Course Name	**LL.B 6th sem**
Subject	**Interpretation of Statute**
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Concept	**INTERPRETATION OF MANDATORY AND DIRECTORY PROVISIONS IN STATUTES**

INTERPRETATION OF MANDATORY AND DIRECTORY PROVISIONS IN STATUTES

Introduction

The classification of statutes as mandatory and directory is useful in analyzing and solving the problem of what effect should be given to their directions. But it must be kept in mind in what sense the terms are used. There is a well-known distinction between a case where the directions of the legislature are imperative and a case where they are directory. The real question in all such cases is whether a thing has been ordered by the legislature to be done and what is the consequence if it is not done. The general rule is that an absolute enactment must be obeyed or fulfilled substantially. Some rules are vital and go to the root of the matter, they cannot be broken; others are only directory and a breach of them can be overlooked provided there is substantial compliance. No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be considered. The Supreme Court of Indian has pointed out on many occasions that the question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained not only form the phraseology of the provision , but also by considering its nature, its design and the consequences which would follow from construing it the one way or the other. In the case of statutes that are said to be imperative, the court have decided that if it is not done, the whole thing fails and the proceedings that follow upon it are all void. On the other hand, when the courts hold the provisions to be directory, they say that although such provisions may not have been complied with, the subsequent proceedings do not fail. No universal rule can be laid down, while construing statutes, to determine whether mandatory enactments should be considered directory, or obligatory with an implied nullification for disobedience. The Supreme Court of India has been stressing time and again that the question whether statute is mandatory or directory is not capable of generalization and that in each case the court should try and get at the real intention of the legislature by analyzing the entire provisions of the enactment and the scheme underlying it. 1 A provision in a statute is mandatory if the omission to follow it renders the proceeding to which it relates illegal and void, while a provision is directory if its observance is not necessary to the validity of the proceeding, and a statute may be mandatory in some respects and directory in others.

In DA Koregaonkar v State of Bombay

It was held that, one of the important tests that must always be employed in order to determine whether a provision is mandatory or directory in character is to consider whether the non-compliance of a particular provision causes inconvenience or injustice and, if it does, then the

court would say that, the provision must be complied with and that it is obligatory in its character.

DIFFERENCE BETWEEN MANDATORY AND DIRECTORY PROVISIONS:

According to Sutherland "The difference between mandatory and directory statutes is one of effect only. The question generally arises in a case involving a determination of rights as affected by the violation of, or omission to adhere to, statutory directions. This determination involves a decision of whether or not the violation or omission is such as to render invalid Acts or proceedings pursuant to the statute, or rights, powers, privileges or immunities claimed there under. If the violation or omission is invalidating, the statute is mandatory; if not, it is directory".

In Sharif-ud Din v Abdul Gani Lone, the Supreme Court very pertinently pointed out the difference between a mandatory and a directory rule. It was observed by the Court that the fact that the statute uses the word shall while laying down a duty is not conclusive on the question whether it is a mandatory or a directory provision. The Court has to ascertain the object which the provision of law in question is to subserve and its design and the context in which it is enacted. If the object of the law will be defeated by non-compliance with it , it has to be regarded as mandatory. But when a provision of law related to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as directory.

A procedural rule ordinarily should not be should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that a failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow.

RULES FOR DETERMINATION OF MANDATORY AND DIRECTORY STATUTE:

Intention of the legislature:

In determination of the question, whether a provision of law is directory or mandatory, the prime object must be to ascertain the legislative intent from a consideration of the entire statute, its nature, its object and the consequences that would result from construing it in one way or the other, or in connection that with other related statutes, and the determination does not depend on the form of the statute.

It appears to be well settled that in order to judge the nature and scope of a particular statute or rule, ie, whether it is mandatory or directory, the purpose for which the provision has been made,

and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to person resulting from whether the provision is read one way or the other , have ll to be taken into account in arriving at the conclusion whether a particular provisions mandatory or directory.

In Hari Vishnu Kamath v Ahmad Ishaque ,

The Supreme Court observed that the various rules for determining when a statute might be construed as mandatory and when directory are only aids for ascertaining the true intention of the legislature which is the determining factor, and that must ultimately depend upon the context. An enactment, mandatory in form, might in substance be directory. The use of word 'shall' does not conclude the matter.

