



Constitutional interpretations for meritorious reserved candidate (MRC) in India: Emerging judicial trends

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Abstract

Articles 14 -18 provides about 'Right to Equality' under Part-III as one of the Fundamental Right. Now, question arises whether a candidate belonging to the Scheduled Caste or any other reserved category is entitled to be selected for selection for admissions and for public employment in the open competition or not. It is also well accepted that if such candidates belonging to reserved categories are entitled to be selected on the basis of their own merit, their selection cannot be counted against the quota reserved for the categories for vertical reservation that they belong. In the present research work, we are concerned with issue of admissions in different courses in educational institutions and the procedure to be followed in case of a Meritorious Reserved Candidate (MRC). We are also concerned with the same issue of MRC in public employment under the State. There are so many judicial decisions by the Supreme Court of India in this regard, such as; *Indra Sawhney v. Union of India* (1992), *Union of India v. Ramesh Ram & Ors* (2010), *Samata Aandolan Samiti v. Union of India* (2013), *Vikas Sankhala v. Vikas Kumar Agarwal* (2017), *Tripurari Sharan and Anr. v. Ranjit Kumar Yadav* (2018), *Pradeep Singh Dehal v. State of Himachal Pradesh & Ors.* (2019) and *Saurav Yadav & Ors. v. State of Uttar Pradesh & Ors.* (2020). Therefore, to meet out the requirements of the research work we have to discuss apprehensiveness of Dr. B.R. Ambedkar about repressive society, report of second Backward Classes Commission (Mandal Commission), Concept of Meritorious Reserved Candidate (MRC), Meritorious Reserved Candidate & Constitutional Provisions, MRC & certain Exceptions, some recent Judicial Interpretations on MRC and after that we have to conclude finally this research work.

Keywords: meritorious reserved candidate (MRC), public employment educational institutions, open or general category, reserved category, SC/ST/OBC, age relaxation, fee concession, constitutional provisions, & judicial interpretations etc

Introduction

Articles 14 -18 provides about '*Right to Equality*' under Part-III as one of the Fundamental Right. Article 14 enjoins upon the state not to deny to any person 'equality before the law' within the territory of India. Article 15 provides that the state shall not discriminate against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them. Article 16 provides about equality of opportunity in the matter of public employment and also declares that no citizen shall be discriminated in the said matter of public employment on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. Now, question arises whether a candidate belonging to the Scheduled Caste or any other reserved category is entitled to be selected for selection for admissions and for public employment in the open competition or not. There is well settled principle that candidates belonging to any of the vertical reservation categories are entitled to be selected in 'Open or General Category'. It is also well accepted that if such candidates belonging to reserved categories are entitled to be selected on the basis of their own merit, their selection cannot be counted against the quota reserved for the categories for vertical reservation that they belong. There are so many judicial decisions by the Supreme Court of India in this regard, such as; *Indra Sawhney v. Union of India* (1992,

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In the present research work, we are concerned with issue of admissions in different courses in educational institutions and the procedure to be followed in case of a Meritorious Reserved Candidate (MRC). We are also concerned with the same issue of MRC in public employment under the State. Therefore, to meet out the requirements of the research work we have to discuss apprehensiveness of Dr. B.R. Ambedkar about repressive society, report of second Backward Classes Commission (Mandal Commission), Concept of Meritorious Reserved Candidate (MRC), Meritorious Reserved Candidate & Constitutional Provisions, MRC & certain Exceptions, some recent Judicial Interpretations on MRC and after that we have to conclude finally this research work.

Apprehensiveness of DR. B.R. Ambedkar about repressive society

Babasaheb, Dr. B.R. Ambedkar, who had very shocking experiences with tyrannical elements in the society. Therefore, he said,

“A society in which some groups can do much what they please, while others can do little of what they ought, may have virtues of its own; but freedom is not one of them. In so far as the opportunity to lead a life worthy of human beings is restricted to a minority, what is commonly described as freedom would more properly be called privilege?”^[1]

