

RECONCILIATION AND DIVORCE

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INTRODUCTION – PREVENTING DIVORCE

What is the Bahá'í attitude towards divorce?

Divorce is permitted according to Bahá'í law:

God doth verily love union and concord, and abhorreth separation and divorce.
Extract from previously unpublished Tablet, in Divorce compilation by Universal House of Justice, published by National Spiritual Assembly of the Bahá'ís of Australia, p. 3, 1980

To abhor something is to shrink from it or to strongly dislike it. This is essentially the Bahá'í attitude towards divorce. Divorce is highly discouraged and should be sought only if every possible means to reconciliation has been attempted and has failed:

For while, according to the Bahá'í law, divorce is permissible, yet it is highly discouraged, and should be resorted to only when every effort to prevent it has proved to be vain and ineffective.
Letter written on behalf of Shoghi Effendi to an individual believer, 11 September 1938

Why is divorce abhorred?

Divorce is abhorred for two reasons:

1. It has a negative effect on the children of the marriage because the nature of divorce often causes them to choose sides and influences their own attitudes to marriage in the future:

He feels that you should by all means make every effort to hold your marriage together, especially for the sake of your children, who, like all children of divorced parents cannot but suffer from conflicting loyalties, for they are deprived of the blessings of a father and mother in one home, to look after their interests and love them jointly.

Letter written on behalf of Shoghi Effendi to an individual believer, 6 March 1953

The presence of children, as a factor in divorce, cannot be ignored, for surely it places an even greater weight of moral responsibility on the man and wife in considering such a step. Divorce under such circumstances no longer just concerns them and their desires and feelings but also concerns the children's entire future and their own attitude towards marriage.

Letter written on behalf of Shoghi Effendi to an individual believer, 19 December 1947

2. Bahá'u'lláh came to bring unity to the world and a fundamental unity is that of the family. Divorce leads to the disruption of family life and to the disintegration of society:

Regarding the Bahá'í Teachings on divorce. While the latter has been made permissible by Bahá'u'lláh yet He has strongly discouraged its practice, for if not checked and seriously controlled it leads gradually to the disruption of family life and to the disintegration of society.

Letter written on behalf of Shoghi Effendi to an individual believer, 16 November 1936

... the foundation of the Kingdom of God is based upon harmony and love, oneness, relationship and union, not upon differences, especially between husband and wife.

'Abdu'l-Bahá, previously unpublished Tablet, in Divorce compilation, p. 5

It should also be noted that ‘Abdu’l-Bahá has predicted ‘great difficulties’ for anyone responsible for causing divorce:

If one of these two [husband or wife] becomes the cause of divorce, that one will unquestionably fall into great difficulties, will become the victim of formidable calamities and experience deep remorse.

‘Abdu’l-Bahá, previously unpublished Tablet, in Divorce compilation, p. 5

How may the Local Spiritual Assembly prevent divorce from occurring?

The Local Spiritual Assembly is responsible for deepening the community in the importance of the marriage laws:

The Spiritual Assembly should always be concerned that the believers in its community are being deepened in their understanding of the Bahá’í concept of marriage, especially the young people, so that the very thought of divorce will be abhorrent to them.

Letter written on behalf of the Universal House of Justice to an individual believer, 3 November 1982

The Local Spiritual Assembly also has the responsibility of offering considered advice to believers with family problems if approached by the individuals concerned:

He feels, in regard to your family problems, that you should take these matters up with your Assembly, if you desire advice; one of the duties of these Assemblies is to advise and aid the friends, and it is your privilege to turn to your Assembly.

Letter written on behalf of Shoghi Effendi to an individual believer, 10 April 1947

If problems are resolved as they arise, matters should not reach a point where the couple concerned feels it is necessary to apply for a divorce.

When should a Local Spiritual Assembly intervene in a marital conflict?

The Local Spiritual Assembly can only intervene if requested to do so by the parties involved:

There should be no intervention into the marital affairs of individuals in a Bahá’í community unless and until the parties themselves bring a problem to the Assembly. Prior to that it is not the business of the Assembly to counsel the parties.

Letter written by the Universal House of Justice to a National Spiritual Assembly, 22 March 1968

As with any dispute between believers, it is permissible for one party to bring the matter to the Assembly, regardless of whether the other party wishes it or not.

In advising the couple concerned, the Assembly may feel it to be appropriate to encourage them to consult a professional marriage counselling service if necessary.

What should the attitude of the Bahá’í community be towards a couple experiencing marital difficulties?

The Local Spiritual Assembly must ensure that the community maintains an impartial attitude towards the couple experiencing such difficulties, that it does not ‘take sides’,

nor attach any stigma to any party to the marital difficulties. In the words of Shoghi Effendi:

The Bahá'ís must learn to forget personalities and to overcome the desire – so natural in people – to take sides and fight about it.
Letter written on behalf of Shoghi Effendi to a National Spiritual Assembly, 30 June 1949

RECONCILIATION

What is the duty of the Local Spiritual Assembly if a married couple approaches it asking for a divorce?

An Assembly that is approached by one or both marriage partners requesting a divorce has the duty of impartially investigating the matter with a view to bringing about a reconciliation:

When a Spiritual Assembly receives an application for Bahá'í divorce, the Assembly has the duty of trying to reconcile the parties before setting the date for the beginning of the year of patience.

Letter from the Universal House of Justice to a National Spiritual Assembly, 29 March 1966

When an application for divorce is made to a Spiritual Assembly, its first thought and action should be to reconcile the couple and to ensure that they know the Bahá'í Teachings on the matter. God willing, the Assembly will be successful and no year of waiting need be started.

Letter written on behalf of the Universal House of Justice to an individual believer, 3 November 1982

Should the Local Spiritual Assembly advise a couple in a domestic violence situation to separate?

