

Witness and Victim Protection Laws of Bangladesh: A Need for a New Law

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Abstract

A witness is an indispensable aid in the justice dispensation system in any civilized society. Now-a-days we hear a lot of squabbles about unceremonious acquittals in sensational criminal cases. Most of them are an account of defection of loyalty of witnesses. Causes for defection may be various. The lack of witness and victim protection is one of them. The author's attempt is to highlight the necessity and importance of effective witness and victim protection measures, through enactment of a complete protection law on criminal justice dispensation.

This study aims at finding out the loopholes in the existing laws of Bangladesh on witness and victim protection. It also reflects on why witness protection measures are important for effective functioning of criminal justice system. It further discusses some of the factors like police protection, judicial measures etc that have given rise to witness and victim's protection program. This article shall give a comprehensive idea on the protection mechanisms of witness and victim in Bangladesh.

Keywords: Witness and Victim, Witness and Victim Protection, Protective Measures, Existing Laws, Current incidents.

Introduction

The word “**victim**” has not been defined either in the penal code or in the criminal procedure. According to article 1 of the UN declaration of basic principles of justice for victim of crime and abuse of power¹, “**victim**” means persons who individually or collectively have suffered harm, including physical or mental injury, emotional sufferings, and economic loss or substantial impairment of their fundamental rights through acts or omissions that are in violation of criminal laws operative within members states, including those laws prescribing criminal abuse of power (UN, 1985). So “**victim**” can be defined as a person or persons who have suffered physical, emotional, financial, social or psychological injury as a result of the action of someone or something. In some cases, it includes the immediate dependants or a member of the family of the direct victim and also a person who has suffered harm in intervening to assist the victim in distress or to prevent victimization of the victim.

According to legal dictionary², the word “**witness**” means “Individuals who provide evidence in legal proceedings before a tribunal. Persons who give testimony under oath in court, concerning what they have seen, heard, or otherwise observed.

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In law a witness is someone who, either voluntarily or under compulsion, provides testimonial evidence, either oral or written, of what he or she knows or claims to know about the matter before some official authorized to take such testimony. (Wikipedia)

From the above definitions **witness** can be defined as any person including child who sees to happening any crime or accident to make a statement or give evidence or who has made a statement or given evidence legally in any investigative or judicial proceedings in relation to the commission of an offence before the persons who are legally authorized to take evidence.

The role of a witness is very important in a trial. It is a crucial part of the justice delivery system of any country. According to Bentham³, witnesses are the eyes and ears of justice. Their each and every statement is very important as it has a magic force to change the course of the whole case.

However, from the beginning, age of Bangladesh, the criminal justice system has been inefficient and did not function smoothly. The most overwhelming reason of this weakness is that there is no law in our country which can provide protection to the witnesses and victims to a criminal justice system and also based on another reason that is prosecution witnesses retract from statements made earlier before the police and turn hostile.

During the course of investigation, trial and after the trial a witness may suffer harassment, threat etc. at many hands. Pre-deposition and post-deposition periods are generally distressing for a truthful witness. For all these reasons and others, a person abhors becoming a witness. It is the administration of justice that suffers the whole judicial systems.

In our country it is widely observed that in most cases involving dreadful crimes or high profile personalities gave external pressures or threats to the witnesses as well as victims not to give actual testimony or evidence before the court. As a result the criminal justice system suffers a lot. In this context a complete witness and victim protection law is a crying need in our country.

Necessity of Protection

The word “**victim/witness protection**” means protection of a victim or a witness from intimidation, harassment or from further victimization by the accused or his associates or any

person or body of persons, whether named in the First Information Report(FIR)⁴ or not and includes relocation, accommodation, changes of identity, as well as counseling and financial support of a victim or a witness.

The victim and the witness of a crime pay an important role in the administration of criminal justice both as a complainant or a piece of information for the prosecution. They have played a vital role both at the stage of investigation of a reported crime and also at the stage of trial of the case arising out of the crime. But these victims are now a day's helpless because of threats, intimidation, coercion and harassment by the offenders or their associates by preventing them from testifying before the investigating officer at the stage of investigation or from giving evidence before the courts and tribunals at the trial of the case. The testimony of a victim at the stage of investigation and during trial of the case in court can be said to be the best piece of

evidence that can be used against the accused. Thus the victims being an important player in the whole process of criminal justice system, they need to be given the rights, privileges and protection.