Further, he said,

“The discriminations against the Untouchables are merely the reflections of that deep and strong Hindu sentiment which is carried over in law and administration which justifies the making of distinctions between Hindus and Untouchables to the disadvantage of the Untouchables. Those discriminations have their roots in fear of the Hindus that in a free field, the Untouchables may rise above the prescribed station in life and become a menace to the Hindu Social Order the cardinal principle of which is the maintenance of Hindu superiority and Hindu domination over the Untouchables. So long as the Hindu Social Order lasts, discriminations against the Untouchables continue to exist.”^[2]

Report of Second Backward Classes Commission (B.P. Mandal Commission)

On 1st January 1979, by an Order of the President of India under Article 340 of the Constitution of India a Backward Class Commission was appointed under the chairmanship of B. P. Mandal, Indian Parliamentarian of 4th Lok Sabha, which is popularly known as ‘Mandal Commission’. The Mandal Commission was appointed to investigate the conditions of socially and educationally backward classes within the territory of India. The report of the Commission was required to be submitted not later than 31st December, 1979, which date was later extended upto December 31, 1980. The observation of the commission in Chapter-VI was submitted such as:

“Chapter-VI deals with 'Social Justice, Merit and Privilege'. It attempts to establish, that merit in an elitist society is not something inherent but is the consequence of environmental privileges enjoyed by the members of higher castes. This is sought to be illustrated by giving an example of two boys - Lallu and Mohan. Lallu is a village boy belonging to a backward class occupying a low social position in the village caste hierarchy. He comes from a poor illiterate family and studies at a village school, where the level of instruction is woeful. On the other hand, Mohan comes from a fairly well-off middle class and educated family, attends one of the good public schools in the city, has assistance at home besides the means of acquiring knowledge through television, radio, magazines and so on. Even though both Lallu and Mohan possess the same level of intelligence, Lallu can never compete with Mohan in any open competition because of the several environmental disadvantages suffered by him.”^[3]

Concept of meritorious reserved candidate (MRC)

Regarding the Meritorious Reserved Candidate (MRC), the Supreme Court of India in *Indra Sawhney v. Union of India*,^[4] has observed,

“In this connection it is well to remember that the reservations under Article 16 (4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit;

they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.”^[5]

In the case of *Shri Ritesh R. Sah v. Dr. Y.L. Yamul*,^[6] the Supreme Court of India regarding Meritorious Reserved Candidate (MRC) observed,

“In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they will be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission to the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate. Right from the year 1996, the law is well settled that the provisions should be so made that they will not work out to the disadvantage of a MRC and he would not be placed at a more disadvantageous position than the less meritorious reserved category candidates. Aforementioned objective can be achieved if, after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category, the cases of less meritorious reserved category candidates are considered.”^[7]

The dictum laid down in *Ritesh R. Sah* was subsequently followed in *Samta Aandolan Samiti v. Union of India*,^[8] wherein the Court observed,

“No doubt, while doing so, the Court in *Ramesh Ram case* was of the opinion that such meritorious reserved candidates (MRCs) who avail the benefit of Rule 16 (2) of the Civil Services Examination Rules (which permitted such inter-se transfer) and are eventually adjustment in the reserved category, they should be counted part of reserved category for the purpose of computing aggregate reservation quota. However, it was categorically stated that this proposition applies when there is an appointment to a service under the State and categorically excluded the cases of admission in educational institutions. In so far as admission in educational institutions is concerned, such a (MRC) was to continue to be treated as belonging to general category, which position he attained because of his initial merit.”^[9]

On 7th May, 2010 as head of the Constitution Bench of five judges of the Supreme Court of India in *Union of India v. Ramesh Ram & Ors.*^[10] Chief Justice of India Justice K G. Balakrishnan observed,

“These Meritorious Reserved Candidates (MRCs) did not avail of any of the concessions and relaxations in the

eligibility criteria at any stage of the examination, and further they secured enough marks to place them above the general qualifying standard. MRC candidates are entitled to one of the two posts one depending on their performance in the General List and other depending on their position in the Reserved List. When MRC candidates are put in the General list on their own merit they do not automatically relinquish their reserved status.”^[11]