There is no obligation on a wife, who is being subjected to beating by her husband, to continue living with him; she has the freedom to leave him and to live in a separate domicile if she feels it necessary to do so.

Letter written on behalf of the Universal House of Justice to the National Spiritual Assembly of Australia, 12 April 1990

In such cases it is imperative for the Assembly to read carefully and consult about the policy of the National Assembly on 'Domestic Violence'.

If the couple is advised to remain together to try and reconcile their differences, there can be no guarantee that violence will not recur. If the couple separate, however, the role of the Assembly can become that of providing a forum where the couple can come together and try to resolve their differences.

It is imperative that appropriate action be taken by the Assembly where necessary.

Can one party to a marriage, acting alone, approach the Local Spiritual Assembly for a year of patience?

Yes:

Either party may apply for the year of waiting without the consent of the other.
Letter from the Universal House of Justice to a National Spiritual Assembly,
23 November 1970

What procedure should the Local Spiritual Assembly follow when attempting to reconcile a couple?

It is recommended that the following steps be followed, as far as is practicable, when the Assembly is attempting to reconcile a couple.

1. Advise the couple that the Assembly has the duty to try to bring about a reconciliation:

Bahá'ís who apply for divorce should be so counselled and left in no doubt that it is the duty of the Spiritual Assembly concerned, according to the emphatic command of our Scripture, to do everything possible to bring about a reconciliation.

Letter from the Universal House of Justice to a National Spiritual Assembly,
3 August 1981

2. Remember that the Local Assembly must maintain an impartial attitude at all times:

Its members [of an Assembly] must at all times put the interests of the Faith above personality and impartially go into any matter brought to its attention.

Letter written on behalf of Shoghi Effendi to a National Spiritual Assembly, 30 June 1949

The Assembly should also reassure the couple as to the confidential nature of the consultation. As noted in the section 12.1 above, the Assembly must further ensure that the community does not become involved by taking sides in the reconciliation process.

3. Review the Bahá'í Teachings on divorce with the couple. In particular, point out that divorce is abhorred in the Writings and that it can only be granted if the condition of 'irreconcilable antipathy' is found to exist:

In the strict legal sense there are no 'grounds' for a Bahá'í divorce. No question of misbehaviour of either party is involved and the only condition under which a Bahá'í divorce may be considered is the irreconcilable antipathy of the parties.

Letter from the Universal House of Justice to a National Spiritual Assembly, 24 May 1972

4. The couple should be made aware that the following do not constitute valid grounds for a Bahá'í divorce:

- a. physical incompatibility:

For the Bahá'í Teachings do not only preclude the possibility of bigamy, but also, while permitting divorce, consider it a reprehensible act, which should be resorted to only in exceptional circumstances, and when grave issues are involved...transcending such...considerations as physical attraction or sexual compatibility and harmony. The Institution of marriage, as established by Bahá'u'lláh, while giving due importance to the physical aspect of marital union considers it as subordinate to the moral and spiritual purposes and functions with which it has been invested by an all-wise and loving Providence.

Letter written on behalf of Shoghi Effendi to an individual believer, 8 May 1939

- b. merely the lack of love for one's spouse:

Irreconcilable antipathy arising between the parties to a marriage is not merely a lack of love for one's spouse but an antipathy which cannot be resolved.

*Letter from the Universal House of Justice to a National Spiritual Assembly,
3 September 1969*

- c. service to the Cause:

... he does not feel that any believer, under any circumstances whatsoever, can ever use the Cause or service to it as a reason for abandoning their marriage; divorce, as we know, is very strongly condemned by Bahá'u'lláh, and only grounds of extreme gravity justify it.

Letter written on behalf of Shoghi Effendi to an individual believer, 7 April 1947

5. Make an effort to ascertain the reason for their differences and encourage reconciliation. Note, however, that it is not necessary for the Local Assembly to know the reasons behind the marriage breakdown if the couple really do not wish to discuss the matter:

Assemblies are, of course, discouraged from probing unnecessarily into details of personal lives and the examination of a divorce problem should not go beyond what is necessary to ascertain whether or not such antipathy does, indeed, exist.

Letter written on behalf of the Universal House of Justice to a National Spiritual Assembly, 30 May 1983

Depending on the circumstances, the couple may be advised to:

- a. reflect further on the advice of the Local Spiritual Assembly
 - b. seek counselling from professional counsellors
6. If only one party wishes to initiate a year of patience, the Assembly should attempt to meet with the other party before setting a date for its beginning. The Universal House of Justice has also said:

The Assembly may meet with the couple together or separately in its attempts to reconcile them.

Letter written on behalf of the Universal House of Justice to a National Spiritual Assembly, 20 June 1977

7. If one party to the marriage is not a Bahá'í the Assembly will need to take this matter into consideration and how best to work with the couple together and the parties as individuals..
8. If the Assembly is not able to reconcile the couple, it must conclude that a condition of 'irreconcilable antipathy' exists, in which case it has no choice but to set the date for the beginning of the year of patience:

...if the Assembly finds that it is unable to persuade the party concerned to withdraw the application for divorce, it must conclude that, from its point of view, there appears to be an irreconcilable antipathy, and it has no alternative to setting the date for the beginning of the year of waiting.

*Letter written on behalf of the Universal House of Justice to an individual believer,
3 November 1982*

Should the Assembly offer advice about marriage and divorce to a Bahá'í without voting rights?

... a Bahá'í who has lost his administrative rights is not required to observe the year of waiting before divorce, but he may do so if he wishes. The Assembly should offer counselling on the divorce in any case.

*Letter from the Universal House of Justice to a National Spiritual Assembly,
18 March 1975*

YEAR OF PATIENCE

What is the purpose of the year of patience?

The year of patience is a period of separation during which the couple contemplating divorce have the opportunity to reflect upon their situation and consider means of reconciliation:

Should resentment or antipathy arise between husband and wife, he is not to divorce her but to bide in patience throughout the course of one whole year, that perchance the fragrance of affection may be renewed between them.

