

# Independent Status Of Attorney-General Of India: A Threat To The Constitution

---

*Dr. Bhawna Sharma<sup>1</sup>*

## Synopsis

Introduction .....	63
Constitutional status of Attorney-General of India .....	65
Duties of Attorney-General .....	67
Other functions under ordinary law .....	69
Independent status of Attorney-General: a threat to the Constitution .....	70
Conclusion .....	73

---

<sup>1</sup> Principal (Offg.), HIMCAPES" School of Legal Studies, Badhera

## **Abstract**

---

The office of Attorney-General (AG) has its origin in England. Article 76 of the Indian Constitution lays down the provisions for the office of AG. He is the first law officer of India. But the conduct of the present AG Goolam E. Vahanvati in Colgate Scam has raised many questions such as: (i) whether the independent status of AG has become threat to the Constitution. (ii) Whether the AG should have resigned from his office on moral grounds. (iii) Whether Article 76 should be amended.

This paper concludes with the observation that time has come to make certain amendments in Article 76 of the Constitution so that the integrity of the office of AG guaranteed by the Constitution can be maintained.

---

## Introduction

The office of Attorney-General (AG) originated in England. The reason was that the Crown could not appear in his own Courts to support his interests in person, but was represented by his Attorney, who bore the title of His Majesty's Attorney-General. The original function of the Attorney-General was to represent the Crown. It was inevitably extended to the giving of legal advice to the Crown. He is the chief adviser to the Crown. <sup>2</sup>In England, the appointment of the Attorney-General is 'political' in the sense that it is conferred on a successful barrister who is a supporter of the party in power. He has sometimes been a member of the Cabinet though "it is generally regarded as preferable that he should remain outside the Cabinet as the Government's chief legal adviser."<sup>3</sup>In England, the office of Attorney-General is regarded as a political office. He is a member of the popular Ministry and comes in and goes out with it. He is a member of the House of Commons, but he is not included in the Cabinet.<sup>4</sup>

The Attorney-General in England, has a member of non-political function. As guardian of the public interest, he may institute civil proceedings with High Court for the vindication of public rights.<sup>5</sup>

In Britain, the appointment of the Attorney-General is 'political' in nature in the sense that it is conferred on a successful barrister who is supporter of the party in power. He has sometimes been a member of the Cabinet though "it is generally regarded as preferable that he should remain outside the Cabinet as the Government's chief legal adviser." O.Hood Phillips observes:

---

<sup>2</sup>Narender Kumar, *Constitutional Law of India* 515 (All.Law Agency, 6<sup>th</sup> Ed., 2007).

<sup>3</sup>Wade and Phillips, 333; M.P. Jain, *Indian Constitutional Law* 119 (WADHWA and Company, Nagpur, 4<sup>th</sup> Ed., 1998).

<sup>4</sup>Supranote 2, p.516.

<sup>5</sup>Durga Das Basu, *Commentary on the Constitution of India* 4722 (Lexis-Nexis, Butterworthsadhwa, Nagpur, Vol.4, 8<sup>th</sup> Ed., 2008).

“The better opinion is that the Attorney-General should not be in the Cabinet because of his quasi-judicial functions with regard to prosecutions, and also because it is desirable to separate the giving of advice. Indeed it must be open to question in view of his unfettered discretion to refuse to initiate proceedings and his power to terminate criminal proceedings whether the appointment should be non-political.”<sup>6</sup>

The Attorney General is the first Law Officer of India. He is the Chief Legal Advisor to the Central Government and also acts as a lawyer in the Supreme Court on behalf of it. He also represents to the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution. All references are made to the Attorney General by the Union Ministry of Law and Justice.<sup>7</sup>It may be noticed that the advice tendered by the Attorney-General, in discharge of his duties and constitutional obligations, itself, cannot be judicially reviewed by the Court, for, it would not be in the public interest, to raise and create controversies regarding the protected communications between the State and its counsel.<sup>8</sup>

In USA the Attorney General has an executive authority, but in India the Attorney General has no such authority. The Attorney General is not a neutral person because he is selected by the Central Government and acts as its advocate in the Supreme Court.<sup>9</sup>

Simply to be proud to be Indian is pretentious. We have a long distance to go before such pride can be justified. The Attorney General of India (AG) holds a constitutional post (article 76). He represents the government in all courts who can seek his independent advice. He can also address Parliament and its Committees

---

<sup>6</sup>Ibid.