Meritorious Reserved Candidate & Constitutional Provisions

The Constitution of India provides about the equal opportunities to all and promotes the concept of merit in all respect. All persons in like circumstances must be treated equally. Equality is between equals is the basic purpose of the Constitution. The Constitution is for the entire country and all of its peoples and for all time to come. The Constitution of India provides that appointments to public services should be made purely on the basis of merit. The Constitution of India also makes some provisions for the promotion of persons of underprivileged classes to promote the concept of equality and merit. Article 10 of the Draft Constitution was supported by Dr. H. C. Mookherjee,^[12] by following words: “Before we start the general discussion, I would like to place a particular matter before the Honourable Members. The clause which has so long been under discussion affects particularly certain sections of our population which have in the past been treated very cruelly and although we are today prepared to make reparation for the evil deeds of our ancestors, still the old story continues, at least here and there, and capital is made out of it outside India. Every time we seek to place discussions in the international sphere on a high plane, it is at once thrown in our teeth that we have been treating certain sections of our brethren in a very unjustifiable way. I would therefore very much appreciate the permission of the House so that I might give full freedom of discussion on this particular matter to our brethren of the backward classes. Do I have that permission?”^[13]

Article 14

The basic concept of equality contained in Article 14 which provides, “Equality before law and endowed with 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.”

Article 15

Article 15 provides, “Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth and states that (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.”

Article 16

Article 16 provides, “Equality of opportunity in matters of public employment. (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.”

Meritorious reserved candidate (MRC) & certain exceptions

Meritorious Reserved Candidates (MRCs) who availed the benefits of age relaxation and the fee concession merely comes within the reserved zone only and they are not entitled for open merit. Certain judicial decisions in this regards provides as;

In *Deepa EV v. Union of India*,^[14] the considered facts of this case are:

“The appeal arises out of the judgment of the Kerala High Court whereby the Division Bench affirmed the order passed by the learned Single Judge. The appellant applied for the post of Laboratory Assistant Grade-II in Export Inspection Council of India functioning under the Ministry of Commerce and Industry, Government of India. The appellant belongs to Dheevera community which is one of the ‘Other Backward Class’ candidate. Since the appellant was aged 26 Years, she got age relaxation, as was granted to OBC category candidates. The appellant was one of the eleven candidates from OBC who were called for interview. The appellant secured 82 marks (in the list of candidates from OBC category). One Ms. Serena Joseph (OBC), who secured 93 marks was selected and appointed. Insofar as the general category is concerned, no candidate has secured the minimum cut off marks i.e. 70 marks. Stating that the appellant has to be accommodated in the general category, she filed a Writ Petition before the High Court, which was dismissed. Being aggrieved, the appellant challenged the same in Writ Appeal No.827 of 2015, which came to be dismissed, which is impugned in this appeal.”

In this case, the double bench^[15] of *the Supreme Court of India* considered the issue and held,

“Having regard to the observations in paragraphs 65 and 72, in our view, the principles laid down in *Jitendra Kumar Singh* cannot be applied to the case in hand. As rightly pointed out by the High Court that judgment in *Jitendra Kumar Singh* was based on the statutory interpretation of the U.P. Act, 1994 and Government order dated 25.3.1994 which provides for entirely a different scheme. Be it noted, in the instant case, the appellant has not challenged the constitutional validity of the proceedings dated 1.7.1998 read with Rule 9 of the Export Inspection Agency (Recruitment) Rules, 1980. On a perusal of the prayer made in the writ petition we find that the appellant has only sought for a declaration that Exhibit P5 (proceedings dated 1.7.1998) is not binding on the appellant. No argument was canvassed challenging the constitutional validity of the proceedings before the learned Single Judge or before the Division Bench of the High Court. Therefore, we do not find any merit in this appeal, which is, accordingly, dismissed.”^[16]

In *Government of NCT Delhi v. Pradeep Kumar* (2019)^[17] the considered facts of this case are:

