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Analysis of the Role of Amicus Curiae in the Indian Judiciary

By Kirti Mahal

“I had always understood that the role of an amicus curiae was to help the court by expounding the law impartially, or if one of the parties were unrepresented, by advancing the legal argument on his behalf.”

— *Salmon L.J.*¹

Introduction

This observation captures the true meaning of amicus curiae, an institution that has become very important in the Indian Judicial system. In today’s times of complex cases, public interest litigation and ethical lapses in adversarial proceedings, Indian courts have relied on amicus curiae to maintain neutrality and ensure that justice is upheld. Amici Curiae is a Latin term meaning “Friend of the Court.” It is when someone who is not involved in a legal case volunteers to provide helpful information to the Judge. Amicus curiae acts as a neutral “outsider” who helps the court avoid irrational or rushed decisions.

Who can do this?

1. Expert organisations
2. Advocacy groups
3. Legal scholars
4. Industry associations
5. Government agencies

They are the experts who offer their perspective to help the court to make a better decision. They help the court to minimise errors and deliver sound judgements. They submit a document called ‘amicus brief’ which includes legal opinion, analysis, Information about how the decision might affect others, Historical context or research, and technical or scientific expertise. An amicus curiae does not represent any litigant and is expected to act impartially, with the sole objective of aiding the court in delivering justice. It is up to the judge to decide whether to accept and consider their input.²

¹ Salmon L.J., *Allen v. Sir Alfred McAlpine & Sons Ltd.*, [1968] 2 Q.B. 229 (C.A.)

² Friend of the Court - Amicus Curiae, LegalServiceIndia, <https://www.legalserviceindia.com/article/I282-Amicus-Curiae.html> (last visited Jan. 25, 2026).

In India, there is no exhaustive statutory definition of *amicus curiae*. Instead, the concept has developed through judicial practice and conventions. Courts appoint amici particularly in cases where parties are unrepresented, legal issues are complex, or where the decision could affect many people beyond just the parties involved. The absence of a rigid statutory framework allows courts flexibility in appointing amici based on the demands of justice.

Legal Basis of Amicus Curiae in India

The power of Indian courts to appoint amici curiae flows primarily from their inherent and constitutional powers. While the Constitution of India does not explicitly mention *amicus curiae*, several provisions enable courts to seek such assistance.

Article 142 of the Constitution empowers the Supreme Court to pass any order necessary to do “complete justice” in a matter.³ This provision has often been invoked to justify the appointment of *amicus curiae* in cases involving constitutional or public importance.

Further, Articles 129⁴ and 215⁵, which declare the Supreme Court and High Courts as courts of record, respectively, grant them inherent powers to regulate their own procedures. These powers include appointing amici curiae to assist in legal and factual determinations.

Additionally, the Supreme Court Rules, 2013, particularly Order XLVII, provide procedural backing for appointing *amicus curiae*, especially in criminal appeals and cases where the accused is unrepresented.⁶

Appointment and Procedure

The appointment of the amici curiae in India can occur through the court when it feels the need for an expert legal opinion or when a party is not represented. Sometimes, even individuals or organisations can volunteer to be amici curiae.

Appointment of the amici curiae is within the court’s discretion; it is usually done through an official order. The court usually appoints a senior advocate or a person who has great expertise in the relevant field of law.⁷

In the case of *Anokhilal v. State of Madhya Pradesh*⁸, laid down guidelines for the appointment of *amicus curiae*, particularly in serious criminal cases. The Court held that:

“In cases involving the possibility of life imprisonment or the death penalty, the *amicus curiae* appointed should have at least ten years of experience at the Bar. Where a matter is before the High Court for confirmation of a death sentence, Senior Advocates of the Court should ordinarily be considered first for appointment as *amicus curiae*. An *amicus curiae* must

³ INDIA CONST. art. 142.

⁴ INDIA CONST. art. 129.

⁵ INDIA CONST. art. 215.

⁶ Supreme Court Rules, 2013, Order XLVII (India).

⁷ *Amicus Curiae in India*, LawBhoomi (May 22, 2024), <https://lawbhoomi.com/amicus-curiae-in-india/> (last visited Jan. 25, 2026).

⁸ *Anokhilal v. State of Madhya Pradesh*, (2019) 20 S.C.C. 196 (India).

be given a reasonable time to prepare the case. The Court observed that a minimum period of seven days would generally be appropriate.”

Role and Functions

1. The primary role of an amicus curiae is to advise the court on legal matters. They have to provide an unbiased opinion.
2. Conducting legal and factual research in complex or technical cases.
3. The sole purpose of appointing a amici curiae is to bring specialised knowledge and expertise to the court. For example, in cases involving technology and data protection, an amicus curiae with subject-matter expertise can assist the court in understanding technical issues that impact legal interpretation.
4. Representing the interests of unrepresented or marginalised groups, especially in PILs

Judicial Pronouncements on Amicus Curiae

The famous BMW hit-and-run case stands as a landmark example of the vital role played by amicus curiae in preserving the integrity of the Indian judicial process. The court removed both the prosecution and defence counsel who were forcing the witness to be hostile. To restore neutrality and safeguard justice, the Delhi HC appointed Advocate Arvind Nigam as amicus curiae. Acting as an independent officer of the court, Nigam represented neither party but assisted the judiciary in evaluating evidence objectively and addressing ethical violations that had compromised the trial.⁹

The cases of *Ajmal Kasab*¹⁰, *Yakub Memon*¹¹, and *the Nirbhaya case*¹² showcase the court’s commitment to ensuring legal representation even in the situation of intense public outrage. In these cases, Senior advocates were appointed by the court to represent the accused despite resistance and reluctance within the legal community.

Conclusion

Amicus curiae plays an important role in the Indian judicial system by helping courts decide complex cases and protecting the right to fair legal representation. By providing independent and impartial assistance, amici support justice and strengthen public confidence in the judiciary. However, issues such as possible bias, delay, and excessive reliance must be addressed. Courts should therefore use amici curiae carefully, with clear guidelines and transparency, so that it continues to assist the court without weakening the adversarial process.

⁹ State v. Sanjeev Nanda, (2012) 8 S.C.C. 450 (India).

¹⁰ Mohd. Ajmal Amir Kasab v. State of Maharashtra, (2012) 9 S.C.C. 1 (India).

¹¹ Yakub Abdul Razak Memon v. State of Maharashtra, (2013) 13 S.C.C. 1 (India).

¹² Mukesh v. State (NCT of Delhi), (2017) 6 S.C.C. 1 (India).