



Comparative Analysis Of Dispute Resolution Councils With Similar Legal Institutions In English Law

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Abstract. Iranian lawmakers have established Dispute Resolution Councils by article 189 of The Third Development Plan Law, in order to decrease time of judgment and density of files in Department of Justice, and agreement between two sides of lawsuits. Consequently, Islamic Parliament of Iran approved Law of Dispute Resolution Councils in 2009. At comparative viewpoint, County Courts and Peace Courts in English Law are similar institutions with Dispute Resolution Councils in Iran. However, certainly, there are diversities between them. This research has studied Dispute Resolution Councils in Iran with similar institutions in England with analytic-descriptive way. Until will be presented recent achievements and solutions for improvement of this institution.

Keywords: Profitability, Earnings, Tehran Stock Exchange, Earnings per share

1. INTRODUCTION

Before the establishment of government and regimen, popular institutions had been an instrument for settlement of disputes by traditional ways, in human societies. There were persons who have called as sheriffs until in lack of intensive governments discipline and peace were established. People have referred and respected them specially.

In addition to Iranian Law there are various agreement institutions in other countries' legal systems. Some institutions in countries are responsible for resolving disputes immediately and easily. Consultation means to achieve advises and comments by referring others' opinions. The vocabulary of consultation "SHORAA" is mentioned in Holy Quran several times. In verse 233 Al-BAGHARA, Holy Quran says to consult in infant's feeding, then people should confer in crucial and vital individual and social issues.

By the way, Dispute Resolution Council is a board that has capability of consultation, then challenge and disagreement between lawsuits would be resolved afterward.

However, it comes to mind initially that Dispute Resolution Council has not juridical qualification to resolve disputes, even by council's judge consultation. But lawmakers have presented juridical decision authority to Dispute Resolution Councils.

Hence, according to the Law, Dispute Resolution Council is a institution which has authority to handle minor claims. Moreover they try to resolve disputes, at first. If there was no agreement between both sides of claim, the council will start proceeding.

On the other hand there are juridical institutions such as County Courts, Magistrates and peace judges which are responsible for handling minor claims. They are significant similar to Dispute Resolution Councils in Iran and they annually resolve more lawsuits. Use of prosperous peace and reconciliation institutions' experiences could help Dispute Resolution Councils in Islamic juridical system of Iran. Iranian lawmakers and legislators' attitude for transmitting other countries' juridical experiences is vital and crucial in Islamic Republic of Iran's juridical policies.

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Therefore, this research is categorized in four phases:

2. FROM PHILOSOPHY OF ESTABLISHMENT UNTIL ESSENCE OF DISPUTE RESOLUTION COUNCILS IN IRANIAN LAW

According to historical review there have been similar institutions like as Dispute Resolution Councils in Iran, in the past, which were removed from legislative scene.

However, legislators in 2001 by approval of article 189 of the Third Development Plan restored institutions such as Justice Home, Judge Council which is called Dispute Resolution Councils.

What is reason and approach for resuscitating again in juridical system and parliament? That is crucial question.

In other word, what is the philosophy of establishment of Dispute Resolution Councils?

These answers could be presented as establishment of Dispute Resolution Councils:

a- Prevention of integration of the claims in courts, decrease of government's costs, avoid imposing on public expenditure, suppression of reduce of speed and accuracy of courts' verdicts and reduce of people referring to Justice.

In recent years, major scientific advances are achieved in areas such as mediation and restorative justice which are mentioned in Islamic teachings too.

b- Developments in the public participation in community affairs in recent years, is considered as another reason of approval of article 189 of the Third Development Plan and establishment of Dispute Resolution Councils. Including elections of Islamic Councils Cities and Villages

This time, the lawmaker has wanted to involve people in juridical affairs of society , for settlement of disputes.

It is challenging issue that is essence of Islamic Councils Cities judgment or decision? And is it juridical institution or semi-judicial?

Certainly, one the most known branch of consultation is the judgment.

In democratic systems are recognized properly this right.

Constitution of the Islamic Republic of Iran emphasizes on governing by the council and public participation, however it seems that the nature of Dispute Resolution Councils differs from its role in Constitution Law.

Council's members are not elected by people absolutely. Moreover according to article 6 of the law of Dispute Resolution Councils, their members are elected by notice or consultation with local authorities.

Actually, members are elected by local authorities therefore they are governmental choices, and this contrasts with popular character of councils in Constitution Law, article 189 of the Third Development Plan and Law of Dispute Resolution Councils.

Thus, term of council in Dispute Resolution Councils differs with the legal concept in Constitution Law.

