

**ELEMENTS  
OF  
HINDU LAW**

**S.K. Routh, M.A, LLB**

**IDEAL LIBRARY**

# ELEMENTS OF HINDU LAW

By  
S.K. Routh, M.A., LLB. (1<sup>ST</sup>. Class).

*With foreword by*  
Abdul Haq, B.Com., LL.B., Ph.D., M.P.;  
Education Commission of Bangladesh ;  
Formerly Dean of the Faculty of Law,  
Rajshahi University.

LA LAW BOOK HOUSE  
HAHJALAL MARKET  
NILKHAT, DHAKA.

**Published By :**  
**Md. Asraf Uddin**  
**Comilla Law Book House**  
**Shahjalal Market**  
**Nilkhat, Dhaka-1205.**  
**Mobile : 01716544065 / 01811102837**

**Copy right : (All rights reserved by the publication)**

**First edition : 1974**  
**Second edition : 2008**  
**Reprinted : 2010**  
**Reprinted - 2011**

**Compose : Md. Emdad Hossain**  
**221/4 Bhashan Tek Cantt, Dhaka.**

**ISBN : 984-300-000821-0**

**Distributor's**

**Central Law Book House**  
**Islamia Market**  
**Nilkhat Dhaka 1205**  
**Mobile : 01819882107**

**New Al Jalal Agency**  
**14. No. B.B Avenue**  
**Pho : 9560285**

**Price : Tk. 300/- (Three Hundred Only)**

BOOK

DR. A. W. M. ABDUL LISAP  
Member, Commission of Enquiry  
Law Commission of India  
Lucknow

I have gone through the book 'Book of Blind Law' written by Mr. S. K. Das. It is a very interesting and the book is the first of its kind in India. It is a very good book to read for the students of law. It is a very good book to read for the students of law. It is a very good book to read for the students of law.

**TO THE MEMORY  
OF**

**LATE BIRENDRA NATH SARKAR, ADVOCATE,  
ASSASSINATED BY THE OCCUPATION ARMY**

**AT HIS RESIDENCE AT RAJSHAHI  
ON THE THIRD DAY OF APRIL, 1971.**

Written in a very simple and lucid style, the book is a very good book to read for the students of law. It is a very good book to read for the students of law. It is a very good book to read for the students of law. It is a very good book to read for the students of law. It is a very good book to read for the students of law.

A. W. M. Abdul Lisap  
1971

Dark and beautiful  
Comilla  
The 4th August 1971

## FOREWORD

By

**DR. A. W. M. ABDUL HAQ B.COM., LL.B., Ph.D., M.P. ;**  
Member, Education Commission of Bangladesh ;  
Formerly Dean of the Faculty of Law,  
Rajshahi University.

I have gone through the book "Elements of Hindu Law" written by Mr. Sudhansu Kumar Routh. this is a new venture and the book is the first of its kind in Bangladesh. While taking classes, I used to advise my students to come forward to compose law books, suitable to our own needs and it is heartening to note that one of them has actually done it. The Hindu law has undergone considerable changes in India but in our country it is still in its original form. Since the problem touches the religious sentiment, it is difficult for Muslim M.P.s to attempt any change in it. However, the Hindu M.P.s may take the initiative for suitable changes in the Hindu law in Bangladesh, in the light of the Indian experience in this field, by setting up a commission.

Written in simple and transparent language, the book gives a very useful introductory survey of the subject, explaining with lucidity the basic concepts and principles of Hindu law with reference to the original Sanskrit texts and up to date judicial decisions without entering into excessive detail. All technical terms and allusions have been sufficiently explained to render them fully intelligible. The most difficult chapters have been explained with the help of charts and diagrams.

The book adequately describes its subject without pretentiousness and the reader who wants to know about Hindu law, will find enough in it.

I hope, the book will meet the long-standing requirements not only of the students but also of those who are in legal profession.

