

# An Examination of the Institutions of Investigation and Prosecution in Iranian Criminal Law and English Law

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## Abstract

Preliminary investigations and prosecution are legal prerogatives of prosecutorial authorities and the police, functioning as human instruments in the procedural stages of criminal justice in both the Common Law system of England and the Romano-Germanic systems in France and Germany. Similarly, Iran—through a fusion of Islamic jurisprudence and codified law (Romano-Germanic)—has been influenced by both the substantive and procedural aspects of French criminal law. In England's criminal procedure, while observing the principles of fair trial, the police—rather than the public prosecutor's office—hold independent and lawful authority over crime detection and preliminary investigations. The Crown Prosecution Service (CPS) acts as the prosecuting body and is responsible for initiating prosecutions in court. However, in the Romano-Germanic legal systems and in Iran, which follows this model, the police are legally mandated—under the supervision and directives of the public prosecutor—to perform the lawful functions of crime detection and preliminary investigations in accordance with the Code of Criminal Procedure. English law recognizes one of its core prosecution principles as the discretionary authority to suspend prosecution, terminate prosecution, or accept guilt, which are seen as key manifestations of this principle. This principle is also embedded within Iran's Code of Criminal Procedure. The present study investigates the institutions of investigation and prosecution in Iranian criminal law and English law.

**Keywords:** preliminary investigation, prosecution, Iran, England, discontinuance of prosecution.

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## 1. Introduction

The criminal justice system in Iran follows a mixed model of criminal procedure. One of the core principles of mixed procedural systems is the independence of the investigating authority from the prosecuting authority during the preliminary investigation stage. According to this principle, the responsibility for conducting preliminary investigations in all criminal cases

lies with an independent authority known as the investigating judge or examining magistrate, while the initiation of prosecution—both prior to and following the preliminary investigation—is assigned to the prosecuting authority or the public prosecutor.

In explaining the principle of the separation of investigative and prosecutorial functions, it is argued that this principle is derived from two foundational sub-principles: on one hand, the prohibition of prosecutorial interference in investigative duties, and on the other, the prohibition of investigative interference in prosecutorial actions. The principle thus means that the preliminary investigation of all criminal offenses must be carried out by an independent body—namely, the examining magistrate—while the prosecutor must refrain from any interference in the investigation. Based on Articles 265, 268, 279, 300, and 359 of the Iranian Code of Criminal Procedure, it is only after the completion of the investigation by the examining magistrate and agreement with the decision to indict that the prosecutor issues an indictment and pursues the prosecution in court.

According to this principle, the examining magistrate is responsible for conducting investigations, which may be carried out independently after referral of the matter and at the request of the prosecutor—provided that the prosecuting authority deems continued prosecution necessary. The rationale for this principle lies in ensuring the neutrality of the investigative body, allowing it to impartially evaluate the case between the prosecutor and the accused.

Although Iranian legislators, inspired by the French legal system, adopted an inquisitorial model in the preliminary investigation stage when enacting the Code of Criminal Procedure in 1912 (1291 SH), they have never fully adhered to the complete separation of the investigating and prosecuting authorities, which is a hallmark of mixed criminal procedure systems. In various periods, this principle has been compromised, notably during the enactment of the 2013 (1392 SH) Code of Criminal Procedure and its 2015 (1394 SH) amendments. Various provisions in Chapter Four, Section One (Articles 89 to 115), have expanded the scope of deviation from the principle by allowing judicial officials other than the prosecutor to conduct preliminary investigations.

Removing the examining magistrate's authority to investigate certain serious offenses, allowing direct referral of cases to court, and maintaining the prosecutor's authority over the examining magistrate before, during, and after investigations are among the most significant breaches of the principle of separation between investigation and prosecution. The prosecutor, as the representative of the public interest, is obligated to pursue offenders upon becoming aware of a crime in order to protect both individual and public rights. However, once prosecution has begun and the accused is arrested or summoned, the responsibility for investigating whether a crime occurred rests with the examining magistrate as the investigating authority. In effect, the magistrate—as a neutral actor—conducts the investigation within the bounds of the law and then determines whether the accused is guilty or not.