“The respondents and few others had filed the O.A. No. 1047 of 2014 before the Central Administrative Tribunal (CAT) and the same was allowed on 20.08.2018. The resultant challenge by the appellants was dismissed under the impugned order of the High Court of Delhi in the Writ Petition (C) No. 557 of 2019, which has led to the present appeal. The matter pertains to the recruitment of Special Education Teachers under the Govt. of NCT of Delhi. Since respondents are not recognized as OBC in Delhi, they cannot claim eligibility qua the CTET criterion, with lower pass marks, in the CTET examination. The Respondents

could not also be considered under the unreserved category, as the same would be subject to minimum 60% marks for the general category in order to be CTET qualified. The High Court accordingly held that once the candidate had obtained the CTET qualification, the marks secured in the qualification examination is immaterial for consideration of their candidature, for the unreserved category vacancies. The appellants challenged the decision of the Delhi High Court with the contention that the respondent having secured the eligibility qualification under relaxed norms for the OBC Category are in-eligible to be considered against General Category vacancies.”

In this case, the full bench ^[18] of *the Supreme Court of India* considered the issue and held,

“The other distinguishing aspect in *Vikas Sankhala* is that the candidates who had applied under the reserved category belonged to Rajasthan. For the selection and aspirants from the same State i.e., Rajasthan, the Court allowed such candidates to migrate to the unreserved category. In the present case, however, the candidates (i.e. the respondents) belong to States other than Delhi. Being OBC (outsiders), they could have been considered only under the unreserved category if they secure at least 60% marks in the CTET. The respondents admittedly did not secure 60% and thus were ineligible. Moreover, an OBC candidate not certified in the State/Territory outside of Delhi cannot be eligible to avail of employment in reserved category posts earmarked for OBCs who are certified by the Delhi Government. It is important to keep in mind that the respondents are competing for general category vacancies. All others in this group have obtained their CTET eligibility qualification, securing the normal pass marks without availing any relaxation of pass norms. On the other hand, the respondents despite their lesser marks in the CTET examination could qualify only because they availed the relaxation benefits as OBC category examinees. Their eligibility qualification is secured under relaxed norms meant for OBC category and therefore we do not think it is proper to consider them to be eligible for the general category vacancies and contention to the contrary is unacceptable. The respondents with their CTET qualification under relaxed norms would be eligible for OBC category posts provided their OBC status is certified and recognized by the Delhi government. But such not being the case, they are ineligible for the reserved category vacancies. To allow them to migrate and compete for the open category vacancies would not be permissible simply because, they have secured the CTET qualification with relaxation of pass marks meant for those belonging to the OBC category. As the respondents have not secured the normal pass marks for general category, their eligibility for the general category vacancies is not secured. Therefore, their performance in the selection examination would be of no relevance, in the present process. As earlier discussed, this case concerns qualifications obtained with concession in pass marks. Such concession would have a direct impact on standards of competence and merit in the recruitment of Special Education Teachers. The principles of reservation under the Constitution of India are intended to be confined to a specifically earmarked category and the unreserved category must be protected, to avoid dilution of competence and merit. If *Vikas Sankhala* is interpreted shorn of its peculiar facts, as has been suggested by the respondent’s counsel, it would in our perception, considering that respondents secured the qualification under relaxed norms,

would lead to dilution of merit in the unreserved category. The arguments made to the contrary by the respondents are therefore rejected. In view of the forgoing, the High Court and the Tribunal erred in granting relief to the respondents. The impugned judgment of the High Court of Delhi is set aside and this appeal is allowed.” ^[19]

Meritorious Reserved Candidate (MRC) – Recent Judicial Trends

In *Shri V.V. Giri v. Dippala Suri Dora and Others*, ^[20] the Constitution Bench of the Supreme Court of India in the context of election law observed:

“In our opinion, the true position is that a member of a Scheduled Caste or Tribe does not forego his right to seek election to the general seat merely because he avails himself of the additional concession of the reserved seat by making the prescribed declaration for that purpose. The claim of eligibility for the reserved seat does not exclude the claim for the general seat; it is an additional claim; and both the claims have to be decided on the basis that there is one election from the double-member constituency. In this connection we may refer by way of analogy to the provisions made in some educational institutions and universities whereby in addition to the prizes and scholarships awarded on general competition amongst all the candidates, some prizes and scholarships are reserved for candidates belonging to backward communities. In such cases, though the backward candidates may try for the reserved prizes and scholarships, they are not precluded from claiming the general prizes and scholarships by competition with the rest of the candidates.” ^[21]

In *Union of India v. Virpal Singh Chauhan* ^[22] it has been held,

“That while determining the number of posts reserved for Scheduled Castes and Scheduled Tribes, the candidates belonging to reserved category but selected/promoted on the rule of merit (and not by virtue of rule of reservation) shall not be counted as reserved category candidates.”

