

Attorney General of India - Role and Importance

Mains: GS II - Constitutional bodies

Why in News?

Recently, the Attorney General of India (AGI) Calls for 'National Mediation Movement', Says India Should Lead the World in Collaborative Justice.

What is the process of appointment of AGI?

- **Appointment** - Article 76 of the Constitution mandates the President to appoint the AGI, who is qualified to be a judge of the Supreme Court of India.
- **Other qualifications** - Accordingly, the AGI must be an Indian citizen and must have:
 - Served as a judge of a High Court for at least five years, or
 - An advocate of a High Court for at least 10 years, or
 - An eminent jurist as in the opinion of the President.
- This requirement of the highest judicial qualifications underscores the importance of the office.
- **Retirement** - It is important to note that while Supreme Court judges retire at the age of 65, there is no prescribed age of retirement for the AGI.
- **Tenure** - The AGI, who is appointed by the President on the advice of the Union Cabinet, holds office during the pleasure of the President (no fixed tenure), who also determines his/her remuneration.

How the Constitution places AGI in a unique position?

- **Establishment of the office** - The post of the AGI was established by the Constitution of India and came into force with its adoption in 1950.
- This ensured that the newly formed government has access to expert legal counsel.
- In doing so, the Constitution places the AGI in a unique position that enables interaction with all three organs of the state - Executive, Legislature, and Judiciary.
- **Rights in the parliament** - Under Article 88, the AGI has the right to speak and take part in the proceedings of both Houses of Parliament, their joint sittings, and any parliamentary committee of which he/she may be a member, but without the right to vote.
- **Privileges** - The Constitution also grants the AGI all the privileges and immunities available to a Member of Parliament (MP), under Article 105.
- The AGI is assisted by the Solicitor General and Additional Solicitors General in all functions, although only the office of AGI is constitutionally created.
- **Powers w.r.t to contempt proceedings** - The AGI and the Solicitor General have

also been granted the power to grant or deny consent for contempt of court proceedings against individuals who make controversial remarks against sitting judges.

- While the courts may initiate Contempt of Court proceedings *suo motu* without the AGI's consent, a private person can only initiate contempt proceedings with the written consent of the AGI.
- Thus, the AGI functions as a gatekeeper against frivolous contempt actions, balancing judicial dignity with the right to free speech and fair criticism.
- Alternatively, the AGI office can directly move the court to initiate proceedings in certain public interest cases.
- **Right of audience** - Under Article 76(3), the AGI enjoys the right of audience in all courts, including the Supreme Court and High Courts, in the performance of his duties.
- This means that no court can refuse to hear the Attorney General when he/she seeks to make an official submission, effectively ensuring that the government's legal position can always be represented or clarified in all courts.
- Notably, this provision is borrowed from the British convention, where the Attorney General for England and Wales has a right of audience in all courts.

AGI is often referred to as the 'Chief Legal Advisor' and the 'First Law Officer'.

What are the important roles and functions of AGI?

- **Advisory role** - In the advisory capacity, the AGI provides legal advice to the government on matters referred or assigned to him by the President.
- **Representative role** - The AGI also represents the government in all cases in the Supreme Court, and in High Courts when required.
- The AGI also presents the government's views to the Supreme Court in any reference made by the President under Article 143 (President's power to consult the Supreme Court).
- As the top legal representative of the government, the AGI serves as the government's voice before the Supreme Court.
- **Protecting the constitutional integrity** - The office ensures that executive actions conform to the Constitution and the law, thereby protecting the constitutional integrity of the ruling dispensation.
- **Acts as a connecting line** - Participating in Parliamentary debates, the AGI acts as a bridge between the executive and the legislature and provides expert legal insights.

How the Constitution ensures AGI's impartiality?

- **Restriction on advice** - The AGI is not permitted to:
 - Advise or hold a brief against the Government of India.
 - Advise or represent any party in a case in which he or she is called upon to advise or appear for the Government of India.
- The AGI cannot defend accused persons in criminal prosecutions without the

permission of the Government of India.

- **Barred appointments** – The AGI is also barred from accepting appointment as a director in any company without prior permission from the Government of India.
- **Can take up private practice** – However, it is important to remember that the AGI is not a full-time government servant and therefore can engage in private legal practice, subject to these restrictions.
- **Not a member of cabinet** – The AGI is not a member of the Union Cabinet, and the political and executive aspects of legal affairs are handled by the Minister of Law and Justice, not by the AGI.
- This institutional arrangement is meant to safeguard the AGI's impartiality.

What are the challenges for the AGI?

- **Striking the balance** – One of the most significant challenges for the AGI is to strike the right balance between loyalty to the executive and the duty to uphold the Constitution and the rule of law.
- **Convention** – Although the AGI is appointed by the President, there is an ongoing convention that the AGI resigns when the Council of Ministers resigns or a new government assumes office.
- **Lack of a fixed tenure** – It is often cited as a potential threat to the independence of the AGI, as it may, at times, leave him/her vulnerable to executive influence.
- However, the recent practice of stating a fixed term at the time of appointment – for example R Venkataramani's initial three-year term (2022-2025), extended by two years – has been viewed as a progressive step.
 - Despite these limitations and challenges, the AGI plays a key role in the functioning of the Indian Republic.
- AGI stands at the intersection of executive policy and judicial review, not just as the Union Government's lawyer, but also as the keeper of the Constitutional conscience of the government and the chief defender of the rule of law in the apex court.

Reference

[The Indian Express| Attorney General of India](#)