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PROFILE/ ANIL DIVAN

# Courting a friend of the court

BY MANNIKA CHOPRA

**Amicus Curiae:** "A friend of the court. That is to say a person, whether a member of the bar or not, engaged in the case — or any other bystander, who calls the attention of the court to some decision, whether represented or unrepresented or some point of law which would appear to have been overlooked."

From Jowitts Dictionary of English Law.

**W**hen Anil Divan, the testy 67-year-old Supreme Court advocate, was appointed Amicus Curiae in the Bank of India scam case (Dr Subramaniam Swamy vs the Director of CBI and others) a few weeks back, he was not only treading the path of the finest judicial traditions, he was also, in a sense, completing a legal hat trick. This last appointment of Divan followed his selection as 'friend of the court' by the Supreme Court in two other high profile and sensitive cases: the Jain hawala case (Vineet Narain vs Union of India and others) on February 22, '96 and the Chandraswami case (Anukul Chandra Pradhan vs Union of India and others) on February 12, '96.

Both high courts and the Supreme Court have the authority to appoint lawyers as Amici when they feel the need to have additional unbiased legal assistance. Says Supreme Court lawyer and former solicitor general, Arun Jaitley: "A person being appointed as an Amicus Curiae implies that the Court has immense faith in the integrity and expertise of the person." As a 'friend of the court' an Amicus Curiae represents neither party but acts in public interest.

A prestigious assignment, of course. Yet in the legal fraternity, being selected as an Amicus Curiae is a mixed blessing at best. For at a more mundane, materialistic level, it also indicates that the commercial earning time of the lawyer is reduced. Says a senior counsel: "Not many of us are keen to be appointed as Amici because it means that we will be doing legal work for a nominal fee. We could be earning several times that amount from a client."

Divan is obviously undeterred by



consideration of financial loss, for unlike most Amici, he appears personally for each of the three cases.

Perhaps it was because Divan is so different from the majority of his legal brethren that the Supreme Court appointed him as 'friend of the court' in three landmark cases. Divan had already laid the foundation to these appointments by acting Pro Bono (free of charge) in the Jain hawala case when it was filed in early 1993. It was Divan who was responsible for submitting to the Court a petition that the office of the CBI ought not to report to the then Prime Minister P.V. Narasimha Rao as the PMO had a vested interest in the outcome of the case.

Indeed, Divan's credentials — ideological and legal — have never been in doubt. Described as "ethically rigid", the Gujarati lawyer with his trademark De Gaullesque nose is a student of the old school. The type who will not, on principle, accept any legal fees in cash. In fact, he has been known to jokingly admit that he is probably the highest tax payer in the Indian legal fraternity.

Currently vice president of the Bar Association, Divan is the quintessential public litigant. Upholding the letter of the law, especially in the case of the deprived and the underprivileged, has

always been a priority with him. Prior to his appointment as Amicus Curiae, Divan had argued in the well publicised pensioner's case (D.S. Nakara vs Union of India) together with H.D. Shourie of Common Cause. Thanks to the judgment, four-and-a-half million pensioners got their due.

**I**n the highly documented Keshavananda Bharati case of 1973 which forms the stuff that L.L.B. classes are made of, Divan argued for a constitutional amendment to be invalidated on the grounds that it eliminated judicial review. Adds Jaitley: "He is the kind of lawyer who will not succumb to any pressure and go to any lengths to pursue the cause of justice."

**Off the record,** lawyers mention that it is this single-minded devotion to duty and doctrines that makes Divan difficult to work with. A severe Senior to a host of quivering Juniors, he is known for his "pernickety, inflexible; unable to tolerate fools". Potential clients, too, have to be prepared for meticulous three-hour conference sessions instead of the half-hour sessions commonly favoured by most other senior lawyers.

Perhaps his no-quarter-given approach stems from his family tree, the branches of which are weighed with numerous worthies: His mother was the first woman registrar and later Vice Chancellor of SNDT Women's University, one uncle was M.C. Setalvad, independent India's first Attorney General and the other is B.J. Divan, the former Chief Justice of Gujarat. Ironically, his brother-in-law is Ashok Desai, Attorney General, who is representing the state in the Jain hawala case. But, as Divan recently remarked, 'the case is more important than relations'.

**Being the type who will not accept legal fees in cash, Divan is probably the highest tax payer in the Indian legal fraternity**