

Abdul rahim says that
with a view to



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Abdul Rahim says that with a view to regulating the matrimonial relations, Muslim law allows predominant position to the husband “ because, generally speaking, he is mentally and physically superior of the two; and some theorists would treat the dower payable to the wife as consideration for the alienation of her matrimonial freedom”. The protagonists of equality of sexes will not agree with Abdul Rahim, but that seems to be an adequate explanation for the recognition of unilateral divorce in Muslim law. When the husband exercises the right of pronouncing divorce on his wife, technically, this is known as talak. The most remarkable feature of the Muslim law of talak is that all the schools of the Sunnis and the Shias recognize it; they differ only in some details. In the Muslim world, so widespread has been the talak that even the Imams practised it.

The absolute power of a Muslim husband of divorcing his wife unilaterally, without any cause, without assigning any reason, literally at his whim, even in a jest or in a state of intoxication, and without recourse to the court, and even in the absence of the wife, is recognized in modern India. All that is necessary is that the husband pronounces talak; how he does it, when he does it, or in what manner he does it, is not very material. In *Hannefa v. Pathummal*, the judicial conscience of Khalid, J. was disturbed at this, and he debbed it as a “ monstrosity”. Among the Sunnis, talak may be express, implied, contingent, constructive, or, even delegated.

The Shias recognize only the express and the delegated talak.

Express Divorce and Its Forms:

When clear and unequivocal words, such as “ I have divorced thee” are uttered, the divorce is express. The express talak falls into two categories: (i) Talak-ul-sunna (approved), and (ii) Talak-ul-badai or talak-ul-bidaat or talak-ul-bida (unapproved). The talak-ul-sunna has two forms: (a) Ashan, and (b) Hasan. The former is most approved and the latter is approved. The talak-ul-badai, also has two forms: (a) The triple divorce or three declarations at one time, and (b) One irrevocable declaration. The basic distinction between the talak-ul-sunna, and talak-ul-badai, is that in the former case the pronouncement of divorce is revocable while in the latter, it is irrevocable.

This seems to be the reason why the talak-ul-sunna is considered to be approved divorce, and the talak-ul-badai as unapproved.