In *R.K. Sabharwal v. State of Punjab* ^[23] the Supreme Court of India observed,

“When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular Backward Class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage

has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a Backward Class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the Backward Class. The fact that considerable number of members of a Backward Class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward Classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition.”^[24]

In *Rajesh Kumar Daria etc. v. Rajasthan Public Service Commission and others*^[25] the Supreme Court of India held, “That a candidate belonging to any of the vertical reservation categories, on the basis of his own merit, is entitled to be selected in the Open or General Category and in such eventuality his selection is not to be counted against the quota reserved for such vertical reservation category.”

In *Jitendra Kumar Singh & Anr. v. State of Uttar Pradesh & Ors.*,^[26] the Supreme Court of India has very categorically held,

“That relaxations given in educational qualifications etc. making a person eligible to participate in selection process would not be treated as availing benefits in the recruitment/employment and the benefits envisaged have to be those which have direct relation to recruitment/employment and are relatable to the jovial relationship of employer and employee. It is also clarified that such benefits must occur from and should be post 'level playing field'.”

In *Samata Aandolan Samiti v. Union of India*^[27] the Supreme Court of India held,

“The question in that case was whether a reserved category candidate who is entitled to be selected for admission in open competition on the basis of his/her own merit should be counted against the quota meant for the reserved category or should he be treated as a general candidate. The Court reached the conclusion that when a candidate is admitted to an educational institution on his own merit, then such admission is not to be counted against the quota reserved for Schedule Castes or any other reserved category. In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates

should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate.”^[28]

In *Vikas Sankhala v. Vikas Kumar Agarwal*^[29] the Supreme Court of India examined,

“Whether reserved category candidate who obtains more marks than the last general category candidate is to be treated as general category candidate. It was held that such reserved category candidate has to be treated as unreserved category candidate provided such candidate did not avail any other special concession. The Court held that migration from reserved category to general category shall be admissible to those reserved category candidates who secured more marks obtained by the last unreserved category candidates who are selected, subject to the condition that such reserved category candidates did not avail any other special concession. It is clarified that concession of passing marks in TET would not be treated as concession falling in the aforesaid category. It is stated at the cost of repetition that provision of giving 20% marks of TET score was applied to all candidates irrespective of the category to which he/she belongs and, therefore, no concession or relaxation or advantage or benefit was given in this behalf which could disturb the level playing field and tilt advantage in respect of reserved category candidate. On the contrary, the reserved category candidates who had secured less marks in TET examination are given lesser marks in the recruitment process on the application of the formula of allocating 20% marks of TET score.”^[30]

In *Tripurari Sharan and Anr. v. Ranjit Kumar Yadav*,^[31] the Supreme Court of India held,

“However, the issue before us is more nuanced whether Meritorious Reserved Candidate (MRC) can opt for a seat earmarked for reserved category? If answer is yes then since MRC exercises the option of admission to the seats in different colleges earmarked for reserved category candidates, should a less meritorious reserved category candidate who is affected by such process be given admission to the college left over by MRC consequently? This would be better understood by a simplified example. Let it be assumed that there are 100 seats available through one common entrance examination to PG courses in various medical colleges across the country. Out of these, 50 are general category seats and the remaining 50 are reserved category seats. X, a reserved category candidate, is assigned rank number 50 on account of his performance in the entrance examination. Thus he is just above the cut-off for reserved category candidates, and has got an open merit rank. Hence, X is a MRC; however, X being in general category is not willing to accept the seat available for general category at the time of his counseling. He wants admission in another college of his preference which is incidentally reserved for reserved category candidates, and a seat in the same is available in the reserved category. Consequently, X chooses a seat available in the college meant for reserved category candidate based on his merit among the reserved category candidates. As he does so, one seat in the general category list of 50 candidates remains

unoccupied. In that context, two questions arise for consideration: (i) Whether X MRC can opt for a seat earmarked for reserved category? (ii) If answer is yes; what happens to the 50th seat which was to be allotted to X MRC (i.e. 50th general merit candidate) had he opted for a seat meant for the reserved category to which he belongs?"^[32]

