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Meaning of mandatory and directory requirements



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What is prohibited and what is restricted is a debatable subject in law as the same is purely dependent on language and is affirmed by judicial pronouncements. For a Company it sometimes becomes practically impossible to determine whether what the law is asking to comply with is mandatory in nature or is it only a direction which may or may not be followed. The same confusion has led to several judicial pronouncements. This confusion arises so as to establish whether there is any non-compliance of any provision of law or not and if the same would be an offence or not. The same depends on whether the conditions to be fulfilled for compliance are a requirement precedent or subsequently. That is to say, in case any provision is mandatory in nature and the same is not complied with leads to an offence. This article attempts to analyse when a provision can be said to be mandatory and/or directory.

Meaning of mandatory and directory

Uses of negative words in a phrase, expression, sentences etc is clearly prohibitive and are ordinarily used as a legislative tool to make a statutory provision imperative. Use of expression like “shall not” clearly indicates that under no circumstances can the Company carry a particular work/take a decisions. This phrase is mandatory in character which is strengthened by the negative form of the language. Therefore, prohibitive and negative words can rarely be directory in nature. Prohibitory and negative words are basically indicative of legislative intent when the statute is made mandatory. When a provision is mandatory the non-compliance of the same vitiates the law and attracts the penal provisions.

A statute is understood to be directory when it contains matters merely of direction and entails something to be done at a subsequent stage but it is mandatory when those directions are followed by an express provision that in default of non compliance the same shall be null and void. When a provision is merely directory, it is immaterial, so far as relates to the validity of the thing done, whether the provisions are strictly complied with or not.

When mandatory- Conditions precedent

In case when the provisions are mandatory in nature such expressions are generally accompanied with “unless”. Therefore, such expressions imply compliance of certain provisions/acts to be done prior to happening of an event/taking a decision. Such expressions are used with a view to emphasise insistence of compliance with the provisions of statute. Mandatory provisions are for the purpose of enabling the

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doing of something and prescribe the formalities for doing certain things. Therefore, in case when provisions are directory the conditions are generally subsequent.

Tests for determining the mandatory or directory nature of a statute

The tests for finding out when a provision is mandatory or directory are: the purpose for which the provision has been made, its nature, the intention of the legislature in making the provision, the general inconvenience or injustice which may result to the person from reading the provision one way or the other, the relation of the particular provision to other provisions dealing with the same subject and the language of the provision.

Judicial pronouncements

In *Dattatraya Moreshwar vs. The State of Bombay & Ors*, AIR 1952 SC 181, the Court observed that law which creates public duties is directory but if it confers private rights-it is mandatory. Relevant passage is quoted below:

“It is well settled that generally speaking the provisions of the statute creating public duties are directory and those conferring private rights are imperative. When the provision of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of legislature, it has been the practice of the Courts to hold such provisions to be directory only the neglect of them not affecting the validity of the acts done.”

In *Raza Buland Sugar Co. Ltd., Rampur Vs. Municipal Board, Rampur* AIR 1965 SC 895 and *State of Mysore Vs. V.K. Kangan*, AIR 1975 SC 2190, the Court held that:

“as to whether a provision is mandatory or directory, would, in the ultimate analysis, depend upon the intent of the law-maker and that has to be gathered not only from the phraseology of the provision but also by considering its nature, its design and the consequence which would follow from construing it in one way or the other.”