In Ramkrishnamma v Lakshmibayamma ,

It was held that, in order to determine whether a particular provision is mandatory or directory, it would be necessary whether a particular provision is mandatory or directory, it would be necessary to ascertain whether the failure to comply with the requirement affects the very foundation of being validated, It is always difficult to demarcate with any degree of accuracy in a particular case what is mandatory and what is directory, or what is irregularity and what is a nullity. When a question arises as to how far the proceedings are affected by the contravention of any provision, it is necessary to see the scope and object of the particular provision which is said to be violated.

Purpose behind the Statute:

In Chandrika Prasad Yadav v State of Bihar

It was held that, the question as to whether a statute is directory or mandatory would not depend upon the phraseology used therein. The principle as regards the nature of the statute must be determined having regard to the purpose and object the statute seeks to achieve. If an object of the enactment is defeated by holding the same director, it should be construed as mandatory; whereas if by holding it mandatory serious general inconvenience will be created for innocent persons of the general public without furthering the object of enactment, the same should be construed as directory but all the same, it would not mean that the language used would be ignored altogether.

In Howard v Bodington , Lord Penzance observed as follows— " I believe, as far as any rule is concerned , you cannot safely go further that, in each case you must look to the subject –matter, consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory" o determine whether a particular provision is mandatory or directory, it would be necessary

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In Aeron Steel Rolling Mills v State of Punjab ,

The question before the court was whether section 33B of the Industrial Disputes Act 1947, which empowered the State Government to transfer a proceeding under the Industrial Disputes Act from one Tribunal to another, was mandatory or directory. The relevant portion of the provision read as follows—" The appropriate Government may, by order in writing and for reasons to be stated therein withdraw any proceeding under this Act pending before a Labour Court Tribunal, or National Tribunal and transfer the same to another Labour Court, Tribunal or National Tribunal, as the case may be, for the disposal of the proceeding". The Court observed that the provision empowered the Government to transfer cases from one tribunal to another and specified the manner in which the power shall be exercised. The provision required the required the government to specify the reason won which the order of transfer was based with and was not related to the essence of the thing to be performed and compliance with its terms is a matter of convenience rather than of substance. The Court held—

"A failure to comply with this provision is not likely to result in any injury or prejudice to the substantial rights of interested person, or in the loss of any advantage, the destruction of any right or the sacrifice of any benefit. On the other hand, insistence on a strict compliance with it is likely to result in serious general inconvenience of injustice to hundreds of innocent person who have no control over Government without promoting the real aim and object of the legislature. The power to transfer is not so limited by the direction to give reasons that it cannot be exercised without following the directions given. No penalty has been provided for failure to comply with the terms of provision and the enactment is silent in regard to the consequence of noncompliance. No substantial rights depend on a strict observance of this provision; no injury can result from ignoring it; and no Court can declare that the principal object of the legislature that case should be capable of being transferred has not been achieved. Considerations of convenience and justice plainly require that this provision should be held to be directory and not mandatory".

Use of prohibitory words

In State of Himachal Pradesh v MP Gupta , the Court was interpreting section 197 of the Code of Criminal Procedure 1973, which provided 'that no court shall take cognizance of any offence alleged to have been committed by a public servant, judge, magistrate, or member of the armed

forces'. It was held that the use of the words 'no' and 'shall' make it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete.

In DA Koregaonkar v State of Bombay

It was held that the legislature can incorporate in a statute or in the Constitution a provision mandatory in character by expressing it in the form of a positive injunction rather than in the form of a negative injunction. For example, if the legislative intent is expressed clearly and strongly, such as the use of 'must' instead of 'shall', that itself will be sufficient to hold the provision to be mandatory, and it will not be necessary to pursue the inquiry further.

