

**POLITY**

❖ **A-G, the constitutional post**

❖ **CONTEXT:** Senior Advocate Mukul Rohatgi has declined the government's offer to be Attorney General (A-G) for India after "second thoughts". Rohatgi, who had earlier agreed to take up the position. The term of the incumbent A-G, K K Venugopal, ends on September 30 2022. He is 91 years old, and on his third extension. Venugopal has conveyed to the government that in view of his advanced age, he would not be able to continue after the end of his current term. Venugopal was appointed the 15th AG of India in 2017. He succeeded Mukul Rohatgi who was AG from 2014-2017. R Venkataramani, assumed the office as the 16th Attorney-General on 1 October 2022.

❖ **Who is the Attorney General for India?**

• The Constitution of India places the post of the A-G on a special footing. The A-G is the Government of India's first law officer, and has the right of audience in all courts of the country. The Attorney General (AG) of India is a part of the Union Executive.

• **Article 76** of the Constitution provides for the office of AG of India.

❖ **Appointment and Eligibility:** AG is appointed by the President on the advice of the government.

• **Under Article 76(1)**, the A-G is appointed by the President from among persons who are "qualified to be appointed a Judge of the Supreme Court".

• **Article 76(4)** says "the Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine."

• Simply put, A-G must be a person who is qualified to be appointed a judge of the Supreme Court, i.e. He or she must be a citizen of India and must have been a judge of some high court for five years or an advocate of some high court for ten years or an eminent jurist, in the opinion of the President.

• **Term of the Office: Not fixed by the Constitution.** Procedures and grounds for the removal of AG are not stated in the Constitution.

• A-G holds office during the pleasure of the President (may be removed by the President at any time).

• **Duties: Article 76(2)** of the Constitution says "it shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President".

• The A-G is also supposed to "discharge the functions conferred on him by or under this Constitution or any other law for the time being in force".

• A-G advises Government of India (GoI) upon such legal matters, which are referred to her/him by the President.

• A-G perform such other duties of a legal character that are assigned to her/him by the President.

• A-G appears on behalf of the GoI in all cases in the Supreme Court or in any case in any High Court in which the GoI is concerned.

• A-G represents the GoI in any reference made by the President to the Supreme Court under Article 143 (Power of the President to consult the Supreme Court) of the Constitution.

❖ **Fact and analysis about the A-G**

• Under **Article 88**, the "Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member".

• However, he or she doesn't have the right to vote in the House.

• Also, the A-G for India is not, like the A-G for England and Wales and the A-G of the United States, a member of the Cabinet.

• A-G enjoys all the privileges and immunities that are available to a member of Parliament.

• A-G does not fall in the category of government servants. A-G is not debarred from private legal practice.

However, A-G should not advise or hold a brief against the GoI.

• The remuneration of the Attorney General of India is not fixed by the Constitution. He receives such remuneration as the President may determine.

• Solicitor General of India and Additional Solicitor General of India assist the AG in fulfillment of the official responsibilities. Corresponding Office for Attorney General in the states is Advocate General (Article 165).

❖ **Who are Solicitor General and Advocate General?**

• Solicitor General is the second highest law officer in the country. He is subordinate to the Attorney General of India, the highest law officer and works under him. He also advises the government in legal

matters. Solicitor general is appointed for period of three years by Appointment Committee of Cabinet chaired by Prime Minister.

- So, unlike the post of Attorney General for India, which is a Constitutional post under Article 76 of the Constitution of India, the posts of the Solicitor General and the Additional Solicitors General are merely statutory.

Currently, the Solicitor General of India is Tushar Mehta.

- The Advocate General is appointed by the Governor of the State, who must be a person qualified to be appointed a judge of a High Court. That is, he/she must be a citizen of India and must have held a judicial office for a period of ten years or been an advocate of a high court for ten years. The Constitution does not fix the term of office of the Advocate General and it does not contain the procedure and grounds for his/her removal. The Advocate General holds office during the pleasure of the Governor of the State, which means that he/she may be removed by the Governor at any time.

❖ **Important articles with respect to Advocate General are:**

- Article 165- Advocate-General of the State
- Article 177- Rights of Advocate-General as respects the Houses of State Legislature and its Committee
- Article 194- Powers, privileges, and immunities of Advocate- General

❖ **Mains perspective:**

❖ **Is the government client of the A-G? Whose counsel is A-G really? Is the AG just another lawyer defending the government before the judiciary or is the institution more than that?**

- 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.**

- **The AG is "Attorney General for India", not attorney general for the government of India.** In that, the AG is special for he acts "**for India**" and not the government.

- There is a constitutional expectation on the AG and other legal officers to exercise independent judgement and provide wise counsel to the government, notwithstanding who appointed them or what advice is being expected from them.

