cited:-

1. The classification of officer ex-servicemen and ex-servicemen of other cadre was not reasonable in nature while keeping the object of the scheme in view.
2. The object of the scheme was to provide healthcare services to all of its ex-servicemen who are members of the scheme, and hence providing preferential treatment to a particular cadre is arbitrary.
3. The above mentioned reasons find its backing in Article 14 of the Constitution which is a fundamental right, and hence no infringement of the same is possible.

Thus, the judgement in this case is sufficiently proven to be perfectly right in nature.

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5. *D.S. Nakara v Union of India* [1983] AIR 130, 1983 SCR (2) 165

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2. Ex-servicemen Contributory Health Scheme 2018. [↑](#footnote-ref-3)
3. #### *Srinivasa Theatre v. State of Tamil Nadu* [1992] AIR 999

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4. # Adele Chapin, ‘Nasty Gal Accused of Illegally Firing Pregnant Employees’<<https://www.racked.com/2015/6/9/8751563/nasty-gal-lawsuit-pregnant-employees>>

   [↑](#footnote-ref-5)
5. *D.S. Nakara v Union of India* [1983] AIR 130, 1983 SCR (2) 165 [↑](#footnote-ref-6)
6. *Madhu Limaye v. Superintendent of Tihar Jail* [1975] AIR 1505 SCR(3)582 [↑](#footnote-ref-7)
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8. John Rawls, *A Theory of Justice*(1st edn, Belknap Press,1971) [↑](#footnote-ref-9)