Now a days crimes have been syndicated and has been an organized act, particularly, in the case of murder, kidnapping, abduction, rape, trafficking for commercial sexual exploitation and acid throwing against women and children have increased considerably and are being organized. But the victims of these crimes feel reluctance to file their complaints against the offenders for fear of threat, intimidation, humiliation, harassment and of further victimization by the offenders and their associates during the investigation, trial and post trial stage.

As the testimony of victim is a very important piece of evidence in the criminal trial, it is essential that the victim should be able to give his /her testimony in court or tribunal freely and without any fear and pressure for securing the ends of justice. That's why some legal arrangements for the victims as well as witnesses are therefore, necessary to be made.

Similarly, witness named in the charged sheets of crimes of grave nature, are also subjected to threats, intimidation and harassment by the accused party or their associates preventing them from attending a court or a tribunal to give their evidence at the trial of the case.

In some cases it is also found that the victim or the complainant as witness in the court, contradicts his/her own statement made in the First Information Report or during investigation because of the fear, threat, intimidation, coercion and harassment made by the offenders and their associates during the trial of the proceedings. In order to facilitate the victim to give his/her testimony in court freely and without any fear or pressure, it is necessary that the victim and other witnesses are provided with certain rights and protection. In this connection the legal approach of witness and victim protection may be mentioned.

Legal Basis for Witness and Victim Protection

a) National Approach

In the Article 31 of the Bangladesh Constitution⁵ it is stated that to enjoy the protection of the law, and to be treated in accordance with law and only in accordance with law, is the inalienable right of every citizen (Bangladesh Constitution, 1972). This Article is the soul basis for enacting a new specific law regarding protection of witnesses and victims.

ICT Act 1973⁶ of Bangladesh does not contain any provision regarding witness and victim protection though in the chapter VIA a new Rule 58 A (1) has been inserted on witness and Victim protection which say's the tribunal on its own initiative, or on the application of either party may pass necessary order directing the concern authorities of the government to ensure protection, privacy and well-being of the witnesses and victims.

A bench of the High Court comprising Justice Md. Imman Ali and Justice Sheikh Hasan Arif passed the order upon a Writ petition filed by BNWLA⁷ named Bangladesh National Women Layers Association Vs The Government of Bangladesh on November 2, 2010 directed the

government to enact a victim and witness protection Act to secure the victims and the witnesses of sexual harassment case.

b) International Approach

The UN declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power:(General Assembly resolution 40/34, Annex): The declaration adopted by the General Assembly in 1985, recognizes that the victims of crimes and often their families, witnesses and others who aid them, experience additional hardship where they assist in the prosecution of offenders. In order to ensure that they do not suffer unnecessary harm if they cooperate in proceedings, the declaration outlines 21 principles for victim support and assistance.

The witness and victim protection and support provisions of the international and hybrid criminal tribunals: The Statutes of the Extraordinary Chambers in the Courts of Cambodia (ECCC), the International Criminal Court (ICC), the International Criminal Tribunal for Rwanda (ICTR), the International Tribunal for the former Yugoslavia (ICTY), the Special Court for Sierra Leone (SCSL), and the Special Tribunal for Lebanon (STL) inserted provisions for victims and witnesses protection where the Rules of Procedure and Evidence provide policies to implement those provisions of the statutes effectively.

For example, Article 68 of the Rome Statute on the International Criminal Court provides that “the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means.”

Regional Victim/Witness Protection to combat trafficking, Commercial Exploitation and Sexual Abuse of Women and Children in South Asia⁸:

This Protocol is an attempt by the Regional Action Forum on Improving the Implementation of Laws Protecting Women and Children to establish norms for victim/witness protection in Bangladesh, India, Nepal, and Sri Lanka.

Although the laws (the penal codes, the criminal procedure codes and constitutions) of those countries refer to witness protection, the drafters of the protocol believe that the existing laws are insufficient to adequately protect women and child victims and witnesses who had been trafficked for sexual exploitation.

Objectives

The main objectives of this paper are the followings:

- To establish the necessity of making a new law including protective measures regarding protection of witnesses and victims.
- To ensure the fundamental rights “right to protection of law” more effectively and to uphold the rule of law as both stated in the Constitution of Bangladesh through enactment of a new law.
- And to strengthen the criminal justice system in Bangladesh.

