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The Uneasy Seat: Amicus Curiae and the Conscience of Indian Courts

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The Latin term "amicus curiae", meaning "friend of the court", has an almost humanitarian flavour, but in India it actually refers to an external legal advisor who is neither elected nor appointed. The amicus is perhaps one of the most controversial and least clear constitutional roles in the judiciary of this country. This individual is neither a party nor even a legal representative of any party, and yet his input can have a major bearing on criminal appeals, environmental laws, and the death penalty, etc. Without any express approval from the Constitution or the Civil Procedure Code.

The Preamble to the Constitution, the Civil Procedure Code, 1908, and the Code of Criminal Procedure, 1973, are silent on the subject of amicus curiae. These laws provide that, if a Court thinks so, it will appoint an amicus curiae. This practice is based wholly and solely on the inherent powers of the Court under Article 143 (reference under Article 144A, powers not expressed but implied) and the High Court's powers under Articles 213 and 225 read with Section 151 of the CPC, which gives civil courts power to protect themselves. Rule of the Supreme Court Regulation (SC) (Rules) 1966, Order XXI, Rule 25 is the operative provision: "The Court may, if it considers the matter worth it, appoint an amicus curiae for the assistance in the proceedings."¹

This bare system of laws has permitted Indian courts to make amicus curiae a versatile tool and at times, as some would say, a very bold instrument.

The two functions of an amicus for different Indian court cases are, first, representative and, second, advisory. Representation is the first capacity, which is when the court appoints an amicus curiae, so that even the right to Article 22(1) is not left only on paper. The second is

¹ *Supreme Court Rules*, 1966, Order XXI, Rule 25 (India).

an advisory role, which the Indian courts use mainly in complicated constitutional, environmental or technical cases.

For example, in the 2012 Delhi gang rape appeal court, the Supreme Court assigned two Senior Advocates, Raju Ramachandran and Sanjay Hegde, as amici to the court even after the availability of the defence lawyer, stating that the appointment was made so that the court can consider different facets of the matter, rather than interpreting it through counsel's lack of knowledge. The Representational Amicus is the subject under discussion for the Procedural Labyrinth Anokhi Lal and its Progeny.

The judgment of the Supreme Court in *Anokhi Lal v. State of Madhya Pradesh* (2019) 20 SCC 196 radically changed the role and function of the representational amicus.² The four key mandates issued by the Court under the judgment were what comes next: (i) In matters of life sentence or death punishment as a maximum sentence, the amicus should be only the one who has at least worked as a practising advocate or barrister for ten years, (ii) When a death sentence from the High Court is to be confirmed by the Supreme Court, the Court first considers appointing only the Senior Advocates, (iii) The amicus must be given at least seven days to get himself prepared; (iv) The amicus should be given the facility of meetings and communications with the prisoner.

The case of Anokhi Lal had become a case of a very rapid trial that was also a mockery of justice. On the first day of framing of charges, the amicus was appointed. The trial ended within fourteen days, and a death sentence was given. The Supreme Court cancelled the conviction, saying that "justice cannot be allowed to suffer or be sacrificed at all by a hasty disposal.

Anokhi Lal's trigger was such a very speedy disposal of the matter that it became a joke. In March 2026, the Court further explained that with *Bhola Mahto v. State of Jharkhand*, the Court had to consider a very old case of a convict.³ After his appeal was partly disposed of by the High Court, at the aid of an amicus, the Court found out that the convict was not even informed of the hearing and decision of the matter. The Supreme Court recognised that the High Court was under no legal obligation to notify the accused, but the Court felt it would have been a good "desirable precaution" to inform him. Now, the Court recommends that if an amicus is going to be appointed to an appellate court, a convict should at least be served

² *Anokhi Lal v. State of Madhya Pradesh*, (2019) 20 SCC 196.

³ *Bhola Mahto v. State of Jharkhand*, 2026 SCC OnLine SC 487 (Decided Mar. 16, 2026).

with a copy of the appointment; if he can't be found, via the local police station or by fixing a copy on his recorded residential address would sufficiently fulfil the legal requirement.

Amicus curiae, the Friend of the Court, has become a gatekeeper in PIL proceedings. Public Interest Litigation (PIL) as a mechanism gives non-litigants (those not legally involved) a right to raise their voice against a perceived injustice. Amicus curiae is not simply a legal assistant but a fact finder and truth verifier, too. A number of examples can be cited where Indian Courts have, in one way or another, used amicus to counter PIL bias and check whether petitioners are not hiding something. As for the case of the forest definition of Aravalli hills, amicus curiae submitted in the month of March 2026 that the Union Environment Ministry "has completely suppressed" the Forest Survey of India report, which contained findings opposite to the government's stance.

Another novel procedure that has come up is handling "public interest immunity", which is when a public authority or State wants to withhold documents for reasons of national secrecy, etc. Instead of sealed cover, which has been a topic of criticism, the Supreme Court now refers the matter to an appointed amicus to examine if there is a real reason for non-disclosure to be granted the same.

There is no doubt that the institution of amicus is criticised from time to time. A few years back, when the Kerala High Court appointed two second-year law students as amici in an NDPS case (August 2025), the Kerala High Court Advocates' Association lodged an objection calling it "a mockery of the judicial system, " saying:⁴It is quite natural that the Court should not think this Hon'ble Court is the place for training law students," and asking the Court to amend the High Court Rules, which would be a step toward transparency of amicus appointments.

Beyond that, the position of amicus also shows quite a conflict within Indian legal tradition. Appointed without the consent or even against the objections of the parties, paid hardly anything or not at all, amicus with all these factors may have a decisive influence on a trial for life and liberty. Still, the whole matter remains under the umbrella of judicial discretion that is virtually uncheckable. Anokhi Lal guidelines and Bhola Mahto notice were important steps, but they only concerned the representational amicus. Even to date, the advisory amicus, in particular the one dealing with PIL matters, is completely outside the law, i.e., is free of any

⁴ *Kerala High Court Advocates' Ass'n v. Registrar General*, Letter to Chief Justice, Kerala High Court (Aug. 2025) (objecting to appointment of law students as amici curiae).

statutory boundary and has its only accountability in the bench (Judge/s) that has appointed the amicus.