According to Article 92 of the Code of Criminal Procedure enacted in 2013, “Preliminary investigation of all offenses is the responsibility of the examining magistrate...”. In English law, preliminary investigation and prosecution are legal powers held by prosecuting authorities and the police as human instruments within the criminal justice process in both the English Common Law and the Romano-Germanic systems of France and Germany. In England's criminal procedure, under the principle of fair trial, the police—rather than a public prosecutor's office—hold independent statutory authority to investigate crimes and conduct preliminary inquiries. The Crown Prosecution Service (CPS) is responsible for prosecution and filing indictments in the courts.

In contrast, in the Romano-Germanic systems and in Iran, which is influenced by them, the police act under the supervision and direction of the public prosecutor according to the Code of Criminal Procedure. The investigative and prosecutorial system in England is structured differently from virtually all other prosecutorial systems. For a long time, the initial decision to prosecute or not was in the hands of the police, and the CPS only became operational after its establishment. During early stages, the police had significant discretion, and the CPS had no authority to compel the police to ask specific questions or follow particular procedures during investigations or prosecutions.

In recent years, the division of responsibilities has changed. The CPS was established under Section 1 of the Prosecution of Offences Act 1985. Conditions of investigation and prosecution in England changed significantly in the mid-1980s. Until then, three main bodies carried out investigation and prosecution: first, the police, who had conducted most prosecutions since the mid-19th century and continued to make most decisions regarding prosecution; second, the Director of Public Prosecutions (DPP), who operated in a limited part of London and handled prosecutions related to homicide and a broad range of other cases

involving national security, public figures, and police misconduct; third, various other prosecuting bodies such as the Inland Revenue, the Post Office, and local health and environmental authorities.

Currently, the decision to prosecute lies with the Crown Prosecution Service, not with police officers. This means that once a case is filed by the police or other agencies against a suspect and the individual is charged or summoned, the next stage involves review by the prosecution service. The case is examined by a legally trained and professionally equipped member of the CPS. Criminal prosecution in the Common Law system is always guided by public interest. Unlike in the Romano-Germanic system—where prosecution may not necessarily be subject to public interest—under Common Law, the decision to prosecute is always conditioned by considerations of public welfare.

## 2. Doctrinal Foundations of Proportionality in Investigation and Prosecution

The proportionality of criminal prosecution is based on specific doctrinal foundations. Understanding and articulating these foundations facilitates acceptance of the principle and thereby enhances its core function.

### 2.1. Cognitive School Foundation

Identifying the doctrinal schools on which the principle of proportional prosecution rests may be regarded as the first foundation. This basis, which may be labeled as the cognitive school foundation, requires an understanding of the instrumental nature of law—a concept centered on the use of legal mechanisms to achieve specific policy goals. In this approach, the prosecutorial authority is not a mere executor of the law but must reflect on how to apply the law and take responsibility for its consequences.

The legal pragmatism school, which emphasizes proportional prosecution, advocates for a judge who is forward-looking and outcome-oriented, capable of anticipating the potential consequences of their decisions on specific cases and on society at large. A pragmatist judge can skillfully interpret legal texts and extract intended meanings, not being confined solely to legal rules. Rather, they may draw on any relevant evidence, including sociological and economic data, in contrast to traditional judges (Ansari, 2014).

The legal realism school may also serve as a basis for the principle of proportional prosecution. This school focuses heavily on translating legal concepts into empirically verifiable matters within the social sciences. As a result, many adherents challenge the practical methods judges use to adjudicate and render verdicts (Bix, 2020). In other words, this school underscores the importance of employing data derived from social sciences. According to this view, judicial authorities, as members of society, are influenced not only by legal statutes but also by social factors when issuing judgments. Thus, legal realism provides a strong foundation for proportional prosecution, as it prioritizes using socially contextualized data in criminal proceedings.