Literature Review

Witness and victim protection is a burning question in our circumstances. Bangladesh is not the first country to have seen the necessity for witness protection legislation. Many countries such as the USA, Canada, Thailand, Australia, South Africa, etc have enacted Witness Protection Legislations while many others such as the United Kingdom have informal physical security systems. The International Criminal Tribunal for Rwanda has formulated rules for protection of victims and witnesses. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was adopted by the United Nations General Assembly in Resolution 40/34 of 29 November, 1985. The members of Bangladesh Law Commission (2013), proposed law relating to witness and victim protection law and the reasons for enactment. But their proposal has not been yet implemented in the proper way. A. Hariprasad (2011) suggested some measures for witness protection for India. These measures can be applicable for Bangladesh. Markus Eikel (2012), who studied the importance of witness protection for assessing the efficiency of International Criminal Court (ICC), Karen Kramer, (2012) recommended adopting witness protection programs for those states which have witnesses of organized and serious crimes to ensure safety and security of the witnesses. He also gave some of the factors that go up the witness protection programs. The High Court directed the government to enact a 'victim and witness protection Act' to secure the victims and the witness of sexual harassment cases on November, 2010 (Bangladesh Law House, 2011). Umme Wara (2013) showed that the proposed national law on victim and witness protection does not provide comprehensive measures compared with international and hybrid criminal tribunals. Goklesh Meena (2010), who identified the reasons why the witness becomes hostile in criminal proceedings in India and suggested specific witness protection law as a solution to the problem of hostile witness.

Methodology

The study is based on content analysis and case law study method. It is basically based on the review of secondary literatures including books, journals, annual reports, newspapers and case study etc. Internet browsing has been used for collection of most recent literature on the subject.

Case Study

a) Threats to victims and complainants:

Mrs. Shahin Sultana Santa was severely assaulted by the Bangladeshi police on 12 March 2006 while she was waiting to pick up her son from school. Pregnant at the time, Santa was later forced to undergo an abortion, as her injuries caused medical complications. After the Mohammdpur police station refused to file her complaints against the police officers, Santa lodged two cases at the CMM⁹ Court of Dhaka, under the Penal Code and the Women and Children Repression Prevention Act respectively. Although the court dismissed all charges against the accused police officers on May 21, Santa is in the process of appealing against the judgment. From the time she lodged cases in the court, Santa and her family has been subjected to threats

and harassment, including being implicated in false cases. On March 22, two cases were lodged with the CMM against Santa and her husband, Mr. Atiur Rahman, a lawyer by profession. The first case was involved charges of illegally claiming tolls, while in the second case Santa and Atiur were charged with theft. Furthermore, the investigating officers in both the cases are the officers accused of assaulting Santa.

On March 23, one of Santa's witnesses, Mr. Zakir, went to the Magistrate's office to give evidence regarding Santa's case filed under section 10/30 of the Women and Children Repression Prevention Act. Shortly after leaving the Magistrate's office, Zakir was arrested. Similarly, on March 29, another witness, Mr. Omar Farukh Keru was threatened by police inspector Nabo Jyoti Khisha, who said he would be implicated in 10 cases. The police have also been threatening other witnesses in Santa's case frequently.

b) Threats to Witness:

Some recent incidents are mentioned below in this connection:

In Bangladesh International War Crimes Tribunal in the case of State Vs Delwar Hossain Sayedi faced a threat. In this case a very important state witness named Sukhranjan Bali was abducted after giving testimony against the accused in the earlier stage of this case.

The daily newspaper named The New Age published a statement on May 17, 2013 from Sukhranjan Bali. He has given this statement whilst in jail in India in which he said that he was abducted by the Bangladeshi police from the entrance to the ICT.

Another woeful incident of this case is an important state witness named Mustafa Howlader witness no 8 (eight) of this case who has given testimony against the accused was hurt by some assassins at his own house in Pirojpur District in Bangladesh on 7th December 2013 and was dead 3 days later on that attack. It happened at that time while Appeal stage of this case subsists in Appellate Division of the Supreme Court of Bangladesh.

In this situation the question of protection of the victims and the witnesses of international war crime tribunal and other courts are now a burning issue in our country. Because there is no specific law which provide for the rights and protection of the victims and witnesses in our country. Certain rights and protection of victims and witnesses should, therefore, be granted by enacting a specific law and doing so, efforts shall be made to balance the rights of the accused with those of the victims and witnesses.

