



- Attorney General of India is the highest law officer of the country & also the chief legal advisor to the government of India.
- The post of Attorney General of India is provided under the constitution and hence is a constitutional post.
- The Attorney General of India is appointed by the President of India on the advice of the Union Cabinet of ministers.
- To be appointed as the AGI, a person must be qualified to be a Supreme Court judge, i.e. they must either be a judge of a High Court for five years or an advocate in a High Court for 10 years or an eminent jurist in the President's opinion.
- Being the highest law officer of the country, it is the duty of the attorney general to advise the government on legal matters that are referred to her by the president.
- She is also duty-bound to undertake any responsibilities of duties of legal character that are assigned to her by the president.
- She is also bound to perform any other functions conferred upon her by the constitution.
- Among the duties conferred upon her by the president are, to appear on behalf of the central govt in Supreme Court, to represent the central govt in any reference made to the Supreme Court under art 143 by the president, & to appear in any High Court for a case where the Government of India is concerned.
- The AGI enjoys the right of audience in any court of the country when concerned with her duties.
- She further enjoys all the immunities and special privileges available to an MP.
- She has the right to participate in the proceedings of both the houses without the right to vote & can be designated as a member.
- Art 76
- The term of the office is not fixed by the constitution as well as the procedure of removal is not mentioned
- She holds office during the pleasure of the President
- Conventionally resigns when the council of ministers resigns or replaced, as AG is appointed on its advice
- Receives remuneration determined by President
- AG performs the functions conferred on her by the constitution or any other law
- Represents GOI in any reference made by the president to the SC under art 143
- She has the right to speak & take part in the proceedings of both the houses of Parliament or

the joint sitting & any committee of the Parliament of which he may be named a member, but without a right to vote

- She should not advise or hold a brief against GOI
- She should not advise or hold the brief in cases in which she is called upon to advise or to appear for GOI
- She should not defend accused persons in criminal prosecutions without the permission of GOI
- She should not accept the appointment as a director in any company or corporation without the permission of GOI
- AG is not the full time counsel for the govt – does not fall in the category of govt servants – not debarred from private legal practice
- Unlike USA, the AGI does not have executive authority & is not a govt minister; those functions are performed by the law minister
- The AG is assisted by the Solicitor General of India or by several additional Solicitor General
- Art 76 does not mention about the solicitor general & additional solicitor generals
- Solicitor General is the second law officer of the country who assists AG in fulfilling his duties
- First woman lawyer & first woman attorney general of India is Cornelia Sorabji.
- In Britain, whose system we follow, the attorney-general is a full-blown member of the Cabinet – There is no 'law minister' in Westminster.
- It has become a tradition that the Attorney General resigns when a new government is formed.
- The Attorney General is selected by the Government and acts as its advocate, and hence is not a neutral person
- Like the Attorney General of the United States, the Attorney General for India have executive authority. Those functions are performed by the Law Minister of India.
- Also the AG is not a government servant and is not debarred from private legal practice.
- The Attorney General can accept briefs but cannot appear against the Government.
- She cannot defend an accused in the criminal proceedings & accept the directorship of a company without the permission of the Government.

CONTEMPT PROCEEDINGS & AGI

- According to the Contempt of Courts Act, 1971, Section 15 of the legislation describes the procedure on how a case for contempt of court can be initiated.
- In the case of the Supreme Court, the Attorney General or the Solicitor General, & in the case of

High Courts, the Advocate General, may bring in a motion before the court for initiating a case of criminal contempt.