### 2.2. Criminological Foundation

The criminological foundation can serve as another basis for the principle of proportional prosecution. Among the various criminological theories that have influenced the occurrence of crime and the content of criminal statistics, those theories that focus on the main actors of criminal behavior—namely, the offender and the victim—have placed greater emphasis on proportional prosecution. Undoubtedly, theories that center the concept of crime and hold that the certainty of even moderate punishment has a greater deterrent effect than the fear of a severe punishment from which one might be spared (Beccaria, 2010, p. 86) reject prosecutorial discretion to forego prosecution and instead consider prosecution and punishment a right that belongs not to an individual, but to all citizens (Bix, 2020).

In periods when offenders were the primary focus of criminological studies, society's response was determined by the character of the offender, their motivation, and the circumstances surrounding the offense. Later, victims were also included in this evaluative process. Judicial authorities no longer rendered decisions in criminal cases in absolute terms, disregarding the views of the offender and victim. Instead, they began to consult the participants of criminal cases on the case outcome, occasionally basing their judgments on the expressed desires of those involved (Niazpour, 2020).

This approach, referred to as restorative justice, represents a significant shift in the strategic direction of criminal justice. It offers a new perspective on the phenomenon of crime and the appropriate responses to it (Johnstone, 2002). Naturally, this

outlook substantially influences how proportionality in prosecution is perceived. Additionally, labeling theory is another theoretical foundation for proportional prosecution. Originating in England and the United States, where police exercised broad powers that were subject to criticism, this theory led to major transformations in criminal policy and the decriminalization process—especially concerning juveniles, whose cases were removed from the jurisdiction of police and prosecutors, with all proceedings, including preliminary investigations, conducted directly by the court (Zera’at, 2020).

In other words, this theory posits that an individual labeled as a criminal may psychologically internalize that label and begin to behave in ways that align with societal expectations of a criminal (Zera’at, 2020). This perspective fostered a new approach to crime and criminal response, which, in turn, transformed the paradigm of proportional prosecution.

### 2.3. *Practical Foundation*

The practical foundation is another basis for proportional prosecution in criminal cases. This foundation adopts a realist approach and demonstrates the impact of proportional prosecution on the criminal justice system. The overload of criminal case files necessitates granting prosecutorial discretion in order to determine which cases should be referred to court and which can be resolved through alternative, out-of-court methods. Clearly, obligating judicial authorities to prosecute all cases would not resolve this issue. Therefore, adopting proportional prosecution becomes essential to manage case backlog effectively.

In this context, the role of prosecutors has become increasingly significant. Prosecutors play a vital role in reducing judicial caseloads through the discontinuation of prosecution (Tak, 1986). Another reality is that pursuing minor offenses consumes limited judicial resources, rendering them ineffective for addressing more serious crimes. The justice system, like any organizational structure, operates with limited resources and cannot meet unlimited demands. Thus, economically managing this system requires deprioritizing the prosecution of minor offenses, allowing resources to be reallocated toward serious crimes—thereby ensuring the utility and effectiveness of prosecution.

The centrality of the offender and the individualization of prosecution is another reality, wherein proportional prosecution enables non-prosecution of first-time offenders. This is based on the rationale that initial contact with the prosecution office may be sufficient to deter some defendants. In fact, the prosecutor may determine that such limited exposure is adequate punishment, making continued prosecution unnecessary (Najafi Abrand Abadi & Hashemi, 2014).

## 3. **The Institution of Investigation and Prosecution in Iranian Criminal Law**

It cannot be said that Iranian law adheres to a single, coherent legal system, as Iran’s substantive and procedural laws are a hybrid of Islamic jurisprudence and the Romano-Germanic legal system, particularly influenced by French criminal law. This influence is evident in the Islamic Penal Code’s general provisions and the classification of public criminal law, as well as in the Criminal Procedure Code, enacted in late 2013 (1392 SH), which exhibits an even greater reliance on the formal aspects of French criminal procedure.

Notable changes include expanding the legal authority of prosecutors and their subordinates (e.g., investigating judges and assistant prosecutors), introducing institutions such as exemption from punishment, postponement and suspension of prosecution, judicial supervision orders, procedural safeguards for fair trial during the investigation and adjudication stages, and recognizing the defense attorney’s right to access during preliminary investigations.

