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THE APPLICATION OF “THE INDIAN EVIDENCE ACT, 1872” IN TRIBUNAL PROCEEDINGS

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Abstract

In order to enable circumventing the trappings of the court, including time and money investment, various legislations have provided for the constitution of quasi-judicial authorities or Tribunals, to ease the burden on the courts and ease the justice-seeking mechanism for the aggrieved. This paper shall explore the applicability of the provisions of the Evidence Act, 1872 explicitly and implicitly, in the proceedings before various tribunals constituted at different times; including the Debt Recovery Tribunal (constituted in 1993), “The National Company Law Tribunal” (constituted in 2016) and “The National Green Tribunal” (constituted in 2012), in light of their relevant statutes. The aim of the paper is to identify the extent of the applicability of the provisions of “The Indian Evidence Act, 1872” both explicitly and implicitly through the established procedure, in proceedings before the Tribunals. Further, the paper shall analyze how impactful the extensive or restricted applicability of these provisions is upon the delivery of justice – keeping in mind the time and resource factors. Furthermore, the paper shall evaluate the efficacy and success of each of the three tribunals and analyse how much of that result is attributable to the procedural laws of India, including “The Indian Evidence Act, 1872”; “The Code of Civil Procedure, 1908” and “The Code of Criminal Procedure, 1973”. The final aim is to ascertain how much of “The Indian Evidence Act, 1872” is being followed by these tribunals and whether this factor impacts their efficacy.

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Introduction

Evidence law deals with the statutory framework governing the presentation, interpretation and importance of evidence in judicial proceedings, both civil and criminal. Evidence on its own refers to any statements or documents which provide relevant information to the case at hand either by proving or disproving a certain contention/allegation before a judicial authority. Owing to the rising population, changing market dynamics, advancement and evolution of different fields and development of businesses, among other factors of causation, the number of cases pending before the different courts in the judicial hierarchy, is seeing an exponential rise which ofcourse has resulted in extensive delays in the judicial process.

In order to reduce the burden on the courts and make seeking justice a simpler and faster process, specialized tribunals have been introduced in the last few decades, which are focused on particular areas of law and classes of disputes. The fundamental idea behind creating these tribunals as quasi-judicial authorities, is to enable escaping the trappings of the court. The term trappings of the court refers to the time investment, resources investment and complexity of the traditional judicial system wherein procedural delays are inescapable and irrefutable.

It can be argued that the application of “The Indian Evidence Act, 1872” is a major contributor to these trappings of the court, along with the application of “The Code of Civil Procedure, 1908” and “The Code of Criminal Procedure, 1973”. The biggest contributor, however, is the sheer volume of cases and the shortage of judicial infrastructure and judges to adjudicate disputes.

In order to circumvent these trappings of the court, Tribunals operate in their own independent wing in the judicial system. They are exempted from the requirements to follow statutory provisions strictly and frame their own procedure to a large extent, which is best suited to handling the nature and volume of disputes brought before them. While the procedure and rules may be based on the existing statutory framework mentioned above, they are allowed to sway from the straight and narrow in the interest of speedy justice.

1. The Debt Recovery Tribunal

1.1. Constitution and Jurisdiction

The Debt Recovery Tribunal has been constituted under the Recovery of Debts and Bankruptcy

Act, 1993², to deal with the recovery of debts owed to banks and other financial institutions.³ Furthermore, under The Insolvency and Bankruptcy Code, 2016, the Debt Recovery Tribunals are also empowered to handle matters relating to the insolvency of individuals and partnership firms within their territorial jurisdiction⁴; that is, any suit or claim against the individual or partnership debtor can be initiated before The Debt Recovery Tribunal.⁵

1.2.Procedural Framework

The Debt Recovery Tribunal is expressly exempted from the provisions of “The Code of Civil Procedure, 1908” and is permitted to formulate its own procedure based on the principles of natural justice.⁶ The Debt Recovery Tribunal has complete autonomy in its operations and though empowered as if a civil court⁷, it is free to deviate from the procedure laid down for civil courts. The Debt Recovery Tribunal can summon witnesses and have them examined under oath⁸; it can mandate the production of documents⁹ including affidavits; it can authorize the examination of such documents¹⁰ to consider their evidentiary value, including evidence submitted through affidavits¹¹.

While there is no express mention of the applicability of “The Indian Evidence Act, 1872”, inferring from context, it is fair to assume that The Debt Recovery Tribunal is free to interpret and apply the provisions of “The Indian Evidence Act, 1872” as it sees fit, if at all.¹²

However, to decide any matter, there has to be evidence which supports the claim and/or refutes the claim. The Debt Recovery Tribunal, as it deals with financial irregularities, is largely focused on documentary evidence. All such documents relied upon by the applicant/petitioner must be attached to the application submitted to The Debt Recovery Tribunal¹³. This includes the documents/agreements detailing the nature of the debt, the security provided, the valuation of the

² “The Recovery Of Debts And Bankruptcy Act, 1993”, S.3

³ “The Recovery Of Debts And Bankruptcy Act, 1993”, S.17(1)

