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Marriage ties can't be cut instantly: HC

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Mumbai: "Ability to act faster in the modernised age must not result in instant decisions relating to delicate human relationships.... Marriage should not become a commodity as it will prove disastrous to the social fabric and the institution of marriage under the Hindu Jaw....," the Bombay high court said while upholding the compulsory pre-condition of a year-long separation between husband and wife before they could jointly file for divorce.

The judgment delivered by a bench of Chief Justice Swatanter Kumar and Justice J P Devadhar was passed on a first-ever challenge to the constitutional validity of the provision under Section 13B of the Hindu Marriage Act. The section imposes a year's mandatory separation before a couple, who have registered their wedding under the Hindu Marriage Act, can seek a divorce by mutual consent.

A young couple in their mid-20s had decided to call it quits after being married for four months and filed for divorce at the end of six months. The family court rejected their petition saying they hadn't lived separately for a year as required under law. They found this imposition "arbitrary" and in violation of their right to move on immediately. But the court found that their lawyer, Uday Warunjikar, did not make out a strong case as to why the year-long separation clause was unconstitutional.

The CJ, who wrote the judgment, said the case involved a "pertinent question of law". The HC said the husband and wife claimed to be educated, "but their education has not directed them to-

wards a path of reconciliation and, without a substantial reason, they decided to dissolve their marriage". Their perceived inconvenience and hardship was "more imaginary than real" and was "disproportionate to the social good and legislative object of a fair chance of survival of a marriage".

"Hindu marriage is a sacrament couple with an element of contract supported by statutory provisions," the



court said. So it could not be treated as a simple contract capable of being abruptly terminated at "whim and fancy."

Hindu couples should realise, the court said, that the law required them to be aware of their "obligation towards each other and their families in terms of law and social and sacrosanct values". The year's separation is meant as a healing period to give time to the estranged couple to try and reconcile their differences.

The HC said that the legislative intent and judicial pronouncements had a great impact on social values and the institution of marriage and accepting the liberal interpretation suggested by the couple would "encourage complete disharmony in the continuance of the institution of marriage, perhaps without any rationale". The HC said and advised that married couples should not decide to split "in a hurried manner by impulsive decisions".