



## **Government of Tamilnadu**

### **Department of Employment and Training**

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# UNION AND STATE EXECUTIVE

## UNION EXECUTIVE

### **Introduction:**

The Preamble of the Constitution of India, Declares India a Sovereign, Socialist, Secular, Democratic Republic. Unlike England where a hereditary monarch, either a Queen or a King is the Head of the State, India has an elected President as head of the state with fixed tenure of office.

The President is the supreme head of all the constitutional wings of the State, i.e the legislature. Executive, judiciary and armed forces. The President supervises their functions and ensures adherence to constitutional provisions by these bodies. The President represents the entire nation and upholds the constitution in every sphere of State's activity.

But unlike the President of the USA, Where the President of the republic wields de-facto (real, functional) executive powers, the President of Indian Republic is not vested with direct executive responsibilities; Such direct and real executive responsibilities are assigned by the Constitution, to a Council of ministers led by the prime minister, and such council of ministers, both collectively and individually responsible and accountable to the union legislature.

Thus, our Republican form of State is different from American form of Republic. Where it is Presidential executive.

### **PRESIDENT:**

The President is the head of the Indian State. He is the first citizen of India and acts as the symbol of unity, integrity and solidarity of the nation.

## **Qualifications for election as President**

1. He should be a citizen of India.
2. He must have completed the age of 35 years.
3. He should be qualified to become the member of the Lok Sabha.
4. He should not hold any office of profit under the government.

## **Election of President**

The President is elected by members of an electoral college consisting of: -

1. The elected members of both the Houses of Parliament,
2. The elected members of the Legislative Assemblies of the States.

The election of the President of India is in accordance with the system of proportional representation by means of single transferable vote. The system of secret ballot is adopted for the election of the President.

## **Term**

The President of India is elected for a period of five years. He is eligible for re-election for a second term.

## **Procedure for Impeachment of the President**

The President of India can be removed from office by impeachment for violation of the constitution. Impeachment has to be approved by both the House of Parliament. One fourth of the total members of a House can give notice at least fourteen days in advance of their intention to impeach the President. The charges if approved by two-thirds majority will be referred to the other House for investigation. If the investigating House also approves the charges with two-thirds majority, the President shall stand impeached and will vacate his office, on the date on which such a resolution is passed.

## **Powers of the President of India**

### **1. Executive Powers**

The executive power of the Union is vested in the President and is exercised by him either directly or through officer's subordinate to him in accordance with the constitution. There is a Council of Ministers to aid and advise the President in the exercise of his functions. All executive powers of the Union government are exercised in the name of President.

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The Prime Minister is appointed by the President and on the advice of the Prime Minister other Ministers of the Union are appointed by the President. The President appoints the Attorney -General of India, Comptroller and Auditor - General of India, Ambassadors, High Commissioners and other diplomatic representatives to foreign countries, the Chief Justice and other Judges of the Supreme Court and the High Courts, Governors of States, Lt. Governors, Chairman and members of the Union Public Service Commission, Election Commission. The President is the Supreme Commander of the Armed forces. He appoints the Chief of Staff of Army, Navy and the Air Force.

The President has the power to remove the Ministers on the advice of the Prime Minister. He can remove the Chairman or a member of the Union Public Service Commission only on the basis of the report of the Supreme Court. He can remove a Judge of the Supreme Court or the Election Commissioner only on the basis of decisions taken by the Parliament by a special majority in both the Houses.

It may be observed that though formally all the executive powers are vested in the President, he exercises them on the advice of the Prime Minister and his Council of Ministers. Earlier it was not obligatory for the President to accept this advice but the Forty-Second Amendment Act, 1976 made it obligatory for the President to exercise his functions in accordance with the advice of the Council of Ministers.

However, under the Forty-Fourth Amendment Act, 1978 the President has been authorized to refer back the matter to the Council of Ministers for reconsideration. But if the Council of Ministers after such reconsideration tenders any advice to the President, the President has to abide by the same.