- However, if the motion is brought by any other person, the consent in writing of the Attorney General or the Advocate General is required.
- The objective behind requiring the consent of the Attorney General before taking cognizance of a complaint is to save the time of the court.
- Judicial time is squandered if frivolous petitions are made and the court is the first forum for bringing them in.
- The AG's consent is meant to be a safeguard against frivolous petitions, as it is deemed that the AG, as an officer of the court, will independently ascertain whether the complaint is indeed valid.
- The AG's consent is mandatory when a private citizen wants to initiate a case of contempt of court against a person.
- Before such a plea can be filed, the Attorney General must sign off on the complaint, determining if it requires the attention of the court at all.
- When the court itself initiates a contempt of court case, the AG's consent is not required.
- This is because the court is exercising its inherent powers under the Constitution to punish for contempt & such Constitutional powers cannot be restricted because the AG declined to grant consent.
- The three-judge Bench of SC said that "As far as the suo motu petitions are concerned, there is no requirement for taking consent of anybody, including the Attorney General because the Court is exercising its inherent powers to issue a notice for contempt."
- According to SC, "Once the Court takes cognizance, the matter is purely between the Court & the contemnor. The only requirement is that the procedure followed is required to be just & fair & in accordance with the principles of natural justice,"
- If AGI turns down the consent to move on the contempt case, The complainant can, separately bring the issue to the notice of the court & urge the court to take suo motu cognizance.
- Article 129 gives Supreme Court the power to initiate contempt cases on its own, independent of the motion brought before it by the AG or with the consent of the AG.
- According to article 129, "The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself,"
- The Constitution does not provide for Attorney General of India. It provides for Attorney General for India.
- This would seem to indicate that the AG's client is not the government but rather the people of India.

PEOPLE'S ATTORNEY

- In our system, the AG is supposed to discharge the high constitutional office independent of the political executive that appoints him.
- During the Constituent Assembly debates, K T Shah had moved an amendment to draft Article 63 (that became Article 76) proposing that the salary of the AG be determined by law.
- Perhaps Shah's amendment was motivated by the experience of the first US Attorney General, Edmund Randolph.
- Randolph had to sustain a private practice even after being appointed as the AG. He had no clerk, no files, no furniture, and no office space, & was especially unhappy about the low pay.
- The AG is "Attorney General for India", not attorney general for the government of India. In that, the AG is special for she acts "for India" & not the government.
- The fact that constitutionally the AG has to be as good as a Supreme Court judge clearly demonstrates the framers intent.
- The AG ought to be a pivotal institution that helps the government act in accordance with the rule of law.
- In our system, the AG is obliged to speak truth to power and help the government to adhere to the Constitution.
- The Attorney General for India represents the people of India.
- In the 1978 landmark ruling in Maneka Gandhi v Union of India AGI despite appearing for the government, defended the petitioner's right to be heard - The court in this case held that due process is substantive and not merely procedural when it comes to personal liberty .
- In the 1994 SR Bommai v Union of India case, AGI argued that the proclamation of President's rule is subject to judicial review.
- During making of constitution, a member moved an amendment which would require the Attorney-General to resign upon the resignation of the Prime Minister.
- He argued that the Constitution mandated the Advocate-General in the states to resign upon the Chief Minister's resignation. Hence, a similar provision needed to be made for the Attorney-General.
- He argued that the Attorney-General & the Advocate-General must have the same footing in the Constitution. Moreover, England had a similar precedent.
- There was another proposal which would make the remuneration of the Attorney-General subject to the law made by the Parliament, instead of the President. This would ensure a consistent salary that would not be subject to the discretion of the President.

- Art 88[iii] enables the AGI to participate in legislative proceedings & the proceedings of any parliamentary committee to which he may be appointed, with the exception that Attorney Generals do not have the power to vote.
- According to SC , in "P.N. Duda versus V. P. Shiv Shankar & Others on 15 April 1988. An Attorney General is a "friend, philosopher, and guide of the court,"
- However, in B.P. Singhal vs Union of India on 7 May 2010, the Supreme Court stated that there is undoubtedly an element of lawyer-client relationship between the Attorney General and the Union Government.
- The Attorney General's office is exempt from the Right to Information Act.
- Rule 8 of the Law Officer (Conditions of Service) Rules, 1987[vi] bars law officers from representing any party other than the Central Government or the State Government or any University, Government School or College, local authority, Public Service Commission, Port Trust, Port Commissioners, Government aided or Government managed hospitals, a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956), any Corporation owned or controlled by the State, and anybody or institution in which the Government has a preponderating interest.
- It also bars them from advising any party against the government of India so if there is litigation involving the govt, they cannot advise the other party in that case.
- Rule 8 bars them from defending an accused person in a criminal prosecution or accepting any appointment to any office in any company or corporation or even advising any ministry without the reference of the law ministry.
- Rule 10 of the Law Officer (Conditions of Service) Rules, 1987 allows the Central Government to relax these provisions if it thinks it is necessary to do so.
- Only exceptional condition here being that Rule 8 cannot be relaxed for a matter where the Government of India or any Central Government institution is likely to be affected.
- But there was an office memorandum[vii] issued in 2011, 2012, and 2014 claiming that law officers which include the Attorney General as well, have been requesting permissions to appear in private matters in a routine manner
- They also said that sometimes the number of requests are so large that it tends to take away a sizable amount of time of the law officer in private matters and their prime attention in government matters suffer.