Bahá'u'lláh, Kitáb-i-Aqdas, para. 68

It is, of course, important for the friends to realize that although divorce is permitted in Bahá'í Law, it is nevertheless condemned, and great efforts should be made to avoid it. It is always the hope that, during the year of patience, affection between the couple will recur and that divorce will not be necessary.

Letter written on behalf of the Universal House of Justice to a National Spiritual Assembly, 3 August 1981

What are the primary obligations of the couple and of the Local Spiritual Assembly during the year of patience?

During the year the couple have the responsibility of attempting to reconcile their differences, and the Assembly has the duty to help them.

*Letter written on behalf of the Universal House of Justice to an individual believer,
3 November 1982*

Who fixes the date for the beginning of the year of patience?

According to the Universal House of Justice:

It is for the Local Spiritual Assembly, or the National Assembly, as the case may be, to fix the date for the beginning of the year of patience...

*Letter from the Universal House of Justice to a National Spiritual Assembly,
26 August 1965*

The Local Assembly under whose jurisdiction the couple falls at the beginning of the Year of Patience sets the date for its beginning. If a couple do not live in a Local Spiritual Assembly area, the National Spiritual Assembly becomes the responsible body. The National Assembly may choose to devolve this responsibility to a nearby Local Assembly.

When does the year of patience begin?

Normally the date for the beginning of the year of patience is that on which the parties have separated and applied to the Assembly for divorce. By separation is meant no longer sharing the same home. It is for the couple between them to decide who will leave the family home:

The Bahá'í Law requires that the parties separate for one full year before the divorce may be realised. This [constitutes] complete physical separation in the sense that they should not reside in the same dwelling.

Letter from the Universal House of Justice to a National Spiritual Assembly, 23 April 1964

The couple must realise that the year of patience cannot begin to run unless and until they are living apart, and it is for them to decide between them which will leave the home.

Letter from the Universal House of Justice to a National Spiritual Assembly, 2 December 1965

Can the date for the beginning of the year of patience be back-dated?

If the Assembly believes there is sufficient reason it may set the date for the year of patience earlier than that on which the party or parties apply to the Assembly for the divorce, but it can never be set earlier than the last date on which the couple actually separated with the intention to divorce:

The Spiritual Assembly may, if it is satisfied that there is sufficient reason for doing so, establish the date for the beginning of the year of waiting retroactively. Whether established retroactively or not, the date set for the beginning of the year of waiting cannot be prior to the last date when the couple actually separated for the purpose of obtaining a divorce.

Letter from the Universal House of Justice to a National Spiritual Assembly, 26 September 1972

How is maintenance arranged during the year of patience?

The House of Justice views it as a basic principle of Bahá'í law that the husband is responsible for the support of his wife and children as long as they are married, i.e. until the granting of a divorce. There may be particular circumstances in which the wife is the bread-winner of the family, or both husband and wife are earning income; such situations should not be ignored, or changed merely because the couple is in a year of waiting.

Letter from the Universal House of Justice to a National Spiritual Assembly, 19 May 1989

What responsibility does the Assembly have for the care of dependents during the year of patience?

The Assembly...has the duty to see that just arrangements are made for the support of dependents during the year of patience.

Letter from the Universal House of Justice to a National Spiritual Assembly, 29 March 1966

Is the year of patience necessary if one party is not a Bahá'í?

Yes:

With regard to the question of Bahá'í divorce, the year of separation is necessary even though the non-Bahá'í partner to the marriage is the one instituting the divorce proceedings...

*Letter from the Universal House of Justice to a National Spiritual Assembly,
28 January 1966*

What if a civil divorce is granted before the end of the year of patience?

Even if a civil divorce is granted to the non-Bahá'í partner before the end of the year of patience, the Bahá'í partner must wait until the end of that year before Bahá'í divorce can be granted:

If, as in the case cited, a civil divorce is granted to a non-Bahá'í partner before the end of the year of patience, Bahá'í divorce cannot be granted until the end of that year.

*Letter from the Universal House of Justice to a National Spiritual Assembly,
23 January 1966*

What if the non-Bahá'í partner remarries before the end of the year of patience?

If the non-Bahá'í partner remarries, the Bahá'í divorce should be granted immediately:

Should the non-Bahá'í partner remarry before the year of separation is over, the Bahá'í partner is released from further waiting and a Bahá'í divorce may be granted.

*Letter from the Universal House of Justice to a National Spiritual Assembly,
28 January 1966*

Must a believer without voting rights observe a year of patience?

No:

... a Bahá'í who has lost his administrative rights is not required to observe the year of waiting before divorce, but he may do so if he wishes.

*Letter from the Universal House of Justice to a National Spiritual Assembly,
18 March 1975*

Can the year of patience be extended?

No. The waiting period only extends beyond one year if the civil divorce has not yet been finalised:

...if, at the end of the year, harmony is not established, the Bahá'í divorce becomes effective, unless further waiting is necessary before the civil divorce is granted since the Bahá'í divorce cannot be granted before the civil divorce is finalised. Other than this, there is no possibility for extending the period of waiting. Moreover, Bahá'ís should not prolong the process longer than is necessary.

Letter from the Universal House of Justice to an individual believer, 12 July 1979

Can one party, acting alone, petition for a termination of the year of patience?

No:

One party to a divorce, acting alone, cannot petition for a termination of the year of waiting.

Letter from the Universal House of Justice to a National Spiritual Assembly, 1 May 1967

There cannot be reconciliation except by the agreement of both parties.

What constitute acceptable social relationships during the year of patience?

Normal friendships with members of the opposite sex are permissible during the year of patience, but these should not progress to courting. To do so is to contravene the purpose of the year of patience, which is to bring about a reconciliation between the couple concerned:

It is always the hope that, during the year of patience, affection between the couple will recur and that divorce will not be necessary. Therefore, although normal social relationships between each of the partners and members of both sexes are permissible, it is quite contrary to the spirit of the Teachings for either party to be courting a new partner during the year of waiting.

