

Bachahan Devi v. Nagar Nigam, Gorakhpur,[1]

“18. 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 intend 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 directory significance would defeat the very object of the Act, the word ‘may’ should be interpreted to convey a mandatory force. As a general rule, the word “may” is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word “shall”, which ordinarily is imperative as it imposes a duty. Cases however, are not wanting where the words “may” “shall”, and “must” are used interchangeably. In order to find out whether these words are being used in a directory or in a mandatory sense, the intent of the legislature should be looked into along with the pertinent circumstances.

19. “17. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word ‘shall’ or ‘may’ depends on conferment of power. Depending upon the context, ‘may’ does not always mean may. ‘May’ is a must for enabling compliance of provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with the power, it becomes [his] duty to exercise [that power]. Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty.”

20. If it appears to be the settled intention of the legislature to convey the sense of compulsion, as where an obligation is created, the use of the word “may” will not prevent the court from giving it the effect of Compulsion or obligation. Where the statute was passed purely in public interest and that rights of private citizens have been considerably modified and curtailed in the interests of the general development of an area or in the interests or removal of slums and unsanitary areas. Though the power is conferred upon the statutory body by the use of the word “may” that power must be construed as a statutory duty. Conversely, the use of the term ‘shall’ may indicate the use in optional or permissive sense. Although in general sense ‘may’ is enabling or discretionary and “shall is obligatory, the connotation is not inelastic and inviolate.” Where to interpret the word “may” as directory would render the very object of the Act as nugatory, the word “may” must mean ‘shall’.

21. The ultimate rule in construing auxiliary verbs like “may and “shall” is to discover the legislative intent; and the use of words ‘may’ and ‘shall’ is not decisive of its discretion or mandates. The use of the words “may” and ‘shall’ may help the courts in ascertaining the legislative intent without giving to either a controlling or a determinating effect. The courts

have further to consider the subject matter, the purpose of the provisions, the object intended to be secured by the statute which is of prime importance, as also the actual words employed."

[\[1\]](#) (2008) 12 SCC 372