MANDATORY AND PERMISSIVE WORDS:

In Sidhu Ram v Secretary Railway Board ,

The Court had to consider the import of Rule 1732 of the Railway Establishment Code. The relevant portion of the Rule read thus—

"where the penalty of dismissal , removal from service, compulsory retirement, reduction in rank or withholding of increment has been imposed, the appellate authority may give the railway servant either at his discretion or if so requested by the latter a personal hearing, before disposing of the appeal"

The Court has to consider whether the obligation to give a personal hearing was mandatory or directory. On plain reading of the Rule, the Court held that if the expression 'may' were to be read as 'must', it would impose a duty on the appellate authority to give a right of personal hearing in each case. In the opinion of the Court, if that was the intendment of the legislature, it would have expressed it in much simpler and explicit terms. Hence, the Court held that the provision was directory and not mandatory.

In arriving at this decision, the Court observed— "Ordinarily the words 'shall' and 'must' are mandatory and the word 'may' is directory although they are often used interchangeably. It is this use, without regard to the literal meaning, that generally makes it necessary for the court to resort to construction in order to ascertain the real intention of the draftsman. Nevertheless, it is generally presumed that the words are intended to be used in their natural meaning. Law reports do show that when a statute deals with the right of the public, or where a third person has a claim in law to the exercise of the power, or something is directed to be done for the sake of justice of public good, or when it become necessary to sustain the constitutionality of a statute, the word 'may' is sometimes used as 'must'. In the final analysis, it is always a matter of construction of the statute in question"

It may, however be noted that the presumption that the legislature used mandatory and permissive terms in their primary sense is a rebuttable one. The intention of the legislature will control and prevail over the literal meaning of these words. The literal and ordinary meaning of

imperative and permissive terms, will give way when the interpretation of the statue according the literal meaning of its words lead to absurd, inconvenient, or unreasonable results.

USE OF WORD 'MAY'

It is well settled that the use of word 'may' in a statutory provision would not by itself show that the provision is directory in nature. In some cases the legislature may use the word 'may' as a matter of pure conventional courtesy and yet intent a mandatory force. In order, therefore, to interpret the legal import of the word 'may'. The court has to consider various factors, namely the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well-settled that where the word 'may' involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words a directory significance would defeat the very object of the Act, the word 'may' should be interpreted to convey a mandatory force.

In Alcock, Ashdown & Company Ltd v Chief Revenue Authority ,

The appellants claimed exemption from excess profit duty, but this contention was rejected. They applied to the High Court for an order directing the respondent to state a case of the opinion of the High Court and the question was whether the High Court had jurisdiction to do so. Section 15 of the Excess Profits Duty Act 1919 made section 51 of the Indian Income Tax Act 1918 applicable to proceedings under the former Act. Section 51 of the latter Act provides that if— " in the course of any assessment a question has arisen with reference to the interpretation of any of the provisions of the Act , the Chief Revenue Authority may draw up a statement of the case and refer it to the High Court:.

It was held that it was true that 'may' does not mean 'shall' but when a capacity or power is given to a pubic authority, there may be circumstances which couple with the power a duty to exercise it. In their Lordships' view, always supposing that there is a serious point of law to be considered, there does lie a duty upon the Chief Revenue Authority to state a case for the opinion of the Court, and if he does not appreciate that there is such a serious point, it is in the power of the court to control him and to order him to state a case.

In Siddheshwar Sahakari Sakhar Karkhana Ltd v CIT Kolhapur , it was argued that the expression 'may' followed by the words 'convert such deposits into shares after repayment of loans etc' provided in bye-law 61 A under the Maharashtra Co-operative Societies Act 1960, connoted that the provision was only directory. The Court held that it would be appropriate to read the expression 'may' as 'shall', observing that discretion is always coupled with a duty and that a discretion cannot be sued to circumvent an obligation cast by law. Conversely, the use of the term 'shall' may indicate the use in optional or permissive sense.

In Societe De Taction v Kaman Engineering Co Ltd , it was held that, though in general sense ‘may’ is enabling or discretional and ‘shall’ is obligatory, the connotation is not inelastic and inviolate.