Letter from the Universal House of Justice to an individual believer, 6 March 1974

If one party to a year of patience is known to be dating another person, he or she should be advised by the Assembly that such behaviour is inappropriate. Sanctions, however, should not be applied unless the person's behaviour is flagrantly immoral:

...this is not an area in which the Assembly should resort to sanctions if either or both of the pair disregard this principle. Naturally, if one of the parties conducts himself or herself in a way that is blatantly or flagrantly immoral the matter should be handled as any other similar case would be.

Letter from the Universal House of Justice to an individual believer, 6 March 1974

Cases of serious misbehaviour should be referred to the National Spiritual Assembly.

Does reconciliation end the year of patience?

Yes. If a couple are reconciled, the process of divorce is considered to be abandoned. If the couple again wish to apply for divorce, the year of patience must begin anew:

If at any time during the waiting period affection should recur, the marriage tie is valid. If this reconciliation is followed by estrangement and divorce is again desired, a new year of waiting will have to be commenced.

Bahá'u'lláh, Kitáb-i-Aqdas, p. 152

Whether sharing a common residence temporarily could void the year of patience must be determined by the Assembly, according to whether it determines that the purpose of the year of patience has been preserved or not:

Regarding the question of voiding the year of waiting, should a couple share a common residence for one or two nights when the residence belongs to a third

party, the House of Justice does not wish to make a ruling on such a general basis. In the case you mention involving temporary residence in the home of the parents of one of the parties who are in a year of waiting, the House of Justice suggests you try to verify whether or not the purpose of the year of waiting has been preserved and if satisfied this is so, make your decision accordingly.

Letter from the Universal House of Justice to a National Spiritual Assembly, 2 August 1981

CIVIL DIVORCE LAW

What is the civil law regulating divorce in the UK?

The law relating to divorce is laid out in the Family Law Act 1996. Divorce cases come before the County court.

RELATIONSHIP BETWEEN BAHÁ'Í AND CIVIL DIVORCE LAWS

What is the relationship between Bahá'í and civil divorce laws?

As Bahá'í divorce is not legally recognized in the UK, a Bahá'í couple must obtain a civil divorce as well as a Bahá'í divorce.

When is Bahá'í divorce granted?

According to Bahá'í law, divorce is granted automatically by the responsible institution at the end of the year of patience if there has been no reconciliation. As Bahá'ís must also obey civil law, however, the Bahá'í divorce cannot be granted until civil divorce is granted:

If the Assembly ascertains that the couple have not been able to become reconciled and that the year of patience has truly been completed, then it is possible for a Bahá'í divorce to be granted. However, as Bahá'í law in these matters is subordinated to civil law, the Bahá'í divorce does not become effective until the civil divorce is granted.

Letter from the Universal House of Justice to a National Spiritual Assembly, 2 December 1965

The civil divorce decree granted must be 'decree absolute', not 'nisi':

You should make it clear that a Bahá'í divorce cannot be granted prior to the granting of a final divorce decree in the civil action nor before the expiration of the year of patience.

Letter from the Universal House of Justice to a National Spiritual Assembly, 5 June 1966

When the year of patience has been completed and the responsible Bahá'í institution has had sight of the 'decree absolute', it must notify the divorcing parties in writing that their Bahá'í divorce has been granted. A copy of this letter must also be sent to the National Spiritual Assembly for the national records. This letter is the record of the Bahá'í divorce. It is a very important record which a Bahá'í planning to remarry will need to produce as proof of his or her Bahá'í divorce. A suggested format for this letter can be found at the end of this chapter.

Can civil divorce proceedings be initiated prior to the end of the year of patience?

As far as is possible, civil divorce proceedings should not be initiated prior to the end of the year of patience unless special circumstances make this necessary. It is not, however, a sanctionable offence if it occurs:

... it is more within the spirit of Bahá'í Law for Bahá'ís to postpone the initiation of civil proceedings, (if the law of the country requires a civil divorce) until the end of the year of waiting. However, if such postponement gives rise to inequity or to a legal prejudice against the possibility of a civil divorce, it is, of course, permissible for the civil proceedings to be initiated during the year of waiting.

Letter written on behalf of the Universal House of Justice to a National Spiritual Assembly, 20 June 1977

There is no Bahá'í law requiring the removal of voting rights for obtaining a civil divorce before the end of the year of waiting. It is, of course, preferred that civil divorce action not be instituted or completed before the end of the year unless there are special circumstances justifying such action.

Letter from the Universal House of Justice to a National Spiritual Assembly, 20 August 1974

What if civil divorce is granted before the end of the year of patience?

Although a civil divorce is granted, Bahá'í divorce cannot be granted before the end of the year of patience. A Bahá'í is not permitted to re-marry before the end of the year of patience. Should a Bahá'í do so he or she will be subject to sanctions:

... the believer will be subject to sanctions if he should marry a third party within the year of patience, not only because it is a violation of the year of patience itself, but also because even though a civil divorce has been granted, the Bahá'í divorce cannot be granted until the end of the year of patience. For this reason no marriage is possible during the running of the year of patience unless the parties to the divorce re-marry each other in a civil ceremony.

Letter written on behalf of the Universal House of Justice to a National Spiritual Assembly, 18 July 1973

What if the couple reconciles between the end of the year of patience and granting of the civil divorce?

In this instance, according to Bahá'í law, there is no need for the couple to re-marry:

... should the couple be reconciled during the period between the end of the year of waiting and the time when the civil divorce would become effective, there would be no need for the parties to remarry according to Bahá'í law.

Letter from the Universal House of Justice to a National Spiritual Assembly, 1 May 1967

What is the situation for a couple living in a de facto relationship, which is accepted as a marriage under Bahá'í law?

