The Mounting Problems of Cost in English Civil Litigation: Learning from German Experience

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I. Introduction
II. Why to adopt German system
III. Is convergence practically possible
   1. The adversarial inquisitorial debate
   2. The common law civil law disparity, the question of prejudice, and recent trend
IV. Overview of brief history, cost model and implication of cost rules of Germany
   1. Short history of German cost reform and relevant regulation
   2. Cost rules and recoverable cost, fees and expenses
   3. Source of Funding
   4. Implication of German rules
V. Overview of brief history, cost model and implication of the cost rules of England
VI. Comparison between the two systems and German advantage
   1. Statutory fee scale is the key to German success
   2. ‘Cost follows the actual demand’ restrain litigants to bring ambitious claim
   3. Predictability reduces cost, attract insurers
   4. German system promotes settlement
   5. Comparison of funding
VII. A way out for England
VIII. Conclusion

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I. Introduction:

Ensuring access to justice is a challenge for every civil justice system. Cost is one of the critical determinants to assess whether litigant have access to court or not. Moreover, matters relating to cost permeate all aspects of the administration of justice. Civil justice system of England and Wales has been suffering from severe problems of inefficiency regarding cost since last two decades. Economic disposal of cases has become a great challenge. The price of justice is gradually getting high. A review led by Lord Justice Woolf identified as follows: “it is too uncertain; the difficulty of forecasting what litigation will cost and how long it will last induces the fear of unknown; as it is incomprehensible to many litigants”. Afterwards, his reform proposals were implemented in 1999 which is considered a major overhaul in the civil justice system of England. They initiate new ideas such as pre action protocol, overriding objectives, settlement offer etc. Despite some success, the initiatives failed to combat an underlying trend of cost in litigation. Peysner and Seneviratne noted that Lord Woolf’s hypothesis was that by increasing the efficiency of the litigation process, by diverting disputes from litigation and by cutting delay in most cases there would be a reduction in costs with the constrained procedures. Their research concluded that this had proved wrong. Attention needs to be given

2) Ibid at 6.