

Mandatory & Directory Provisions

By

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JUDGMENTS

1. Justice Khurshid Anwar Bhinder Versus Federation of Pakistan. 2010 P L D 483 Supreme Court

Said Judges, however, had deliberately and knowingly violated the order of Seven Members Bench of the Supreme Court and took oath not only in flagrant violation thereof but from Justice Abdul Hameed Dogar who was never and could have never been appointed as Chief Justice of Pakistan---Said Judges had acted in a highly prejudicial, unconstitutional and contemptuous manner fully knowing the implications and consequences of non-compliance of the said order of the Supreme Court being **mandatory** in nature and binding upon them pursuant to the **provisions** as enunciated in Art. 189 of the Constitution; it was their constitutional, legal and moral duty to defend the Constitution but they took oath under the Provisional Constitution Order, 2007, having no constitutional and legal sanctity.

**2. Government of Balochistan, CWPP&H Department
Versus**

**Nawabzada Mir Tariq Hussain Khan Magsi
2010 SCMR 115
Supreme Court**

- Suit against the Government---No suit can be filed against Provincial Government without impleading the Province as a party and the procedural precondition is **mandatory** in nature and no relief can be sought without its strict compliance and suit would not be maintainable.
- Due to non-compliance of **mandatory provisions** of S.79, C.P.C. and Art. 174 of the Constitution, a suit against the functionary only is not maintainable.

3. Human Rights Cases Nos. 4668 of 2006, 1111 of 2007 and 15283-G of 2010

2010 PLD 759

Supreme Court.

- Non-adherence to legislative **provisions** other than the Constitution is permissible, **provided it does not entail penal consequences**---There are two types of statutory/legislation i.e. **mandatory** and **directory**---**mandatory** provision is required to be enforced strictly without interpreting/construing it in any manner liberally.

4. Muhammad Nadeem Arif

Versus

Inspector General of Police Punjab, Lahore.

2010 PLC 924

Supreme Court.

- Constitutional petition---
Announcement of judgment by High
Court after six months of hearing the
arguments of parties---Validity---
provisions of O.XX, R.1(2), C.P.C.,
were directory but not **mandatory**.

5. Muhammad Ismail Shahid

Versus

Executive District Officer (Revenue), Lahore

2008 SCMR 609

Supreme Court

- Inquiry proceedings conducted in absence of service of statement of allegations on civil servant would be void and nullity in eyes of law as civil servant was not confronted with them---Evidence recorded prior to regular inquiry, in absence of civil servant, would not be of any value as right of cross-examining witnesses had been denied to civil servant resulting in manifest injustice---Inquiry had not been conducted according to **mandatory provisions** of law so much so that even statement of allegation was not supplied to civil servant to meet charges---Supreme Court set aside impugned judgment and directed reinstatement of civil servant with all back benefits.

6. Dr. Ghulam Mustafa Versus State.
2008 SCMR 76
Supreme Court

- High Court had no jurisdiction whatsoever to take the role of the investigating agency and to quash the F.I.R. while exercising constitutional power under Art.199 of the Constitution or under S.561-A, Cr.P.C **unless and until very exceptional circumstances existed**---High Court had decided the case in violation of the **mandatory provisions** of the Code of Criminal Procedure---Offences in the impugned F.I.R. being not compoundable, High Court was not justified to quash the same on the basis of alleged settlement between the parties outside the Court.

7. Raja Sohail Javed Versus Raja Atiq-ur-Rehman
2008 PLD 470
Supreme Court

- Directions to tenant to deposit all the rent due from him etc.---Non-compliance---Effect.
- Rent Controller, after the date and before the issues are framed, shall direct the tenant to deposit all the rent due from him, and also to deposit rent regularly till the final decision of the case, before the fifteenth day of each month.
- Where such **mandatory provisions** of law had neither been complied with by the Rent Controller, nor attended to by the High Court, both the orders of the Rent Controller and High Court were not sustainable in law and were set aside by the Supreme Court.

8. Khursheed Begum

Versus

Inam-Ur-Rehman Khan

2009 PLD 552

Lahore-High-Court-Lahore

- O. XXI, Rr.90, 66 & 85---Auction sale of property---Non-issuance of notice and non-compliance of the **provisions** of O.XXI, R. 66, which is **mandatory**, shall vitiate the sale on account of material irregularity, present case being a classic one of the nature, attracted O.XXI, R.90, C.P.C., therefore auction sale is liable to be set aside.

9. Younas Siddique Versus Mst. Tahira Jabeen
2009 PLD 469

Lahore-High-Court-Lahore

- Application for ejectment of tenant---prescribed notice to be issued to the tenant---Procedure---Guidelines---Said prescribed notice more or less is in accordance with the Form B-IV in which a notice is issued by a court in suits filed under O.XXXVII, C.P.C.; apart from this the notice has to be issued through process-server, registered post A.D. and courier service---**mandatory** requirement is that the notice has to be accompanied by the copy of the application and the documents annexed with the application.

10. Muhammad Rafique Versus State

2009 PLD 132

Lahore-High-Court-Lahore

- Trial Court called upon the surety to show cause without forfeiting bail bond--Said order of the Trial Court being violative of **mandatory provisions** of S.514, Cr.P.C., was not sustainable---Trial Court forfeited the bail bond in favour of the State, which it should have forfeited before issuance of show cause notice and order for attachment.