People who are living in a de facto relationship which has been recognised as a valid marriage under Bahá'í law must have a Bahá'í divorce if they separate. They are bound by the requirement to go through the year of patience but do not need a civil divorce.

What is the status of an individual who initiates civil divorce proceedings prior to becoming a Bahá'í?

When an individual has initiated civil divorce proceedings prior to becoming a Bahá'í, he or she does not have to observe Bahá'í divorce law:

You ask about the contact who wishes to declare her faith, having already initiated legal steps to divorce her husband. As this case is already in process before her declaration she does not have to observe Bahá'í divorce law.

Letter from the Universal House of Justice to a National Spiritual Assembly, 21 May 1968

What is the status of an individual who remarries without having a Bahá'í divorce due to ignorance of Bahá'í law?

If the Local Spiritual Assembly is satisfied that the individual was genuinely ignorant of Bahá'í law, the following guidance applies:

In cases in which your Assembly has decided that the believer was ignorant of the law requiring him to have a Bahá'í divorce before marrying another, and a civil divorce has already been obtained, your Assembly may in its discretion excuse him and he would be regarded as in the same status as one who obtained a divorce before becoming a Bahá'í.

Letter from the Universal House of Justice to a National Spiritual Assembly, 14 March 1976

Can one party interfere with the granting of the civil divorce once the year of patience has ended?

No:

When a year of waiting ends without re-establishment of the marriage relationship, it is not in the spirit of the Faith for one party to delay or interfere with the civil divorce which thereafter must occur in order to legalise the Bahá'í divorce.

Letter from the Universal House of Justice to a National Spiritual Assembly, 1 August 1978

Are Iranian Bahá'ís who had a Bahá'í marriage in Iran and are seeking to divorce required to have both a Bahá'í and a civil divorce?

Yes.

In reply to your fax message of 14 November 1994 concerning the divorce of a Bahá'í couple who were married in Iran, we have been asked by the Universal House of Justice to convey the following reply.

Since it has been your experience in the ... that such couples apply for a civil divorce, this practice should be continued. If the couple should experience difficulties in obtaining it, they should be counselled to obtain a lawyer. Nothing should be done to give the impression to the authorities that the Bahá'í marriage which took place in Iran was invalid.

Letter written on behalf of the Universal House of Justice to a National Spiritual Assembly, 27 November 1994

RESPONSIBILITIES OF THE LOCAL SPIRITUAL ASSEMBLY FOR ADMINISTERING THE YEAR OF PATIENCE

What procedure should the Local Spiritual Assembly follow when administering a year of patience?

A suggested procedure is outlined below:

1. Seek a reconciliation between the parties.
2. If attempts at reconciliation prove unsuccessful, set the date for the beginning of the year of patience, record the date in the minutes, and notify both parties in writing (see the end of this Chapter for a suggested format for the letter, a copy of which should be sent to the National Spiritual Assembly).
3. Make certain that the extent of the maintenance obligations during the year of patience has been clarified for both the husband and wife.
4. Ensure that suitable arrangements have been made for taking care of the children and any other dependents.
5. Ensure that the couple are aware of the rules of conduct during the year of patience.
6. Determine a suitable method of consultation with the couple to attempt reconciliation during the year:

Attempts at reconciliation should continue during the year of waiting.

Letter written on behalf of the Universal House of Justice to a National Spiritual Assembly, 20 June 1977

This implies that the Local Spiritual Assembly should arrange such consultations more than once during the year. Further points to consider are as follows:

- a. whether the couple will be consulted together or separately
 - b. whether the Assembly will consult as an Assembly or whether it will delegate the responsibility either to an individual or sub-committee of the Assembly, or to someone not on the Assembly: e.g. a mature, deepened Bahá'í couple. If the Assembly does decide to delegate the responsibility, it nevertheless retains overall responsibility for ensuring that the matter is handled appropriately
9. If one party to the year of patience is a non-Bahá'í, the Assembly needs to consider its relationship to that person. Obviously, consultation with the non-Bahá'í spouse is desirable if possible.
 10. Advise the couple of marriage counselling services available and encourage them to use such a service, if appropriate. Ideally, Bahá'ís should be referred to Bahá'í marriage counsellors. Where none are available, however, it is recommended that the Local Spiritual Assembly seek first to ascertain whether a particular counselling service holds views that are compatible with the Faith. Essentially this means that the counselling service should be focussing on trying

to reconcile the couple. It would also be most helpful for the counsellor concerned to be made aware of the Bahá'í principles and teachings on divorce. Again, the Local Spiritual Assembly retains overall responsibility for any advising process that is implemented.

11. If the year of patience ends without reconciliation, note the date on which it ends and record this date in the minutes.
12. Notify the couple accordingly and remind them that the Local Spiritual Assembly must be given a copy of the civil 'decree absolute' (not 'nisi') before a Bahá'í divorce can be approved (see the end of this Chapter for a suggested format for such a letter, a copy of which should be sent to the National Spiritual Assembly).
13. When the 'decree absolute' is received, file a copy of it, note the date on which it was granted in the minutes, and advise the couple concerned in writing that their Bahá'í divorce is now finalised. This letter is the record of the Bahá'í divorce (see the end of this Chapter for a suggested format for such a letter).
14. Send a copy of the letter granting the Bahá'í divorce to the National Spiritual Assembly.
15. Advise the National Assembly in writing if the year of patience ends because the couple have been reconciled.

What should the Local Spiritual Assembly's attitude be towards the couple whose year of patience it is administering?

The administrators of the Faith of God must be like unto shepherds. Their aim should be to dispel all the doubts, misunderstandings and harmful differences which may arise in the community of the believers. And this they can adequately achieve provided they are motivated by a true sense of love for their fellow-brethren coupled with a firm determination to act with justice in all the cases which are submitted to them for their consideration.