<sup>7</sup> available at:<http://lawyersupdate.co.in/lu/4/669.asp> (as browsed on 29 July,2013).

<sup>8</sup>Govt. of A.P. v. PushpendraKaur, AIR 2004 AP 41; A.M. Mathur v. Pramod Kumar Gupta, AIR 1990 SC 1737.

<sup>9</sup>Supra note 7.

(Article 88). Before the Emergency we had noble Attorney Generals such as Setalvad, Daphtary, Gupte, Niren De.<sup>10</sup>

Today, we witness a drama being played out between law officers. It is unfortunate that an officer of the rank of Attorney –General is involved in such controversies as is present AG. This is the consequence of the devaluation of the post of AG over the years. In the past, the posts of Attorney General (AG) and Solicitor General (SG) have been held by eminent lawyers. Earlier, even the post of ASG was occupied by leaders of the Bar, such as HN Sanyal and SV Gupte.

### **Constitutional status of Attorney-General of India**

The Constitution of India is the fountainhead from which all our laws derive their authority and force.<sup>11</sup> Article 76 envisages exclusively the provisions for Attorney General. This Article has four clauses which collectively fulfill the provisions in respect to him.

In exercise of the powers conferred by the proviso to article 309 of the Constitution read with article 76 of the Constitution and in supersession of the Law Officers (Conditions of Service) Rules, 1972, the Law Officer (Conditions of Service) Rules, 1987 were made by the President regulating the remuneration, duties and other terms and conditions of the Attorney-General for India, the Solicitor-General for India and the Additional Solicitor-General for India.

Section 2(a) of the Law Officer (Conditions of Service) Rules, 1987 defined “Attorney- General” as the person appointed under clause (1) of Article 76 of the Constitution as the Attorney-General for India and includes any person appointed to act temporarily as the Attorney-General for India;

### **Article 76 of the Constitution of India lays down the following provisions for AG:**

---

<sup>10</sup> Rajeev Dhavan, *Unfit to hold the post of AG* (published on May 9, 2013) available at: <http://www.lawexams.in/legalarticles/category/attorney-general/>(as browsed on 29 July, 2013).

<sup>11</sup>*Supra* note 7.

**"Attorney-General for India-** (1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India.

(2) 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, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.

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

This Article corresponds to Sec. 16 of the Government of India Act, 1935 changing the name 'Advocate-General' and omitting sub-sec. (4) which made the appointment and dismissal of the Advocate-General a matter of 'individual judgment' of the Governor-General.<sup>12</sup>

It is also important to understand that appointments to the office are made by the President of India under Article 76 of the *Constitution of India*. The Attorney General therefore, also has a duty to uphold the Constitution. Very often, this duty would require him to act independent of the Government of India.<sup>13</sup>

In creating this office, the framers of India's Constitution sought to ensure that the Union government received legal advice "free from the trammels of political or party associations." The value of independent advice is enormous because the government, like everyone else, must obey the Constitution and the law.

---

<sup>12</sup>*Supra* note 5, p.4725.

<sup>13</sup> *Aju John*, "The Ethical Attorney-General and Three C's" available at: <http://blog.mylaw.net/tag/attorney-general/> (published on July 10, 2013).

However, the office of AG in India is independent in nature and not authoritative and therefore, certain restrictions have been imposed under Rule 8 of the Law Officer Rules, 1987 which are as:

Rule 8 of the Law Officer (Conditions of Service) Rules, 1987 imposes certain restrictions as- (1) A Law Officer shall not -

(a) hold briefs in any court for any party except the Government of India or the Government of a State 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, anybody or institution in which the Government has a preponderating interest;

(b) { advise any party against the Government of India or a Public Sector Undertaking, or in cases in which he is likely to be called upon to advise, or appear for, the Government of India or a Public Sector Undertaking; }

(c) Defend an accused person in a criminal prosecution, without the permission of the Government of India; or

(d) Accept appointment to any office in any company or corporation without the permission of the Government of India;

(e) {advise any Ministry or Department of Government of India or any statutory organization or any Public Sector Undertaking unless the proposal or reference in this regard is received through the Ministry of Law and Justice, Department of Legal Affairs.}

(2). Where a Law Officer appears or does other work on behalf of bodies of Union of India such as the Election Commission, the Union Public Service Commission etc. he shall only be entitled to fees on the scales mentioned in clauses (c) of sub-rule (1) of rule 7.

