

**GRADATION OF TEXTS:
MANDATORY AND DIRECTORY
TEXTS IN THE *MIMANSA***

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9.1 Vidhi, Niyama and Parisankhya

The *Mimansa* system has a sophisticated gradation of *Vidhis* and similar positive directions.¹ A command may be imperative - which is the highest degree. Or, it may be directory, which is the second highest. Or, it may be a merely monitory concept. The Sanskrit words indicating this gradation are - *Vidhi*, *Niyama* and *Parisankhya*, respectively. This gradation is linked with the criterion whether the benefit attainable by the text in question is otherwise attainable. Sarkar has given a lucid modern version. According to him, a *Vidhi* supplies an urgent necessity, and it may be taken that the form "you shall do it", is appropriate for it. A *Niyama* is not so urgent and the form "you shall do it unless there be a good reason to the contrary" is the proper form for it. A *Parisankhya* is hardly regarded as a rule of law and it may be taken that the form "you may do it" is the proper form for it.

9.2 Imperative and directory rule

Broadly speaking, a *Vidhi* is imperative, while (in most cases) a *Niyama* is directory. A *Niyama* is said to be *Guna-Sruti* - a subsidiary or incidental statement.

9.3 Kratu Dharma and Purusha Dharma

Jainini's distinction between *Kratu Dharma* and *Purusha Dharma* is based on similar criteria. The former is imperative, while the latter merely acts on the conscience.

9.4 Arthakarma and Pratipattikarma

Similarly, the *Mimansa* system makes a distinction between *Arthakarma* (work for the main purpose) and *Pratipattikarma* (work merely incidental thereto). The former category represents essential ceremonies. The latter represents non-essential ceremonies.²

9.5 Comparison with Modern law

Modern law has certain comparable counterparts. The distinction between the mandatory and directory effect of statutory provisions is well known in modern rules of construction of statutes. Every statutory provision - even one containing the word "shall" - is not necessarily mandatory and its breach does not always invalidate the action taken in breach thereof. For example, the Code of Criminal Procedure requires that the search of premises under the Code shall be witnessed by two respectable persons of the locality. But the breach of this safeguard does

1. Sarkar, pages 41-42, paragraphs 180-190.

2. Sarkar, pages 186-187.

not invalidate the search nor does it, in general, have an adverse impact on the validity of the prosecution in the course of which evidence of such breach is produced. The principle was stated as under by the Privy Council (per Sir Arthur Channell):-¹

“When the provisions 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 breach of this duty would work serious 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 the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them though not punishable, not affecting the validity of the acts done.”

In contrast, where jurisdiction of a court is dependent on the existence or satisfaction of a certain requirement, that requirement is generally regarded as mandatory.² Of course, this is subject to a specific statutory provision saving irregularities.

1. Montreal Street Railway Co. v. Normandin, (1917) A.C. 170, 174 (P.C.).

2. Public Prosecutor v. Oie Hi Koi, (1968) A.C. 829, 852; (1968) 1 All E.R. 419.