Analysis and Findings

Crime is the most challenging issue for the development and social stability in Bangladesh.

But the rate of crime is increasing day by day in our country. As witness and victims are the two indispensable parts of crime, consequently they have suffered a lot. And one of the main reasons of increasing crime is defection of loyalty of witnesses and victims to the criminal justice system. The causes for defection may be various but lack of witness and victim protection is the main. As a result the accused are acquitted in most sensational criminal cases and crime rate is increasing rapidly in our country.

Bangladesh police statistics of the last ten years show that crime is increasing alarmingly.

Crime Statistics

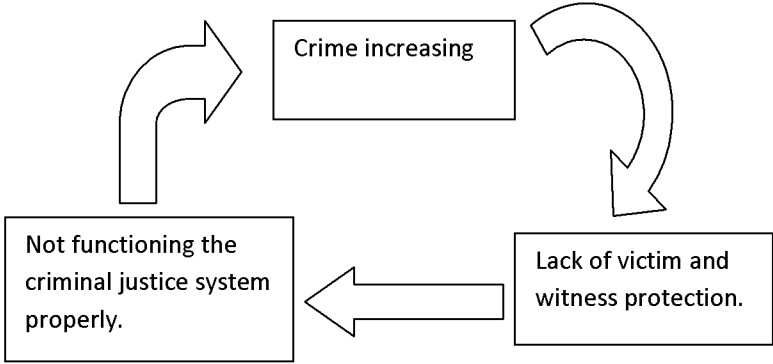
(Number of registered cases from 2003 to 2012)										
Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Crimin- al cases	125639	119323	123033	130578	157200	157979	157108	162898	169667	183407

Source: www.police.gov.bd¹⁰

Growth rate of increasing crime = $\{(\frac{End\ year}{Beginning\ year})^{1/no\ of\ years}\}-1$
= $\{(\frac{183407}{125639})^{1/10}\}-1$
= 3.86%

This growth rate of crime also increases the number of victimized direct and indirect witness and victim.

The following flow chart shows the interrelation between crime and victim/witness.



Existing provisions of laws related to the protection of witnesses and victims in Bangladesh are quite insufficient.

As mentioned earlier the Article 31 of the Bangladesh constitution stated that to enjoy the protection of the law, and to be treated in accordance with law and only in accordance with law, is the inalienable and fundamental right of every citizen but still there is no specific law available at this moment in Bangladesh to ensure that right more effectively especially in the case of protection of witnesses and victims.

The Penal Code of 1860¹¹ defines and prescribes punishment for criminal offences. The Code of Criminal Procedure 1898¹² and The Evidence Act 1872¹³ are applicable in all the criminal courts and tribunals of the country. These statutes lays down the general procedure for the adjudication of criminal cases in Bangladesh, and are generally considered sufficient for administering the judicial responsibilities of the state. But as has been rightly observed in the UN Resolution A/RES/40/30 of 1985 these statutes do not contemplate and accommodate all victims of offences

to play a substantial role in various stages of criminal proceedings. Sections 151 and 152 of The Evidence Act 1872 protects the witness from being asked indecent, scandalous, offensive questions, and questions which intend to annoy or insult them but no provision for the protection of witnesses in Bangladesh.

From the above analysis it is clear that though The Penal Code 1860; The Criminal Procedure Code 1898; The Evidence Act 1872 are applied in all criminal courts and tribunals, yet these laws do not contain any provision regarding the protection of witnesses and victims of crimes.

The ICT Act 1973 of Bangladesh does not contain any provision regarding witness and victim protection though in the chapter VI A a new Rule 58 A (1) has been inserted on witness and victim protection which says that the tribunal on its own initiative, or on the application of either party may pass necessary order directing the concerned authorities of the government to ensure protection, privacy and well-being of the witnesses and victims which showed insufficient in the current situation and in the practical experience of the witness of the ICT.

This table shows the insufficiency of provisions of witness and victim protection law.

	Act	Provisions
1	Bangladesh Constitution, Article 31	Provided protection as a right but still no specific law exist.
2	The Code of Criminal Procedure 1898	No provision about protection
3	The Evidence Act, 1873	No provision about protection
4	The Penal Code 1860	No provision about protection
5	ICT Act, 1973, chapter VIA	Inserted new rule for protection but not sufficient in the practical context.

