

CLASS 03

Divorce & Beyond

Family Law · Unit 3 of 3
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TODAY'S TWO PILLARS

A How Marriages End

Fault grounds (s.13(1)), the wife's extra grounds (s.13(2)), and divorce by mutual consent (s.13B) — plus the bars in s.23.

The exit routes

B The Wider Map

Beyond Hindu marriage: civil marriage, adoption, maintenance, guardianship and succession — one line on each.

Family law at a glance

ROADMAP

The Last Mile

From the grounds of divorce to the whole family-law landscape.

FROM CLASS 02

RELIEFS

s.9 & s.10 settled

THEORIES

fault · consent · breakdown

TODAY'S BUILD

- 1 Fault grounds of divorce — s.13(1)
- 2 Breakdown & wife's grounds — s.13(1A), s.13(2)
- 3 Divorce by mutual consent — s.13B
- 4 Bars to relief — s.23
- 5 The wider family-law map
- 6 Apply it to a CLAT fact pattern

SECTION 13(1)

Fault Grounds of Divorce

Available to EITHER spouse — but each must be proved. (Leprosy was removed as a ground in 2019.)

i Adultery **PROVE IT**

Voluntary sexual intercourse with a person other than one's spouse after the marriage.

ii Cruelty **PROVE IT**

Physical or mental cruelty that makes it unreasonable to expect the spouse to live with the other.

iii Desertion **2 YEARS**

Desertion for a continuous period of at least two years immediately before the petition.

iv Conversion **PROVE IT**

The other spouse has ceased to be a Hindu by converting to another religion.

TWO SPECIAL ROUTES

Breakdown & the Wife's Extra Grounds

s.13(1A) is for both spouses; s.13(2) belongs to the wife alone.

BREAKDOWN — s.13(1A)

- No resumption of cohabitation for 1 year after a judicial separation decree.
- No restitution for 1 year after a restitution (s.9) decree.
- Either spouse may rely on these.

WIFE ONLY — s.13(2)

- Husband had another wife living at the time of this marriage (pre-Act bigamy).
- Husband guilty of rape, sodomy or bestiality.
- Option of puberty: repudiate a marriage fixed before 15, before turning 18.

SECTION 13B

Divorce by Mutual Consent

The consent route runs in two motions with a gap in between.

STAGE 1

Pre-condition

The parties have been living separately for one year or more and mutually agree the marriage should end.



STAGE 2

First Motion

A joint petition is filed. The court records statements. Then a cooling-off period of 6 to 18 months follows.



STAGE 3

Second Motion

After the gap, both reaffirm consent. The court grants the decree — the 6-month wait can be WAIVED (see next).

LANDMARK

The Cooling-Off Can Be Waived

Amardeep Singh v. Harveen Kaur

2017 · (2017) 8 SCC 746, Supreme Court of India

HOLDING

The 6-month waiting period between the two motions under s.13B(2) is directory, not mandatory. Where the parties have genuinely settled all disputes and reconciliation is impossible, the court may waive the period to avoid prolonging their agony.

WHY IT MATTERS FOR CLAT

A CLAT favourite: the word 'shall' in s.13B(2) does not always mean compulsory. Discretion to waive turns on whether the marriage is truly over and the settlement is real.

“

Once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact.

Naveen Kohli v. Neelu Kohli (2006) — the case for irretrievable breakdown

SECTION 23

Bars to Relief

Even with a good ground, the court must be satisfied none of these bars apply.

1 **No Taking Advantage of One's Own Wrong** **CLEAN HANDS**
A petitioner cannot benefit from a ground created by their own misconduct.

2 **No Accessory, Connivance or Condonation** **ADULTERY**
If the petitioner connived at, or forgave (condoned), the adultery, relief is barred.

3 **No Collusion** **NO DEALS**
The petition must not be presented in collusion between the parties to manufacture a divorce.

4 **No Unnecessary Delay** **TIMING**
There must be no improper or unnecessary delay in presenting the petition.

ZOOM OUT · ONE STATUTE, ONE IDEA EACH

The Wider Family-Law Map

Area	Statute	The one-line idea
Civil / interfaith marriage	Special Marriage Act, 1954	Secular marriage for any two persons; notice + registration.
Adoption	Hindu Adoptions & Maintenance Act, 1956	Who may adopt/be adopted; a valid adoption is irrevocable.
Maintenance	s.125 CrPC (now BNSS); HAMA s.18; HMA ss.24-25	Neglected wife, child or parent can claim.
Guardianship	Hindu Minority & Guardianship Act, 1956	Welfare of the minor is paramount.
Succession	Hindu Succession Act, 1956 (am. 2005)	Since 2005, daughters are coparceners, equal to sons.

Q1. A couple files for divorce by mutual consent under s.13B. They have lived apart for 18 months, have settled alimony and custody, and tell the court reconciliation is impossible. Can the court grant divorce before the 6-month gap ends?

(A) No — the 6-month period under s.13B(2) is always mandatory

(B) Yes — the period is directory and may be waived on these facts

(C) No — mutual consent divorce needs a 3-year separation

(D) Yes — but only after a fresh judicial separation decree

TRAP (A) reads 'shall' in s.13B(2) as compulsory; (C) invents a 3-year rule — the law needs only 1 year of living separately.

REASONING Under *Amardeep Singh v. Harveen Kaur* (2017), the 6-month cooling-off in s.13B(2) is directory. Where the parties have lived apart well beyond a year, settled all disputes and reconciliation is impossible, the court may waive the wait. The s.13B pre-condition is 1 year of separation, not 3.

ANSWER · (B) Yes — the cooling-off period is directory and waivable here

LOCK THESE IN

Vocabulary to Walk Out With

Desertion

Wilful abandonment of one spouse by the other for 2+ years without consent or cause.

Condonation

Forgiveness of a matrimonial offence (e.g. adultery) that bars later relief on it.

Collusion

A secret agreement between spouses to obtain a divorce by deceiving the court.

Cooling-off period

The 6-18 month gap between the two motions in s.13B; waivable (Amardeep Singh).

Coparcener

A member with a birthright share in joint family property; daughters included since 2005.

Alimony

Maintenance a court orders one spouse to pay the other (HMA ss.24-25).

TAKEAWAYS

The Whole Unit on One Slide

01 Fault grounds (s.13(1)) must be proved; leprosy was removed as a ground in 2019.

02 s.13(1A) gives breakdown grounds to both; s.13(2) gives extra grounds to the wife.

03 Mutual consent (s.13B): 1 year apart + two motions; cooling-off is waivable.

04 Amardeep Singh (2017): the 6-month wait is directory, not mandatory.

05 s.23 bars relief for own wrong, condonation, collusion or undue delay.

06 Wider map: SMA 1954, HAMA 1956, HMGA 1956, Hindu Succession Act (2005 daughters).



THANK YOU

Family Law unit complete — revise with the three practice sheets, then attempt the unit mock

KEEP IN TOUCH

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