### 3.1. *Main Criminal Justice Institutions in Iran*

In Iran, where the separation of powers principle prevails, the judiciary—pursuant to the Constitution—is the principal organ responsible for criminal adjudication. It operates through the formation of prosecution offices and courts, applying both the Islamic Penal Code (substantive law) and the Criminal Procedure Code (procedural law). The prosecution phase and the enforcement of court rulings are managed by tools such as the prosecutor, investigative judges, assistant prosecutors, enforcement judges, administrative staff, and general officers in the case of in flagrante delicto offenses.

If a finding of guilt results in an indictment, the case and the accused (usually under bail conditions) are referred to the competent criminal court. According to Article 335 of the 2013 Criminal Procedure Code, criminal courts initiate proceedings

based on various grounds, including the prosecutor's indictment, the court's decision to summon the accused, or the prosecutor's oral argument in court (Jafari, 2013).

### 3.2. *Criminal Investigation and Preliminary Inquiry in Iran*

The head of the prosecution office is the public prosecutor, supported by deputy prosecutors, investigating judges, and administrative staff. Despite Article 92 of the 2013 Criminal Procedure Code clearly stating that "preliminary investigation of all offenses is the responsibility of the investigating judge," the initiation of the preliminary investigation process is conditional upon referral by the prosecutor. Even if the investigating judge is personally aware of a crime, they may commence the investigation but must immediately inform the prosecutor, and may only continue upon the prosecutor's referral (see Article 89 of the 2013 Criminal Procedure Code, enacted on February 23, 2014).

Article 90 defines preliminary investigation as the set of legal measures undertaken by the investigating judge or other judicial authorities to preserve crime scene evidence, collect proof of the offense, identify and locate the suspect, and prevent their escape or concealment. According to Article 64 of the same code, a criminal case or prosecution may be initiated under the following conditions:

1. Complaint by the victim or private claimant,
2. Notification by judicial officers, official authorities, or credible individuals,
3. Commission of a crime in the presence of the prosecutor or investigating judge,
4. Confession or admission by the accused,
5. The prosecutor's knowledge of the crime through other lawful means.

Therefore, under Iranian criminal law, which is influenced by the Romano-Germanic system, preliminary investigations are the responsibility of prosecution authorities under the direction of the public prosecutor. The police operate as delegated agents under prosecutorial supervision (Khaleghi, 2019).

### 3.3. *Sentencing and Crime Classification in England*

A. Three primary statutes are significant in determining sentences:

1. The Criminal Justice Act 1991
2. The Powers of Criminal Courts Act
3. The Criminal Justice Act 2003, which transformed sentencing practices and led to the establishment of the Sentencing Advisory Panel and the Sentencing Guidelines Council.

B. In the English legal system, crimes are classified into three categories:

The first category comprises summary offences, which are less severe and dangerous and are adjudicated solely in magistrates' courts.

The second category includes indictable offences, such as intentional and unintentional homicide and theft, which are prosecuted solely through indictment and must be heard before a judge and jury in a criminal court.

The third category includes either-way offences, which are treated as summary offences unless the magistrates' court determines that the case is more suitable for trial in a Crown Court, or if the defendant elects for trial by jury in a higher court (Khaleghi, 2019).

## 4. **Preliminary Inquiry and Investigation in England**

In the author's view, the criminal procedure in England includes two stages: the preliminary investigation, which involves charges and evidence collection and is conducted by the police; and the preliminary review, conducted by the Crown Prosecution Service (CPS).

#### 4.1. *Preliminary Investigation by the Police in England*

One of the most reputable institutions in England is its police service. Outside London—in counties—the police are employed locally and paid through county offices. The central government delegates policing powers to local authorities, and detectives from the Home Office supervise local forces. The Home Secretary holds the authority to appoint and dismiss chief constables, though local police operations are generally not the responsibility of ministers.

In London, the police have various responsibilities. The Metropolitan Police operate under defined jurisdictions and are overseen by the Home Secretary, placing them under central government control. The Metropolitan Police offer a broad range of services and consider themselves successful when they perform their duties well, including reporting incidents and assisting judicial authorities. In British society, police use their legal powers responsibly and are trusted by the public. Their reports are considered legally valid unless proven otherwise (Krug, 2002).