- This makes the task of the AG very difficult and indeed delicate. 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 Union Cabinet is answerable not only to the Parliament but also to the judiciary, and in the ultimate analysis, to the people.

❖ **Who tells the Union Cabinet that their proposed actions are possibly unconstitutional or at least of suspect constitutionality?**

- Certainly not the Cabinet itself. Actions taken by successive Union Cabinets, regardless of their political complexion, have been found unconstitutional and struck down by the courts.

- The Cabinet might agree to do something because of its political desirability or compulsions. The President can refuse to follow the advice of the Cabinet but only once.

- So, let the Cabinet and the Parliament do whatever they want and leave the legal aspects to be examined at a later date by the courts. There is no reason to arrive at this conclusion because we have the **AG**.

❖ **'AG' and the Constitutional Assembly Debate**

- In Indian system, the AG is supposed to discharge the high constitutional office independent of the political executive that appoints him. Many eminent lawyers have discharged this office with great distinction.

- 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. Salaries of all ministers as well as MPs are determined by law.

- Shah wanted the AG's salary to be protected by legislation because he wanted to ensure that his salary is not altered to his detriment during the time he holds office. The amendment did not carry, but it gives us food for thought.

- **Alexander Hamilton** in Federalist No. 79 said, "In the general course of human nature, a power over a man's subsistence amounts to a power over his will." The framers of our Constitution were sensitive to this. They ensured that the salaries of high court and Supreme Court judges can't be reduced during the term of their offices. Shah wanted a similar protection for the AG. This was at a point of time when

it was clearly understood that we will not be following the British system where the AG is a cabinet member. The hidden Hamiltonian logic behind Shah's amendment indicates that the AG was being envisaged as an independent office.

❖ **AG and the spirit of Constitution**

- **B R Ambedkar:** "However good a Constitution may be, if those who are implementing it are not good, it will prove to be bad. However bad a Constitution may be, if those implementing it are good, it will prove to be good."
- Our Constitution is one of the finest in the world but we need upright people in high constitutional offices to uphold its promise. The AG is such an office since the Attorney General for India represents the people of India. The AG has to be good enough to be appointed a Supreme Court judge and must discharge his office in that spirit.

**PRELIMS**

1. **significance of Archaeological Survey of India's recent findings in Bandhavgarh Tiger Reserve**

❖ **CONTEXT:** The Archaeological Survey of India (ASI) recently reported 26 Buddhist caves in Madhya Pradesh's Bandhavgarh Tiger Reserve, after a month-long exploration conducted this summer. Besides the caves, which date back to the 2nd-5th century BCE, other archaeological remains of the Mahayana sect of Buddhism, such as chaitya-shaped doors and cells containing stone beds, were also reported by the ASI team.

❖ **The exploration**

- The exploration was conducted between May 20 and June 26 this year by the ASI's newly formed team. The team covered nearly 170 sq km within the reserve's core area.
- According to ASI In the exploration, remarkable archaeological remains came to light, adding a new chapter in the history of Baghelkhand.
- Baghelkhand, which is said to derive its name from the Vaghela Rajput kings of the 14th century, covers the northeastern regions of Madhya Pradesh, and a small area of southeastern Uttar Pradesh.

❖ **The findings**

- The 26 caves that were found are associated with the Mahayana sect of Buddhism, adding that these date back to the same time as the Ajanta caves in Aurangabad, a UNESCO World Heritage Site.
- The team also found the remains of 26 temples, two mathas, two stupas, 46 idols and sculptures, 26 fragments and 19 water bodies.
- It also mentioned a Buddhist pillar fragment containing a miniature stupa carving, dating to the 2nd-3rd century CE, and 24 Brahmi inscriptions from the 2nd-5th century CE.
- The temples are from more recent times — the Kalachuri period (9th-11th century), while the water bodies range between 2nd-15th centuries CE.
- The report says that the places Kaushami, Mathura, Pavata (Parvata), Vejabharada and Sapatanaairikaa are mentioned in the Brahmini inscriptions, while the inscribed names of kings include Shri Bhimsena, Maharaja Pothasiri and Bhattadeva.

❖ **Other explorations at the reserve**

- This was the first phase of the current exploration by ASI, which covered the expanse of the Tala Range.
- In the coming phases, the ASI will survey the remaining ranges of the Bandhavgarh forest, Khitauli and Magadhi. Tala, Khitauli and Magadhi comprise the three main zones of the national park, which together cover an area of 716 km.
- Bandhavgarh was declared a national park in 1968 and became a tiger reserve in 1993. The ASI stated that explorations in the region had been undertaken for the first time since 1938, under the command of ASI archaeologist NP Chakravarty.