## **2. Legislative Powers**

The President of India summons the Parliament at least twice a year. President prorogues or terminates the sessions of both or any of the Houses of Parliament. He is empowered to dissolve the Lok Sabha.

The President nominates twelve members to the Rajya Sabha, from among the distinguished persons in the field of art, science, literature and social service. He can also nominate not more than two members to the Lok Sabha from among the Anglo-

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Indian Community if in his opinion that community is not adequately represented therein.

President addresses the Parliament. He may address the joint-sitting of both the Houses or any of its Houses separately. He can convene a joint sitting of the Lok Sabha and Rajya Sabha to resolve the dispute if any.

No bill passed by the Parliament can become a law, without the assent or approval of the President. The President is empowered to issue an ordinance when the Parliament is not in session.

### **3. Financial Powers**

No money bill can be introduced in the Parliament without the recommendation of the President. The constitution of India places the Contingency Fund of India at the disposal of the President who is authorized to make advances out of it to meet the unforeseen expenditure pending its final authorization by the Parliament. Every five year, the President appoints a Finance Commission.

### **4. Judicial Powers**

The President has the power to grant pardon, reprieve or remission of punishment. He has the right to seek advice of the Supreme Court on a matter involving constitution and law.

### **5. Emergency Powers**

The President of India is vested with emergency powers.

They are as follows: -

- (a) Emergency due to war or external aggression or armed rebellion (Article :352)
- (b) Emergency due to failure of constitutional machinery in States (Article: 356)
- (c) Financial emergency. (Article: 360)

### **VICE-PRESIDENT:**

The Vice-President of India is the ex-officio Chairman of the Rajya Sabha. The Vice-President occupies the second highest office in the country. He is accorded a rank next to the President in the official warrant of precedence. In the event of the occurrence of any vacancy in the office of the President by reason of his death,

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resignation or removal, or otherwise, the Vice-President acts as the President until the date on which a new President takes charge. When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

### **Qualifications**

1. He should be a citizen of India
2. He must have completed the age of 35 years
3. He should possess the qualifications to become the member of the Rajya Sabha.
4. He should not hold any office of profit under the government.

### **Election of the Vice - President**

The Vice - President of India is elected by the members of an electoral college consisting of the members of both Houses of Parliament.

### **Oath or Affirmation:**

Before entering upon his office, the Vice-President has to make and subscribe to an oath or affirmation. In his oath, the Vice-President swears:

1. To bear true faith and allegiance to the Constitution of India; and
2. To faithfully discharge the duties of his office.

The oath of office to the Vice-President is administered by the President or some person appointed in that behalf by him.

### **Term of Office of Vice-President**

The Vice - President of India is elected for a period of five years. He is eligible for re-election. The Vice-President may resign before the expiry of his term.

### **Vacancy in office**

The Vice-President occupies the second highest office in the country. He is accorded a rank next to the President in the official warrant of precedence.

### **Removal Procedure**

Parliament can remove him from office. At least fourteen days notice is necessary for this purpose. If Rajya Sabha passes a resolution for removal of Vice-President by a



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majority of its total membership and if Lok Sabha also agrees to it, the Vice-President shall be removed from office.

### **Functions**

As the Chairman of the Rajya Sabha, the Vice-President presides over the meetings of the House. As the Presiding Officer, the Chairman of the Rajya Sabha is the unchallenged guardian of the prestige and dignity of the House. He is also the principle spokesman of the House and represents the collective voice to the outside world. He ensures that the proceedings of the House are conducted in accordance with the relevant constitutional provisions, roles, practices and conventions and that decorum is maintained in the House.

The Office of the Vice-President is one of the unique features of the constitution of India. It has no exact parallel in the countries of other democratic constitutions of the world.

### **PRIME MINISTER:**

In the scheme of parliamentary system of government provided by the constitution, the President is the nominal executive authority and Prime Minister is the real executive authority. In other words, president is the head of the State while Prime Minister is the head of the government.