Preliminary investigations are conducted by police under the supervision of several solicitors with more than ten years of legal experience and no significant disciplinary infractions. Courts do not participate in the preliminary investigation, which has both advantages and disadvantages. From the moment of arrest, the suspect has the right to legal counsel. Greater emphasis is placed on scientific and investigative evidence than on confessions. Police officers, trained and experienced, bring charges based on solid evidence rather than relying on a confession. The presumption is that the suspect's denial of guilt is a legal right, and officers are not inclined to compel confessions.

The police begin their duties at the moment a crime is discovered. Before prosecution, they are responsible for gathering evidence related to the offense. If the investigation yields sufficient grounds for charging and prosecuting a suspect, the police formally charge the individual and forward the case to the CPS. Therefore, the police initially decide whether a person should be prosecuted. If the charges are justified, the case is transferred to the CPS; if not, it is archived by the police (Hosseini et al., 2013).

#### 4.2. *Preliminary Review by the Crown Prosecution Service (CPS)*

The CPS was established in 1985. It consists of legal professionals whose main role is to review cases submitted by the police to determine whether prosecution should proceed. Further prosecution in higher courts, such as the Crown Court, if necessary, is carried out by private barristers contracted for that purpose.

If the defendant pleads not guilty, the prosecution must present evidence to meet the criminal standard of proof—beyond a reasonable doubt—for each element of the offense as defined by law. If the CPS fails to provide sufficient evidence to convince the jury of the defendant's guilt, the judge must direct the jury to issue a not guilty verdict. Conversely, if the defendant pleads guilty, there is no need for a jury trial since the defendant voluntarily accepts the charges. The court then proceeds directly to sentencing. If additional information is required, proceedings are temporarily paused to await a report from the prosecution (Miri, 2021).

A prosecution may begin through the filing of a complaint, whether written or oral, or by formally charging a person with an offense, which must be documented on a charge sheet (Miri, 2021).

### 5. **Legal Representation in Preliminary Investigation in England**

In England, legal professionals fall into two categories:

1. Solicitors, who provide legal advice to the general public, are regulated by the Law Society, and have limited rights of audience in magistrates' courts.
2. Barristers, who are regulated by the Bar Council and represent clients referred to them by solicitors in higher courts.

In preliminary investigations, the right to legal counsel is an internationally recognized principle. The presence of counsel ensures a fair trial throughout the criminal justice process and helps to safeguard the following principles:

- The Branth principle
- The legality of crimes and punishments
- The personal nature of punishment



- Equality before the law
- The right to remain silent
- The right to legal representation
- Judicial impartiality
- Separation of duties
- Continuity and clarity in proceedings

Therefore, compliance with fair trial standards in criminal proceedings, especially in preliminary investigations, has been emphasized in international legal instruments. These include:

- The right of the accused to freely access counsel at all stages, especially during preliminary investigations
- The obligation to inform suspects of their right to legal counsel throughout the process
- The provision of legal aid when the accused cannot afford a lawyer, particularly when the interest of justice requires it (Roshan Ghanbari, 2020).

Thus, in accordance with the legal commitment to fair trial standards in England's Common Law system, the accused is entitled from the moment of arrest to rights such as the right to silence and access to legal counsel. The defense attorney genuinely represents the client before judges and juries and has the authority to challenge both evidence and witnesses. Moreover, only legal counsel—not other individuals—may submit evidence in court.

## 6. Manifestations of Proportionality in Criminal Investigation and Prosecution in Iranian and English Law

The methods by which criminal prosecution is discontinued—referred to here as manifestations of proportional prosecution—are categorized into two groups based on their nature: administrative and criminal.

### 6.1. Administrative Methods

The archiving of criminal files is an administrative decision whereby the public prosecutor, upon deciding not to prosecute a criminal case, orders its closure. In practice, this means the prosecutor directs the registration and filing of the criminal case in the archives of the prosecution office (Borikan & Simon, 2010). Certain legislative provisions explicitly allow the archiving of cases in specific types of offenses if statutory conditions are met. This method does not exist in English law, but the Iranian Code of Criminal Procedure extensively recognizes this approach.

