Advocate General of State

- ✓ The Advocate General of a State is a Constitutional post and authority duly appointed as per Article 165 of the Constitution of India.
- ✓ The authority and function of Advocate General is also specified in the Constitution of India under Article 165 and 177.

Article 165: Advocate General for the State

- ✓ The Governor of each State shall appoint a person who is qualified to be appointed as a Judge of a High Court to be Advocate General for the State.
- ✓ It shall be the duty of the Advocate General to give advice to the Government of concerned State 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 Governor and to discharge the functions conferred on him by or under this constitution or any other law for the time being in force.
- ✓ The Advocate General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the governor may determine

Article 177

- ✓ Every Minister and the Advocate-General for a State shall have the right to speak-in, and otherwise take part in the proceedings of Legislative Assembly of the State or in case of a State having a Legislative Council; Both Houses, and to speak-in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member but shall not; by virtue of this Article, be entitled to vote.

Appointment and Term of Advocate General of a State

- ✓ The advocate general is appointed by the governor. He must be a person who is qualified to be appointed a judge of a high court. In other words, he must be a citizen of India and must have held a judicial office for ten years or been an advocate of a high court for ten years.
- ✓ The term of office of the advocate general is not fixed by the Constitution. Further, the Constitution does not contain the procedure and grounds for his removal.

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- ✓ He holds office during the pleasure of the governor. This means that he may be removed by the governor at any time.
- ✓ He may also quit his office by submitting his resignation to the governor. Conventionally, he resigns when the government (council of ministers) resigns or is replaced, as he is appointed on its advice.
- ✓ The remuneration of the advocate general is not fixed by the Constitution. He receives such remuneration as the governor may determine

Duties and Function of Advocate General of a State

As the chief law officer of the government in the state, the duties of the advocate general include the following:

a. To give advice to the government of the state upon such legal matters which are referred to him by the governor.
b. To perform such other duties of a legal character that are assigned to him by the governor.
c. To discharge the functions conferred on him by the Constitution or any other law.

- ✓ In the performance of his official duties, the advocate general is entitled to appear before any court of law within the state.
- ✓ Further, he has the right to speak and to take part in the proceedings of both the Houses of the state legislature or any committee of the state legislature 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 the state legislature.
- ✓ The Advocate General appears in important constitutional and other cases before the High Courts, Supreme Court, Water Disputes Tribunal etc. and defends the action of the State Government. The Advocate General advices the Government in matters which are referred to him by the Government. The Advocate General is also the Head of the Department of the Office of the Advocate General.

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Example of Advocate General role or other information like in Karnataka State

- **Functions:** The principal activity of this department is to conduct the cases pertaining to the cases before the Hon'ble High Court of Karnataka at its Principal Bench, Bangalore, Benches at Dharwad and Gulbarga, Karnataka Administrative Tribunal, Consumer Disputes Redressal Forums, Consumer Disputes Redress Commission of State/National and the Hon'ble Supreme Court of India where the interest of State of Karnataka and its Departments needs to be defended.
- The **Advocate General** is the Head of the Department and he is the principal legal advisor to the Government. A team of Law Officers comprising the Additional Advocate General. The Government Advocates, the State Public Prosecutors, the Additional State Public Prosecutors, the Additional Government Advocates and the High Court Government Pleaders have been appointed to look after the litigation work. The Law Officers including the Addl. Advocate General work under the guidance and supervision of the Advocate General. The Advocate General has been endowed with all administrative and financial powers.
- The Administrative Officer supervises the entire ministerial work of the office of the Department. He is assisted by Assistant Administrative Officers, one at the main office, one at the Karnataka Administrative Tribunal Unit Office, one at Gulbarga Unit Office and one at the Dharwad Unit Office. There are Section Officers and Audit Officer. The day today work relating to administration is taken care of by the Administrative Officer.
- The Advocate General is the top-most Law Officer who takes care of matters before the High Court as well as before the Hon'ble Supreme Court. The Advocate General is also consulted in matters relating to water disputes as well as other issues having legal ramifications. Before the High Court, the Advocate General generally appears only in matters relating to important legal issues and in matters which has far reaching ramifications for the State Government. The Advocate General is the Ex-Officio member of Karnataka State Legal Services Authority, Karnataka Law Commission & Karnataka State Bar Council.
- The **State Public Prosecutor** takes care of all criminal matters and the State Public Prosecutor also functions under the Advocate General. The work relating

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to various subjects in the High Court is distributed among different Government Advocates and Government Pleaders.

- Similarly, the criminal work is also distributed among the State Public Prosecutors, Additional State Public Prosecutors and others. All Law Officers are governed by the Karnataka Law Officers (Appointment and Conditions of Service) Rules, 1977.
- These rules applied to District Government Pleaders, Office of the Advocate General, State Public Prosecutors as well as the advocates appearing before the Supreme Court. The Law Officers are entitled to remuneration as prescribed under the above Rules.

All India Services

The Design of the Civil Service at Independence

- While designing a successor civil service, the Indian political leaders chose to retain elements of the British structure of a unified administrative system such as an open-entry system based on academic achievements, elaborate training arrangements, permanency of tenure, important posts at Union, State and district levels reserved for the civil service, a regular graduated scale of pay with pension and other benefits and a system of promotions and transfers based predominantly on seniority.
- The civil services in India can be grouped into three broad categories. Services whose members serve both the Union and the State Governments are termed as All India Services.
- Services whose members serve only the Union Government are termed Central Civil Services. Apart from these, the State Governments have their own group of services – State Civil Services.
- The posts in the Union and the State Governments are hierarchically arranged into four Groups – Group A to Group D.

Object of formation of all-India services

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- Apart from the services under the respective state governments, the Constitution has made special provision for the constitution of all-India services as a service common to the Union and the states.
- Article 312 of the Constitution makes specific provision for the creation of the all-India services by parliament if the council of states has declared by not less than two-thirds of the members present and voting that it is necessary in the national interest that in respect of a particular service an all-India cadre of officers should be constituted, Parliament can do so.

Initial constitution of all-India services under the Constitution

- In exercise of the powers conferred under article 312 Parliament enacted the All India Services Act, 1951.
- Before enacting the said law, the necessity of the resolution of the council of states as required under article 312 was dispensed with by the President in exercise of his powers of removal of difficulties under article 392.
- Dispensing with the necessity of resolution of council of states for the constitution of all-India services was within the competence of the President and therefore it was competent for Parliament to have enacted the said law without the resolution of council of states.
- Under section 4 of the Act, all the rules relating to recruitment and other conditions of service applicable to IAS and IPS, which were in force prior to the commencement of the Constitution, were adopted.
- Further, the Act has empowered the Government of India to make, after consultation with the state government, rules for regulation of recruitment and conditions of services of the persons appointed to an All India Service.
- In exercise of power under section 3 of the Act, the recruitment rules, the cadre rules, the All India Service (Conditions of service - Residuary Matters) Rules, 1960 have been made by the central government.
- The cadre rules enable the central government to determine the strength and composition of the cadre in each state by framing regulations and in exercise of such power, the Cadre Strength Regulations, 1955 have been framed by the central government and not only the total authorized strength of the cadre for

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