Darikandi, bancharampur  
Comilla.  
The 4<sup>th</sup> August, 1973

**A.W.M. Abdul Haq.**  
4-8-1973

OPINION

DEAN OF THE FACULTY OF LAW  
UNIVERSITY OF CHITTAGONG.

Date-22-2-1974

I have gone through the book "Elements of Hindu Law" by Mr. S. K. Routh, M.A., LL.B. Written in a simple, clear and lucid style, the book is rich in contents and exhibits great learning and industry on the part of the author. The work may be justly regarded as the *locus classicus* on the codified Hindu Law being a masterly exposition of the Law in systematic and logical schemes. I have no doubt that the book would be found useful by the Law students and Lawyers.

**REZAUR RAHMAN**

Dean of the Faculty of Law,  
University of Chittagong.

22-2-1974.

## PREFACE

The book aims at explaining the principles underlying the Hindu law in a straightforward way—straightforward both in contents and in language.

There ought to appear here a long list of eminent authors to whom I am indebted in the writing of this book. I hope that those who find that they have been used will accept my sincere thanks and apologies for what I have done with their own work. Any suggestion for future improvement of the book would be thankfully received.

My thanks are due to Dr. A. W. M. Abdul Haq, LL.B., Ph.D., Member, Education Commission of Bangladesh and formerly Dean of the Faculty of Law, Rajshahi University, Mr. Rezaur Rahman, Advocate and Dean of the Faculty of Law, Chittagong University, Mr. Tarun Kanti Sen, Advocate and Professor, Comilla Law College and Mr. Jagat Bandhu Sen, M.A., B.L., Advocate and Professor, Chittagong Law College for their valuable suggestions and guidance.

I am also indebted to Mr. Sonatan Datta, Advocate, Mr. Mozammel Huq, Government Pleader, Mr. M. A. Karim, Advocate, Mr. Amiyangshu Sen, Magistrate, 1<sup>st</sup> Class, Mr. Hasan Morshed, LL.B., Magistrate 1<sup>st</sup> Class, Mr. Enayet Karim, M.A., LL.B., and Mr. Md. Miran for their help and co-operation.

I am thankful to my younger brother Sreeman Sitangshu Kumar Routh, M. A. (Double) and my friend Mr. Kamala Ranjan Das for going through the proof sheets.

Leading cases were compiled by my friend, Mr. Md. Alam Mian, LL.B. Miss Alaka Datta, B. Sc. and Miss Ratna Das, B. A. (Hons) prepared the table of cases. The index was prepared by Mrs. Nelie Routh and Mr. Dilip Kumar Kar, B. Sc. (Hons), M. Sc.

The employees of the Zilla Board Press, Comilla, specially Mr. Serajul Islam Pahlwan and Mr. Nirmal Lal Sharma worked hard to complete the book in time.

I offer my sincere thanks to all of them.

Rupakhali, Begunbari  
Mymensing.  
The 4<sup>th</sup> April, 1974

S. K. R.

## CHAPTER I

### ✓ Nature, origin and Sources

|   | Page |
|---|------|
|   | 2-6  |
| Sruti   | 2    |
| Smriti  | 2    |
| Customs   | 3    |
| Other Sources of Hindu Law                                    | 4    |
| Commentaries or Nibandhas                                     | 4    |
| Factum Valet  | 4    |
| Puranas   | 5    |
| Acts of Legislatures  | 6    |
| Judicial Decisions  | 6    |
| Minor texts and commentaries<br>not regarded as authoritative | 6    |
| Equity, justice and good conscience                           | 6    |

## CHAPTER II

### Application, enactments and schools

|  |      |
|--|------|
|  | 7-13 |
| Application  | 7    |
| Enactments   | 8    |
| Schools  | 9    |
| Difference between mitakshara<br>and Dayabhaga schools | 13   |