As an important witness of ICT named Asif Munir son of Late renowned Munir Chowdury,¹⁴ expressed in an electronic media channel named News 24 on 10th December 2013 and also in BBC-Bangladesh Dialogue arranged by Channel- I on 15th December 15, 2013 that the protection which provided to the witness and victims of ICT by the Govt. of Bangladesh, is not sufficient at all.

And it is also found that the Government as well as NGO’s initiatives is very poor regarding this matter though the Human Right Organizations both national and worldwide sometime express their anxieties relating to the matter which showed insufficient in fact.

Recommendations

In the light of above discussion the author strongly recommends to enact a new specific law with sufficient protective measures and programs and other initiatives relating to the protection of witnesses and victims which are as follows:

- 1) A number of protective measures must be taken at the pre- trial, trial and post- trial stages for witnesses and victims of a prosecution to ensure that the case is successfully prosecuted and the trial process is not compromised.

The witness and victims security measures fall into three categories:

- a) Police protection and good operational practices
- b) Judicial and procedural measures
- c) Witness and victims protection program

a) Police protection and good operational practice:

The police have the primary responsibility for securing safety and security of the citizens. In this regard, good investigative practices and basic police protection provide the basis of all other measures. It includes keeping investigation confidential, any act of intimidation or threat made to witness and victims are made known to prosecutors and judges. At all stages, police and investigators should be sensitive to whether the witness and the victims have been or are likely to be intimidated, threatened or in danger due to their cooperation.

b) Judicial and procedural measures:

Judicial and Procedural measures may include:

- Statements of victim and witness should be unidentified;
- For psychological support there should be presence of associated persons;
- Shields, disguises or voice distortion;
- Use of witness's pre trial statement instead of in court testimony;
- Testimony via closed circuit television or videoconferencing;
- Removal of the defendant or the public from the courtroom.

Some measures, such as video testimonies or the exclusion of general public from a hearing, are aimed at protecting the witness's identity, privacy and dignity. Video testimonies, this method protects the witness from direct confrontation with and intimidation by the accused because it creates physical distance between the witness and the accused. And thus an environment where the witness feels secure enough to testify. Other measures, for example, witness concealment or allowing witness to remain anonymous, are aimed at protecting their physical security. And camera trial measures which keep the confidentiality and identity of the victim and witness of trial especially in case of sexual violence keep them secured and safe.

c) Witnesses and victims protection program:

The measures which are discussed above must insert in a new specific law regarding protection of victims and witnesses to ensure their protection in every stage of criminal prosecution.

The rights, benefit and protection to be given to the victims and the witnesses shall include, among others, accommodation with a secured housing facility, relocation(transferring residence from one place to another), change of identity (giving a new name , national id card, passport)as well as counseling and financial support facilities(providing similar job), subsistence allowance(ration card), medical treatment and other facilities to ensure the security of the victims and the witnesses to facilitate their becoming self-sufficient. Some developed countries take an option as a plastic surgery to change witness identity. Protection may also be provided to the immediate family of the witness or a person associated with, such witness, if the family or person may also be endangered on account of the participation of the witness in the judicial proceedings.

The victim's special right shall include the rights to be rescued immediately after getting the information of the commission of a crime and in case of women her identity shall be kept confidential and shall not be disclosed to the public or media and right of access to justice, fair treatment and to promote redress, and to proper assistance in every stage of criminal proceedings and right to protection of privacy and safety.

- 2) The law making authority must take necessary steps to make a new specific law including the above mentioned protective measures and also proper implementation system regarding protection to the witnesses and victims of crimes immediately in order to keep safe anyone who is a witness or a victim in a case specially regarding the crimes of murder, rape, dacoits, kidnapping, abduction, extortion, abduction for commercial exploitation and sexual abuse of women, trafficking of women and children, Police assaults etc. And the law enforcing authority must implement that law effectively, for instance, the accused must lead to the prosecution.
- 3) The police have the primary responsibility for securing safety and security of citizens. In this regard, good investigative practices and basic police protection provide the basis of all other protective measures. So proper steps must be taken to ensure that matter, for example, they must ensure professional norms and ethics in performing their duties to the citizens.
- 4) The NGOs can play a vital role regarding protection to the witnesses and the victims by arranging witness and victim protection program to make awareness of citizens and to pressurize the Government to ensure the matter.
- 5) The Human Right Organizations must come ahead more effectively regarding that matter as it is directly connected to the violation of human rights of persons.
- 6) There is no special security force yet in our country to give protection to the victim and the witness. So the government must form special security forces in this regard.
- 7) The media both print and electronic must take effective initiatives regarding the matter.