⁴ “The Insolvency and Bankruptcy Code, 2016”, S.179(1)

⁵ “The Insolvency and Bankruptcy Code, 2016”, S.179(2)

⁶ “The Recovery Of Debts And Bankruptcy Act, 1993”, S.22(1)

⁷ “The Recovery Of Debts And Bankruptcy Act, 1993”, S.22(2)

⁸ “The Recovery Of Debts And Bankruptcy Act, 1993”, S.22(2)(a)

⁹ “The Recovery Of Debts And Bankruptcy Act, 1993”, S.22(2)(b)

¹⁰ “The Recovery Of Debts And Bankruptcy Act, 1993”, S.22(2)(d)

¹¹ “The Recovery Of Debts And Bankruptcy Act, 1993”, S.22(2)(c)

¹² “Supra Note” 6

¹³ “The Debt Recovery Tribunal (Procedure) Rules, 1993”, R.9(1)(ii)

security, the failure to honour the debt and all relevant correspondence between the lender and debtor, amongst others. This requirement ties in with the importance of documentary evidence as discussed in “The Indian Evidence Act, 1872”¹⁴. “The Indian Evidence Act, 1872” speaks about documentary evidence of two kinds¹⁵; primary evidence which is the original document itself¹⁶; and secondary evidence, which refers to certified copies / true copies etc.¹⁷

While there is no explicit mention of primary or secondary evidence in regard to documents supporting the Debt Recovery Tribunal application, applying the principles of natural justice and reasonableness, the primary evidence is bound to be presented during proceedings in order to support the claim of the applicant. Where primary evidence is not available, secondary evidence may be relied upon to a certain extent. Logically, the applicant is bound to have the original loan/credit documents and proof of security provided.

However, in cases of very long-term loans, the originals could have been misplaced or in case of collateral, it is possible that the original documents concerning the collateral are with the debtor and hence the applicant may not be able to furnish the primary evidence in that regard. “The Indian Evidence Act, 1872” provides for such situations, *inter alia* wherein if the original document is held by the opposite party¹⁸, or has been misplaced or destroyed¹⁹, the secondary evidence may be relied upon. The Debt Recovery Tribunal would also likely follow these provisions in proceedings before it as it is the only logical way forward in situations such as the ones highlighted above.

Furthermore, upon the filing of the application before it, The Debt Recovery Tribunal has to issue a notice to the defendant to disclose their assets other than those detailed by the applicant²⁰. Once again, the reliance would be placed on documentary evidence such as title documents, deeds of ownership, registration certificates etc. These details, when submitted in the written statement by the defendant, must be accompanied by the original documents relied upon by the defendant, or true copies thereof.²¹ If such secondary evidence is submitted, the originals would have to be

¹⁴ “The Indian Evidence Act, 1872”, S.3

¹⁵ “The Indian Evidence Act, 1872”, S.61

¹⁶ “The Indian Evidence Act, 1872”, S.62

¹⁷ “The Indian Evidence Act, 1872”, S.63

¹⁸ “The Indian Evidence Act, 1872”, S.65(a)

¹⁹ “The Indian Evidence Act, 1872”, S.65(c)

²⁰ “The Recovery Of Debts And Bankruptcy Act, 1993”, S.19(4)(ii)

²¹ “The Recovery Of Debts And Bankruptcy Act, 1993”, S.19(5)(i)

presented at trial for verification by The Debt Recovery Tribunal²² and for the opposite side to examine²³.

If the parties wish to lead evidence through witnesses, the affidavits of such witnesses must be submitted along with the application or written statement as the case may be, and only then can the witnesses be presented during proceedings and be allowed to lead evidence.²⁴

Pursuant to the filing of the documents by both parties, The Debt Recovery Tribunal shall conduct a hearing on the admissibility of the documents presented²⁵, which would include arguments by both sides and possibly involve the parties presenting their witnesses²⁶ which would be subjected to examination – in – chief and cross–examination²⁷. This procedure is comparable to that provided for in “The Indian Evidence Act, 1872”²⁸.

The procedure for the Debt Recovery Tribunal cases also provides for the defendant to file an application for a set–off of the debt, which is to be accompanied by the original documents supporting his claim²⁹. Similar to the provisions detailed hereinabove in regard to filing the application and the written statement, this provision too, calls for the presentation of documentary evidence as described in “The Indian Evidence Act, 1872”³⁰.

