

When the word “may” shall mean “shall”?

“Principles of Statutory Interpretation”, 14th Edition – Justice G.P. Singh while considering the enabling words ‘may’ explained the following principles of interpretation:-

“(K) Enabling words, e.g., ‘may’, ‘it shall be lawful’, ‘shall have power’. Power Coupled with duty

Ordinarily, the words ‘May’ and ‘It shall be lawful’ are not words of compulsion. They are enabling words and they only confer capacity, power or authority and imply discretion. “They are both used in a statute to indicate that something may be done which prior to it could not be done”. The use of words ‘Shall have power’ also connotes the same idea.”

Although, ordinary use of word ‘may’ imply discretion but when the word ‘may’ is coupled with duty on an authority or Court, it has been given meaning of shall that is an obligation on an authority or Court. Whether use of the word ‘may’ is coupled with duty is a question, which needs to be answered from the statutory scheme of a particular statute.

The Principles of Interpretation have been laid down by Lord Cairns in **Julius Vs. Lord Bishop of Oxford**, (1874-80) All ER Rep. 43 where Lord Cairns enunciated Principles of Statutory Interpretation in the following words:-

“There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty and make it the duty of the person in whom the power is reposed to exercise the power when called upon to do so.

Where a power is deposited with a public officer for the purpose of being used for the benefit of persons specifically pointed out with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised and the Court will require it to be exercised.

The enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right”

In **State of Uttar Pradesh Vs. Jogendra Singh**, AIR 1963 SC 1618, the Apex Court had occasion to consider the use of word ‘may’ in Rule 4(2) of the Uttar Pradesh Disciplinary Proceedings (Administrative Tribunal) Rules, 1947. In the above regard, in Paragraph 8 following has been stated:-

“8. Rule 4(2) deals with the class of gazetted government servants and gives them the right to make a request to the Governor that their cases should be referred to the Tribunal in respect of matters specified in clauses (a) to (d) of sub-rule (1). The question for our decision is whether like the word “may” in Rule 4(1) which confers the discretion on the Governor, the word “may” in sub-rule (2) confers the discretion on him, or does the word “may” in sub-rule (2) really mean “shall” or “must”? There is no doubt that the word “may”

generally does not mean "must" or "shall". But it is well settled that the word "may" is capable of meaning "must" or "shall" in the light of the context. It is also clear that where a discretion is conferred upon a public authority coupled with an obligation, the word "may" which denotes discretion should be construed to mean a command. Sometimes, the legislature uses the word "may" out of deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed. In the present case, it is the context which is decisive. The whole purpose of Rule 4(2) would be frustrated if the word "may" in the said rule receives the same construction as in sub-rule (1). It is because in regard to gazetted government servants the discretion had already been given to the Governor to refer their cases to the Tribunal that the rule making authority wanted to make a special provision in respect of them as distinguished from other government servants falling under Rule 4(1) and Rule 4(2) has been prescribed, otherwise Rule 4(2) would be wholly redundant. In other words, the plain and unambiguous object of enacting Rule 4(2) is to provide an option to the gazetted government servants to request the Governor that their cases should be tried by a tribunal and not otherwise. The rule-making authority presumably thought that having regard to the status of the gazetted government servants, it would be legitimate to give such an option to them. Therefore, we feel no difficulty in accepting the view taken by the High Court that Rule 4(2) imposes an obligation on the Governor to grant a request made by the gazetted government servant that his case should be referred to the Tribunal under the Rules. Such a request was admittedly made by the respondent and has not been granted. Therefore, we are satisfied that the High Court was right in quashing the proceedings proposed to be taken by the appellant against the respondent otherwise than by referring his case to the Tribunal under the Rules."

The Apex Court held that use of the word 'may' in Rule 4(2) confers an obligation and gives the right to the government servants to make a request to the Governor. Thus, in the above case, the word 'may' was coupled with duty, which was held to be obligatory.

In **Ramji Missar Vs. State of Bihar** AIR 1963 SC 1088, the Supreme Court again considered Sections 11(1) and 6(2) of Probation of Offenders Act, 1958. In Para 16, this Court laid down following:-

16. Though the word "may" might connote merely an enabling or premissive power in the sense of the usual phrase "it shall be lawful", it is also capable of being construed as referring to a compellable duty, particularly when it refers to a power conferred on a court or other judicial authority. As observed in Maxwell on Statutes:

"Statutes which authorise persons to do acts for the benefit of others, or, as it is sometimes said, for the public good or the advancement of justice, have often given rise to controversy when conferring the authority in terms simply enabling and not mandatory. In enacting that they 'may', or shall, if they think fit,' or, 'shall have power,' or that 'it shall be lawful' for them to do such acts, a statute appears to use the language of mere permission, but it has been so often decided as to have become an axiom that in such cases such expressions may have — to say the least — a compulsory force."

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The apex Court noticed that in the 1958 Act, certain tests as a guidance have been laid down for exercise of discretion by the Court. The Court rejected the submission that there is unfettered discretion in the Appellate Court in exercising power under Section 11. The above case was also a case where discretion given to the Court to be exercised under certain guidelines and tests, which was a case of discretion coupled with duty.

The apex Court in the case of **State of Kerala & Ors. Vs. Kandath Distilleries**, (2013) 6 SCC 573 came to consider the use of expression 'may' in Kerala Abkari Act, 1902. The Court held that the expression conferred discretionary power on the Commissioner and power is not coupled with duty. Following observation has been made in paragraph 29:-

"29. Section 14 uses the expression "Commissioner may", "with the approval of the Government" so also Rule 4 uses the expressions "Commissioner may", "if he is satisfied" after making such enquiries as he may consider necessary "licence may be issued". All those expressions used in Section 14 and Rule 4 confer discretionary powers on the Commissioner as well as the State Government, not a discretionary power coupled with duty...."

In **Pankaj Jain v Union of India**, (2018)1 SCeJ 471, it has been held that Section 88 of the Cr.P.C. does not confer any right on any person, who is present in a Court. Discretionary power given to the Court is for the purpose and object of ensuring appearance of such person in that Court or to any other Court into which the case may be transferred for trial. Discretion given under Section 88 to the Court does not confer any right on a person, who is present in the Court rather it is the power given to the Court to facilitate his appearance, which clearly indicates that use of word 'may' is discretionary and it is for the Court to exercise its discretion when situation so demands.