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It seems that council's decision is a juridical decision, because it resolves and judges between litigants.

However it is impossible that will be considered as juridical institution completely, since it has twofold function and essence: in one side they are peace and agreement institutions which terminate challenges in the society by intermediation, and in other side they have juridical essence and function. Moreover the articles 9,11 of Dispute Resolution Councils Law express their juridical role explicitly. Thus, this law shows that regulators have been away from the main philosophy of establishment of Councils.

3. AN INSTITUTION LIKE DISPUTE RESOLUTION COUNCILS IN ENGLISH LAW

In this section we discuss and describe Dispute Resolution Councils in English Law, before beginning of main issues.

3.1. The earliest judges

During this period judges gradually gained independence from the monarch and the government. The very first judges, back in the 12th century, were court officials who had specific experience in advising the King on the settlement of disputes. From that group evolved the justices in eyre, who possessed a complex administrative and judicial jurisdiction.

The justices in every were not, to put it mildly, popular. In fact, they came to be regarded as instruments of oppression.

The seeds of the modern justice system were sown by Henry II (1154-1189), who established a jury of 12 local knights to resolve disputes over the ownership of land. When Henry came to the throne, there were just 18 judges in the country – compared to more than 40,000 today.

In 1178, Henry II first chose five members of his personal household – two clergy and three lay – “to hear all the complaints of the realm and to do right”.

This, supervised by the King and “wise men” of the realm, was the origin of the Court of Common Pleas.

Eventually, a new permanent court, the Court of the King's Bench, evolved, and judicial proceedings before the King came to be seen as separate from proceedings before the King's Council.

3.2. Seeds of change

In 1166, Henry issued a Declaration at the Assize of Clarendon (an assize was an early form of the King's Council; the term later became the name for a sitting of a court).

The Assize of Clarendon ordered the remaining non-King's Bench judges to travel the country – which was divided into different circuits – deciding cases.

To do this, they would use the laws made by the judges in Westminster, a change that meant many local customs were replaced by new national laws. These national laws applied to everyone and so were common to all. Even today, we know them as the ‘common law’.

The system of judges sitting in London while others travelled round the country became known as the 'assizes system'. Incredibly, it survived until 1971.

Changes evolved slowly; even in the middle of the 14th century, under Edward III, there could be close collaboration between the Court of King's Bench and the King's Council. A third common law court of justice, the Court of Exchequer, eventually emerged as the financial business of the Royal Household was split off to a specialist group of officials.

3.3. The first professional judges and magistrates

Martin de Pateshull, Archdeacon of Norfolk and Dean of St Paul's, became a Justice of the bench in 1217. By the time he died in 1229 he was known as one of the finest lawyers in England; even 60 years after his death, his judgments were being searched for precedents.

Like Martin, many judges of this era were members of the clergy – although this did not necessarily mean they were parish priests, performing services, weddings and christenings. In an era when the church was rich and the King poor, joining the clergy was often just seen as a sensible means of support.

By the middle of the 13th century, knights had begun to join clerics on the bench. The first professional judges were appointed from the order of serjents-at-law. These were advocates who practised in the Court of Common Pleas. Lawrence de Brok, a serjeant, became a judge in 1268, starting the tradition, which lasted until 1875, of serjeants being the group from which judges were chosen.

This was vital, because it meant that the judiciary now had real professional experience of the law before moving on to the bench.

Over the years, serjeants were overtaken in popularity by barristers and solicitors, and even today, these are the groups from which the judiciary is appointed.

3.4. Growth of independence

During this era bribes and payments were common, however even so, in the middle of the 13th century the judiciary was openly accused of corruption.

In 1346, judges were obliged to swear that "they would in no approach accept gift or reward from any party in litigation before them or give advice to any man, great or small, in any action to which the King was a party himself".

Judicial salaries were also increased, possibly to make them less dependent on other forms of income.

This didn't always help: in 1350 the Chief Justice of the King's Bench, William de Thorpe, was sentenced to death for bribery (he was later pardoned, but demoted).

3.5. The first magistrates' courts

Meanwhile, a new kind of court began to evolve – that which we now recognize as the magistrates' court. Magistrates' courts hark back to the Anglo-Saxon moot court and the manorial court; however their official birth came in 1285, during the reign of Edward I, when 'good and lawful men' were commissioned to keep the King's peace.

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From that point, and continuing today, Justices of the Peace have undertaken the majority of the judicial work carried out in England and Wales (today, about 95 per cent of criminal cases are dealt with by magistrates).

Until the introduction of our modern system of councils in the 19th century, JPs also governed the country at a local level.