1.3. Evaluation

While the statutory framework provides for a resolution period of six months³¹, the average time taken to pass a final order is somewhere between two³² to four years³³. This suggests that even though the disposal may be faster than it would have been if the case was brought before the civil

²² “Supra Note” 9

²³ “Supra Note” 10

²⁴ “The Recovery Of Debts And Bankruptcy Act, 1993”, S.19(10A)

²⁵ “The Recovery Of Debts And Bankruptcy Act, 1993”, S.19(5A)

²⁶ “Supra Note” 24

²⁷ “The Recovery Of Debts And Bankruptcy Act, 1993”, S.22(2)(d)

²⁸ “The Indian Evidence Act, 1872”, S.138

²⁹ “The Recovery Of Debts And Bankruptcy Act, 1993”, S.19(6)

³⁰ “Supra Note” 15; “Supra Note” 16; “Supra Note” 17

³¹ “The Recovery Of Debts And Bankruptcy Act, 1993”, S.20(6)

³² “Saikat Das, ‘Rajiv Takru asks the Debt Recovery Tribunal to make process of loan recovery more swift’, (*Economic Times*, 24 October 2013), <https://economictimes.indiatimes.com/news/economy/finance/rajiv-takru-asks-drt-to-make-process-of-loan-recovery-more-swift/articleshow/24659191.cms?from=mdr>, accessed 6 April 2023”

³³ “Gaurav Vivek Bhatnagar, ‘Why Does it Take So Long to Resolve Debt Recovery Cases in India?’, (*The Wire*, 21 November 2016), <https://thewire.in/economy/debt-recovery-npa-insolvency>, accessed 6 April 2023”

courts, it is still taking an excessive amount of time. A part of this can be attributed to procedural delays but the main contributing factors are the exponentially rising number of cases and the shortage of capacity of The Debt Recovery Tribunals.³⁴ Even though there are 39 benches of The Debt Recovery Tribunal operational today³⁵, the caseload is too immense for the intended purpose of speedy disposal to be served.³⁶ Furthermore, most of the Debt Recovery Tribunal cases are appealed before the Debt Recovery Appellate Tribunal, of which there are only 5 benches to deal with the mountain of appeals.³⁷

The resolutions provided themselves tend to be a staggeringly low proportion of the debts due, which is largely attributed to the delay in processing³⁸, making lenders desperate for a remedy and hence accepting unfair terms of settlement from the borrowers. The Debt Recovery Tribunals are facing excessive criticism for their failure to serve their purpose³⁹, to defend which, The Debt Recovery Tribunals claim that the delays are largely due to borrowers refusing to submit details of assets and the time taken to liquidate assets to recover the loans⁴⁰. Additionally, the distressed sales of such assets tend to fetch a below fair market value of the asset and hence the loan recovery amount is lower.⁴¹

It is evident that the provisions of “The Indian Evidence Act, 1872” are applied to a certain extent in proceedings before The Debt Recovery Tribunal, but this extent is reasonably limited to those necessary procedural requirements, contravening or eliminating which, would be a violation of the principles of natural justice. It is possible that a stricter implementation of the procedural laws such as “The Code of Civil Procedure, 1908”, “The Code of Criminal Procedure, 1973” and “The Indian Evidence Act, 1872” would result in more efficient operations of The Debt Recovery Tribunal in this case, and could also help cover up the time lag alleged to have been caused by the failure to furnish information.

³⁴ Ibid

³⁵ “Government of India – Ministry of Finance – Department of Financial Services <https://financialservices.gov.in/about-debt-recovery-tribunal#:~:text=At%20present%2C%2039%20Debts%20Recovery,Officer%20and%20a%20Chairperson%20respectively>, accessed 6 April 2023”

³⁶ “Supra Note” 33

³⁷ “Supra Note” 35

³⁸ “Supra Note” 32

³⁹ “Supra Note” 33

⁴⁰ “Supra Note” 32

⁴¹ “Supra Note” 33

2. “The National Company Law Tribunal”

2.1. Constitution and Jurisdiction

“The National Company Law Tribunal” was constituted under “The Companies Act, 2013” for the purpose of dealing with disputes involving companies and for contraventions of the statutory framework governing such entities⁴². Liquidation and insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 are also dealt with by “The National Company Law Tribunal”⁴³.

2.2. Procedural Framework

“The National Company Law Tribunal” is expressly exempted from the strict compliance of “The Code of Civil Procedure, 1908” and is free to frame its own procedure, subject to the guiding principles of natural justice.⁴⁴ There are certain explicit applications of “The Indian Evidence Act, 1872” specified in “The National Company Law Tribunal” Rules, but in addition thereto, the procedure can be examined under the light of “The Indian Evidence Act, 1872”.

“The National Company Law Tribunal” though not a civil court, is empowered as a civil court⁴⁵. This includes the authority to summon and enforce the attendance of witnesses⁴⁶; mandating the production of documents⁴⁷; requisitioning public documents or a certified copy thereof⁴⁸; commissioning examination of witnesses and documents⁴⁹ etc. All proceedings before “The National Company Law Tribunal” are deemed judicial proceedings⁵⁰. Pursuant thereto, attempting to use or actually furnishing false or fabricated evidence is punishable⁵¹ with imprisonment up to 7 years and a fine⁵². Furthermore, causing insult or interruption to the functioning of “The National Company Law Tribunal” or any of its officers, including the judicial members, is punishable with simple imprisonment of up to 6 months and/or a fine up to Rs. 1,000/-.⁵³

⁴² “The Companies Act, 2013”, S.408

⁴³ “The Insolvency and Bankruptcy Code, 2016”, S.60

⁴⁴ “The Companies Act, 2013”, S.424(1); “The National Company Law Tribunal” Rules, 2016, R.51

⁴⁵ “The Companies Act, 2013”, S.424(2)