### **Oath or Affirmation:**

Before the Prime Minister enters upon his office, the president administers to him the oaths of office and secrecy. In his oath of office, the Prime Minister swears:

1. to bear true faith and allegiance to the Constitution of India
2. to uphold the sovereignty and integrity of India,
3. to faithfully and conscientiously discharge the duties of his office, and
4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.

In his oath of secrecy, the Prime Minister swears that he will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a Union Minister except as may be required for the due discharge of his duties as such minister.



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## **Term**

The term of the Prime Minister is not fixed and he holds office during the pleasure of the president. However, this does not mean that the president can dismiss the Prime Minister at any time. So long as the Prime Minister enjoys the majority support in the Lok Sabha, he cannot be dismissed by the President. However, if he loses the confidence of the Lok Sabha, he must resign or the President can dismiss him.

## **Salary**

The salary and allowances of the Prime Minister are determined by the Parliament from time to time. He gets the salary and allowances that are payable to a member of Parliament. Additionally, he gets a sumptuary allowance, free accommodation, travelling allowance, medical facilities, etc.

## **Powers and Functions**

The Prime Minister is the Head of the Government. He is the real executive. The Prime Minister is appointed by the President. The President invites the leader of the majority party in the Lok Sabha to become the Prime Minister.

The Prime Minister of India is

1. Leader of the majority party
2. Leader of the Cabinet
3. Leader of the Parliament
4. Link between the President and Council of Ministers
5. Link between the President and Parliament
6. The Chief Spokesman of the Nation
7. Responsible for running the administration of the country
8. Responsible for conduct of international relations.

The Prime Minister is described as the 'Keystone of the Cabinet Arch' and 'First among equals'. Professor Harold J. Laski called him 'The pivot of the whole system of Government'. Sir Ivor Jennings described him as 'The Sun around which the planets revolve'.



## **ATTORNEY GENERAL OF INDIA:**

The Constitution (Article 76) has provided for the office of the Attorney General for India. He is the highest law officer in the country.

### **Appointment**

The Attorney General is appointed by the President.

### **Qualifications**

He must be a person who is qualified to be appointed a judge of the Supreme Court. In other words, he must be a citizen of India and he 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**

The term of office of the AG is not fixed by the Constitution. Further, the Constitution does not contain the procedure and grounds for his removal. He holds office during the pleasure of the president. This means that he may be removed by the president at any time. He may also quit his office by submitting his resignation to the president. Conventionally, he resigns when the government (council of ministers) resigns or is replaced, as he is appointed on its advice.

### **Salary**

The remuneration of the AG is not fixed by the Constitution. He receives such remuneration as the President may determine.

### **Duties and Functions:**

1. To give advice to the Government of India upon such legal matters, which are referred to him by the president.
2. To perform such other duties of a legal character that are assigned to him by the president.
3. To discharge the functions conferred on him by the Constitution or any other law.
4. To appear on behalf of the Government of India in all cases in the Supreme Court in which the Government of India is concerned.

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5. To represent the Government of India in any reference made by the president to the Supreme Court under Article 143 of the Constitution.
  6. To appear (when required by the Government of India) in any high court in any case in which the Government of India is concerned.

In the performance of his official duties, the Attorney General has the right of 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. He does not fall in the category of government servants.

## **STATE EXECUTIVE**

### **GOVERNOR**

The executive power of the state is vested in the Governor and all executive actions of the state have to be taken in the name of the Governor. But he has to act as the nominal head of the state due to parliamentary system.

Normally, there shall be a Governor for each state according to Article 153, but an amendment of 1956 makes it possible to appoint the same person as the Governor for two or more states.

Articles 153 to 167 in Part VI of the Constitution deal with the state executive. The state executive consists of the governor, the chief minister, the council of ministers and the advocate general of the state. Thus, there is no office of vice-governor (in the state) like that of Vice-President at the Centre.