Letter written on behalf of Shoghi Effendi to an individual believer, 9 March 1934

In addition, the Local Spiritual Assembly needs to demonstrate the following characteristics when guiding a couple:

1. Objectivity – it is important that the Local Spiritual Assembly remain completely objective in its assessment of the problem and not allow itself to be influenced by the personalities or views of those whom it is advising.
2. Confidentiality – it is imperative that neither the Local Assembly members, nor the parties being counselled, discuss the consultation outside the Assembly meeting. If the Local Spiritual Assembly appoints other believers in the community to consult with the couple it must ensure that they also are aware of these principles and will abide by them. The Assembly must also ensure that the community as a whole observes these principles and does not take sides in the conflict.

Does the Local Spiritual Assembly have an advisory role or an adjudicatory role with regard to the couple?

The Local Spiritual Assembly's role is advisory only. Its function is to assist the couple to work out their differences in the hope of reconciliation, but not to dictate what the couple must do. The Assembly also has a responsibility to advise the couple about the Bahá'í Laws which relate to divorce.:

In the opening paragraphs of your letter you speak of your Committee adjudicating upon divorce settlements, and the House of Justice feels that the use of the word 'adjudicate' may lie at the root of some of the problems that the committee is facing. In a country like ..., where divorce is subject to the civil law, the function of the Assembly (or its committee) in dealing with a divorce case is not primarily a matter of adjudication. Its first duty is to try to reconcile the couple. If it finds that it is unable to do this, it then sets the beginning of the year of waiting and continues, as circumstances permit and wisdom dictates, throughout the running of the year, its attempts at reconciliation.

Letter written on behalf of the Universal House of Justice to a National Spiritual Assembly, 24 February 1983

It is important to note that this guidance applies to all aspects of the year of waiting and any subsequent divorce settlement. The Local Spiritual Assembly has only an advisory role in assisting the couple to reconcile, in assisting them to arrive at an amicable financial agreement during the year of patience, and to assist them in arriving at a just settlement relating to division of assets, custody of children, and so forth after the year of patience. If a couple, for instance, wishes to make decisions about the division of their assets without consulting their Assembly, they are, of course, free to do so.

What if the couple is unable to arrive at an amicable financial agreement during the year of patience?

If the couple are unable to arrive at a financial agreement and the Local Spiritual Assembly is unable to assist them to arrive at such an agreement, the matter must be referred to the civil court for decision:

One of the duties of the committee is to see that the requirements of Bahá'í Law governing the year of waiting are not violated – that is to say, that the two parties live apart and that proper provisions are made for the financial support of the wife and children. As you will see from the enclosures, this is a matter that needs to be considered for [each] case on its own merits. If the matter can be amicably arranged between the parties, well and good. If not, the basic principle of Bahá'í Law is that the husband is responsible for the support of his wife and children so long as they are married; that is until the granting of the divorce. In a particular case, however, it may have been the wife who was the bread-winner of the family or both the husband and wife may have been earning income. The Assembly should not ignore such specific situations and change them merely because a year of waiting is running. The application of these principles should not be in the form of an adjudication which the Assembly will require the couple to accept, but as a basis for an arrangement which the couple will amicably agree to and present to the Court for endorsement. If the Assembly is unable to get the couple to agree, it should leave the matter to the civil court.

Letter written on behalf of the Universal House of Justice to a National Spiritual Assembly, 24 February 1983

It follows from the above that the Local Spiritual Assembly should not insist upon seeking an amicable agreement over an extended period of time. If the Assembly has tried to achieve such an agreement and failed, it should, without further delay, advise the parties concerned to turn to the civil courts for a remedy.

Do Bahá'í sanctions apply if a party fails to abide by the agreement reached?

No. In the event of one or other party failing to abide by the financial agreement reached, Bahá'í sanctions do not apply, although civil sanctions do:

While it is obvious that the Assembly should encourage the husband to honour his Bahá'í responsibilities in paying the required support money, matters of support may be covered by the civil courts when a civil divorce is applied for, and, in such a case, the wife would, of course, be able to invoke whatever civil remedy is available. In any case, at the present time National Spiritual Assemblies should not normally apply sanctions in cases of failure to comply with support requirements.

Letter written on behalf of the Universal House of Justice to a National Spiritual Assembly, 6 February 1978

What if one or both parties to the year of patience are serving on the Local Spiritual Assembly?

Where one or both parties to the year of patience are serving on the Assembly, they may not feel comfortable discussing personal problems before their fellow Assembly members. In this case, the Assembly may consider the options outlined above, of delegating responsibilities to advise the couple either to an individual or sub-Committee of the Assembly or to a mature married couple not on the Assembly. The Assembly should also bear in mind the guidance contained in the Guidance Note on 'Consultation' concerning the presence of an Assembly member at a consultation in which that member's personal affairs are being discussed. In certain circumstances the National Spiritual Assembly may appoint an ad hoc committee to handle the matter, which could be made up of members of the community concerned and other nearby communities:

In reply to your letter of February 4th asking whether you may assign personal problems which a Local Spiritual Assembly is unable to deal with to a nearby Local Spiritual Assembly, we feel that in such cases it would be better for your National Spiritual Assembly to appoint an ad hoc committee for each case, the membership of which could be drawn from one or two nearby communities as well as the community where the particular problem exists.

Letter from the Universal House of Justice quoted in a letter written on behalf of the Universal House of Justice to a National Spiritual Assembly, 22 October 1984

Such a committee would report directly to the National Spiritual Assembly.

Who administers the year of patience if one or both parties move to a new Assembly area?

If one or both parties move to a new Assembly area, the Local Spiritual Assemblies concerned should consult together on the best means by which to proceed with

reconciliation efforts. If the reconciliation fails the Assemblies should decide between themselves which Assembly will be responsible for administering the year of patience. If they cannot decide this matter between themselves the National Spiritual Assembly must decide:

It is incumbent on both LSAs to consult with each other and make effort effect reconciliation parties. If unsuccessful and they cannot agree on which Assembly should assume jurisdiction, it is within jurisdiction of National Assembly to decide.