⁴⁶ “The Companies Act, 2013”, S.424(2)(a)

⁴⁷ “The Companies Act, 2013”, S.424(2)(b)

⁴⁸ “The Companies Act, 2013”, S.424(2)(d)

⁴⁹ “The Companies Act, 2013”, S.424(2)(e)

⁵⁰ “The Companies Act, 2013”, S.424(4)

⁵¹ Ibid; “The Indian Penal Code, 1860”, S.196

⁵² “The Indian Penal Code, 1860”, S.193

⁵³ “The Indian Penal Code, 1860”, S.228

Ensuring proper respect and regard for “The National Company Law Tribunal”, the provisions relating to contempt of court are applicable upon proceedings before it⁵⁴. By creating criminal liability for failure to comply with orders/directions of “The National Company Law Tribunal” for appearance before “The National Company Law Tribunal”⁵⁵, for furnishing of documents or any other evidence⁵⁶ etc. Also, obstructing the enforcement of “The National Company Law Tribunal” orders⁵⁷, threatening to cause injury to officers of “The National Company Law Tribunal”⁵⁸, refusing to cooperate with officers lawfully exercising their duty or obstructing them in any way⁵⁹ etc. are also punishable offences in relation to “The National Company Law Tribunal” proceedings.

These provisions help reinforce the sanctity of “The National Company Law Tribunal” proceedings and ensure proper adherence to the legal framework and proper compliance with the procedure. This goes toward making the proceedings of this tribunal effective and efficient, thereby serving the true purpose of the formation of tribunals.

“The National Company Law Tribunal” requires the furnishing of documentary and oral evidence. While documentary evidence is likely to take precedence in terms of relevance and application, there is a requirement for oral evidence as well, which is governed by provisions set forth in “The National Company Law Tribunal” Rules itself.

As is the case with any documentary evidence, the original document carries the highest weightage as primary evidence, but certified copies or true copies can be furnished and may be relied upon in the absence of the originals, under certain circumstances. “The National Company Law Tribunal” Rules, 2016 speak about certified documents, which refer to public documents issued by the concerned public officer, with the certification that such document is a true copy of the original⁶⁰. “The National Company Law Tribunal” follows the same concept of certified documents as detailed in “The Indian Evidence Act, 1872”⁶¹. These certified copies act as proof

⁵⁴ “Supra Note” 50; “The Code of Criminal Procedure, 1973”, S.195

⁵⁵ “The Indian Penal Code, 1860”, S.174

⁵⁶ “The Indian Penal Code, 1860”, S.175

⁵⁷ “The Indian Penal Code, 1860”, S.183; S.184; S.186; S.188

⁵⁸ “The Indian Penal Code, 1860”, S.189

⁵⁹ “The Indian Penal Code, 1860”, S.172; S.173; S.176; S.178; S.179; S.180; S.182; S.184; S.187

⁶⁰ “The Indian Evidence Act, 1872”, S.76

⁶¹ “The National Company Law Tribunal” Rules, 2016, R.2(9)(a); R.2(10)

of the concerned original document and the contents thereof.⁶² In the context of “The National Company Law Tribunal” cases, these certified documents are of utmost importance as they refer to the compliance form filings by the company and its officers, with the Registrar of Companies, which serves as the truest source of information for any action taken by the company. These form filings include the appointment and removal of directors, the payment of dividends, the details of board meetings and board resolutions etc.⁶³ Therefore, such certified documents, i.e., true copies of Registrar of Companies filings, are exceedingly important for any dispute involving a company, especially if it is with regard to compliance failures.

As discussed hereinabove with regard to filings before The Debt Recovery Tribunal, documentary evidence is required to be furnished along with the application and the reply thereto, which links up with Chapter V of “The Indian Evidence Act, 1872”.

“The National Company Law Tribunal” has the power to direct parties to file evidence in the form of affidavits⁶⁴, and the concerned deponents may be subjected to cross-examination.⁶⁵ This ties in with the provisions of “The Indian Evidence Act, 1872” in this regard⁶⁶. However, over and above the replicated concept of cross-examination, “The National Company Law Tribunal” is empowered to conduct such cross-examination through virtual meetings, if applied for by either of the parties, subject to the approval of “The National Company Law Tribunal”.⁶⁷

Additional evidence which was in the possession or knowledge of the parties but was not furnished before the Inspector investigating under XIV of “The Companies Act, 2013”, generally cannot be admitted at a later stage of trial, unless they can prove that the inspector did not provide sufficient opportunity to present evidence.⁶⁸ However, the court can direct parties to submit additional evidence or file affidavits as it may require⁶⁹, which can also be subjected to cross-examination by the opposite party⁷⁰. In civil courts, under the ambit of “The Indian Evidence Act, 1872”, there

⁶² “The Indian Evidence Act, 1872”, S.77

⁶³ “Forms under “The Companies Act, 2013””, (*Cleartax*, 12 October 2021) <https://cleartax.in/s/forms-companies-act-2013>, accessed 6 April 2023”

⁶⁴ “The National Company Law Tribunal” Rules, 2016, R.39(1)

⁶⁵ “The National Company Law Tribunal” Rules, 2016, R.39(2)

⁶⁶ “The Indian Evidence Act, 1872”, S.137

⁶⁷ “Supra Note” 65

⁶⁸ “The National Company Law Tribunal” Rules, 2016, R.40(1)

⁶⁹ Ibid

⁷⁰ “The National Company Law Tribunal” Rules, 2016, R.40(4)

is no such bar on submission of evidence, however, the right to counter or cross-examine on any evidence submitted is carried forward from “The Indian Evidence Act, 1872”⁷¹.