❖ **The significance of the findings**

- It is the first time that all remains have been officially documented by the agency.
- While smaller expeditions have been conducted in this, no significant report is available in the public domain.
- As many as 35 temples have been documented in the reserve, of which 26 were done during the latest expedition. Also, the number of documented caves has increased from 50 to 76, two mathas and two stupas have been reported, another 24 inscriptions have been found (50 in total), the number of reported sculptures have increased to 56 from the previous 10, 20 additional fragments and another 19 water bodies have been found, above the eight previous ones.
- Additionally, a Votive Stupa has also been reported for the first time, adding a new chapter to Bandhavgarh's history, claiming that the reported temples are also important from an architectural point of view.

**2. Black cocaine**

❖ **CONTEXT:** The Narcotics Control Bureau (NCB) recently arrested a Bolivian woman from Mumbai airport for allegedly carrying black cocaine. Based on her interrogation, the NCB also arrested a Nigerian national from Goa, who was to receive the contraband.

❖ **What is Black Cocaine?**

- “Black cocaine”, a rare drug, is a mixture of regular cocaine and other chemicals of administrated quantity. In a bid to ensure that sniffer dogs used at airports do not detect cocaine, it is being used by drug peddlers coming to India from South American countries. It neutralises the smell of cocaine so that it can pass through checkpoints easily.
- Black cocaine is a mixture of regular cocaine base with various substances to camouflage typical appearance (e.g. charcoal), to interfere with colour-based drug tests (cobalt salts form deep red complexes in solution), to make the mixture undetectable by drug-sniffing dogs as activated carbon may sufficiently absorb trace odours.
- The pure cocaine base is then recovered from the mixture by extraction using common organic solvents such as methylene chloride or acetone. A second process is required to convert the cocaine base into powdered cocaine hydrochloride.

❖ **Since when has it been used to evade law enforcement agencies?**

- As per reports, in the mid-1980s, Chilean dictator Augusto Pinochet ordered his army to build a clandestine cocaine laboratory in Chile to make black cocaine which could not be detected by law enforcement agencies.
- In 2008, black cocaine was discovered by police in Spain which had been manufactured into rubber-like sheets and made into luggage.
- In 2021, a major consignment of black cocaine – 860 kgs – was seized in Spain.

❖ **What has been the major source of cocaine in India?**

- South American countries where coca plants grow are major suppliers of cocaine to India.
- Generally, Mumbai is one of the landing points from where it is then sent to other parts of the country, especially to metro cities and Goa.
- Amongst narcotics, Cocaine is one of the most expensive ones and is primarily used by the upper classes of society.

**3. Armed Forces (Special Powers) Act (AFSPA)**

❖ **Context:** The Ministry of Home Affairs (MHA) has extended the Armed Forces (Special Powers) Act (AFSPA) in parts of Arunachal Pradesh and Nagaland for another six months.

- The Act in its original form was promulgated by the British in response to the Quit India movement in 1942.
- After Independence, Prime Minister Jawaharlal Nehru decided to retain the Act, which was first brought in as an ordinance and then notified as an Act in 1958.
- AFSPA has been imposed on the Northeast states, Jammu & Kashmir, and Punjab during the militancy years.
- Punjab was the first state from where it was repealed, followed by Tripura and Meghalaya.
- It remains in force in Nagaland, Manipur, Assam, J&K, and parts of Arunachal Pradesh.
- AFSPA provides for special powers for the armed forces that can be imposed by the Centre or the Governor of a state, on the state or parts of it, after it is declared “disturbed”.

❖ **Powers of the armed forces:**

- The Act, which has been called draconian, gives sweeping powers to the armed forces.
- It allows them to open fire, even causing death, against any person in contravention to the law or carrying arms and ammunition.
- It gives them powers to arrest individuals without warrants, on the basis of reasonable suspicion, and also search premises without warrants.
- The Act further provides blanket impunity to security personnel involved in such operations
- There can be no prosecution or legal proceedings against them without the prior approval of the Centre.

❖ **Safety nets**

- While the Act gives powers to security forces to open fire, this cannot be done without prior warning given to the suspect.
- The Act further says that after any suspects apprehended by security forces should be handed over to the local police station within 24 hours.

- It says armed forces must act in cooperation with the district administration and not as an independent body.

**ANSWER WRITTING**

**Q. The Attorney-General is the chief legal adviser and lawyer for the Government of India.” Discuss.**

The Constitution under Article 76 has provided for the office of the Attorney-General for India (AGI). He is appointed by the President and holds the office during the pleasure of the President. He must be a person who is qualified to be appointed as a judge of the Supreme Court.