## CHAPTER III

### Definitions

|           |       |
|-----------|-------|
|           | 16-18 |
| Gotra     | 16    |
| 'Kulya'   | 16    |
| Daya      | 17    |
| Partition | 17    |
| Sapinda   | 17    |
| Sakulya   | 17    |

|             | <b>Page</b> |
|-------------|-------------|
| Samanosdaka | 18          |
| Gotra       | 18          |
| Sagotra     | 18          |
| Pravara     | 18          |
| Bandhus     | 18          |

## CHAPTER IV

### Marriage

|  |       |
|--|-------|
|  | 19-31 |
| Approved forms   | 19    |
| Brahma   | 19    |
| Daiva  | 19    |
| Arsha  | 19    |
| Prajapatya   | 20    |
| Disapproved forms  | 20    |
| Gandharva  | 20    |
| Asura  | 20    |
| Rakshasa   | 20    |
| Paisacha   | 21    |
| Essentials or prerequisites<br>of a valid marriage               | 22    |
| Only one husband at a time                                       | 22    |
| The bride should be virgin                                       | 22    |
| Guardianship and consent   | 22    |
| Marriage should be performed in any<br>one of the approved forms | 22    |
| Parties should belong to the same caste                          | 23    |
| Parties should not be within<br>prohibited degrees for marriage  | 24    |
| Mitakshara school  | 25    |
| Betrothal  | 27    |
| Ceremonies   | 27    |
| Legal Consequences of marriage                                   | 27    |
| Guardianship   | 28    |
| Maintenance & Residence  | 28    |
| Change of religion by the husband                                | 30    |

|                                | Page |
|--------------------------------|------|
| Wife of disqualified heir      | 30   |
| Gharjamai                      | 31   |
| Restitution of conjugal rights | 31   |

## CHAPTER V

### Adoption

|   |       |
|---|-------|
|   | 34-58 |
| Aurasa  | 34    |
| Kshetraja   | 35    |
| Gudhhaja  | 35    |
| Kanina  | 35    |
| Putrikaputra  | 35    |
| Sahodhaja   | 35    |
| Paunarbhava   | 35    |
| Dattaka   | 35    |
| Krita   | 35    |
| Kritrima  | 35    |
| Svayandatta   | 35    |
| Apavidha  | 36    |
| Essentials Of Valid Adoption                                      | 37    |
| The adopter should be legally capable of taking in adoption       | 37    |
| The person giving in adoption must be legally competent to do so  | 37    |
| The adoptee should be lawfully capable of being taken in adoption | 37    |
| Actual giving and taking  | 38    |
| Datta homa  | 38    |
| Dattaka   | 39    |
| ✓ Who may adopt   | 39    |
| ✓ Wife  | 40    |
| ✓ Widow   | 40    |
| Mithila   | 40    |
| Dayabhaga and Benares school                                      | 40    |
| Madras, Bombay and Punjab   | 40    |

|                                       | Page |
|---------------------------------------|------|
| ✓ Nature Of Women's Right To Adoption | 41   |
| Termination Of Widow's Power          | 43   |
| Who May Give In Adoption              | 44   |
| ✓ Who May Be Adopted                  | 45   |
| Dvyamushyayana                        | 48   |
| Ceremonies Required                   | 48   |
| Legal Consequences Of Adoption        | 50   |
| Divesting Of Estate On Adoption       | 53   |
| Alienations Prior To Adoption         | 55   |
| Effects Of Invalid Adoption           | 55   |
| Mode Of Proof And Estoppel            | 56   |
| Kritrima Adoption And                 |      |
| Other Allied Forms                    | 57   |
| Adoption Of Daughters                 | 58   |
| Illatom Son-In-Law                    | 58   |

