



AMICUS CURIAE IN INDIAN LEGAL SYSTEM: AN OVERVIEW

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Abstract-- Amicus Curiae is a Latin term which literally means a friend of the court. This friend advises the court on the matters of law or fact. Amicus Curiae is not an active participant in the proceedings of the court. He is not even a party to the litigation. It is only by the permission of the court, when it seeks some advice in respect of a matter of law that Amicus Curiae gets directly involved in the case. This involvement is totally voluntary on the part of the Amicus Curiae. This paper is an attempt to analyze the instances when Amicus Curiae was involved in a case in the Court of Law.

Keywords: Amicus Curiae, Latin, court, law, case, litigation.

INTRODUCTION

Amicus Curiae, the friend of the court, is an impartial advisor, often voluntary, in a court of law in a particular case. He is someone who is not a party to a case, nor is an advocate appearing in the case, but has knowledge, expertise, insights that have a bearing on the legal issues in the case. He advises and assists the Courts on matters of fact or law, that might otherwise escape consideration of the Judge, and thus help in minimizing the risks of error in judgments. An amicus curiae brief is a persuasive legal document and normally amplifies, augments or supplements the already made arguments or presents a totally different arguments not yet raised by any party to the case. Lord Salmon in the case of *Allen v. Sir Alfred McAlpine and Sons Ltd.*¹ has opined on the role of amicus as: "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."

AMICUS CURIAE IN INDIAN LEGAL SYSTEM

In India, the Amicus Curiae appointed by the Courts are senior advocates, advocates, officers of the court, or the law academicians, or the experts in a particular field or discipline. It is entirely the discretion of the Courts, as to whom they shall appoint as an amicus curiae in a particular case. They can be appointed in civil as well as criminal matters. Some of the relevant and notable provisions are mentioned here:

1. *Article 39A of the Constitution of India:* The insertion of this article in 1976, as part of the Directive Principles of State Policy was to encourage the due process of law through a fair trial and adequate representation in the court. The Article says that "the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to

¹ ((1968) 2 Q.B. 229 at p.266 F-G)



ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

2. *Section 45 of the Indian Evidence Act, 1872*: This section says about “when the Court has to form an opinion upon a point of foreign law or of science, or art, or as to identity of handwriting, or finger impressions, the opinions upon that point of persons particularly skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts. Such persons are called experts.”

CASE REFERENCES

*Hussainara Khatoon v. State of Bihar*²: This case is a landmark case on speedy trial in India. The landmark judgment led to the speedy trial of cases to be engrained as the fundamental right of every accused person, which was overlooked so far. This case shocked everyone, as regards to the state of affairs of the administration of justice in the state of Bihar. The very fundamentals of Article 21 of the Constitution of India were shaken. Even Article 39A, under the Directive Principles of State Policy, was brought to the fore. The writ of *habeas corpus*, is a constitutional tool to prevent unlawful incarceration, by ordering the person with custody to prove the legality of the custody. In such cases, amicus can access the person in custody and be a friend, not only to the prisoner, but also the court.

*Siddhapal Kamala Yadav v. State of Maharashtra*³: In this case, the accused murdered a person, with a saline stand, while he was in prison. He pleaded not guilty, and said he was unaware of what he was doing. He pleaded insanity. When the police constable arrived there and handcuffed him, he tried to escape, showing that he was fully aware of the nature of his act. The evidence of doctors who attended the accused, expressed their opinion, and clearly stated that the appellant’s plea relating to unsoundness of mind has no substance. The court then rejected his claim of insanity as defence, saying that the case does not fall under Section 84 of IPC, 1860.

As referred earlier, Section 45 of the Indian Evidence Act, 1872 is about the opinions of the experts. This case clearly illustrates that the opinion of the doctors that the accused is normal was taken as vital evidence and led to the rejection of the insanity plea. This case highlights that the amicus does not necessarily always belong to the legal fraternity.

