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## **The Challenges of Developing the Alternative to Criminal Prosecution by Taking the England Laws into Consideration**

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### **Abstract**

The alternatives to the public criminal prosecution have changed the criminal laws. Contrary to the traditional way of settling the disputes which puts emphasis on analyzing the committed crimes, the most significant factor in alternatives to the public prosecution is the conditions, in which the crime happens. The present research seeks to evaluate the problems and challenges in the way of developing and increasing the alternatives to the criminal prosecution by taking the England's laws into consideration. The alternatives to the criminal prosecution are an intermediate approach that are substituted for criminal prosecution and filing the criminal record away unconditionally. In this way, the aim of the punishments is achieved without imposing the punishment. The alternatives to the criminal prosecutions are based on the ideological, criminological and practical principles. There are many similar cases of imposing alternatives to the criminal prosecutions on the defendants in Islamic teachings. But the alternatives to the criminal prosecutions have not properly developed in Iran. Their development faces with many theoretical and practical challenges. According the investigations, we can define the theoretical challenges faced with alternatives to the criminal prosecutions as the series of the factors and reasons that impede the development of this idea and runs it into the problem. In other words, lack of intention and will to apply these alternatives.

**Keywords:** Prosecution, Alternatives to the criminal prosecutions, Prosecutor, Prosecution in England.

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## **1. Introduction**

Criminal prosecution is considered to be one of the most important stages in the criminal process. Following the crime and its detection, the prosecutor will perform his duty and will decide whether to prosecute the crime or ignore its prosecution based on the legal system of the country. If the crime prosecution is obligatory based on the legal system of the country, the prosecutor will conduct a prosecution, no matter whether the prosecution is in the interest of the society or not. But in the legal systems that are based on the proportionality of the crime and prosecution, the prosecutor has to evaluate and has the authority to take the loss and interest of the society into consideration. He may disregard the prosecution if it is not in the interest of the society or the defendant. In the said approach, the defendant is not prosecuted, but by using the alternative methods to prosecution, not only the aim of imposing punishment is achieved, but also people don't think that a committing a crime will be left unpunished. Considering the benefits of this method of prosecution and since this method is used in many countries all over the world including the England, the legislature power designated some parts as the alternatives to the criminal prosecution in Criminal Procedure Act Adopted in 2013. It is considered as a worthwhile action, but it is not enough. Even these rare cases of alternative criminal prosecution face many challenges in its enforcement stages. This paper seeks to study and investigate on the said challenges and problems.

The prosecution system of England is almost different from all other legal systems. For a long time, it was the police who were in charge of prosecuting or not prosecuting a crime. Crown prosecution service (CPS) was established in 1986. At the first years, police hold a considerable power and authority and CPS had not entitled to make police to follow a certain procedure of prosecution and interrogation. The allocation of the responsibilities changed in the recent decades. Crown prosecution service (CPS) based on the prosecution of offences Act adopted in 1985).

The conditions for the prosecution changed in mid-1980. Prior to that time, there were three main bodies for prosecution. The first bodies, the police, were in charge prosecuting a main part of the crimes since mid-19 century. It was also the police who had to make decision on prosecuting a crime or not. Director of public prosecution (DPP) was the second body charged with prosecution of the criminal offences. Its office located in a small town in London. It was charged with prosecution of intentional murder and a vast range of other related cases including national security, the crimes committed by popular celebrities and police officers. The third bodies were consisting of other prosecution entities including tax department, post office, health and hygiene Commission and local officials (such as the environment sanitation officers) (Ashworth and Redmayne, 2010). But currently, it is the Crown prosecution service (CPS) that decides which cases should be prosecuted not the police officers (Cavendish researchers' Board, 2008:152).

When the police or another body prepares a case against a defendant and s/he is charged with offense, the Crown prosecution service (CPS) investigates the case in the following stage and an official of the Crown prosecution service (CPS), who graduated in law and is qualified to study the case, would be investigate the case (Ashworth and Horder, 1999).

The criminal prosecution in common law system always takes the public interest into consideration. Contrary to German—Roman law systems, in which, the prosecution can be against public interest, protecting the public interest is always a precondition for deciding to conduct criminal prosecution in common law. Based on the common law (both in England and the U.S.) conducting a prosecution requires fulfilling two main conditions: 1. Sufficient evidence 2. Public interest. Some other conditions like the interest of the victim and observing the ethical principles are secondary conditions.