### **Appointment of Governor**

The Governor is not elected but is appointed by the President and holds office at pleasure of the President. According to the Constitution, the Governor is appointed by the President by a warrant under his hand and seal. But, in actual practice, the Governor is appointed by the President on the recommendation of the Prime Minister.

## ◆.....◆ **Qualifications**

Any citizen of India over 35 years of age is eligible for the office, but he must not hold any other office of profit, not be a member of the legislature of the union or of any state according to Article 158.

But, the Sarkaria Commission has suggested that a person to be appointed as the Governor should satisfy the following criteria.

1. He should be eminent in some walk of life.
2. He should be a person from outside the state.
3. He should be a detached figure and not intimately connected with local politics of the state.
4. He should be a person who has not taken too great a part in politics generally and particularly in the recent past and
5. In selecting a Governor in accordance with the above criteria, persons belonging to the minority groups should continue to be given a chance as hitherto.

## **Term**

The normal term of a Governor's office shall be five years and he can be given another term also. Even after the completion of his term, he continues in office till his successor joins the office. Even though the term of office of Governor is five years, he may lose his office by his resignation or the dismissal by the President. He receives his salary from the Consolidated Fund of the state which is non-votable in the State Legislature.

## **Powers and Functions of the Governor**

The Governor is the head of the state executive and he has enormous powers.

In the exercise of functions and powers, the Governor, except in certain cases, is to be guided by the aid and advice of the Council of Ministers headed by the Chief Minister under Article 163. As the executive head in the state level, the Governor has following functions and powers.

### **A. Executive powers**

- All executive actions of the state government are formally taken in the name of Governor.
- He appoints the Chief Minister and other ministers. They also hold office during his pleasure.

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- He appoints the Advocate - General of the state and determines his remuneration. The Advocate General holds his office during the pleasure of the Governor.
  - He appoints the State Election Commissioner and determines his condition of service and tenure of office.
  - He appoints the Chairman and Members of the State Public Service Commission. Yet, they can be removed from office only by the President of India and not by the Governor

### **B. Legislative Powers**

- The Governor is an integral part of the state legislature. But he is not a member in the either house of the legislature. In this capacity, he enjoys the following legislative powers.
- He has the right to summon or prorogue the state legislature and dissolve the State Legislative Assembly.
- He can address the state legislature at the commencement of the first session after each general election and the first session of each year.
- He can send messages to the houses of the state legislature relating to a bill pending in the legislature.
- He can appoint any member of the Legislative Assembly to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant.

### **C. Financial Powers**

- The Governor has to see that the state budget known as the Annual Financial Statement is laid before the legislature.
- Money Bills can be introduced in the state legislature only with his prior recommendation.
- No demand for any grant can be made exception on his recommendation.
- He can make advances out of the state Contingency Fund to meet any unforeseen expenditure; and



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- He constitutes a Finance Commission after every five years to review the financial position of the panchayats and the municipalities.

#### **D. Judicial powers**

- The Governor can grant pardons, reprieve and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence. But, the pardoning power of the Governor differs from the president in following ways.
- The President can pardon the death sentence while the Governor cannot.
- The President can pardon the sentences inflicted by court martial whereas the Governor cannot.
- He is consulted by the President while appointing the judges of the concerned state High Court.
- He makes appointments, postings and promotions of the district judges in consultation with the High Court; and
- He appoints the persons to the judicial service of the state in consultation with High Court and the Public Service Commission.

#### **E. Discretionary Powers:**

The Governor reserves a bill for the consideration of the president. He recommends for the imposition of the President's rule in the state. He seeks information from the Chief Minister relating to the administrative and legislative matters of the state. He can call the leader of any party to form ministry in the state when there is no clear-cut majority to any party in the Legislative Assembly after the general election she can dismiss the Council of Ministers when it is unable to prove the confidence of the Legislative Assembly; and He can dissolve the Legislative Assembly if the Council of Ministers has lost its majority.