Above all the steps should be taken by the Government and NGO's as well as citizens to ensure a safe and secured environment for the people in the society.

Conclusion

In view of the discussions as made above, it is clear that there is no sufficient provision of existing laws regarding protection to the witness and victim at this moment in our country. And it is also proven in this research that this insufficiency of existing laws causes a lot of sufferings to the whole criminal justice system and increases the crimes and sufferings of witness as well as victims alarmingly. Under the circumstances, the author recommends that an urgent need for making a new law providing the rights, privileges and protections with proper protective measures as stipulated in the recommendation part for the victims and witnesses and where necessary their family members to empower them to give their best evidence in the most secured environment possible so that justice is done and crime decreases.

Though the law ministry made a draft of the Witness Protection Law 2011 and sent to the home ministry for review, nothing more was done. Recently the Law Commission of Bangladesh also created a draft relating to protection of the victims and the witnesses of crimes involving grave offences. It's time to stop mulling over the draft of a victim and a witness protection law. In fact, it's high time to enact a new specific law regarding victim and witness protection to ensure justice and rule of law in the society in our country.

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Endnote

1. Adopted by General Assembly resolution 40/43 of 29 November, 1985.
2. Contains legal meaning, <https://legal dictionary, the free dictionary.com/witness>.
3. Jeremy Bentham a writer on jurisprudence was born in Red Lion Street, Houndsditch, on 15 Feb 1747.
4. FIR is a written document prepared by police organizations in Bangladesh, India, and Pakistan when they receive information about the commission of a cognizable offence. It is generally a complaint lodged with the police by the victim of a cognizable offense or by someone on his or her behalf, but anyone can make such a report either orally or in writing to the police.
5. It is the supreme law and fundamental law of the state which is a collection of some principles by which the government of Bangladesh governs the state. It was adopted on the 4th November 1972 by the members of assembly and came to effect from 16th December 1972.
6. The International Crime (Tribunal) Act is enacted in 1973. It is an Act to provide for the detention, prosecution and punishment of persons for genocide, crimes against humanity, war crimes and other crimes under international law. It extends to the whole of Bangladesh.
7. It promotes the rights and status of women lawyers alongside fighting for access to justice for all women and children particularly for the most disadvantaged women and children in Bangladesh
8. www.Sariq.org/downloads/10-59-17 RVWPP%20-%20FRinal.pdf
9. Chief Metropolitan Magistrate courts which is also known as Chief Judicial Magistrate Court outside the Metropolitan area. This court can conduct only those criminal cases which are not punishable to death penalty.
10. Website of Bangladesh police.
11. It is a substantive law of Bangladesh where the definitions of various crimes, elements of crimes and their punishment are prescribed. It was enacted in 1860 and came to effect from 1st January of 1860. It applies to the all criminal Courts and Tribunals within the whole territory of Bangladesh
12. It is the procedural law of Bangladesh which prescribes the pleading procedure of criminal cases before the courts and tribunals by which substantive law is applied for instance what is murder? It is defined in the penal code 1860 and how the case of murder be filed? It's prescribed in the Criminal procedure code. This law is enacted in 1898 and came to effect from 1st July of 1898. It applies to the whole of Bangladesh.
13. The law of evidence is a procedural law which applies both in civil and criminal proceedings in Bangladesh. It is that part of procedural law which prescribes the methods of proof of a case or suit. This law is codified in 1872 and came into force on the first day of September, 1872. It extends to the whole of Bangladesh and applies to all judicial proceedings including Courts-martial, other than Courts-martial convened under the Army Act, 1952, the Naval Discipline Ordinance, 1961, or the Air Force Act, 1953 of Bangladesh and to no affidavits presented for any Court of officer, or to proceedings before an arbitrator.
14. Intellectual martyr of Bangladesh Liberation War, 1971 on the date 14th Dec1971.