Furthermore, “The National Company Law Tribunal” can call for further evidence as it deems fit for the purpose of passing an order.⁷² These evidences are, explicitly, as provided for in “The Indian Evidence Act, 1872”⁷³, and include *inter alia* books of accounts⁷⁴; emails⁷⁵; written communications; contracts; electronic certificates⁷⁶ etc.⁷⁷ If there is a claim of forgery or fabrication of such documents, “The National Company Law Tribunal” can order a forensic examination at the cost of the party alleging such forgery or fabrication.⁷⁸

In “The National Company Law Tribunal” proceedings, an application can be made to summon witnesses and pursuant thereto, “The National Company Law Tribunal” shall issue summons for the witness to appear before it and submit such document as required.⁷⁹ Naturally, the witnesses summoned will be subjected to examination-in-chief, cross-examination and re-examination if required, as provided for in “The Indian Evidence Act, 1872”⁸⁰. Furthermore, to enforce the attendance of the witness, Order XVI and XXVI of “The Code of Civil Procedure, 1908” shall apply and the witness shall be put under oath for examination,⁸¹ which means the provisions in regard to perjury shall also be made applicable.⁸²

2.3.Evaluation

“The National Company Law Tribunal” is touted as one of the best dispute resolution bodies in the country, in terms of speed, efficiency and justice delivery. With 16 benches pan India⁸³, “The National Company Law Tribunal” is amongst the Indian tribunals with the maximum number of

⁷¹ “Supra Note” 66

⁷² “The National Company Law Tribunal” Rules, 2016, R.43(1)

⁷³ “The National Company Law Tribunal” Rules, 2016, R.43(2)

⁷⁴ “The Indian Evidence Act, 1872”, S.34

⁷⁵ “The Indian Evidence Act, 1872”, S.65B

⁷⁶ “The Indian Evidence Act, 1872”, S.67A

⁷⁷ “Supra Note” 73

⁷⁸ “The National Company Law Tribunal” Rules, 2016, R.43(3)

⁷⁹ “The National Company Law Tribunal” Rules, 2016, R.52(1)

⁸⁰ “Supra Note” 66

⁸¹ “The National Company Law Tribunal” Rules, 2016, R.135

⁸² “The Indian Penal Code, 1860”, S.193

⁸³ “The National Company Law Tribunal – Benches (<https://nclt.gov.in/national-company-law-tribunal-benches>) accessed 11 April 2023.”

benches. On average, the dispute resolution time for a case before “The National Company Law Tribunal” is 12 – 18 months⁸⁴, which does seem lengthy but is fantastically lesser than that of cases before civil courts, which is a testament to the fact that “The National Company Law Tribunal” is effectively serving its purpose of speedy disposal of matters within its jurisdiction. Of the approximately 83,000 cases filed before “The National Company Law Tribunal” since its formation on 1st June 2016, over 62,000 cases have been disposed of⁸⁵, which is a disposal rate of 74.7% which is undoubtedly a highly impressive ratio.

This success can be attributed to various factors including the application of “The Code of Criminal Procedure, 1973” in reference to obeying the orders of the court. The enforceability of the orders of “The National Company Law Tribunal”, having the backing of punitive effects for non – compliance, helps ensure smooth and fast operations of the tribunal. Furthermore, the freedom to frame its own procedure and the dilution of the procedural laws, viz. “The Code of Civil Procedure, 1908”, “The Code of Criminal Procedure, 1973” and “The Indian Evidence Act, 1872”, to the bare minimum required for the operation of natural justice and logical proceedings, could be one of the main contributors to the speediness of the system. By eliminating the procedural delays created by parties, seeking adjournments and condonations for filing further evidence, and having a limited scope of admissible evidence as well as countering evidence submitted through documents or witnesses, the process is accelerated and unnecessary delays are prevented. Therefore, while “The Indian Evidence Act, 1872” is made applicable to “The National Company Law Tribunal” proceedings, it is reduced to its fundamentals and is hence a catalyst in the justice delivery system of this tribunal.