In seventh- and eighth-degree *ta'ziri* offenses, if there is no private complainant or the complainant has withdrawn the complaint, and the accused has no prior criminal record, the judicial authority may, after formally charging the accused, and by considering their social background and the circumstances surrounding the offense—and, if necessary, obtaining a written undertaking from the accused to comply with legal regulations—refrain from prosecution once and issue an order to archive the case. As seen, the practice of archiving is rooted in the principle of proportional prosecution.

### 6.2. Criminal Methods

#### - Admission of Guilt

In this method, the accused, following discussions with the prosecutor, confesses to the commission of the crime to receive the minimum sentence possible from the court. In other words, a confession before the prosecutor to benefit from a reduced sentence is considered an admission of guilt (Regoli & Hewitt, 2008).

In England, upon the defendant's admission of guilt, the case is closed. However, Section 144 of the *Criminal Justice Act 2003* stipulates that the confession must be truthful to be accepted (Ashworth & Redmayne, 2010). In Iran's criminal system, the rule of admission of guilt has legal effect in *hudud* (divinely prescribed), *ta'ziri* (discretionary), and deterrent offenses. In *hudud* cases, based on religious principles, repentance is regarded as a form of guilt admission (Niazpour, 2020).

#### - Discontinuance of Prosecution

The prosecutor may, by weighing the circumstances and prioritizing public interest, choose not to pursue a criminal case, even if there is sufficient evidence of guilt. In some cases, the private interest of the victim may take precedence over the public

interest, and the law allows the victim to request discontinuance. According to the Iranian Code of Criminal Procedure, if the complainant requests termination of prosecution, the court issues an order to that effect. However, this does not bar the possibility of a renewed complaint.

Therefore, discontinuance of prosecution is a concrete example of proportional prosecution. Notably, the current law does not clearly specify the number of times the victim may exercise this right or the precise conditions for reinitiating prosecution. It is known, however, that the complainant may request prosecution of the accused once within one year from the date of the discontinuance order.

A similar concept in English law is the prosecutor's discretionary power to impose conditions on the offender, such as providing services to the victim to mitigate the material or moral harm caused. Upon the victim's acceptance of these conditions, the prosecutor may discontinue prosecution. This conditional discontinuance is not considered a form of punishment, as compensation is applied voluntarily by the offender. In contrast, court-ordered compensation is unilateral and constitutes a penalty (Tak, 1986).

#### **- Suspension of Prosecution**

Suspension of criminal prosecution is another example of proportionality, whereby the prosecutor may, upon fulfillment of statutory conditions, suspend criminal proceedings for a specified duration. Factors such as the nature of the offense, the age of the offender, the circumstances of the offense, and post-offense conduct are relevant in this determination.

In English law, suspension is used when, given the circumstances, such a decision is deemed appropriate, the offense is minor, and the accused has confessed. Iran's Code of Criminal Procedure also provides for the suspension of prosecution. In sixth-, seventh-, and eighth-degree *ta'ziri* offenses with suspensible penalties, if there is no complainant, the complaint has been withdrawn, the damage has been compensated, or compensation is arranged with the victim's consent, and the accused has no prior criminal convictions, the judicial authority may, with the accused's consent and, if necessary, appropriate security, suspend prosecution from six months to two years.

#### **- Plea Bargaining**

Plea bargaining is a contract between the prosecuting authority and the accused, which both parties are bound to observe. Under this agreement, in exchange for the accused's admission of guilt, certain charges or aggravating circumstances are ignored. For instance, aggravated theft may be reclassified as simple theft or attempted theft, or some charges may be dropped, leaving only the admitted offense to be prosecuted. If only one charge is under investigation, the confession may lead to a reduced sentence (Roshan Ghanbari, 2020).

The distinction between plea bargaining and admission of guilt lies in the outcome: in admission of guilt, the case is closed following confession, whereas in plea bargaining, the type or number of charges or the severity of punishment may be reduced, but the case is not automatically closed. Additionally, in admission of guilt, the prosecutor is obligated to close the case; however, in plea bargaining, the prosecutor may withdraw from the agreement and proceed with prosecution.