## CHAPTER VI

### Succession

|  |        |
|--|--------|
|  | 64-115 |
| Mitakshara Succession                            | 64     |
| The Hindu Women's Rights to<br>Property Act-1937 | 66     |
| Samanodakas                                      | 69     |
| Order Of Succession                              | 72     |
| Son, grand-son and great-grand-son               | 72     |
| Widow  | 77     |
| A. Predeceased son's widow etc                   | 79     |
| Daughter   | 79     |
| Daughter's son                                   | 79     |
| Mother   | 79     |
| Father   | 80     |
| Brothers   | 80     |
| Brother's son                                    | 80     |
| Brother's sons' son                              | 80     |
| Father's mother                                  | 80     |

|  | Page |
|--|------|
| Uncle's son's son's son  | 80   |
| Samanodakas  | 81   |
| Bandhus  | 81   |
| Bombay   | 85   |
| Madras   | 85   |
| Special Rules Of Succession In<br>Bombay And Madras                            | 86   |
| Female Heirs   | 87   |
| Re-Union, Mitakshara School  | 88   |
| ✓ Dayabhaga Succession   | 89   |
| Points of difference between Dayabhaga<br>and Mitakshara system of inheritance | 89   |
| ✓ Doctrine Of Spirtual Benifit   | 91   |
| Classes Of Heirs   | 95   |
| Sapindas   | 95   |
| Sakulyas   | 99   |
| Samanodakas  | 101  |
| Principles Of Dayabhaga Succession   | 102  |
| Principles governing precedence  | 102  |
| Order Of Succession  | 109  |
| 1. Sapindas  | 109  |
| 1—3. Son, grand-son and great-grand-son  | 109  |
| Widow  | 109  |
| Daughter   | 110  |
| Daughter's son   | 111  |
| Father   | 111  |
| Mother   | 111  |
| Brother  | 111  |
| Brother's son  | 111  |
| Brother's son's son  | 111  |
| Whole and half blood   | 111  |
| Sister's son   | 112  |
| Sakulyas and samanodakas   | 115  |
| Dayabhaga Re-Union And Order<br>Of Succession                                  | 115  |

## CHAPTER VII

### Exclusion From Inheritance

|   | Page    |
|---|---------|
|   | 119-121 |
| Sex   | 119     |
| Unchastity  | 119     |
| Change of religion and loss of caste                  | 119     |
| Enmity to father and enmity to<br>propositus (Murder) | 120     |
| Adoption of religious order                           | 121     |
| Other incurable diseases                              | 121     |

## CHAPTER VIII

### Stridhanam And Female Heirs

|   | 125-176 |
|---|---------|
| Enumeration of stridhanam   |         |
| Yautaka (gift)  | 125     |
| Sulka   | 125     |
| Adhyabhanika  | 126     |
| Anvadheyaka   | 127     |
| Adhivedanika  | 128     |
| Vritti  | 128     |
| Ornaments   | 128     |
| Acquisitions by practice of mechanical arts   | 128     |
| Gift from strangers   | 129     |
| Saudayika   | 129     |
| Husband's gifts   | 129     |
| Property obtained by adverse possession   | 130     |
| Property purchased with stridhana and the<br>savings of the income of the stridhana | 130     |
| Property obtained by compromise   | 130     |
| Property acquired by inheritance  | 130     |
| Property obtained by partition  | 131     |
| Property acquired from other sources  | 131     |
| Stridhana by custom   | 131     |
| Stridhana according to different schools  | 132     |

|   | <b>Page</b> |
|---|-------------|
| Stridhana and widow's estate              | 136         |
| Rights of a woman over her stridhana      | 138         |
| Succession to stridhanam                  | 141         |
| Mitakshara succession to stridhana        | 144         |
| Benares and Madras school                 | 146         |
| Bombay School                             | 146         |
| Technical Stridhana                       | 147         |
| Non-technical stridhana                   | 148         |
| Mithila school                            | 148         |
| Sulka                                     | 148         |
| Yautaka                                   | 148         |
| Other technical stridhana                 | 148         |
| Dayabhaga school                          | 149         |
| Anvadheyaka from father                   | 150         |
| Ayautaka                                  | 150         |
| Rules common to all the schools           | 151         |
| Widow's estate                            | 153         |
| Incidents of the widow's estate           | 154         |
| Liability and alienations                 | 154         |
| Religious or charitable purposes          | 154         |
| Legal necessity and benefit of the estate | 159         |
| Accumulations and savings from income     | 164         |
| Alienation with reversioner's consent     | 167         |
| Lease, debts etc                          | 170         |
| Waste                                     | 172         |
| Surrender and reconveyance                | 172         |
| Management                                | 174         |
| Judicial proceedings                      | 175         |
| Remedies against the widow                | 176         |