#### **F. Miscellaneous Powers:**

In addition to the functions and powers mentioned above, the Governor exercises the following miscellaneous function also. The Governor receives the annual report of the State Public Service Commission and submits the same to the Council of Ministers and the state legislature for discussion; and He receives the report of the Auditor - General

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regarding income and expenditure made by different departments under the State Government.

### **CHIEF MINISTER:**

In the scheme of parliamentary system of government provided by the Constitution, the governor is the nominal executive authority and the Chief Minister is the real executive authority

### **Appointment of Chief Minister**

The Chief Minister is appointed by the Governor. Actually, after the general elections to the state Legislative Assembly are over, the Governor calls the leader of the majority party to form ministry in the state

### **Oath**

Before the Chief Minister enters his office, the governor administers to him the oaths of office and secrecy. In his oath of office, the Chief Minister swears:

1. to bear true faith and allegiance to the Constitution of India,
2. to uphold the sovereignty and integrity of India,
3. to faithfully and conscientiously discharge the duties of his office, and
4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.

In his oath of secrecy, the Chief Minister swears that he will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a state minister except as may be required for the due discharge of his duties as such minister.

### **Term**

The Chief Minister shall hold office during the pleasure of the Governor. However, the normal term of office of the Chief Minister is five years. But, he may lose the office due to his resignation and the imposition of state emergency under Article 356.

### **Salary**

The salary and allowances of the Chief Minister are determined by the state legislature. In addition to the salary and allowances, which are payable to a member of the state



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legislature, he gets a sumptuary allowance, free accommodation, travelling allowance, medical facilities, etc.

### **Powers of Chief Minister**

The Chief Minister is the chief of state administration. He has enormous functions and powers.

The following are the functions and powers of the Chief Minister.

#### **A. Relating to the Council of Ministers**

As the head of the Council of Ministers, the Chief Minister enjoys the following functions and powers. The Chief Minister recommends the persons who can be appointed as ministers by Governor. He allocates the portfolios among the ministers. He shuffles and reshuffles his ministry. He can ask a minister to resign or to advise the Governor to dismiss him in case of difference of opinion. He presides over the meetings of the Council of Ministers and influences its decisions. He can bring about the collapse of the council of ministers by resigning from office; and He guides, directs, controls and coordinates the activities of all the ministers.

#### **B. Relating to the Governor**

1. The Chief Minister is the principal channel of communication between the Governor and the Council of Ministers under Article 167, and
2. He advises the Governor in relation to the appointment of the following officials.
  - (a) Advocate General
  - (b) State Election Commissioner
  - (c) Chairman and Members of the State Public Service Commission.
  - (d) Chairman and Members of the State Planning Commission
  - (e) Chairman and Members of the State Finance Commission.

#### **C. Relating to State Legislature**

The Chief Minister advises the Governor with regard to the summoning and proroguing the sessions of the state legislature. He announces the government policies on the floor of the house. He can introduce the bills in the Legislative Assembly; and He can recommend for the dissolution of the Legislative Assembly to the Governor anytime.



## **D. Other function and powers**

As the leader of the ruling party, the Chief Minister has to control the party and develop the disciplines. As the leader of the state, he has to keenly consider the demands of the different sections of the people. As the political head of the various services, he has to supervise, control and co-ordinate the secretaries of various departments in the state level.

For smooth functioning of the state and for good Centre-State relations, he has to develop a rapport with the union government; and the size of the ministry is decided by the Chief Minister.

However, only 15 percent of the members of the Legislative Assembly can be made as ministers due to the recent constitutional amendment. Thus, the Chief Minister plays a very significant and highly crucial role in the state administration.

However, the discretionary powers of the Governor have slightly reduced the role and importance of the Chief Minister only in a few states where the Governors have special provision. But it is not so in the states like Tamil Nadu.