Plea bargaining allows the accused the opportunity to receive a lesser penalty than the one a judge might otherwise impose. Importantly, the court is not obligated to grant leniency solely because a plea bargain was negotiated—the final decision remains with the competent court, which may reject the deal and return the case to the prosecution for further action and indictment. Thus, plea bargaining takes various forms, including reduction in the severity or number of charges, disregard of certain allegations, mitigation of sentence, substitution of charges with less stigmatizing ones, or a decision by the prosecutor not to pursue certain penalties (Schmallegger, 2010).

Plea bargaining is not recognized under Iranian law. Consequently, the prosecutor may not use this method to halt prosecution, nor is it anticipated in the Code of Criminal Procedure. In contrast, the English legal system permits plea bargaining, wherein negotiations occur between the prosecutor and the accused to persuade the latter to confess. If the accused confesses, a lesser charge or penalty may be applied—for example, armed robbery may be reclassified as simple theft or rape as indecent assault (Miri, 2021). Nevertheless, British legal scholars argue that no trace of plea bargaining existed in criminal proceedings in England prior to the 18th century (Roshan Ghanbari, 2020)s.

## **7. Conclusion**



In the English Common Law system, preliminary investigations are conducted by the police under the supervision and oversight of a number of solicitors with at least ten years of legal experience and no record of professional misconduct. In contrast, under Iranian criminal law, which is derived from the Romano-Germanic legal system, the police, according to statutory provisions, act under the supervision and instruction of the prosecutor in investigating crimes, preserving evidence, collecting proof of the offense, identifying and locating suspects, preventing escape or concealment, serving legal documents, and executing judicial decisions.

In the English Common Law system, the principle of trust in the police to maintain social order and security grants the police the authority to conduct preliminary investigations, collect evidence, and formally charge suspects. However, in Iranian criminal procedure, the primary responsibility for conducting preliminary investigations of all crimes rests with the investigating judge, although the initiation of such proceedings requires referral from and supervision by the prosecutor, as head of the prosecution office. The police have investigative authority only in the case of *flagrante delicto* (evident crimes), and may issue formal charges in writing and detain suspects for up to 24 hours where there is strong evidence suggesting an obvious crime and where such detention is necessary to complete the investigation. Nevertheless, in both *flagrante delicto* and non-obvious offenses, the police are required to immediately report their actions to the prosecutor.

Regarding the powers of the Crown Prosecution Service (CPS) in England and the prosecutorial authorities in Iran, the latter—derived from the Romano-Germanic legal system and heavily influenced by French substantive and procedural codes—enjoy broader legal authority than their English Common Law counterparts. Therefore, the police's statutory authority during the preliminary investigation stage, and its close relationship with the CPS in England, has arguably contributed to greater social order and security in comparison to Iran.

In the English Common Law system, lawyers are present at every stage of criminal proceedings. They serve as genuine representatives of their clients before judges and juries, with the power to challenge both evidence and witnesses. Only attorneys are authorized to submit documents and evidence in court. In contrast, in Iran's codified legal system, lawyers act primarily within the boundaries of their clients' legal interests and do not play a central role. Their primary function is to provide legal advice on technical matters. Fortunately, in the Code of Criminal Procedure enacted in 2013, the Iranian legislature, influenced by legal doctrines and the written scholarship of jurists trained in Romano-Germanic (particularly French) substantive and criminal law, as well as English Common Law and international conventions, has acknowledged the necessity of fair trial guarantees throughout the criminal process, including the rights of the accused.

In summary, the English Common Law system consists of two stages: preliminary investigation by the police and preliminary review by the Crown Prosecution Service. In Iranian criminal law, which is based on the Romano-Germanic model, all preliminary investigations are the responsibility of the investigating judge, but they may only begin upon referral and under the supervision of the prosecutor. The police may only detain suspects in *flagrante delicto* cases for up to 24 hours if there is compelling evidence of the offense and the need to complete the investigation, but they must immediately inform the prosecutor of all actions taken, even in evident and non-evident crimes.