*From a telex from the Universal House of Justice to a National Spiritual Assembly,
14 May 1987*

If one or both parties move to an area without a Local Assembly, the details must be sent to the National Spiritual Assembly and the parties informed accordingly.

What special care should an Assembly take when there are court orders in place such as restraining orders?

Conditions of a court order are legally binding and must be upheld by the parties and by others, including the Assembly. Therefore the Assembly should not instruct believers to, for example, meet together with the Assembly or its representatives, if this is contrary to the conditions of any court order. Parties should be encouraged to share such conditions with the Assembly, for example, providing a copy in confidence, to guide the Assembly's consultation. Assemblies will need to devise suitable creative methods of communication with and between the parties and for attendance at functions such as Feasts which do not breach the conditions.

ARRANGEMENTS AFTER THE DIVORCE

Does Bahá'í law require maintenance to be paid after completion of the year of patience?

No. Bahá'í law only requires maintenance to be paid during the year of patience. On completion of that year, the Local Assembly has the duty to assist the couple to arrive at a just financial settlement:

The only provision in Bahá'í Law regarding the support of the wife is that which makes the husband responsible for her support during the year of waiting. This does not mean, however, that further support is prohibited; all such matters will require legislation in the future. At the present time, it is the responsibility of the Assembly to arrange an amicable and just financial settlement between the couple, and any such arrangement must, obviously, take into consideration the financial situation of both parties and their relative responsibilities.

Letter from the Universal House of Justice to a National Spiritual Assembly, 5 April 1970

Can a refund of marriage expenses be demanded in the event of divorce?

No. Shoghi Effendi has written:

Concerning...divorce: He has no right to demand from his wife a refund of the marriage expenses he incurred. In the Aqdas it is quite clear that the husband must not only give the dowry but must support his wife until the time when the

divorce is completed. In view of this she is not required to repay expenses of the marriage, etc.

Letter written on behalf of Shoghi Effendi to the National Spiritual Assembly of India, Dawn of a New Day, p. 118

To what extent should the Local Spiritual Assembly involve itself in such matters as division of family assets, custody of children, etc?

The Assembly should assist the couple concerned to reach agreement on these matters. This agreement then need only be submitted to the civil courts for ratification. If it is not possible to reach an agreement the parties concerned must take the matter to the civil court:

...it is preferable for the Spiritual Assembly to try to arrange some amicable agreement between the parties concerning such matters as division of family assets, the custody of children and their support and education, rather than to let these things become the subject of dispute between the Bahá'ís in the law courts. Should a settlement be agreed, provision should be made for this to be submitted to the civil court for its endorsement and ratification, both to ensure that it complies with civil law and to avoid problems in case of a dispute in the future. If, however, it proves impossible to reach an amicable agreement, the only recourse the couple will have will be to submit the matter to the decision of the civil courts.

Letter written on behalf of the Universal House of Justice to a National Spiritual Assembly, 14 March 1980

The Assembly must not unduly delay the parties from seeking a civil remedy if it is unable to bring about an agreement between them.

What guidelines should the Local Spiritual Assembly follow when assisting a couple to make arrangements following the divorce?

The Universal House of Justice has provided the following guidelines:

The decisions in each case must be made in light of the particular conditions of that case. The guidelines given below are general in nature and should be applied as far as possible unless there are compelling reasons to the contrary.

1. Custody of Children

- a. It is preferable that the couple should amicably agree on the custody of the children and submit their agreement to the Assembly for endorsement. Normally in the case of very young children custody is given to the mother unless there are compelling reasons which make this inadvisable.
- b. Regardless of which parent is given custody, the children should be so educated that they may develop a proper Bahá'í attitude towards, and due regard for, both parents. Fair and practical arrangements should be made to protect the rights of the parent not having custody to associate with the children and spend time with them.

- c. Usually custody arrangements continue until the child comes of age unless, of course, new circumstances transpire during this period which call for a review of the arrangements.

2. Financial Support

- a. The husband is obligated to support the wife and children until the granting of the Bahá'í divorce. This normally takes place at the end of the year of waiting unless it has to be postponed pending the granting of a civil divorce.
- b. Following the granting of the divorce the father continues to be under the obligation of providing the necessary funds for the support of the children, but he has no continuing obligation to support his former wife.

*Letter from the Universal House of Justice to a National Spiritual Assembly,
13 January 1983*

What role does the Local Spiritual Assembly have in enforcing decisions of the civil court?

Once the civil court has made its decision regarding financial settlement, etc., the couple, as Bahá'ís, have the obligation to obey it. Should they not do so, the Assembly should advise them to obey:

Once the divorce decree with its related provisions has been handed down by the court, it is the obligation of both parties, as good Bahá'ís, to obey it and, if either is lax in so doing, the Assembly should advise him or her about his or her duties and press for their fulfilment.

Letter written on behalf of the Universal House of Justice to a National Spiritual Assembly, 13 January 1983

This does not negate the right of the wronged party to also appeal to the civil court for enforcement of its decision:

The wronged party, however, should at the same time be left free to apply to the civil authorities for the enforcement of the decision. Unfortunately, such enforcement is notoriously difficult, especially when the parties subsequently reside in different countries. It is here that the action of the Spiritual Assembly, reinforcing the decision of the civil courts, can be of help.

Letter written on behalf of the Universal House of Justice to a National Spiritual Assembly, 13 January 1983

Do sanctions apply to Bahá'ís who do not obey decisions of the civil court?