As the chief legal adviser of the Government of India, the Attorney-General has the following duties:

- To give advice to the Government of India on legal matters, which are referred to him by the President.
- To perform 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 AGI is the highest law officer in the country and acts as the lawyer of the Government of India. Through a notification of 1950, he has been assigned the following duties by the President:

- To appear on behalf of the Government of India in the Supreme Court and high courts.
- To represent the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution.

Along with these duties, the AGI also has the right of audience in all courts in the territory of India. He also enjoys all the privileges and immunities that are available to a member of Parliament.

However, the Attorney-General is not the full-time counsel of the Government. He does not fall in the category of government servants and he is not debarred from private legal practice. But, he should not advise or hold a brief against the Government of India and he should not defend accused persons in criminal prosecutions without the permission of the Government of India.

Thus, the duties and privileges of the AGI, combined with the limitations imposed on him, make him the chief legal adviser and lawyer of the Government of India. Nevertheless, the separate law minister in the Central cabinet to look after legal matters at the government level, to some extent, gives the office of AGI a subordinate position.

**MCQs**

1. Consider the following statements with reference to Armed Forces (Special Powers) Act (AFSPA)
  1. It can be enacted only when a state or a part of it is declared 'disturbed'.
  2. Armed forces have an absolute immunity for acts done under AFSPA.
  3. Currently, it is applicable on Jammu & Kashmir and all states of Northeast.

Which of the above statement/s given above is/are correct?

- a) **Only 1**
- b) 1 and 2
- c) Only 2
- d) 1,2 and 3

2. Which of the following statements is not true with respect to the office of A-G?
  - a) Procedures and grounds for the removal of AG are not stated in the Constitution.
  - b) The remuneration of the Attorney General of India is not fixed by the Constitution.
  - c) Attorney-General of India shall have the right to speak in either house of Parliament.
  - d) **A-G for India is not a member of the cabinet like the A-G for United States.**

3. Consider the following statements about the Archeological Survey of India (ASI)
  1. It is directly under the aegis of Ministry of Culture
  2. The provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, guide ASI.
  3. It regulates antiquities and art treasure act, 1972
  4. It was established by William Bentinck

Which of the above statements is/are correct?

- a) 1 and 4 only
- b) 1 and 2 only
- c) 2,3 and 4 only
- d) **1, 2 and 3only**

4. Recently caves that were found are associated with the Mahayana sect of Buddhism, with reference to Indian religious history consider the following pairs
  1. Hinayana original teachings of Buddha and believe in idol worship
  2. Mahayana believed in the heavenliness of Buddha
  3. Maitreya future Buddha

Which of the above pairs are correctly matched?

- a) 1 only
- b) 1, 2 only
- c) 1, 3 only
- d) 2, 3 only**

5. Delhi winter action plan often mentioned in news, consider the following statements regarding the SAFAR system.

- 1. It is a central government-run very advanced air quality and weather forecast system .
- 2. It was developed indigenously by the Indian Institute of Tropical Meteorology, Pune.
- 3. It will not measure the sun's UV - Index.

Which of the above statement/s is/are correct?

Choose the correct answer from the options given below:

- a) 1 only
- b) 1 and 2 only**
- c) 2 and 3 only
- d) All of the above

6. With reference to the Central Vigilance Commission, consider the following statements:

- 1. It is the main agency for preventing corruption in the Central government.
- 2. The appointment and removal of its members is done by the President.
- 3. State government cannot dissolve State Vigilance Commission as they are established under the central Act.
- 4. Central Vigilance Commission has to present a report annually to the Central government on its performance.

Which of the statement/s given above is/are correct?

- a) 1 and 2 only**
- b) 2 and 3 only
- c) 1 and 3 only
- d) 3 and 4 only

7. Luhansk, Kherson and Donetsk regions are in news due to which of the following reason?

- a) Discovery of new crude oil wells
- b) Discovery of Uranium block
- c) Ukraine-Russia war**
- d) Armenia and Azerbaijan issue

8. With reference to Bande Bharat Express consider the following statements

- 1. The train is a 100% 'Make in India' project.
- 2. It is equipped with advanced KAVACH system.

Choose the correct statement/s using the codes given below

- a) 1 only
- b) 2 only
- c) Both 1 and 2**
- d) Neither 1 nor 2

9. Which of the following date has been celebrated as National Pension System Diwas (NPS Diwas) to promote pension and retirement planning among the citizens of India?

- a) 30<sup>th</sup> September
- b) 1<sup>st</sup> October**
- c) 2<sup>nd</sup> October
- d) 3<sup>rd</sup> October

10. SFURTI clusters being organized for the first time to promote the traditional products from across the country, commemorating Azadi ka Amrit Mahotsav under which ministry?

- a) Ministry of Culture
- b) Ministry of Tourism
- c) Ministry of Commerce and Industry
- d) Ministry of Micro, Small & Medium Enterprises**