## **COUNCIL OF MINISTERS:**

The constitution of India under Article 163 provides that there shall be a Council of Ministers with the Chief Minister as its head to aid and advise the Governor in every state. Accordingly, the Governor is a nominal head and real powers of the state government vests in the Council of Ministers in Tamil Nadu.

## **NATURE OF ADVICE BY MINISTERS**

Article 163 provides for a council of ministers with the chief minister at the head to aid and advise the governor in the exercise of his functions except the discretionary ones. If any question arises whether a matter falls within the governor's discretion or not, the decision of the governor is final and the validity of anything done by him cannot be called in question on the ground that he ought or ought not to have acted in his discretion.



## **Appointment of Ministers**

The Chief minister is appointed by the Governor. The other ministers are appointed by the governor on the advice of the chief minister. This means that the governor can appoint only those persons as ministers who are recommended by the chief minister.

## **Oath**

Before a minister enters upon his office, the governor administers to him the oaths of office and secrecy. In his oath of office, the minister swears:

1. to bear true faith and allegiance to the Constitution of India,
2. to uphold the sovereignty and integrity of India,
3. to faithfully and conscientiously discharge the duties of his office, and
4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.

In his oath of secrecy, the minister swears that he will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a state minister except as may be required for the due discharge of his duties as such minister

## **Term**

There is no fixed term of office prescribed for the ministers and they hold office during the pleasure of the Governor. However, the normal term of office of the ministers is five years.

## **Salary**

The salaries and allowances of the ministers are determined by the state legislature from time to time. A minister gets the salary and allowances which are payable to a member of the state legislature. Additionally, he gets a sumptuary allowance (according to his rank), free accommodation, travelling allowance, medical facilities, etc.

## **Composition of the Council of Minister**

As far as the size of the Council of Ministers is concerned, it is not uniform in all the states in India. the number of ministers should not exceed 15 percent of the total members of the state legislative Assembly due to the recent Constitutional Amendment Act.



Each minister has to be a member in the state Legislative Assembly. If not, he has to procure this membership within six months. In Tamil Nadu, according to the strength of Legislative Assembly (234 members), the number ministers may be up to 34, i.e. 15 percent of 234.

### **Functions:**

The Council of Ministers maintains law and order and security of life and property of the people in the state. It formulates and decides the policies of the state and implements them effectively. It decides the legislative programmes of the Legislative Assembly and sponsor all important bills. It controls the financial policy and decides the tax structure for the public welfare of the state. It chalks out programmes and schemes for the socioeconomic changes so that the state makes headway in various inter-related fields.

It makes the important appointments of the Heads of Departments. It discusses and takes efforts on the dispute with other states. It advises the Governor on the appointment of Judges of the subordinate courts.

It considers state's share of work in the Five Year Plans and determines its obligations. It frames the proposal for incurring expenditure out of state reserves. It decides all the bills whether ordinary bills or money bills to be introduced in the Legislative Assembly.

Each minister of the Council of Ministers supervises, controls and coordinates the department concerned; and Annual Financial Statement called as the Budget is finalized by the Council of Ministers.

### **ADVOCATE GENERAL OF THE STATE**

The Constitution (Article 165) has provided for the office of the Advocate General for the states. He is the highest law officer in the state.

### **Appointment**

The Advocate General is appointed by the governor.

## **Qualifications**

He must be a person whose 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.

## **Term**

The term of office of the advocate general is not fixed by the Constitution.

## **Removal**

The Constitution does not contain the procedure and grounds for his removal. 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.

## **Salary**

The remuneration of the advocate general is not fixed by the Constitution. He receives such remuneration as the governor may determine.

## **Duties and Functions**

To give advice to the government of the state upon such legal matters which are referred to him by the governor. To perform such other duties of a legal character that are assigned to him by the governor. 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.

## **Questions:**

1. Discuss the power and function of the President of the India.
2. Explain the powers and functions of the Governor of Tamil Nadu.
3. Briefly discuss the functions of
  - a) Attorney General of India.
  - b) Advocate General of the State.