Further, the Court concluded,

"In light of the cases discussed hereinabove, both questions are answered as follows: (i) A MRC can opt for a seat earmarked for the reserved category, so as to not disadvantage him against less meritorious reserved category candidates. Such MRC shall be treated as part of the general category only. (ii) Due to the MRC's choice, one reserved category seat is occupied, and one seat among the choices available to general category candidates remains unoccupied. Consequently, one lesser-ranked reserved category candidate who had choices among the reserved category is affected as he does not get any choice anymore. To remedy the situation i.e. to provide the affected candidate a remedy, the 50th seat which would have been allotted to X MRC, had he not opted for a seat meant for the reserved category to which he belongs, shall now be filled up by that candidate in the reserved category list who stands to lose out by the choice of the MRC. This leaves the percentage of reservation at 50% undisturbed. We reiterate that, 50% reservation rule should not be breached under any circumstance."^[33]

The Supreme Court of India, in *Pradeep Singh Dehal v. State of Himachal Pradesh & Ors.*^[34] held,

"Every person is a general category candidate. The benefit of reservation is conferred to Scheduled Castes, Scheduled Tribes and OBC category candidates or such other category as is permissible under law. It is a consistent view of this Court starting from *Indra Sawhney & Ors. v. Union of India & Ors.*, 1992 Supp. (3) SCC 217 that if a reserved category candidate is in merit, he will occupy a general category seat. The concessions which were availed by the reserved category candidates are in the nature of age relaxation, lower qualifying marks, concessional application money than the general category candidates."^[35]

In *Saurav Yadav & Ors. v. State of Uttar Pradesh & Ors.*,^[36] Justice Uday Umesh Lalit on behalf of in the Supreme Court of India while delivering judgment opined,

"Finally, we must say that the steps indicated by the High Court of Gujarat in *Tamannaben Ashokbhai Desai v. Shital Amrutlal Nishar* (decided on 05.08.2020) contemplate the correct and appropriate procedure for considering and giving effect to both vertical and horizontal reservations. Even going by the present illustration, the first female candidate allocated in the vertical column for Scheduled Tribes may have secured higher position than the candidate at Serial No.64. In that event said candidate must be shifted from the category of Scheduled Tribes to Open / General Category causing a resultant vacancy in the vertical column of Scheduled Tribes. Such vacancy must then enure to the benefit of the candidate in the Waiting List for Scheduled Tribes Female. Having come to the conclusion that the Appellant No.1 and similarly situated candidates had secured more marks than the last candidates selected in 'Open/General Category', the logical consequence must be to annul said selection and direct the authorities to do the exercise de novo in the light of conclusions arrived at by us. However, considering the facts that those selected candidates have actually undergone training and are

presently in employment and that there are adequate number of vacancies available, we mould the relief and direct as: (a) All candidates coming from 'OBC Female Category' who had secured more marks than 274.8928, i.e. the marks secured by the last candidate appointed in 'General Category Female' must be offered employment as Constables in Uttar Pradesh Police. (b) Appropriate letters in that behalf shall be sent to the concerned candidates within four weeks. (c) If the concerned candidates exercise their option and accept the offer of employment, communications in that behalf shall be sent by the concerned candidates within two weeks. (d) On receipt of such acceptance, the codal and other formalities shall be completed within three weeks. (e) Letters of appointment shall thereafter be issued within a week and the concerned candidates shall be given appropriate postings. (f) For all purposes, including seniority, pay fixation and other issues, the employment of such candidates shall be reckoned from the date the appointment orders are issued. (g) The employment of General Category Females with cut off at 274.8928 as indicated by the State Government in its affidavits referred to in Paragraphs 5 and 8 hereinabove are not to be affected in any manner merely because of this judgment. Since it has been accepted that none of the candidates coming from 'SC Female Category' had secured more marks than 274.8298, the claims of the Applicant No.2 and all similarly situated candidates are rejected."^[37]

Justice S. Ravindra Bhat while delivering separate concurring judgment in *Saurav Yadav & Ors. v. State of Uttar Pradesh & Ors.*,^[38] accepted,

"That the open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him. He agreed that there is no rule which forbids the contemplation of women of reserved category in the open category. The Open Category is not a reservation or quota for the upper class; it is for all women and men alike."