In England semi-judicial institutions which are sometimes called courts, yearly are proceeded one million official affairs and other files. In English law a lot of disputes are referred to institutions which are managed by juristic and non- juristic persons commonly. Even, sometimes juristic persons are absent.

In addition, proceedings are accomplished by different ways. A lot of juridical files are addressed by Inferior courts, official commissions and private arbitrators.

There is fundamental division between supreme and inferior justice, then the first is accomplished by supreme courts and the second is implemented by inferior courts and semi-judicial institutions. Lawyers and juristic persons pay attention to supreme courts a lot, since they have significant influence.

The majority of crimes are addressed and resolved in inferior courts and semi-judicial institutions.

But the benefit of their decisions is limited to claims which are resolved. Thus, the criminal proceedings in petty crimes in England is performed by magistrates, who are common people in society and position of Peace Judge, is presented to them. Moreover, they have not any academic juridical education.

They perform their duties with juristic clerks and do not receive compensation and salary. Not only they have qualification of proceeding of inferior crimes, but also they could decide in great files if there are adequate reasons for sending to crown courts.

On the other hand, county courts in civil affairs have resolving capability more, and they have similarities with Dispute Resolution Councils. At first, county courts have established by County Tribunal Law approved 1846 for quick and cheap local proceeding. County courts in English Law should not be comprised with Law Courts in criterion of jurisdiction.

County courts address files and petty crimes which are two legal and criminal aspects. In addition, these courts are under the criminal courts. They send serious and crucial files to crown courts which have adequate reasons. Actually, they perform as preliminary investigations courts and they are primitive courts, moreover there 26000 Magistrates.

4. THE STRUCTURE OF DISPUTE RESOLUTION COUNCILS AND SIMILAR INSTITUTIONS IN BRITISH LAW

The structure of Dispute Resolution Councils is analyzed at first and then structure of county and Magistrate courts is discussed as follows:

4.1. The structure of Dispute Resolution Councils in Iran

The 1 article of Dispute Resolution Councils Law expresses:” Dispute Resolution Council is established for resolving challenges between persons and non-governmental legal persons under the supervision of the judiciary and other conditions which are described in this Law.” The vocabulary of council refers to establishment of council of town and village.

The article 3 of Dispute Resolution Councils Law expresses:” Each council has three members and two alternate members moreover it could belong an office for its duties.” Therefore using of office is not compulsory for Dispute Resolution Councils, because lawmaker uses vocabulary of “could”. But, actually all of them use offices and a person who is not member of council, manages official affairs of Dispute Resolution Council. Main members and alternate members could be responsible of offices. Indeed, a person is elected for each branch as a manager.

If Office manager of the Council is not nor the main neither alternate members of the council, will not be involved in the investigation, then he/she performs official affairs. The article 6 of executive regulations of the Law expresses:” main members and alternates will be elected by the head of jurisdiction’s opinion with publishing notice or consultation with the local authorities”

Unlike Britain's Dispute Resolution institutions, in Iran actually council’s members are required and non-electoral and they are not elected by newspaper notices. They are admitted by local authorities’ decision. The council’s judge participates in the council’s affairs, in addition to other main and alternate members.

4.2. The structure of county courts in English Law

County courts which are managed by judges of criminal courts and county courts are established in 1847 for presenting local justice system and cheap resolving crimes. If two sides of crimes want lawyer it would be made expensive. Every branch has a manager and responsible of office that is called clerk. Managing the office and performing daily affairs are the clerk’s duties.

He has juridical role in addition to official duties, then he could address petty crimes and could hear crimes which are less than identified cost. Usually a judge is responsible for hearing and addressing, therefore, scarcely would be required the eight-member jury. Their judges are elected among lawyers with seven years experiences. These judges are elected by lawyer institution’s suggestion, Chancery approval and Queen’s command until retirement.

It is remarkable that the first judge was a woman who was elected in 1963. The judge’s age of retirement is 72 years old for county courts.

4.3. The structure of Magistrate courts in England

Common and non-juristic people are member of magistrate courts that guarantee right of their supervision in governmental affairs, at the beginning. However in 19 century by development of democracy it was defined as a recent institution with two Magistrates at least which were elected by people and they addressed petty crimes. Indeed, common sense had resolved challenges and disputes in England. The Magistrate court is managed by 2 to 7 judges, and there are 30000 non-specialist and 50 expert Magistrate judges in England and Wales. The majority of Magistrate Courts consist of three non-specialist Magistrate judges and a professional judge. But usually courts have not any specialist Magistrate judge. Magistrate judges are part-time and do not earn salary.