## **2. The Principle of Mandatory Prosecution**

Historically, the principle of mandatory prosecution precedes the advisability of the prosecution. The principle of the advisability came into being after the deficiencies and the inefficiency of the principle of mandatory prosecution. *Nulla poena sine lege* (no penalty without law) and subsequently, the principle of mandatory prosecution were aroused in France revolution. During this period social reformers and revolutionary philosophers such as Beccaria, Bentham and Rousseau in France and England who were angry the oppression and tyranny of kings and tyranny rebelled against the ruling system.

According to the *nulla poena sine lege* principle (one cannot be punished for doing something that is not prohibited by law), expediency is not permissible in conducting prosecution.

Detecting the personality of the criminal, his mental and emotional status, educational and social conditions as well as social actors of committing crime is not necessary. In fact, we may say the principle of mandatory prosecution is a manifestation of the liberal approach in the last century. It is shown the no confidence to the executive officials and the priority of the legislators over other powers to make decisions on social affairs.

The principle of mandatory prosecution is based on the full confidence to the officials for the prosecution (Tak, 1986: 2). That's because, it stipulates that the prosecutor is able to discern the prosecuted case and right action from the law. He doesn't need anything except law to discern the prosecuted case. In Iran laws, the principle of mandatory prosecution has explicitly been mentioned in the 79, the principles of Department of Justice approved in 1928. Based on this principle "public prosecutors have to prosecute and interrogate the offences, crimes and misdemeanor." Clause A, Article 3 of holding the public and revolutionary courts Act reformed in 18/10/2002 writes "these courts are in charge of detecting the crimes, conducting the prosecution against defendants, bringing an action to court due to its divine aspect and protecting the public rights and god legal law (those laws mentioned in holy Quran)." The above mentioned clause draws inspiration from the *sine lege* principle (one

cannot be punished for doing something that is not prohibited by law). Another Clause that legitimates the *sine lege* principle is the criminal procedure Act approved in 2013, this act stipulates “prosecutor is in charge of conducting the prosecution against defendant and before bringing the action to the court due to its public aspect and plaintiff is in charge of requesting for conducting prosecution against defendant due to its private aspects.”

### *2.1. The principle of advisability of the prosecution*

In some cases, not only conducting prosecution against defendant doesn't protect the interest of the public, but also it is advisable for the judicial authorities to postpone prosecuting a defendant. Sometimes, the condition and situation of committing crime shows that the offender has committed the crime for the first time and under certain the influence of the environmental conditions, the victim has not brought the case into the court and the effects of the crime on the public order is trivial and ignorable. In such a case conducting prosecution against the defendant may have very harmful and adverse effect on him (including creating a sense of taking revenge from the society and his familiarity with the criminal environment of prison. The adverse effects of the prosecution are much more than its advantages (Khaleghi, 2008: 37). In these cases, the prosecutor can disregard the prosecution in order to correct and, even when there are enough evidences to convict him. According to the law, prosecutor has to cancel the prosecution, if all of the conditions that are stipulated by law are available.

According to the criminal justice law of England adopted in 2003, the scope of authority of the prosecutor to apply the principle of proportionality of the prosecution is limited to the petty and summary offences, and prosecutor can stop the prosecution that is conducted by the police. The principle of proportionality can be applied only by scrutinizing the case and evaluating the evidences against the defendant and finding that stopping the prosecution process is in the interest of the public people. In fact, the prosecutor makes decision based on the public interest not based on an individual's interest. The prosecutor should consider the loss sustained by the crime to the victim, but he is not obliged to make decision based on the victim's will (Ashworth, 2010: 190). Therefore, the scope of authority of the prosecutor to apply the principle of the proportionality is limited. It means that this principle does not include a wide range of crimes (particularly grave offenses) (Krug, 2002: 648). In Iran law, article 80, criminal procedure Act approved in 2013, stipulates this principle. This Article stipulates “if there is no plaintiff or if plaintiff has remitted or overlooked the case in the discretionary crimes grade 7 and 8, the prosecutor can cancel the process of prosecution and file away the case, but the prosecutor should consider the following cases in this regard: the defendant should not have any effective criminal record, the defendant should be arraigned on its charge, the prosecutor should take the social status and record of the defendant and the conditions of the crime commitment. This judgment can be objected and appealed for 10 days”.

It is worthy of noting that prosecutors and police hold the authority to apply the law of proportionality of the prosecution in England. Police of England has the authority to ignore the crime or conduct a prosecution against him (Slapper and Kelly, 2010: 425). But in Iran, just judiciary officials, especially prosecutor, have the authority to apply the principle of the proportionality of the prosecution and police don't have such an authority in Iran.