Further, he opined,

"The features of vertical reservations are: (i) They cannot be filled by the open category, or categories of candidates other than those specified and have to be filled by candidates of the concerned social category only (SC/ST/OBC); (ii) Mobility ('migration') from the reserved (specified category) to the unreserved (open category) slot is possible, based on meritorious performance; (iii) In case of migration from reserved to open category, the vacancy in the reserved category should be filled by another person from the same specified category, lower in rank, (iv) If the vacancies cannot be filled by the specified categories due to shortfall of candidates, the vacancies are to be 'carried forward' or dealt with appropriately by rules. In view of these clear decisions, it is too late in the day for the respondent state to contend that women candidates who are entitled to benefit of social category reservations, cannot fill open category vacancies. The said view is starkly exposed as misconceived, because it would result in such women candidates with less merit (in the open category) are being selected, and those with more merit than such selected candidates, (in the social/vertical reservation category) being left out of selection. I would conclude by saying that reservations, both vertical and horizontal, are method of ensuring representation in public services. These are not to be seen as rigid 'slots', where a candidate's merit, which

otherwise entitles her to be shown in the open general category, is foreclosed, as the consequence would be, if the state's argument is accepted. Doing so, would result in a communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. The open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him." [39]

Conclusion and Suggestions

On Meritorious Reserved Candidate (MRC), the Law is very much clear that the Reserved Category Candidates are entitled to general seats on the basis of their merit. Actually, there is no law prescribing reservation for general category candidates in public employment and therefore there is no question of reserved category candidates being selected only against reserved seats. There was misreporting about *Deepa EV v. Union of India* (2017) a recent judgment of the Supreme Court of India in which it was claimed that the judgment states that candidates from the reserved category (SC/ST/OBC) cannot claim seats in the general category in any case. However, the actual judgment does not imply anything of this sort. The Supreme Court of India made it clear that with age relaxation and the fee concession, the reserved candidates are merely brought within the reserved zone of consideration otherwise they can participate in the open competition on the basis of their merit. Moreover, the law on this point whether reserved category candidates can claim seats in the general category on the basis of merit is very much clear. In *Indra Sawhney v. Union of India* (1992) popularly known as the Mandal case, the Constitution Bench of the Supreme Court of India clearly held that some members belonging to the Scheduled Castes get selected in the open competition field on the basis of their own merit. They will not be counted against the quota reserved for the Scheduled Castes; they will be treated as open competition candidates. After that in *Union of India v. Ramesh Ram & Ors* (2010), *Samata Aandolan Samiti v. Union of India* (2013), *Vikas Sankhala v. Vikas Kumar Agarwal* (2017), *Tripurari Sharan and Anr. v. Ranjit Kumar Yadav* (2018), *Pradeep Singh Dehal v. State of Himachal Pradesh & Ors.* (2019) and *Saurav Yadav & Ors. v. State of Uttar Pradesh & Ors.* (2020) are numerous judgments in which Hon'ble Supreme Court of India clearly decided that such Meritorious Reserved Candidate (MRC) be counted in the list of the general category only and will be treated as open/unreserved category candidates. Provided that such candidate did not avail any other special concessions and relaxations in the eligibility criteria in the nature of age relaxation, lower qualifying marks, concessional application money than the general category candidates

Even after numerous judgments the Supreme Court of India, some tyrannical officials throughout the country are not able to digest the egalitarian provisions of the Constitution of India as interpreted by the Apex Court of the country. They are always in search of erroneous means to derail the provisions of the Law of the Land and trying to prevent such Meritorious Reserved Candidate (MRC) to get the benefit on the basis of their merit. All such tyrannical officials should be ready to abide by the Constitution of India as interpreted by the Apex Court of the country and they should not create the hurdles in the way of the development of the country.

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37. Para 36-38, Ibid.
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