## CHAPTER IX

### Joint family and coparcenary

|                |         |
|----------------|---------|
|                | 178-230 |
| Mitakshara law | 178     |
| Joint family   | 178     |

|  | <b>Page</b> |
|--|-------------|
| Coparcenary  | 180         |
| Classification of coparcenary property   | 182         |
| Property inherited from paternal ancestors   | 183         |
| Property inherited from maternal grand father  | 183         |
| Property inherited from females and collaterals  | 183         |
| Share on partition   | 184         |
| Gift or will by paternal ancestors   | 184         |
| Accretions   | 184         |
| Gift   | 185         |
| Corody   | 185         |
| Property lost to the family  | 185         |
| Joint family trade   | 186         |
| Management   | 187         |
| Rights of coparceners  | 187         |
| Powers of the manager  | 189         |
| What is legal necessity?   | 192         |
| Benefit of the estate  | 193         |
| Judicial proceedings   | 193         |
| Rights of the purchaser  | 196         |
| Setting aside alienations  | 200         |
| Dayabhaga law  | 202         |
| Debts  |             |
| Mitakshara law   | 205         |
| The Mitakshara law of debts contracted for personal benefit may be summarised as follows | 208         |
| Debts dayabhaga law  | 209         |
| Damdapat   | 209         |
| Partition, mitakshara law  | 210         |
| Impartible property  | 210         |
| Idols and places of worship  | 211         |
| Separate property  | 212         |
| Right of way   | 212         |
| Property which cannot be partitioned   |             |

|  | <b>Page</b> |
|--|-------------|
| without destroying its value           | 212         |
| Property indivisible in nature         | 212         |
| Property impartible by custom          | 212         |
| Father's affectionate gifts            | 213         |
| Certain moveables                      | 213         |
| By suit                                | 214         |
| By agreement                           | 215         |
| By arbitration                         | 215         |
| Evidence of partition                  | 215         |
| Partial partition                      | 216         |
| Suit for partition                     | 218         |
| Hotchpot                               | 219         |
| Share on partition                     | 223         |
| Sons, grand-sons, and great-grand-sons | 223         |
| After-born sons                        | 224         |
| Illegitimate sons                      | 225         |
| Absent coparcener                      | 225         |
| Purchaser                              | 225         |
| Wife                                   | 225         |
| Widowed mother                         | 226         |
| Grand-mother                           | 226         |
| Partition-dayabhaga law                | 227         |
| Sons, grand-sons and great-grand-sons  | 228         |
| Illegitimate sons                      | 228         |
| Purchaser                              | 228         |
| Wife                                   | 229         |
| Mother                                 | 229         |
| Grand-mother                           | 230         |

## ✓ CHAPTER X

### Maintenance

|                   |         |
|-------------------|---------|
|                   | 231-238 |
| Absolute          | 231     |
| Limited liability | 231     |
| Son               | 232     |

|                                   | <b>Page</b> |
|-----------------------------------|-------------|
| ✓ Daughter                        | 232         |
| Parents                           | 233         |
| Grand children                    | 233         |
| Female members of the family      | 233         |
| Persons excluded from inheritance | 233         |
| ✓ Illegitimate sons and daughters | 233         |
| Concubine                         | 234         |
| Wife and widow                    | 234         |
| Amount of maintenance             | 234         |
| Family dwelling house and right   | 237         |
| Of residence                      | 237         |
| Suits                             | 238         |

