

104 Constitutional Amendment Act

[UPSC Notes]

What is the 104th Constitutional Amendment Act?

The Scheduled Castes (SC) and Scheduled Tribes (ST) have seats reserved in the Indian Parliament, state assemblies, and urban and rural-level organizations. The Indian Constitution established this system in 1950, with the intention of keeping it in place for the first ten years in order to secure political participation by groups that were considered weak, marginalized, under-represented, and in need of special protection.

- As per Article 334 of the Indian Constitution, Anglo-Indians, the Scheduled Castes and Scheduled Tribes have been provided with reservations since 1950.
- Various amendments have been made to the Constitution to extend this reservation every 10 years. The last extension in 2010 was to expire on 26th January 2020 and was extended by the 104th Constitutional Amendment Act for a period of 10 years (till 2030).
- Through the 104th Constitutional Amendment Act, the practice of nominating two members of the Anglo-Indian community by the President of India was abolished and the reservations for SCs and STs in the Lok Sabha and State Legislative Assemblies were extended for up to ten years.

The 104th Constitutional Amendment Act is an important topic for the UPSC Exam. Candidates preparing for the UPSC IAS Exam must be well aware of the 104 Amendment of Indian Constitution, its background, need, and the recent updates regarding the 104th Constitutional Amendment Act along with the criticism.

The article will briefly, also cover the reservation system in India, the Reservation of seats in the Parliament, and the subsequent amendments to the Constitution of India regarding the Reservation of seats in the Parliament.

104 Amendment Act for Reservations of Seats in the Parliament

The SCs and STs have seats reserved in the Indian Parliament, state assemblies, and urban and rural-level organizations.

- Article 15(4) and Article 16(4) of the Indian Constitution allows the federal government and state governments to reserve seats in government services for members of the SC and ST communities.
- Article 334 of the Indian Constitution provided exclusively for quota in legislatures to the Anglo-Indians and the SCs and STs.

- According to Article 330 of the Constitution of India and Section 3 of the Representation of the People Act of 1951, seats for Scheduled Castes and Scheduled Tribes in the Lok Sabha are allocated based on the proportion of their population in the State.

In India, the Anglo-Indian group was the only one to have representatives in the Lok Sabha of the Indian Parliament. The idea for the reservation of Anglo-Indians can be accredited to Frank Anthony, who was the president of the All-India Anglo-Indian Association. Article 331 and Article 333 of the Indian Constitution allowed for the nomination of two Anglo-Indians to the Lok Sabha and State Legislature respectively, but that was done away with the 104th Constitutional Amendment Act.

Who are Anglo-Indians?

The term Anglo-Indian first appeared in the Government of India Act, 1935. The roots of the Anglo-Indian community in India can be traced back to the British East India Company's policy of encouraging marriages between its officers and local women. Article 366(2) of the Constitution defines who is an Anglo-Indian and states that - 'An Anglo-Indian is a person whose father or any of whose other male progenitors in the male line is or was of European descent, but who is or was born within the territory of India of parents who are usually resident there and are not there for temporary purposes only.'

According to the 2011 Census, 296 people have declared themselves as Anglo-Indians.

What led to the 104th Constitutional Amendment Act?

Previous Constitutional Amendments that led to 104th Amendment of Indian Constitution are as follows. Under Article 334 of the Indian Constitution, the Anglo-Indian community and the Scheduled Castes and Scheduled Tribes were granted reservations. The reservation was meant to end 20 years after the Indian Constitution's inception but was repeatedly extended by constitutional amendments over the years.

The Eighth Amendment, 1959

This amendment changed Article 334 of the Indian Constitution. Officially known as The Constitution (Eighth Amendment) Act, 1959, the Act extended the period of reservation of seats for Scheduled Castes and Scheduled Tribes, as well as the representation of Anglo-Indians in the Lok Sabha and State Legislative Assemblies, for ten years, from 26 January 1960 to 26 January 1970.

The Twenty-Third Amendment, 1969

It again amended Article 334 of the Indian Constitution. Two basic amendments that were brought under this Constitutional Amendment were:

- The 23rd Amendment extended the reservation of seats for Scheduled Castes and Scheduled Tribes, as well as Anglo-Indian representation in the Lok Sabha and State Legislative Assemblies, for another ten years, until January 26, 1980.
- It ended the reservation of seats for Scheduled Tribes in Nagaland's Lok Sabha and State Legislative Assembly and mandated that the Governor could not designate more than one Anglo-Indian to any State Legislative Assembly.

The Forty-Fifth Amendment, 1980

The amendment amended Article 334 of the Indian Constitution, and extended the reservation for Scheduled Castes and Scheduled Tribes, as well as Anglo-Indian for another ten years, up to 26 January 1990.

The Sixty-Second Amendment, 1989

The amendment amended Article 334 of the Indian Constitution, and extended the reservation for Scheduled Castes and Scheduled Tribes, as well as Anglo-Indian for another ten years, up to 26 January 2000.

The Seventy-Ninth Amendment, 1999

The amendment amended Article 334 of the Indian Constitution, and extended the reservation for Scheduled Castes and Scheduled Tribes, as well as Anglo-Indian for another ten years, up to 26 January 2010.

The Ninety-Fifth Amendment, 2009

This amendment extended the reservation for Scheduled Castes and Scheduled Tribes, as well as Anglo-Indian for another ten years, up to 26 January 2020 by amending Article 334 of the Indian Constitution.

The One Hundred and Fourth Amendment, 2019

The One Hundred and Fourth Amendment extended by ten years the deadline for the cessation of reservation of seats in the Lok Sabha and state legislative assemblies for members of Scheduled Castes and Scheduled Tribes till 25th January 2030. The 104th Constitutional Amendment Act ceased the reservation of the members of the Anglo-Indian community to the Lok Sabha and State Legislative assemblies.

The 104th Constitutional Amendment Act came into effect on January 25, 2020.

Need for the 104th Constitutional Amendment Act

The 104th Constitutional Amendment Act was introduced to the Lok Sabha by Ravi Shankar Prasad, Minister of Law and Justice. The need for the 104th Constitutional Amendment Act was observed that even after 70 years of reservation, the socially backward sections continue to be at a disadvantage. The amendment was sought in order to maintain the Constitution's inclusive character as envisioned by the founding fathers.

Criticism of the 104th Constitutional Amendment Act

One of the main criticisms that the 104 Amendment of the Indian Constitution faced was regarding the reservation. It was argued that why the reservations for Anglo-Indians were not extended as it was done for the Scheduled Castes and Scheduled Tribes.

- The statement of object and reason for the 104th Constitutional Amendment, 2019, justifies the extension of the SCs and STs reservation but does not explain why the Anglo-Indian reservation was not extended.
- In the case of Anglo-Indians, the parliamentarians took the numerical numbers from the 2011 Census, rather than taking into account the Ministry of Minority Affairs Report, 2013 on the Anglo-Indian Community. Whereas, for the SCs and STs, the objective of the founding fathers of the Constitution was considered by parliamentarians.

The Anglo-Indian community is facing a tough time as their very existence is being called into question through this Amendment Act. The repeal of the Anglo-Indian representation through the 104th Constitutional Amendment Act without consideration in the community and without any explanation being given in the Statement of Object and Reason is a concept that obliterates the community and thus silences the voices of a minority.