In Keshav Chandra Joshi v Union of India , the Supreme Court observed that under Rule 27 of the Uttar Pradesh Forest Service Rules 1952, if the Governor is satisfied that the operation of any rule regarding conditions of service of the members caused undue hardship in a particular case, he ‘may’ consult the Public Service Commission notwithstanding anything contained in the rules and dispense with or relax the requirement of the conditions of service and extend the necessary benefit as is expedient so as to relieve hardship and to cause just and equitable results. The word ‘may’ has been used in the context of discharge of statutory duty. The Governor is obligated to consult the Public Service Commission. Therefore, the word ‘may’ must be construed as to mean ‘shall’ and it is mandatory on the part of the Governor to consult the Commission before exempting or relaxing the operation of the rule.

USE OF WORD SHALL:

The word ‘shall’ is not always decisive. Regard must be had to the context, subject matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the court to try to get at the real intention of the legislature by carefully analyzing the whole scope of the statute or section or a phrase under consideration.

In Mohan Singh v International Airport Authority of India , the court had to consider whether the conditions laid down in section 4 (1) of the Land Acquisition Act, 1894, were mandatory or directory. The relevant portion of the provision read as follows—“ a notification to that effect shall be published in the official Gazettte.. and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality, the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the notification” On reading of the provision , the Court held that the effect of the use of the word ‘shall’ was that section 4(1) contemplated three mandatory conditions to be complied with—publication in Official Gazette, followed by publication in two daily newspapers; and lastly issuing public notice. The conditions under the provision were held to be mandatory. In arriving at this decision, the Court observed— “The word ‘shall’, though prima facie gives impression of being of mandatory character, it requires to be considered in the light of the intention of the legislature by carefully attending to the scope of the statute, its nature and design and the consequences that would flow from the construction thereof one way or the other. In that behalf, the court is required to keep in view the impact on the profession, necessity of its compliance; whether the statute, if it is avoided, provides for any contingency for non-compliance; if the word ‘shall’ is construed as having mandatory character, the mischief that would insure by such construction; whether the public convenience would be subserved or public

inconvenience or the general inconvenience that may ensure if it is held mandatory and all other relevant circumstances are required to be taken into consideration in construing whether the provision would be mandatory or directory"

In Owners and Parties Interested in M.V. 'Vali Pero' v Fernandeo Lopez ,

the Supreme Court while holding the use of the word 'shall' in the expression 'deposition shall be signed by witnesses' in Rule 4 of the Calcutta High Court Rules 1914 as directory, pointed out that if the word 'shall' used in this expression is construed as mandatory, non-compliance of which nullifies the deposition, drastic consequence of miscarriage of justice would ensure even where the omission of the witness signature is by inadvertence and correctness of the deposition as well as its authenticity is undisputed. On the other hand, if the word is treated as directory the Court will have power to prevent miscarriage of justice where the omission does not cause any prejudice and the defect is only technical. The object of the provision being merely to obtain acceptance of the witness to the correctness of the deposition, that object would be achieved if the word 'shall' is treated as directory.

STATUTES RELATING TO JUDICIAL DUTIES AND PROCEEDINGS

A statutory requirement relating to a matter of practice or procedure in the court should be interpreted as mandatory if it confers upon a litigant a substantial right, the violation of which will injure him or prejudice his case. On the other hand, a statutory provision regulating a matter of practice or procedure will generally be read as directory when disregard of it or the failure to follow it exactly will not materially prejudice a litigant's case or deprive him of a substantial right.

In Kasi Bishwanath Dev v Paramananda Routrai ,

the matter before the Court was whether under 35B of Civil Procedure Code , the payment of costs would be a mandatory condition precedent to the proceedings of the suit. The relevant portion of the provision read as follows— "The Court may for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court on that date and such order shall be condition precedent to the further prosecution of" The court held that the cause of justice was paramount and a procedural law could not be raised to the pedestal of a mandatory provision as would take away the court's right in a given vase to exercise its discretion in the interest of justice. Hence, the language in which section 35B of the Civil Procedure Code had been expressed must be considered to be directory.

In the case of Hari Vishnu v Ahmad Ishaque , rule 47 (1) (c) of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951 provided that a ballot paper shall be rejected if it is spurious or if it was so damaged or mutilated that its identity as a genuine ballot paper could not be established. The Court held that due to the nature of the provision, there could

be no degrees of compliance as for as rejection of ballot paper was concerned. In the opinion of the Court, that was conclusive to show that the provision is mandatory.