3. “The National Green Tribunal”

3.1. Constitution and Jurisdiction

“The National Green Tribunal” was established by way of “The National Green Tribunal Act, 2010”⁸⁶ for the purpose of adjudicating disputes wherein there exists a substantial question

⁸⁴ “Salil Panchal, ‘Five years of “The National Company Law Tribunal”: The bad loan recovery tool is painfully slow, but still India's best bet’, (*Forbes India*, 12 July 2021), <https://www.forbesindia.com/article/take-one-big-story-of-the-day/five-years-of-nclt-the-bad-loan-recovery-tool-is-painfully-slow-but-still-indias-best-bet/69075/1>, accessed 11 April 2023”

⁸⁵ “The National Company Law Tribunal has disposed of 62,000 cases out of about 83,000 filed: Official’, (*Business Standard*, 27 March 2022), https://www.business-standard.com/article/current-affairs/nclt-has-disposed-of-62-000-cases-out-of-about-83-000-filed-official-122032700022_1.html, accessed 11 April 2023”

⁸⁶ “The National Green Tribunal Act, 2010”, S.3

relating to the environment or a legal right concerning the environment is to be enforced or on appeal on matters arising out of the environmental legislations⁸⁷ such as The Water (Prevention and Control of Pollution) Act, 1974⁸⁸; The Forest (Conservation) Act, 1980⁸⁹ and The Air (Prevention Control of Pollution) Act, 1981.⁹⁰

3.2.Procedural Framework

“The National Green Tribunal” too, is empowered to frame and regulate its own procedure⁹¹ and is expressly exempted from the application of “The Code of Civil Procedure, 1908”⁹² and “The Indian Evidence Act, 1872”⁹³. “The National Green Tribunal” is only bound to follow the principles of natural justice as a guide for conducting proceedings.⁹⁴ While it is exempt from the application of “The Code of Civil Procedure, 1908”, it is empowered at par with a civil court⁹⁵ and has the power and authority to summon and enforce the attendance of any person to examine them under oath⁹⁶; require the discovery and production of documents⁹⁷; receive evidence through affidavits⁹⁸; as directly adopted from “The Indian Evidence Act, 1872”, “The National Green Tribunal” can requisition any public record or document or its certified copy from any office, etc.⁹⁹ “The Indian Penal Code, 1860” and “The Code of Criminal Procedure, 1973” are also made applicable insofar as perjury¹⁰⁰ and contempt of court¹⁰¹ are concerned. This lends authority and enforceability through the power to sanction for contravention, which upholds the sanctity of the proceedings and helps implement the principles of natural justice.

“The National Green Tribunal” strays far from the convention civil system and therefore operates

⁸⁷ “The National Green Tribunal Act, 2010”, S.14(1)

⁸⁸ “The National Green Tribunal Act, 2010”, Schedule I, Entry 1

⁸⁹ “The National Green Tribunal Act, 2010”, Schedule I, Entry 3

⁹⁰ “The National Green Tribunal Act, 2010”, Schedule I, Entry 4

⁹¹ “The National Green Tribunal Act, 2010”, S.19(2)

⁹² “The National Green Tribunal Act, 2010”, S.19(1)

⁹³ “The National Green Tribunal Act, 2010”, S.19(3)

⁹⁴ “Supra Note” 92

⁹⁵ “The National Green Tribunal Act, 2010”, S.19(4)

⁹⁶ “The National Green Tribunal Act, 2010”, S.19(4)(a)

⁹⁷ “The National Green Tribunal Act, 2010”, S.19(4)(b)

⁹⁸ “The National Green Tribunal Act, 2010”, S.19(4)(c)

⁹⁹ “The National Green Tribunal Act, 2010”, S.19(4)(d); “The Indian Evidence Act, 1872”, S.123; “The Indian Evidence Act, 1872”, S.124

¹⁰⁰ “The National Green Tribunal Act, 2010”, S.19(5); “The Indian Penal Code, 1860”, S.193; “The Indian Penal Code, 1860”, S.196; “The Indian Penal Code, 1860”, S.219

¹⁰¹ “The National Green Tribunal Act, 2010”, S.19(5); “The Indian Penal Code, 1860”, S.228

on a very simplified system. The application or appeal as the case may be, has to be submitted along with all documentary evidence relied upon¹⁰², originals and/or certified copies as provided for in “The Indian Evidence Act, 1872”¹⁰³; and as is the procedure with the institution of any suit, however, “The National Green Tribunal” allows for Notice to be sent to the opposite party by email and also allows for the opposite parties to respond by email¹⁰⁴, instead of the conventional sending of letters and copies of the application by registered post. This not only saves time but reduces paper consumption which is beneficial for the environment, which “The National Green Tribunal” is entrusted to protect.

Furthermore, in the interest of simplifying the process, complainants can file their complaints themselves online through e – filing¹⁰⁵, without the need for an advocate¹⁰⁶ and can plead their cases before the bench themselves, however of course, the engagement of an advocate is recommended as they have specialized knowledge on procedure etc.¹⁰⁷

The statutory framework supporting “The National Green Tribunal” does not expressly provide for any procedure in regard to oral or documentary evidence nor their examination, which means such processes will be carried out by relying upon the provisions of “The Indian Evidence Act, 1872” whenever required. The nature of the cases falling within the jurisdiction of “The National Green Tribunal”, suggests little to no need for oral evidence, although, if required, the tribunal can summon witnesses¹⁰⁸. The bulk of the evidence taken under consideration for cases before “The National Green Tribunal”, is likely to be documentary evidence in the form of reports etc. which prove or disprove the alleged contravention by the parties.¹⁰⁹ The complainant is likely to have conducted some sort of investigation and have commissioned some report to ascertain the existence of any contravening acts by the opposite party, in reference to violation of the statutory protection of the environment or any alleged breach. This report would form the basis of the