*Anokhilal v. State of Madhya Pradesh*⁴: In this case a nine-year-old girl was kidnapped, raped and murdered. An Advocate was appointed by the Legal Aid Services Authority to represent the accused. The Advocate did not meet the accused, so a second one was appointed for assistance. The second amicus, in this case, was appointed one day prior to the hearing in the court. So, a debatable point arose whether the appellant was extended “real and meaningful assistance”. As a

² AIR 1979 SC 1369

³ AIR 2009 SC 97

⁴ AIR 2019 SC 1637



result, the Apex Court laid down some norms so that the infirmities in the present case are not repeated⁵. These are as mentioned below:

- In all cases where there is a possibility of life or death sentence, the Advocates with minimum of 10 years practice at the Bar will only be considered to be appointed as Amicus Curiae to represent an accused.⁶
- In all matters dealt with by the High Court concerning confirmation of death sentence, Senior Advocates of the Court must first be considered to be appointed as Amicus Curiae.
- Whenever any learned counsel is appointed as Amicus Curiae, some reasonable time may be provided to enable the counsel to prepare the matter. There cannot be any hard and fast rule in that behalf. However, a minimum of seven days' time may normally be considered to be adequate.
- Amicus Curiae, appointed on behalf of the accused, must be allowed to meet and have discussions with the accused.

The Court expressed its appreciation and gratitude for the assistance given by Mr. Sidharth Luthra, the learned Amicus Curiae and requested him to assist this Court for deciding other issues also. Mr. Siddharth Luthra, who appeared for the appellant on behalf of the Supreme Court Legal Services Authority had highlighted some pertinent issues concerning the way the trial was conducted. He averred that there was no fairness and the interest of the appellant-accused was put to prejudice more than once. His submission included the following points:

- i. Amicus Curiae was appointed on the same day when the charges were framed, which means that the Amicus Curiae did not have sufficient time and opportunity to study the matter.
- ii. Amicus Curiae did not effective interaction with the accused and could not get appropriate instructions.

REMARKS

There is plethora of cases where the assistance of amicus curiae has been sought by the courts.⁷ Although a progressive attitude by the Courts, the limitations cannot be overlooked. The role of amicus curiae can be demarcated in varied manner:⁸ as that of a counsel; as an impartial adviser, since he informs and advises the court to reduce error in judgment; and as a functional judicial activist, because in cases of public importance brought up before the court, he assists the court to

⁵ See, <https://www.thehindu.com/news/national/sc-allows-discharge-of-officer-from-sit-probing-alleged-fake-encounters-in-manipur/article34089307.ece>

⁶ <https://www.sconline.com/blog/post/2019/12/20/sc-lays-down-guidelines-for-appointment-of-amicus-curiae-where-there-is-possibility-of-life-sentence-or-death-sentence/>

⁷ Mulla & Another v. State of Uttar Pradesh :(2003) 3 SCC 569; Sanjeev Kumar Mittal v. The State: Cr. Misc. No. M-20610 of 2017; Jakia Nasim Ahesan & Anr. vs State of Gujarat & Ors: CRIMINAL APPEAL NO. 1765 OF 2011 (ARISING OUT OF S.L.P. (CRL.) NO. 1088 OF 2008)

⁸ <https://timesofindia.indiatimes.com/india/demarcate-how-amici-curiae-can-help-sg-tells-top-court/articleshow/81560146.cms>



reduce the error in judgment.⁹ Senior advocate Harish Salve has appealed to the Supreme Court to be recused as the amicus curiae to assist the court in the suo motu proceedings over the Centre's handling of the Covid-19 crisis in India.¹⁰ "Harish Salve has said this case is perhaps one of the most sensitive cases that the court will handle in its existence."¹¹ "The country is on tenterhooks. This is one of the most sensitive cases the court will ever handle. I don't want it to be taken up under a shadow that I was appointed as the amicus because I know the CJI," said Harish Salve over allegations made by critics and the Opposition since the Supreme Court hearing on Thursday".¹²