### **Duties of Attorney-General**

It can be said that the Attorney-General of India has following

Three duties:

- (i) duties towards client;
- (ii) duties towards court;
- (iii) duties towards Constitution of India.

Rule 5 of the Law Officer (Conditions of Service) Rules, 1987 lays down following duties- It shall be the duty of a Law Officer -

(a) 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 Government of India.

(b) to appear, whenever required, in the Supreme Court or in any High Court on behalf of the Government of India in cases (including suits, writ petitions, appeal and other proceedings) in which the Government of India is concerned as a party or is otherwise interested;

(c) to represent the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution; and

(d) to discharge such other functions as are conferred on a Law Officer by or under the Constitution or any other Law for the time being in force.

Explanation: - For the purpose of this rule and Sub-rule (1) of rule 8, the expression "Government of India" includes the Government of a Union Territory also.

Article 76(2) lays down the following duties of the Attorney-General for India-

- (a) to give advice to the Government of India upon such legal matters referred to him by the President;
- (b) to perform such duties of a legal character as the President, from time to time, may assign to him;
- (c) to discharge the functions conferred on him by the Constitution or any other law for the time being in force.

The following Rules are framed for the Attorney-General for India-

- (1) He shall appear in all cases in the Supreme Court in which the Government of India is a party. The Government of India may require the Attorney-General to appear in any High Court in any case in which the Government of India is a party.

- (2) He shall not advise or hold a brief against the Government of India.
- (3) He shall not defend the accused persons in criminal proceedings.
- (4) He shall not accept appointment as Director in any Company without the previous permission of the Government of India.

He has the right to speak in either House of Parliament. In that case, he is entitled to the privileges and immunities of a member of the Parliament, but he has no right to vote in Parliament.<sup>14</sup>

### **Other functions under ordinary law**

Order XXVIA of the Civil Procedure Code now provides that in any suit if it appears to the court that any substantial questions as to the interpretation of the Constitution is involved (i.e., such a question as is referred to in Art. 132(1) read with Art. 147), the Court shall not proceed to determine that question until after notice has been given to the Attorney-General if the question concerns the Central Government.

Attorney-General offers his aid and assistance with respect to contempt matters in two ways: (1) He moves the court for action when he comes across cases where he thinks fit there is a necessity to vindicate the dignity and reputation of court. (2) His consent is required for a member of the public to bring to the notice of the court any contempt and he thereby helps in screening complaints from the public to safeguard the valuable time of the court.

Attorney-General is the friend of the court and in some respects acts as a friend, philosopher and guide of the court. When a private person desires that action has to be taken against another under the Contempt of Court Act, he has to obtain consent from the Attorney-General for proceeding with the case. In *Connections Group v. Mohammed Yunus*,<sup>15</sup> it was observed that the reason given by the Attorney-General for giving or not giving consent were justifiable. In a later case, it was held the decision of Attorney-General is based on the relevant materials or not considered

---

<sup>14</sup>*Supra* note 2.

<sup>15</sup> *Connections Group v. Mohammed Yunus* (1987) 3 SCC 89 (India).

relevant materials, and then the action is justifiable in an appropriate proceeding for contempt.<sup>16</sup> He represents the Government of India in any reference made by the President to the Supreme Court under Article 143.

As an advocate, the Attorney General owes a duty to both client and court. The following extract from Section II (“Duty to the client”), Chapter II (“Standards of professional conduct and etiquette”), of Part VI (“Rules governing advocates”) of the *Bar Council of India Rules* is relevant to Mr. Vahanvati’s conduct.<sup>17</sup>

“An advocate who has, at any time, advised in connection with the institution of a suit, Appeal or other matter or has drawn pleadings, or acted for a party, shall not act, appear or plead for the opposite party.”

### **Independent status of Attorney-General: a threat to the Constitution**

The rules of professional responsibility are intended to maintain the integrity and competence of the legal profession. The responsibilities cast on a lawyer are many but notable among them is the simple rule that an advocate “who has, at any time, advised in connection with the institution of a suit, appeal or other matter or has drawn pleadings or acted for a party, shall not act, appear or plead for the opposite party.” It is a primary responsibility of a lawyer to best serve the interest of his client without putting himself in a position that results in divided loyalties to differing interests. In 1983, the Supreme Court reminded a young lawyer who first appeared for the complainant and thereafter accepted a brief for the accused: “[A lawyer’s] paramount duty is to the client and where he finds that there is conflict of interests, he should refrain from doing anything which would harm any interest of his client.” In that case, *Chandra ShekharSoni v. Bar Council of Rajasthan*, the Court held it was

---

<sup>16</sup>P.N. Dada v. P. Shiv Shankar, (1988) 3 SCC 167. Durga Das Basu, *Commentary on the Constitution of India* 4732 (Lexis-Nexis, Butterworthsadhwa, Nagpur, Vol.4, 8<sup>th</sup> Ed., 2008).