## CHAPTER XI

### Holy orders and endowments

|                                 |         |
|---------------------------------|---------|
| Endowments                      | 243-252 |
| Position of shebaita and mohunt | 243     |
| Rights of the founder           | 246     |
| Removal of shebaita and mohunt  | 251     |
|                                 | 252     |

## CHAPTER XII

### Gifts

|                         |         |
|-------------------------|---------|
| Gifts                   | 255-260 |
| Gifts to unborn persons | 255     |
| Trusts                  | 258     |
|                         | 260     |

## CHAPTER XIII

### Wills

|                                 |         |
|---------------------------------|---------|
| Bequests to unborn persons      | 262-270 |
| Election                        | 262     |
| Rules common to gifts and wills | 262     |
|                                 | 265     |

|                              | Page |
|------------------------------|------|
| Rule against perpetuity      | 268  |
| Bequest                      | 268  |
| Gift or bequest to a class   | 269  |
| Failure of prior disposition | 270  |

## CHAPTER XIV

### Guardians and wards

|                                  |         |
|----------------------------------|---------|
|                                  | 274-280 |
| Natural guardians                | 274     |
| Testamentary guardians           | 278     |
| Guardians appointed by the court | 279     |
| Remedies                         | 280     |

## CHAPTER XV

### Miscellaneous

|                     |         |
|---------------------|---------|
|                     | 282-283 |
| Benami transactions | 282     |
| Sudra               | 283     |

## APPENDIX-A

### Acts I The Hindu Transfers and Bequests Act, 1914.

|   |         |
|---|---------|
|   | 284-300 |
| II — The Hindu Disposition of Property Act, 1916.                               | 285     |
| III — The Hindu Transfers and Bequests<br>(City of Madras) Act.                 | 286     |
| IV — The Indian Limitation (Amendment) Act I of 1927.                           | 288     |
| V — Hindu Inheritance<br>(Removal of Disabilities) Act, 1928.                   | 289     |
| VI — The Indian Succession<br>(Amendment) Act XIV of 1928.                      | 290     |
| VII — act no. II of 1929.<br>Hindu Law of Inheritance<br>(Amendment) Act, 1929. | 290     |
| VIII — ACT NO. XVIII OF 1929.   |         |

|   |     |
|---|-----|
| Indian Succession (Amendment) Act, 1929.        | 292 |
| THE SCHEDULE                                    |     |
| Enactments repealed.                            |     |
| IX — ACT NO. XIX OF 1929.                       |     |
| As amended by Acts VII and XIX of 1938.         | 293 |
| IXA — Amendment of Child Marriage               |     |
| Restraint Act, 1929 (XIX of 1929). —            | 295 |
| X — ACT NO XXX OF 1930.                         |     |
| Hindu Gains of Learning Act, 1930.              | 296 |
| XI — India Act No. XVIII of 1937                |     |
| as amended by Act XI of 1938.                   |     |
| The Hindu Women's Rights to Property Act, 1937. | 298 |
| XII — Act No. XIX OF 1937.                      |     |
| Arya Marriage Validation act.                   | 300 |
| XIII — GOVERNMENT OF INDIA                      |     |
| Legislative Department.                         | 300 |

## APPENDIX-B

### Leading cases.

|   |         |
|---|---------|
|   | 302-316 |
| Hunooman Persaud V. Babooc              |         |
| Munraj Koonwaree (1856) 6.M.I.A.393.    | 302     |
| Brijnarain V. Mangala Prasad            | 303     |
| Pramathanath Mallick V. Pradyumna       |         |
| Kumar Mallick                           | 304     |
| Indira Rani Ghose V. Akshoy Kumar Ghose | 307     |
| Rangasami V. Nachiappa                  | 309     |
| Suraj Bunsu Koer V. Sheo Persad Singh   | 310     |
| Guru Govind Saha and others             |         |
| V. Anund Lal Ghose and others           | 312     |
| Sri Balusu V. Sri Balusu                | 313     |
| Bhoobun Moyec v. Ram Kishore            | 315     |
| Manikyamala V. Nandakumar               | 316     |