SOME CONTROVERSIES

- In 2017, then Additional Solicitor General, was granted Government permission to represent a

cabinet minister's son when he had filed a criminal defamation case against a news website.

- The Constitution does not specify the tenure for the post of Attorney General so the first Attorney General for India, M.C. Setalvad held the post for 13 years.
- But the Law Officer (Conditions of Service) Rules, 1987 do say that a law officer shall hold the office for a term of three years, & they can be reappointed after this initial three-year period for another term for a maximum of another three years.

RTI PURVIEW

- According to RTI Act , Advisory functions also come under RTI
- According to the Section 2(f) of the RTI Act , "information" includes opinions & advice of a public authority.
- Section 2(h) of the RTI Act describes a public authority as any authority formed under the constitution, and the constitution's Article 88 creates the office of the Attorney General.
- The words "opinions" and "advice" signify that if any public authority advises or gives opinions, it will be treated as information that warrants public disclosure
- The definition of public authority cannot be interpreted to exclude bodies that are performing essentially advisory functions.
- The RTI Act overrides other laws
- The RTI Act contains a provision — Section 22 — that states that it should prevail over all other laws regarding disclosure (or otherwise) of information to the public, including even the Official Secrets Act. So, even if disclosure of information is prohibited by any other law, such prohibition would be invalid if the RTI Act does not provide for this.
- In the Jayantilal Mistry case of 2015, the Supreme Court upheld the constitutional validity of Section 22.
- The framers did not choose 'for' to describe the office of the Chief Justice of India (Article 124) or the Comptroller and Auditor-General of India (Article 148) makes it clear that they envisaged a different role for the AGI.
- Although the President appoints the CJI and the CAG, both have to take an oath or affirmation, according to the form set out for the purpose in the Third Schedule. The AGI, on the contrary, does not have to take an oath or affirmation, before starting his duties after his appointment.
- Naziruddin Ahmad Constitution (under Draft Article 145) mandated the Advocate General in the states to resign upon the chief minister's resignation. Hence, a similar provision needed to be made for the Attorney General, he suggested. He argued that the Attorney General and the

Advocate-General must have the same footing in the Constitution.

- K.M. Munshi, pointed out that the position of the Advocate General is entirely different from that of the Attorney General. In his own province, being the Advocate General, he has audience before all the courts in the province; but as regards other provinces, he has no *locus standi* as Advocate General, and therefore, will be governed by the provisions of the Legal Practitioners' Act.
- As Justice Vibhu Bakhru of the Delhi high court in R.K.Jain v. Office of the Attorney General for India in 2015 noted: "...The role of the AGI is not limited to merely acting as a lawyer for the Government as is contended by the respondent; the AGI is a constitutional functionary & is also obliged to discharge the functions under the Constitution .

Merely because the bulk of the duties of the AGI are advisory, the same would not render the office of the AGI any less authoritative than other constitutional functionaries."

- In Israel & Canada AG's office is very powerful
- In the United States, the role of the Attorney General, which flows from his oath, is to uphold the rule of law, and to represent the best interests of the United States & to pursue justice.
- The AG in the United States is seen as the chief attorney for the country, not the attorney for the office of the presidency or for any particular president.
- The position of the Solicitor General and Additional Solicitors General is not recognised in the Constitution. However they are governed through rules enacted by the Parliament.



New Vision IAS Academy
....wings to aspirations