<sup>17</sup>*Supra* note 13.

unprofessional to represent conflicting interests except by express consent given by all concerned after a full disclosure of facts.<sup>18</sup>

India has a rich tradition of Attorney-Generals who truly respected the office and upheld its integrity. To quote, there are examples of noble Attorney Generals such as Setalvad, Daphtary, Gupte, Niren De. However, there are some who were criticized for their actions taken from time to time as:

(i) In 1962, AsokhSen wanted to be both Law Minister and Attorney General but Nehru quelled this. As Attorney General, Parasaran came in for criticism for fashioning the Bhopal settlement (1989) and silence over Bofors (1986).

(ii) Mrs. Gandhi, in her pre-1977 avatar, took care to appoint a lawyer of great ability but not of her ideological persuasion as her ASG, FaliNariman, and during the Emergency, VP Raman. The Janata government appointed Soli Sorabjee and KK Venugopal to these positions, while the short-lived Charan Singh government took Milon Banerjee as ASG.

(iii) G. Ramaswamy was the quintessential 'hitman' Attorney General. Soli Sorabji spoiled his record arguing for the BJP over the Babri Masjid, having appeared for Muslim groups on the same cause in 1994.

(iv) Our present Attorney General Vahanvati follows the "hitman tradition" and is replete with contradictions in his stances.<sup>19</sup>

Some Attorney Generals have supported the government's view. Some have cautioned government on what they have done or proposed to do. But each incident stressed the independent judgment and accountability of the Attorney General.<sup>20</sup>

The role of the office of the Attorney General (AG) in the Coalgate case presents an ethical dilemma of public importance: how should top law officers of the Union

---

<sup>18</sup> Shyam Divan, "Alpine amnesia and the Attorney General" *available at*: <http://www.thehindu.com/opinion/op-ed/alpine-amnesia-and-the-attorney-general/article4898866.ece> (as browsed on 29 July, 2013).

<sup>19</sup> *Supra* note 10.

<sup>20</sup> *Ibid*.

government discharge their duties when senior government officials are being probed?

On Coalgate, the Attorney General represents the Union government since November 19, 2012. The Central Bureau of Investigation (CBI) represented by a separate set of lawyers told the Supreme Court earlier this year it was investigating the suspected criminal conduct and corruption on the part of officials in the Union government with regard to the allocation of coal blocks. Simply put, the CBI had been investigating officials who were working for the Attorney General's client. Nevertheless, in February and March this year according to the affidavit filed by the CBI Director, the AG was present at meetings with CBI officers, even advising them. The CBI Director states that the advice of the Attorney General was incorporated into the CBI's confidential status reports, subsequently filed in court. The Attorney General continued to appear for the Union government even after the CBI Director had made such a declaration.<sup>21</sup>

There is a legal eagle representing the Government of India who holds the key in two of nations, read worlds, largest scams. The Rs. 1.76 lakh crore 2G spectrum Scam and the Rs. 1.86 lakh crore Coal Block Allocation Scam. Earlier it was the prime accused in CBI's charge sheet in the 2G spectrum scam, Andimuthu Raja, who pulled GhoolamVahanavati in the rink alleging that some important announcements were vetted and approved by the current Attorney General in his previous role as Solicitor General. Now it is Additional Solicitor General and CBI's counsel HarinRaval who has pulled the strings of Ghoolam on the Coal Block Allocation Scam.<sup>22</sup>

It is needless to mention that the previous Solicitor General Rohinton Nariman resigned suddenly over certain issues with Law Minister Ashwani Kumar, who

---

<sup>21</sup>*Supra* note 18.