¹⁰² The National Green Tribunal (Practices and Procedures) Rules, 2011, R.13(5)(b)

¹⁰³ “The Indian Evidence Act, 1872”, S.62; “The Indian Evidence Act, 1872”, S.63

¹⁰⁴ “The National Green Tribunal – Methodology (<https://www.greentribunal.gov.in/methodology-ngt>) accessed 12 April 2023”

¹⁰⁵ “The National Green Tribunal – E – Filing (<https://ngtonline.nic.in/efiling/mainPage.drt>) accessed 12 April 2023”

¹⁰⁶ “Supra Note” 104

¹⁰⁷ “Praveen Bhargav, ‘Everything you need to know about the National Green Tribunal (The National Green Tribunal)’ ,(*Conservation India*, 2 May 2011), <https://www.conservationindia.org/resources/ngt#:~:text=Yes.,guidelines%20related%20to%20dress%20apply.,> accessed 12 April 2023”

¹⁰⁸ “Supra Note” 96

¹⁰⁹ “Supra Note” 104

complaint filed, and the defendant can refute the claim with their own report or by proving certain facts refuting the alleged contravention. “The National Green Tribunal” may direct the conducting of an investigation by the relevant statutory authority or by experts, the report thereof to be submitted to the bench for “The National Green Tribunal” to evaluate the claim. Public reports based on investigations and surveys carried out by or on behalf of government authorities/agencies can be requisitioned by “The National Green Tribunal”¹¹⁰ to evaluate the claim staked by the complainant. The contents of the abovementioned reports can be argued upon, which would be the primary concern in a trial before “The National Green Tribunal”.

Witnesses may be called for the purpose of ascertaining the extent of damage caused and to evaluate the wrongdoing on the part of the defendant. When a witness is summoned and examined, natural justice calls for examination-in-chief, cross-examination and re-examination if required, in consonance with “The Indian Evidence Act, 1872”¹¹¹.

To further the interest of speedy and efficient judicial proceedings, “The National Green Tribunal” does conduct proceedings via video-conferencing¹¹². In circumstances where there is a shortfall in the bench in any of the zonal benches, the principal bench at Delhi conducts hearings through video conferencing for the cases pending before the concerned zonal benches¹¹³. “The National Green Tribunal Act, 2010” specifically provides for three principles to be applied by the bench when adjudication a case; sustainable development, the precautionary principle and the polluter pays principle.¹¹⁴

- i. Whether the defendant’s actions are for or against sustainable development?
- ii. Whether precautions have been taken to protect the environment and whether The National Green Tribunal needs to order precautions to prevent future damage to the environment?
- iii. If the defendant is polluting, he must pay.

These three guiding principles simplify the task of “The National Green Tribunal” as they have to simply evaluate the facts presented before them in light of these three principles, which undoubtedly contributes to the efficiency of “The National Green Tribunal”.

¹¹⁰ “Supra Note” 99

¹¹¹ “The Indian Evidence Act, 1872”, S.137

¹¹² “The National Green Tribunal Western Zone Bench – Advance Cause List 13 April 2023 (<https://greentribunal.gov.in/click-here-see-13th-april-2023-advance-cause-list-western-zone-bench-pune-through-physical-hearing>) accessed 12 April 2023”

¹¹³ “Supra Note” 104

¹¹⁴ “The National Green Tribunal Act, 2010”, S.20

3.3. Evaluation

“The National Green Tribunal” is one of the more successful tribunals in the country. It has five zonal benches including the principal bench for the North in Delhi, Central Zone Bench in Bhopal; Eastern Zone Bench in Kolkata; Southern Zone Bench in Chennai and the Western Zone Bench in Pune.¹¹⁵ From the formation of “The National Green Tribunal” on 18th October 2012, out of the 40,343 cases filed before “The National Green Tribunal”, 38,373 have been disposed of, leaving only 1,970 pending cases. This amounts to a 95.1% disposal rate¹¹⁶, which is truly superlative. “The National Green Tribunal Act, 2010” provides for a 6-month adjudication period¹¹⁷, while exact details of average pendency time are not available, the 95.1% disposal rate mentioned hereinabove speaks for itself in regard to the efficiency of the tribunal.

The nature of the cases brought before “The National Green Tribunal” is such that there is little scope for arguments and hence it is generally acting simply as a body taking decisions based on the information furnished in the application, of course with due regard for natural justice and the due process of law. Furthermore, the number of cases filed before “The National Green Tribunal” is also far lower than most other tribunals, due to the limited scope of its jurisdiction, which again contributes to its efficiency. As the process for “The National Green Tribunal” cases is rather simplified, it eliminates the need for a significant procedural framework and therefore follows “The Code of Civil Procedure, 1908” and “The Indian Evidence Act, 1872” only as much as required for the carrying out of natural justice. This simplified procedure, including electronic filing and replying, boosts the speediness of the process and hence makes it more effective. Therefore, for “The National Green Tribunal”, “The Indian Evidence Act, 1872” is undoubtedly an integral legislation, but by boiling down the extent of applicability to the bare minimum required to carry the principles of natural justice, the tribunal has enabled itself to operate smoothly, with speed and efficiency; which is the ultimate purpose of any tribunal.