## *2.2. The principles of the criminal prosecution alternatives*

The criminal prosecution alternatives are based on a series of principles. Identifying the principles make us to adopt these principles very easily and to evaluate its main functions.

### *2.2.1. The ideological bases*

Identifying the school of thought upon which, the prosecution alternatives are based, can be considered as the primary principle of the said law. Clarifying this base, that can be called as the ideological bases, requires defining the instrumentality of the law. It means that we can make use of the law to achieve and fulfill certain policies. In this approach, the judicial authority is not just the executor of the laws, but he should contemplate on the manner of exercising the law and undertake the responsibility of its effects (Ansari, 2004: 107).

The school of legal realism may be a base for prosecution alternatives. This school of thought, is mainly based on the rendering the legal concepts to the provable cases in the social sciences. Therefore, most of its proponents reject the practical method of proceeding and making judgment (Bix, 2010: 374). In other words, this school put emphasis on making use of data provided by social sciences. They believe that judicial authority as a member of the society falls under the influence of the social factors. So, we can consider this school as a base for the criminal prosecution alternatives because it puts emphasis on the data which have been realized in the society (Jamshidi, 2013: 148).

### *2.2.2. Criminology bases*

Among the criminological theories, each of which has certain effect on the crime commitment and criminal acts quantity, the criminal prosecution alternatives can be observed in the theories which have investigated on the criminal and victim. The proponents of the theories that are based on the crime believe that an inevitable moderate punishment always is more effective than a horrible punishment that is not inevitable (Beccaria, 1995: 86). They don't accept the judicial authorities' power to cancel the prosecution. They consider conducting prosecution against defendant and punishing him as a right of all citizens.

Over the period in which, criminological studies focused on the criminal, the reaction of the society was determined according to the offender's personality, his incentive and the situation and condition of committing the crime. Then, the victim was also taken into consideration. In fact, the judicial authority no longer made decision without taking the criminal and victims' ideas into consideration any longer, but they put emphasis on the victim and criminal's ideas

and at times made decisions based on their judgments (Niazpour, 2011: 44). This approach is called the restorative justice is considered as a main change in the strategies of the criminal justice. It looks at the crime and the method of reacting against it from a new perspective (Johnstone, 2013: 88).

It is obvious that this approach has a considerable effect on the criminal prosecution's alternatives. The theory of labeling can be considered as a theoretical base for the alternatives of the criminal liability. This theory was applied in the U.S. and England for the first time because police has a great deal of authority in these countries and there were lots of criticism against its arresting actions. This theory made drastic changes in criminal policy and decriminalization. The authority of putting the children on trial was taken from the police and prosecutor's office and the all stages of the trial were vested in courts (Zeraat, 2012: 417). In other words, this theory believed that an individual, labeled as criminal, mentally considers himself as a criminal and tries to behave as other people expect him to behave. This theory led to formation of a new approach toward crime and reaction against it. It also changed the way of dealing with the alternatives of the criminal prosecution.

We can consider the policy of concealing the crime as another base for applying the alternatives of the criminal prosecution. We can find lots of cases in Islamic changes that recommend us to conceal the crimes. The reasons of concealing the crime in Islamic works are as following: first of all, the disclosure of the crime has its own adverse effect on the society. The disclosure of the sin or crime has more adverse effect on the society than crime commitment and increases the crime rate. Secondly, it has been proved that imposing punishment on the large scale, decreases the evil and bad aspects of the crime. If people underestimate the crime and sin, they will increase in the society. Thirdly: high presence of the judiciary officials omits diminishes the deterring power of the intimidating role of the courts and people will not be afraid of it. Fourthly: putting cover on the crime and not revealing the crime has positive moral effect, it protects the dignity and personality of the people. Fifthly: when we don't make the criminal publicly known, he is more likely to be repented of his sin and began to live a life of dignity (Piriayi, 2013: 124).

### 2.2.3. Scientific bases

Practical bases are also an important base for alternatives of the criminal prosecution. The high number of the criminal cases requires giving the prosecutors authority to send some cases to the court and settle some other disputes by other non-judicial ways. Making the prosecutor to conduct prosecution will not realize this purpose. We have to adopt the alternatives of the criminal prosecution in order to solve the problem of high number of the criminal cases. The prosecutor plays an important role in decreasing the load of cases in the courts by applying the alternatives of the criminal prosecution (Tak, 1986: 190).