<sup>22</sup>HarinRaval, "*AGhoolam of Attorney General Vahanavati puts him in India's Coal Scam Pit*". PMO, Law Minister in striking distance of CBI" available at: <http://viewology.wordpress.com/2013/04/30/harin-raval-aghoolam-of-attorney-general-vahanavati-puts-him-in-the-coal-pit/>(as browsed on 29 July, 2013).

himself is a eminent lawyer. It was rumored that the real differences of Rohinton Nariman were with GhoolamVahnavati and not with Ashwani Kumar, and the Law Minister sided with Vahnavati's version leading to Nariman's exit. The recent incidents involving Law Minister, Solicitor General and Attorney General do create serious question marks on the independence of state law offices of India. The question of RohintonNariman's sudden exit and the contentious topic of his differences with Law Minister may well be on 2G Spectrum Scam or the Coal Block Allocation Scam only. Incidentally, Vahanavati being a legal eagle who was vetting both, either while the 2g scam was happening or during CBI's investigation in Coal Scam.<sup>23</sup>

By contrast, Vahanvati loves to attend Parliamentary Committees, told the Court in the 2G matter that he couldn't address the court because he had to address a parliamentary committee, and was evasive before the Committee. He was grilled as a witness in the 2G trial which was unprecedented. Four things emerge from his tenure:

- (i) He is more a hitman for the government than its conscience keeper.
- (ii) He has interfered with and compromised the CBI's investigative independence and undermined the rule of law.
- (iii) He has subverted the spirit of the Supreme Court's decision that the independence of the 2G investigation be zealously guarded.
- (iv) He is a very charming person but may have mortgaged his conscience to the government for the post or future prospects.<sup>24</sup>

While he offers legal advice to the government in the Coalgate case, he must not forget that his primary duty is to protect public interest.<sup>25</sup>

## **Conclusion**

---

<sup>23</sup>*Supra* note 22.

<sup>24</sup> *Supra* note 10.

<sup>25</sup> *Supra* note 18.

Mr. Divan's belief is that Mr. Vahanvati's recent conduct is part of a trend where the Attorney General's duty to the Client has been prioritised over the duty to the Court and the Constitution.

The first AG, M.C. Setalvad, led by example in this regard when he appeared before the Chief Justice M.C. Chagla Commission inquiring into the Mundhra scandal in 1958. His severe comments on the conduct of then Finance Minister, T.T. Krishnamachari, and Chagla's report itself led to the latter's resignation. In the wake of the Commission's report, one Member of Parliament criticized Mr. Setalvad's independence: "The Attorney-General whom we sent to defend our case, became the prosecutor of the Finance Minister and, incidentally, of the Government." Because M.C. Setalvad understood the need to balance the Attorney General's duties towards the Client (Government of India), the Court, and the Constitution.<sup>26</sup>

In matters of criminal law and more particularly in cases concerning corruption – as is the case with Coalgate – the office of the AG has a duty to protect the public interest. At a minimum, this duty would entail ensuring that the Coalgate case is not perceived by the public as scripted theatre where the law officers representing opposing sides are aware of each other's lines. The sordid business of a law officer appearing for the Union government in defence of its actions and holding meetings with the CBI officials investigating the role of government officials may not comport with standards of professional responsibility.<sup>27</sup> As to why the office was not made a political office even after the introduction of the responsible system of Government, the Joint Parliamentary Committee observed as follows (Report, para.401):

"it is no part of our intention to suggest that the office of Advocate-General should, like that of the Law Office here . have a political side to it; indeed our main object is to secure for the Provincial Government legal advice from an officer not merely well qualified to tender such advice but entirely free from the trammels of political or party associations, whose salary would not be votable and who would retain his

---

<sup>26</sup>*Supra* note 13.

<sup>27</sup>*Supra* note 18.

appointment for a recognised period of years irrespective of the political fortunes of the Government or Governments with which he may be associated during his tenure of office would prove a valuable aid to a Ministry in deciding the difficult questions which are not infrequently raised by those prosecutions which require authority of Government after initiation though we recognise that the responsibility for decision in these matters must of necessity rest in the last resort on the Government itself.”