¹¹⁵ “The National Green Tribunal – Zonal Benches (<https://greentribunal.gov.in/zonal-benches>) accessed 12 April 2023”

¹¹⁶ “The National Green Tribunal – Home - Grand Total Of Institution, Disposal And Pendency Of The Cases Of NGT Principal Bench And All Zonal Benches From The Date Of Its Inception Till 28.02.2023 (<https://www.greentribunal.gov.in/>) accessed 12 April 2023”

¹¹⁷ “The National Green Tribunal Act, 2010”, S.18(3)

Analysis and Conclusion

Through the dissection of the evidentiary framework and procedure before The Debt Recovery Tribunal, “The National Company Law Tribunal” and “The National Green Tribunal”, this paper has highlighted the extent of the applicability of “The Indian Evidence Act, 1872” in proceedings before quasi-judicial bodies/tribunals, in order to ascertain how beneficial, “The Indian Evidence Act, 1872” is, in the interest of speedy and efficient justice delivery.

The indisputable fact is that “The Indian Evidence Act, 1872” is integral to any judicial procedure as it serves the interest of natural justice. Regardless of whether the statutory framework of a particular tribunal expressly follows or exempts itself from complying with “The Indian Evidence Act, 1872”, the key elements of “The Indian Evidence Act, 1872” are present across the board, particularly;

- i. Furnishing of documentary evidence,
- ii. Importance of original documents as primary evidence
- iii. Circumstances wherein copies of documents as secondary evidence may be relied upon
- iv. Examination of witnesses including examination-in-chief, cross-examination and re-examination.

However, limiting the extent of applicability of “The Indian Evidence Act, 1872” does suggest yielding favourable results in regard to tribunal proceedings being fast and efficient. Simultaneously, it is important to note that a large portion of “The Indian Evidence Act, 1872” is concerned with criminal trials whereas tribunals are equivalent to civil courts with jurisdiction over civil matters, and hence, a lot of “The Indian Evidence Act, 1872” is automatically nullified in regard to tribunals.

Without prejudice to the foregoing paragraph, the legislation which when reduced in applicability, seems to benefit justice delivery the most, is “The Code of Civil Procedure, 1908”. The discussions in regard to The Debt Recovery Tribunal, “The National Company Law Tribunal” and “The National Green Tribunal” suggest that “The Code of Civil Procedure, 1908” is the main restriction and curb on the speedy and efficient delivery of justice as it allows for innumerable procedural delays. This contention appears to resonate with the legislators as well, owing to the fact that the statutory framework of all three of the tribunals discussed in this paper expressly exempt the concerned tribunal from following “The Code of Civil Procedure, 1908”. The freedom to frame their own procedure has resulted in the creation of a simplified process which has

benefited the interests of speedy and efficient justice.

That being said, “The Code of Civil Procedure, 1908” is followed to a certain extent in tribunal proceedings, in a similar diluted fashion as is “The Indian Evidence Act, 1872”, as this is necessary to empower the court, give it authority and power and serve the principles of natural justice. The explicit provision that deems a tribunal at par with a civil court as per “The Code of Civil Procedure, 1908” and gives it the powers awarded to civil courts under “The Code of Civil Procedure, 1908”, is present in the statutory framework of all tribunals.

Another key discovery through this paper is that the tribunal must have the power to issue sanctions and impose punitive repercussions for contraventions or failure in compliance, by enforcing the provisions of “The Indian Penal Code, 1860” and “The Code of Criminal Procedure, 1973”, particularly in relation to failure to comply, contempt of court and perjury, as discussed hereinabove. The discussions in relation to The Debt Recovery Tribunal proved that without imposing strict criminal liability for failure in compliance and contravention of the legal mandates, the tribunal shall fail to be effective let alone speedy.

Therefore, in summation, “The Indian Evidence Act, 1872” is undoubtedly an integral part of the framework governing quasi-judicial bodies and is a catalyst in the justice delivery system, albeit in its most fundamental form. Stripping “The Indian Evidence Act, 1872” down to the key elements is what has served the successful tribunals well. It is impossible to completely evade the application of “The Indian Evidence Act, 1872” but the analysis in this paper suggests that a watered-down version serves the interest of speedy and efficient justice best. Furthermore, the paper reveals that one of the primary causes for delays in justice in both the traditional court system and tribunal system appears to be “The Code of Civil Procedure, 1908”. This acts over and above the fact that the caseload is unfathomable in our country as it has the largest population in the world, and there is a painful shortage of judges and courts to address these disputes. Hence, it is likely that the creation of more tribunals, in sync with the statutory framework of “The National Company Law Tribunal” and “The National Green Tribunal”, to deal with specialised matters, would go a long way in improving the condition of the justice delivery system in India.