

Attorney General of India, UPSC Notes

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What is the importance of the office of the Attorney General of India?

Under **Article 76**, The Constitution of India has provided for the office of the Attorney General (AG) for India.

- He is the **highest law officer** in the country.
- As a **chief legal advisor** to the government of India, he advises the union government on all legal matters.
- He is also the **primary lawyer** representing the Union Government in the Supreme Court and High Court of India.

What are the major provisions regarding the appointment, term, and removal of the Attorney General of India?

Article	Description
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Article 76	• The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney General for India. • It shall be the duty of the Attorney General to give advice to the Government of India upon such legal matters. • In the performance of his duties the Attorney General shall have right of audience in all courts in the territory of India. • The Attorney General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine Conduct of Government Business.
Article 88	Right to speak and to take part in the proceedings of either House, any joint sitting of the Houses, and any committee of Parliament
Article 105	Powers, privileges and immunities of Attorney General

Table: Constitutional provisions related to AG

- **Removal:** Further, the Constitution **does not contain the procedure** and grounds for his removal. He holds office at the pleasure of the President.

What are the duties and functions performed by the Attorney General(AG)?

As chief law officer of the Government of India, the duties of AG include the following:

- To give **advice to the Government of India** upon such legal matters which are referred to him by the President.
- To perform such other **duties of a legal character** that are assigned to him by the President.
- To discharge the **functions conferred on him by the Constitution** or any other law.

The president has assigned the following duties to the AG:

- **To appear on behalf of the Government of India** in all cases in the Supreme Court in which the Government of India is concerned.
- To represent the Government of India in any reference made by the President to the Supreme Court under **Article 143** of the Constitution.
- **To appear (when required by the Government of India) in any High Court** in any case in which the Government of India is concerned.

What are the different rights and limitations of the Attorney General of India?

Rights

- In performing his official duties, the Attorney General has the **right to audience in all courts** in the territory of India.
- Further, he has the **right to speak and to take part in the proceedings of both the Houses of Parliament** or their joint sitting and any committee of the Parliament of which he may be named a member, but without a right to vote.
- He enjoys all the **privileges and immunities** that are available to a member of Parliament.

Limitations

Following limitations are placed on the Attorney General in order to avoid any complication and conflict of duty-

- He should **not advise or hold a brief against the Government** of India.
- He should not advise or hold a brief in cases in which he is called upon to advise or appear for the Government of India.
- He should not **defend accused persons in criminal prosecutions without the permission** of the Government of India.
- He should **not accept an appointment as a director** in any company or corporation without the permission of the Government of India.
- He should **not advise any ministry or department of the Government of India** or any statutory organization or any public sector undertaking unless the proposal or a reference in this regard is received through the Ministry of Law and Justice, Department of Legal Affairs.

What are the issues pertaining to the office of AG in India?

Some of the issues pertaining to the office of AG include

- **Consent for criminal contempt cases:** The precondition of the consent of AG for criminal proceedings under the Contempt of Courts Act, 1971 may be misused by the party in power.
- **Removal:** The removal procedure is not mentioned in the constitution. The President can remove him/her anytime, affecting the independence of the office.
- **Pleasure doctrine:** He/She holds the office under the pleasure of the President. Hence, the term of the office of AG is not fixed.
- **No bar on private practice:** The AG is not debarred from private legal practice. He doesn't fall into the category of a government servant. Thus, It may raise the issue of conflict of interest.

Solicitor General of India

The Solicitor General of India is the **second-highest legal officer** in the country, serving under the Attorney General, who holds the highest position.

- Apart from the Attorney General, the Indian Government has other legal officers, including the Solicitor General and Additional Solicitor General, who **support the Attorney General** in carrying out his duties. However, only the Attorney General's office is established by the Constitution, as **Article 76 does not mention the Solicitor General or Additional Solicitor General.**

- The office and responsibilities of the Solicitor General and Additional Solicitor Generals are regulated by the **Law Officers (Conditions of Service) Rules, 1987**, rather than the Constitution, making them statutory positions rather than constitutional ones.
- The Solicitor General provides **legal advice to the government** and is appointed for a three-year term by the Prime Minister-chaired Appointment Committee of the Cabinet.
- The Attorney General has the right to participate in parliamentary proceedings but cannot cast a vote. The Solicitor General and Additional Solicitor Generals, however, **do not have the right to participate in parliamentary proceedings.**

Advocate General

The constitution has provided for the office of Advocate General for the states. He is the **highest law officer in a state**. Thus the office of the Advocate General at the state level corresponds to the Attorney General of India at the Union level.

- **Constitutional Provision:** Under **Article 165** of the Indian constitution, The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate General for the States.
- The Advocate General shall hold office during the **pleasure of the Governor** and shall receive such remuneration as the Governor may determine Conduct of Government Business
- **The duties, rights, privileges, functions, and responsibilities** of an Advocate General are very much similar to the Attorney General of India. But the only difference is that it is confined to the respective state only.

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