11. Muhammad Siddique Versus State
2008 PLD 368

Lahore-High-Court-Lahore

- Police had grossly violated the law by entering into their house without any search warrants; it was a **mandatory** requirement of law under Art.22 of Prohibition (Enforcement of Hadd) Order, 1979, to seek search warrants to enter into the private residence;
- Raiding party had also violated the **mandatory provisions** of S. 103, Cr.P.C. for not associating independent witnesses of the locality in the recovery process to prove the manufacturing of liquor;
- **Provisions** of Art. 14 of the constitution which provide sanctity and privacy of the private house were also violated and raiding party had not complied with the **mandatory provisions** of S.105, Cr.P.C. by not taking permission from the Illaqa Magistrate before raiding a private residence;

**12. The State through Prosecutor-General
Accountability NAB, Islamabad**

Versus

Babar Ali Kharal

2008 PLD 347

Lahore-High-Court-Lahore

- **Provisions** of S. 12, National Accountability Ordinance, 1999 dealing with freezing of property,
- And it was **mandatory** that if any property was frozen/seized by the NAB Authorities, the order had to be passed by the Chairman NAB for freezing/seizure of the same, which was non-existent in the present case.

13. Muhammad Akram Versus State
2008 PLD 266
Lahore-High-Court-Lahore

- Period of detention to be considered while awarding sentence of imprisonment--- While awarding sentence of 14 years' R.I, to accused benefit of S. 382-B Cr.P.C. was not given to him, nor any such request was made before any Court up to the level of Supreme Court---**provisions** of S.382-B, Cr.P.C being **mandatory**, Trial Court should have considered the same in favour of accused.

14. Manzoor Ahmad Versus State
2008 PLD 243
Lahore-High-Court-Lahore

- R.4---Nature and scope of R.4---Rule 4 of Control of Narcotic Substances (Government Analysts) Rules, 2001 is directory in nature and not **mandatory.**

15. Ghulam Mustafa Versus Abdul Malik
2008 PLD 4
Lahore-High-Court-Lahore

- Grievance of petitioner was that Presiding Officer of Trial Court did not record evidence in his own hand and neither made any memorandum of substance of evidence nor he had recorded any reason for his inability to record the memorandum---Effect---If evidence was not taken down in writing by Judge, he was bound under O.XVIII C.P.C., as the examination of each witness proceeded, to make memorandum of substance of what each witness deposed---Such memorandum was to be written by Judge and had to form part of record---Such was a **mandatory** provision and was required to be strictly adhered to and followed, so that Judge should be cognizant of testimony made by witnesses, to obviate any chance of misconstruing or misinterpreting it; in furtherance thereto O.XVHI, R. 14 C.P.C. contemplated that if Judge was unable to make a memorandum as required

16. Zafar Versus State
2008 SCMR 1254
Supreme-Court

- Ss. 20, 21 & 22---Seizure and arrest--
-Non-compliance of **mandatory provisions**---Effect---**Provisions** of Ss. 20, 21 & 22 of Control of Narcotic Substances Act, 1997, being **directory**, non-compliance thereof would not be a ground for holding trial/conviction bad in the eyes of law.

17. Ghulam Hassan Versus Jamshaid Ali
2008 SCMR 1001
Supreme Court

- Interpretation of Statues---Mandatory and **directory provisions** in a statute---Penalty clause in a statute---Effect---Where the Legislature had provided penalty/ consequences for the non-compliance of a provision such provision is “**mandatory**” in nature---Where, however, such consequences are not provided, the provision is termed as “**directory**”.

18. Faiz Sons

Versus

Hakim Sons (IMPEX) Private Ltd.

1999 SCMR 2771

Supreme-Court

- Interpretation of Statues **provisions** of a statue which do not provide for consequences which may follow upon their non-compliance are directory and strict consequences cannot flow from their non-compliance.

19. Mirza Ali Khan State Shahida Parveen
1992 SCMR 2112
Supreme-Court

- Civil Procedure Code---Order VIII of C.P.C. written statement and Set-off---O.VIII, Rr.11 & 12---Provision of O. VIII, R. 12, C.P.C. is **directory** in nature since its object is to avoid unnecessary delay in disposal of suit so that for purpose of service and address should be filed in court---Provisions of Rr.20, 23, 24 & 25 of O.VII Civil Procedure Code have been applied by O.VIII, R.11(3)---Where a party had failed to file an address for service as provided in O.VIII, R. 11, Civil Procedure Code, 1908, it would be liable to have its defence, if any, struck off and to be placed in the same position as if it had not defended---Cumulative effect of Rr. 11 & 12 of O.VIII, Civil Procedure Code, 1908, stated.

20. Sazia Sultana Versus Razia Begum
2003 PLD 27
Lahore-High-Court-Lahore

- Direction of the Member Inspection Team of the High Court can only be regarded as **directory**, enabling the Court to expedite the hearing/decision, but in no case can be given supremacy over the explicit legal **provisions**.

**21. Khalid Mehmood Versus The State
1999 PLD 279
Lahore-High-Court-Lahore**

- Irregularity or defect in investigation was of no legal consequence after the Court of competent jurisdiction had taken cognizance of the case--- Court was competent to take cognizance both under S.190, Cr.P.C. as well as **provisions** of the Customs Act even **if the report under S.173, Cr.P.C. had been forwarded by an incompetent person as the same could serve as an information---**Such procedural irregularities in the investigation were curable under S.537, Cr.P.C. as the procedure was merely *directory* in nature and not *mandatory*.

22. Muhammad Tariq Versus Fazilat
1997 PLD 728
Lahore-High-Court-Lahore

- **Provisions of O.XXI, R.2, C.P.C. were **directory** rather than mandatory as no consequences were to follow in case of failure---Court should keep in view the substantive rights of parties and not to go by mere technicalities of procedure.**

23. Rifat Askari Versus The State
1997 PLD 285
Lahore-High-Court-Lahore

- Ehtesab Ordinance, 1996 Ss.13, (1) & 14(4) (5)---**Provisions** of Ss. 13, (1) & 14(4)(5) of Ehtesab Ordinance, 1996 are **directory** in nature and not mandatory.