Amicus Curiae can be appointed in cases falling under the civil jurisdiction as well as the criminal jurisdiction. Certain limitations may also arise when taking the assistance and advise of the amicus. These may be the waste of precious time and judicial resources by arguments and extra matters included, arguments may be irrelevant or misplaced or overstated, original issues may be overwhelmed in the litigation. In spite of the limitations, the role of amicus curiae is important and very functional in achieving justice for the litigants. In administration of justice, it is to be remembered that ultimately justice is of supreme importance and this dwarfs the limitations, which in any case are not insurmountable. In criminal justice system the cardinal rule is that the judge must be totally satisfied beyond reasonable doubt that a person is guilty. In light of this, the appointment of Amicus Curiae is important and totally justified.

NOTABLE INSTANCES WHERE AMICUS CURIAE APPOINTED

S.No.	CASE	AMICUS CURIAE
1.	2G Spectrum Case ¹³	K.K. Venugopal
2.	Ayodhya Case ¹⁴	Former Solicitor General Gopal Subramanian
3.	BMW Hit and Run Case ¹⁵	Arvind Nigam
4.	Gujarat Riot Cases	Raju Ramachandran
5.	Nirbhaya Case	Raju Ramachandran
6.	Prashant Bhushan Case ¹⁶	AG Venugopal ¹⁷
7.	Sabarimala Temple	K. Ramamoorthy
8.	Shree Padmanabhaswamy Temple Case	Former Solicitor General Gopal Subramanian
9.	Triple Talaq Case	Salman Khurshid

⁹ <https://www.legalserviceindia.com/legal/article-5426-amicus-curiae.html>

¹⁰ Suo Motu Writ Petition (Civil) No.3 of 2021.

¹¹ https://main.sci.gov.in/supremecourt/2021/11001/11001_2021_35_301_28040_Judgement_31-May-2021.pdf

¹² <https://www.indiatoday.in/coronavirus-outbreak/video/harish-salve-recuses-as-amicus-curiae-in-sc-s-covid-hearing-1794239-2021-04-23>

¹³ Union Of India v. Association of Unified Telecom Service Providers of India Etc., M.A. (D) No. 9887 Of 2020 In Civil Appeal Nos.6328-6399 Of 2015

¹⁴ M. Siddiq v. Mahant Suresh Das & Ors., Civil Appeal Nos 10866-10867 of 2010.

¹⁵ State Tr.P.S. Lodhi Colony, New Delhi v. Sanjeev Nanda, (2012) 8 SCC 450

¹⁶ https://main.sci.gov.in/supremecourt/2020/14323/14323_2020_33_1504_23746_Judgement_31-Aug-2020.pdf

¹⁷ <https://www.hindustantimes.com/india-news/sc-asks-ag-to-be-amicus-curiae-in-bhushan-case/story-L5JYX9wtPLx1uTpsJ8RP9K.html>



CONCLUSION

The foundation of the justice system, which makes it strong, is inter woven with the intelligentsia concoction of academia, law enforcement and forensic services, the judiciary and the officers of the court. To these elements 'amicus curiae' can be safely added. Their importance cannot be underrated or played down. The core balance between search for truth, fairness of the process and ensuing justice has to be maintained at any cost in the administration of justice. The adversarial system of justice, in India, makes it all the more important for making amicus curiae a permanent addition in the litigation process. The adversarial legal system involves two advocates, who represent their parties' case in the court of law and the judge accordingly determines the truth, and passes the judgement on the basis of arguments and proofs presented before him. In fact, the role of court, primarily, is to be an impartial referee. In contrast, inquisitorial system involves the active participation of the court in investigating the facts of the case. It is always better to let ten guilty men go free than one innocent person be declared guilty and convicted. Amicus Curiae can be a bridge between the Adversarial Legal System and the Inquisitorial Legal System.