The two aspects referred to above were also explained in Parliament in connection with the office of the Advocate-General for the Federation thus:

“No doubt he will perform functions performed by Law Officers here, but he will have no political affiliation with the ministry, and so far as ministers require a Law Officer in the political sense, that is to say, a man who will assist them in their Bills and political work, he will not be an Advocate-General but a different individual who will assist them in the Parliamentary work. Both Hon’ble Members are right in saying that the Advocate-General will be the Adviser of the Federal Government but, of course, the Federal Government includes the reserved departments and, therefore, he will advise Government and councils on that reserved department s with which the Ministry will not be concerned.”<sup>28</sup>

From the preceding excerpts it is abundantly clear that the major consideration which guided the framers of the Act of 1935 in making the office of the Advocate-General a non-political one, was that he was to be a legal adviser not only in the ministerial field but also as regards the reserved departments of the Governor-General, or functions which a Provincial Governor might have to perform in his discretion or individual judgment.<sup>29</sup>

It was also said that there were some political prosecutions for which an independent advice should be available to the Governor, uninfluenced by political considerations. All this led the framers of the Act of 1935 to conclude that the Advocate-General should not only be outside the Council of Ministers but also

---

<sup>28</sup>*Supra* note 5, p.4726.

<sup>29</sup>*Supra* note 5, p.4726.

independent of 'control by Ministers as regards his tenure'.<sup>30</sup>Mr. Vahanvati's conduct raises the question whether the independent status of the office of AG has become threat to the very basic provisions of the Constitution?

Article 76 is an original one and has not yet been amended. From the very scrutiny of the language of this Article it is inferred that it should be amended so as to cope with the present day legal scenario.<sup>31</sup> The functions mentioned in the Article 76 are not clear cut provisions because in addition to legal advice the Attorney General performs other functions also. The present Attorney General ShriGoolam E. Vahanvati is the member of the Supreme Court Arrears Committee which was *inter alia* constituted for the purpose of identifying the pending cases in the High Courts which need to be heard and disposed of on priority basis. He is also the Member of the Supreme Court e-committee. He is also the *ex-officio* member of the Supreme Court Legal Services Committee as also the *ex-officio* Vice-President of the Supreme Court Middle Income Group Legal Aid Society. Further the Union Ministry of law refers the legal matters to him. This Article is also silent about his assistants. In practice he is assisted by the Solicitor General and Additional Solicitor Generals.<sup>32</sup>

Moreover, the Attorney General for India is a constitutional office and is held by a person qualified to be appointed a judge of the Supreme Court. The Attorney General continues in office "during the pleasure of the President," a dignified phrase that has its medieval origins in the notion of holding office "during good behaviour." In practice it means until the AG enjoys the confidence of the Prime Minister and his council of ministers.<sup>33</sup>

According to the provision laid down in India, the Attorney-General is appointed on the basis of professional competence and not on political considerations. He is a non-party man, is appointed because of his competence as a lawyer and he is not a

---

<sup>30</sup>Ibid, p.4727.

<sup>31</sup>*Supra* note 7.

<sup>32</sup>*Supra* note 7.

<sup>33</sup> *Supra* note 18.

member of the Cabinet.<sup>34</sup>But the decline of law officers started in 1980 when Mrs. Gandhi rewarded K.G.Bhagat, a trial court lawyer who helped her out with her criminal cases, with the post of ASG. This is when personal loyalty began to play a role in the appointment of law officers, often in preference to independence and competence<sup>35</sup>

Also, the constitutional expert, H.M. Seervai, condemned the notion of law officers “committed to the philosophy of the government” as an “aberrant doctrine” that was: (a) unconstitutional and (b) opposed to the organisation of the Bar. The Attorney General is expected not only to offer legal advice to the government but also act independently of it, where required. This is because by the nature of his duties, the Attorney General is the guardian of the public interest.<sup>36</sup>

The observations made in this paper clearly show that the present AG of India has failed in his duties towards client, court and constitution and his arbitrary behaviour has imposed a threat to the constitution itself and therefore the time has come to make certain amendments in the provisions relating to the office of AG in India. So that the independent status of the office could be held and the Attorney-General could be made more accountable towards his duties, i.e., duties towards client, court and constitution. Strict actions should have been taken against the AG as he has defiled the integrity of the Constitution.

---

<sup>34</sup>M.P. Jain, *Indian Constitutional Law*, 262 (Lexis-Nexis, ButterworthsWadhwa, Nagpur, Vol. 1, 6<sup>th</sup> Ed., 2010).

<sup>35</sup> RajuRamachandran, “Coalgate: Legal scrap shows how UPA has devalued law officers”  
*available at:* [http://articles.economictimes.indiatimes.com/2013-05-01/news/38958226\\_1\\_solicitor-general-law-minister-law-officers](http://articles.economictimes.indiatimes.com/2013-05-01/news/38958226_1_solicitor-general-law-minister-law-officers)(as browsed on 29 July, 2013).

<sup>36</sup>*Supra* note 18.