Sanctions only apply if the disobedience is particularly severe or if it involves failure to provide support for the children. Otherwise, enforcement should be left to the civil court:

Except in circumstances of unusual gravity or cases where the responsible party fails to obey a court decision to provide support for the children, an Assembly should not contemplate imposing sanctions for lack of compliance in these matters. Actual enforcement should normally be left to the action of the civil courts.

Letter written on behalf of the Universal House of Justice to a National Spiritual Assembly, 13 January 1983

All such cases must be referred to the National Spiritual Assembly for a decision.

ANNULMENT

Are there any circumstances under Bahá'í law in which a marriage can be annulled?

A marriage may be annulled if an irreconcilable antipathy develops between the couple after the marriage ceremony and before the marriage is consummated:

Should either party, following the recital of the specifically revealed verse and the payment of the dowry, take a dislike to the other, before the marriage is consummated, the period of waiting is not necessary prior to a divorce.

Bahá'u'lláh, Kitáb-i-Aqdas, p. 151

Note the following clarification provided by the Universal House of Justice regarding the definition of consummation in Bahá'í Law:

The consummation of marriage by a couple is, as you aptly state, an intimate and private matter outside the scrutiny of others. While consummation normally implies a sexual relationship, the Bahá'í Law requiring consummation to take place within twenty-four hours of the ceremony can be considered as fulfilled if the couple has commenced co-habitation with the intention of setting up the family relationship.

From a letter written on behalf of the Universal House of Justice to an individual believer, 28 July 1978

Should any such case arise it must be referred to the National Spiritual Assembly.

REGISTERED GROUPS

Registered Groups do not have the authority to administer Bahá'í divorces. They do, however, have the responsibility of ensuring that their members are deepened in Bahá'í law. Bahá'ís wishing to apply for a year of patience in an area under the jurisdiction of a Registered Group should contact the National Spiritual Assembly, which is the responsible body in such a situation.

FORMAT OF LETTER FOR COMMENCEMENT OF THE YEAR OF PATIENCE

Below is a possible format for a letter advising a couple of the date of the commencement of their year of patience:

Dear Bahá'í Friend,

This is to advise you that the Assembly has accepted ... as the date for the commencement of your year of patience. In order to arrange appropriate counselling procedures for you during the year of patience, the Local Spiritual Assembly would like to meet with you both on ... The meeting will be at ...'s home, at ...pm. At this meeting the Local Spiritual Assembly also wishes to ensure that you have arrived at an amicable financial agreement and that arrangements are in place for taking care of the children. Should you have any queries please do not hesitate to contact the undersigned on

With loving Bahá'í greetings,

(Secretary)

cc National Spiritual Assembly

FORMAT OF LETTER FOR FINALISATION OF BAHÁ'Í DIVORCE

Following is a possible format for a letter advising a couple that their Bahá'í divorce is now finalized:

Dear Bahá'í Friend,

At the Assembly's meeting held on ... the Assembly noted the copy of the decree absolute certificate forwarded by ... as confirmation of civil divorce having been finalised. As this requirement has now been fulfilled, we wish to notify you that according to Bahá'í law, the Bahá'í divorce is now effective. With our loving prayers and best wishes for your future

With loving Bahá'í greetings,

(Secretary)

cc National Spiritual Assembly

APPLYING FOR A YEAR OF PATIENCE

This is available as a separate document, from the website, that can be shared with a couple requesting a Year of Patience.

A brief summary of the requirements

A couple experiencing difficulties in their marriage, and who are considering requesting the setting of a Year of Patience, are urged to take the following steps:

- Approach their Local Spiritual Assembly and ask to consult in confidence. If there is no Local Assembly in the locality, contact the National Spiritual Assembly who will find the nearest Local Assembly. The Local Spiritual Assembly will usually appoint a committee of representatives (usually two individuals) to liaise with the couple and oversee the Year of Patience.
- The couple should be aware that their first responsibility during the Year of Patience is to work towards a reconciliation, especially if they have children. Representatives of the Local Assembly will no doubt wish to explore this with them.
- The couple should be aware that the Year of Patience requires them to live in separate accommodation (not just different rooms in the same house) and this may require considerable consultation and planning on their part to arrange it. If the person moving out from the marital home is a Bahá'í, he or she should inform the National Assembly of his/her new address by writing to nsa@bahai.org.uk
- During the Year of Patience the couple should not have marital relations, nor stay the night in the same accommodation – if they do, the Year is negated.
- Should the Year of Patience be completed with no reconciliation, the couple may proceed with a civil divorce, so that their divorce is recognised in law. The civil divorce should not be long delayed after the Year of Patience is complete.
- In certain circumstances, especially where children are involved, it may be wise for the couple to seek legal advice before the end of the Year of Patience.

... it is more within the spirit of Bahá'í Law for Bahá'ís to postpone the initiation of civil proceedings, (if the law of the country requires a civil divorce) until the end of the year of waiting. However, if such postponement gives rise to inequity or to a legal prejudice against the possibility of a civil divorce, it is, of course, permissible for the civil proceedings to be initiated during the year of waiting.

*Letter written on behalf of the Universal House of Justice to a National Spiritual Assembly,
20 June 1977*

- A Bahá'í divorce is not finalised until the couple have completed the Year of Patience, overseen by a Spiritual Assembly, and have received their civil

divorce Decree Absolute. A copy of this document should be shared with the overseeing Spiritual Assembly.

- The Local Assembly will then record the Bahá'í divorce in its Minutes and produce a letter for the two parties confirming the finalisation of the Bahá'í divorce. The divorce is not finalised until such time as this is done. The letter should be kept safely as proof of the divorce if needed in future. (There is no such thing as a Bahá'í divorce certificate.)
- For more detailed guidance, the following documents are available and can be sent to couples on request.

Preserving Bahá'í Marriages (a memorandum and compilation from the Research Department of the Universal House of Justice)

Reconciliation and Divorce (guidance notes for Local Spiritual Assemblies, which includes answers to a wide range of questions concerning Bahá'í divorce)