The principle of proportional prosecution emphasizes that judicial authorities should have the discretion to refrain from prosecution if it does not serve the public interest, taking into account the offender's individual circumstances and broader societal benefits, even where evidence of guilt exists. This principle has been recognized for many years in various countries, including England, and its acceptance is considered one of the prerequisites for the individualization of criminal justice responses.

In Iranian law, this principle is not explicitly recognized by the legislature, nor has it been widely acknowledged in the rulings of the Supreme Court or lower courts. Nevertheless, a close reading of certain legal texts reveals that the essence of this principle has been implicitly observed in some instances. One criticism of the application of proportional prosecution is that it may infringe on victims' rights—particularly the right to restitution for harm suffered. However, the Code of Criminal Procedure has established victim restitution as a condition for granting suspended prosecution, which is one form of proportional prosecution.

According to this provision, in sixth-, seventh-, and eighth-degree *ta'ziri* offenses that are eligible for suspension, where there is no private complainant, the complainant has withdrawn, damages have been compensated, or compensation is scheduled with the victim's consent, and the accused has no effective prior criminal conviction, the judicial authority may, with the consent of the accused and, if necessary, appropriate security, suspend prosecution for six months to two years.

Implementing proportional prosecution helps reduce the caseload in prosecution offices by allowing the dismissal of minor criminal cases, thereby improving the efficiency of the criminal justice system.

### Authors' Contributions

Authors contributed equally to this article.

### Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

### Ethical Considerations

All procedures performed in this study were under the ethical standards.

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### References

- Ansari, B. (2014). The Subjectivity or Objectivity of Laws for Judges. *Journal of Mofid*, 46, 99-122.
- Ashworth, A., & Redmayne, M. (2010). *The Criminal Process*. Oxford University Press. <https://doi.org/10.1093/he/9780199547289.001.0001>
- Beccaria, C. (2010). *On Crimes and Punishments*. Mizan Publications.
- Bix, B. (2020). *A Dictionary of Legal Theory*. Ney Publications.
- Borikan, J., & Simon, A. M. (2010). *Criminal Procedure*. Khorsandi Publications.
- Hosseini, S. H., Shayegan Fard, M., & Erfani, M. (2013). The Process of Criminal Investigations and Crime Detection by the Iranian Police with a Look at the Laws of England and America. *Journal of Khorasan Razavi Police*.
- Jafari, A. (2013). *A Study of Deprivation of Social Rights and Public Services in Comparison with the Draft of the Islamic Penal Code* Islamic Azad University, Bandar Abbas Branch].
- Johnstone, G. (2002). *Restorative Justice (Ideas, Values, debates)*. willan Publishing. <https://doi.org/10.4324/9781843924807>
- Khaleghi, A. (2019). *Criminal Procedure*. City of Knowledge Institute for Legal Studies and Research.
- Krug, P. (2002). Prosecutorial Discretion and its Limits. *The American Journal of Comparative Law*, 50, 643-664. <https://doi.org/10.1093/ajcl/50.suppl1.643>
- Miri, R. (2021). *Criminal Prosecution*. Majd Scientific and Cultural Association.
- Najafi Abrand Abadi, A. H., & Hashemi, H. (2014). *Encyclopedia of Criminology*. Ganj-e Danesh Publications.
- Niazpour, A. H. (2020). *The Agreement-Based Nature of Criminal Procedure*. Mizan Publications.
- Regoli, R. M., & Hewitt, J. D. (2008). *Exploring Criminal Justice*. Jones and Bartlett publishers.
- Roshan Ghanbari, A. (2020). A Look at Plea Bargaining in the United States. *Journal of the Bar Association*, 103, 101-110.
- Schmallegger, F. (2010). *Criminal Justice Today (An Introductory Text for the 21st Century)*. Pearson Prentice Hall.
- Tak, P. J. P. (1986). *The Legal Scope of Non-Prosecution in Europe*.
- Zera'at, A. (2020). *An Introduction to Criminal Sciences*. Jangal Ja'vadaneh Publications.