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The learned author at page 535 observes: “ As a general rule, a statute which specifies a time for directors so far as the time of performance is concerned, specially where the statute fixed the time simply for convenience or orderly procedure. But there are various exceptions.

For instance, the language may be such that the performance of the act within or at the specified time is imperative. As a result if the statute contains prohibitive or negative words relating to the time within which the act is to be performed, it will be considered mandatory. Maxwell in Interpretation of States, 10th Edition, p. 381 under the heading “ Performance of Public Duty”, states as follows:- “ On the other hand, where the prescriptions of statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance of government and those on whom the duty is imposed, or, in other words, as directory only. The neglect in them may be penal, but it does not affect the validity of the act done in disregard of them. It has often been held, for instance, that when an act ordered a thing to be done by a public body or public office and pointed out that specific time when it was to be done, the Act was directory only and might be complied with after the prescribed time. “ When the Provisions of a statute relate to the performance of a public duty and the case is as 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 duty, and, at the same time, would not promote the main object of the legislature, it has been the practice though punish able, not affecting the validity of the facts done”.

Sutherland’s Statutory Construction, 3rd Edition, Vol. 3, pars 5816, pp. 101 and 102, state the proposition as follows:-

**Particular matters dealt with in the statute:**

Time provisions- A great many cases involve the determination of many datary or directory in connection with time provision, as where a statute limits things to be done within a certain time or prescribes the date on which a thing is to be done. In the determination, there is seen an outstanding example of statutory construction not on the basis alone of ascertaining the actual intent of the legislature, but on grounds of policy and equity to avoid harsh, unfair or absurd consequences. Although those considerations may be couched in terms of legislative intent, it is apparent that the decision rests on an inference of what the legislature can be presumed to have intended had it an tic pated a situation that may have arisen in a particular case. It is difficult to conceive of anything more absolute than a time limitation. And yet, for obvious reasons founded in fairness and justice, the provisions are often found to be directory merely, where a mandatory construction might do great injury to persons not at fault, as in a case were slight delay on the part of a public officer might prejudice private right or the public interest.” In Craies on “ Statute Law,” 5th Edition, p.

542, it is stated: “ No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligated with

an implied nullification for disobedience; and that it is the duty of courts of justice try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed." It is well established that an enactment in mandatory form may, in substance, be directory and that the use of the word " shall" does not conclude the matter. The word " shall" in its ordinary import is obligatory, but there are many decisions where the Courts under different situations construed the word to mean ' may'. It was observed in this case: " When a statute uses by the word " shall prima facie" it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the legislature, the Court may consider inter alia:- (i) The nature and the design of the statute, (ii) The consequences which would follow from construing it the one way or the other, (iii) The impact of other provisions whereby the necessity of complying with the provisions in question is avoided, (iv) The circumstances, namely:- (a) That the statute provide for a contingency of the noncompliance with the provisions, (b) The fact that the non-compliance with the provisions is or is not visited by some penalty, (c) Serious or trivial consequences that flow there from, and (d) Whether the object of legislation will be defeated or furthered." In *Banwari Lai v. State of Bihar*, A.

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849, Mr. Justice Das Gupta observed as follows:- No general rule can be laid down for deciding whether any particular provision is a statute is:- (a) Mandatory, meaning thereby that non-observance thereof involves the consequence of invalidity; or (b) Only directory, i. e. a direction the non-  
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observance of which does not entail the consequences of invalidity, whatever other consequences may occur. But, in each case, the court has to decide the legislative intent.

Did the legislature intend in making the statutory provisions that non-observance to this would entail invalidity or did it not? To decide this, we have to consider:- (i) The actual words used, (ii) The scheme of the state, (iii) The intended benefit to the public of what is enjoined by the provisions, and (iv) The material danger to the public by the contravention of the scheme.”