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The petty criminal files and almost 98 percent of sum of criminal offenses are supervised there. The government only pays non specialist judges' costs. Non- specialist Magistrate judges are elected by two ways as follows:

- a- In the states according to regent's suggestion, which is aimed by Advisory Committee.
- b- In large urban areas such as Stoke on Trent, based on the recommendation of Peace Committee.

Judges of the county courts have important features, that they are native and they have a lot of local and regional information. In addition they are ready to spend their time for addressing and resolving disputes. They should actual local candidate from the region. Unlike of non-specialist, professional Magistrates are full-time and they have all of two or three non-specialist judge's power. They could not occupy other because they should spend all of their time in county court. The clerk should aim non-specialist judge and present them adequate necessary information about their rights and authorities.

5. COMPARISON OF STRUCTURE OF DISPUTE RESOLUTION COUNCILS WITH SIMILAR INSTITUTIONS IN ENGLISH LAW

We will analyze and interpret their likes and dislikes of two institutions as following:

5.1. Comparison of structure of Dispute Resolution Councils with structure of county courts

In both of them judges of Dispute Resolution Councils and judges of county courts are elected by government. Although in Dispute Resolution Councils notices are published in local newspapers, but their members are not elected by people. This situation has decreased the popularity of institutions, which should resolve society's disputes.

People desire that their files are investigated in the juridical courts in comparison with county courts. They do not trust Dispute Resolution Councils adequately. Because court's judges are elected among lawyers with 7 years experiences at least, but Dispute Resolution Councils' members does not oblige to have any juridical knowledge. Another difference is education of office manager of Dispute Resolution Councils and county courts. Office manager of county courts should be a jurisconsult with 7 years experience.

Although the members of Dispute Resolution Councils should have various conditions, judges of county courts just should have 7 years experience. Finally, county court judges are elected by queen's command evermore, but members of Dispute Resolution Councils are selected by president jurisdiction in consultation with the local authorities.

5.2. Comparison of the structure of Dispute Resolution Councils with structure of Magistrates courts

The non-professional Magistrates same as Dispute Resolution Councils' members have any juridical knowledge, they are native and they are ready to spend their defined time for performing official duties. The Theory of Separation of Powers does not cover both of them. Because magistrates are members of local councils and Dispute Resolution Councils' members

are chosen by local authorities' opinions. Moreover magistrates services their clients free same as Dispute Resolution Councils' judges.

The first distinction is about their power of decision. Magistrates are independent in their responsibility, but Dispute Resolution Councils' judges are free for resolving disputes exclusively. The second difference is about way of their elections. Magistrates only should be native and has adequate local information, but Dispute Resolution Councils' judges should have 9 conditions.

5.3. Comparison of Jurisdiction of Dispute Resolution Councils with Jurisdiction of county courts

Both of them perform petty crimes with identified cost. It seems to resolve inferior crimes and serious crimes will be sent to higher juridical courts. Although Dispute Resolution Councils could not judge in family issues, but county court judges could interfere in family challenges. Usually Dispute Resolution councils have authority of financial issues but county courts interfere in non-financial disputes more.

5.4. Comparison of Jurisdiction of Dispute Resolution Councils with Magistrates courts

The Magistrates courts are more similar to Dispute Resolution Councils than county courts, because both of them have legal and criminal Jurisdiction. Both of them are limited. Some inferior crimes are common between them such as traffic regulations and stop in prohibited areas, therefore they have identified punishments.

One of the most important differences is sentence of imprisonment, Dispute Resolution Councils in contradict with magistrates courts could not issue Sentence of imprisonment. In addition, magistrates courts perform as a reference for a preliminary investigation in crimes which has no Jurisdiction about them, but Dispute Resolution Councils has not that capability.

6. CONCLUSION

Although, common sense and the majority of society accept and admire establishment of Dispute Resolution Councils, but there are problems in its details. There are a lot of similarities between this institution and similar institutions in English Law, but differences in implementation cause change of nature of their functions. in English Law judges, magistrates and county court's judges classified by their knowledge and expertise, then according to their capabilities are identified Jurisdiction. In addition, their structures are different in reference of revision of sentences, way of proceedings, process of member's elections, and then they are distinguished naturally.

		OrtalamaDeğer	KOKH	% Hata
E5	Eğitim	3,28x1019	5,98x1015	0,02
	Test	4,38x1019	3,15x1018	7,00
M5	Eğitim	1,02x1024	1,42x1021	0,14
	Test	1,41x1024	1,61x1023	11,00

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