By conducting prosecution against the minor crimes, the limited resources of judiciary system to conduct prosecution against indictable and major will be ineffective. Judicial system has limited resources like any other system. These limited resources cannot fulfill unlimited requirements. Therefore, economic management of this organization requires ignoring the minor crimes and allocating its resources to major crimes. Therefore, the prosecution will be efficient too. The major role of the criminal and its personal nature also make contribution to ignore the prosecution of the defendants with clean record. The rationale behind this theory is that going to prosecutor's office can be as a punishment for some defendants, and prosecutor may consider it as a reasonable punishment for them and stop the prosecution (Kazemi Najaf Abadi, no date: 225).

### **3. The challenges met by alternatives of the criminal prosecution**

The alternatives to the criminal prosecutions consist of a series of the methods and measures stipulated by the legislator. Based on this principle, the prosecutor can ignore the prosecuting a public claim in order to re-socialize the defendant and to secure the victims rights. We can say that this method plays an intermediary rule and it is the moderate approach between unconditional archive of the record and conducting prosecution. Due to the profits of applying the alternatives, the legislator recognized some of the alternatives in Rules of the Procedure Act approved in 2013 but they are not enough. Even these rare cases of alternative to the criminal prosecution face many challenges in its enforcement stages. These problems falls under two categories of theoretical challenges and practical challenges of the alternatives of the criminal prosecution.

#### **Theoretical challenges**

The theoretical challenges are the series of factors and causes that runs the idea and concept of the alternatives of the criminal prosecution into the problem. In this kind of challenge, there is no intention and tendency to enforce the alternatives. The reasons for the lack of tendency and intention are as following:

##### *3.1. Not considering the aims of the punishments*

Since the early establishment of the criminal justice system, based on the spatial and locational requirements of the societies have been pursuing certain aims and objectives by imposing punishment on the criminals. The aim of the punishments in Islamic criminal policies is to deter from repeating crime, to rehabilitate criminals and re-socialize them (Mir Khalili, 2014: 678). The major goal of exercising the punishment is to completely eradicate the crime. The torture of the criminal is one way of achieving to this goal (Gholami, 2013). The goals may not be achieve just by achieving the criminal. It is likely for the punishment to have the reverse results in many cases and criminal commit many other crimes after receiving

the punishment. Not considering the aims of the punishments is one of the main obstacles in the way of officials to develop and increase the alternatives of the criminal punishment. At times, the aim of the punishment is achieved by not imposing the punishment (like rehabilitation of the criminal).

### *3.2. Not taking the Islamic teachings into consideration in conducting the prosecution including not revealing the sins*

Islamic teaching has regularly put emphasis on concealment of the crimes and sins committed by the criminals. This matter can have many positive effects on the society. At times, spreading the crime and sin in the society can be more harmful than crime itself; therefore concealment of the crime may be in the interest of the society. Imposing punishment on the large scale decreases the evil and bad aspects of the crime. If people underestimate the crime and sin, they will increase in the society. High presence of the judiciary officials diminishes the deterring power and the intimidating role of the courts and people will not be afraid of it. Putting cover on the crime and not revealing the crime has positive moral effect, it protects the dignity and personality of the people. When we don't make the criminal publicly known, or he is not given the punishment, he is more likely to be repented of his sin and began to live a life of dignity.

### *3.3. Lack of specified strategies to institutionalize the values*

One of the main duties of the government is to institutionalize the important values by enjoining right and forbidding wrong and advising ignorant people. In other words, these measures should be taken prior to imposing the punishment on the criminals. It is assumed that these values have already been institutionalized in the society but criminal ignores these values and commit a crime due to his insubordination and he has to be punished. But if these values have not been institutionalized in the society, we cannot mitigate the punishment due to lack of the institutionalized values.

### *3.4. Decreasing the deterrent power and intimidating aspect of the punishment*

There is some doubt that by enforcing the alternatives of the criminal prosecution within the scope of specific crimes may decrease the intimidating aspect of the punishment. If criminals find that they will not receive punishment within the scope of the specified crimes under certain conditions, they will be stimulated to commit crime (Mir Khalili, 2014: 698).

### *3.5. Punishment oriented judicial procedure*

When we look at the judicial procedure of Iran (after the Islamic Revolution), we notice that judges take two different approaches to deal with the criminals. Some judges believe that the only way to settle the problem of crime and create security and peace in the society is criminal prosecution and imposing punishment. They believe that applying the concepts of the criminology and penology just compounds the puzzle and increases the problem instead of



solving it, but some judges believe that reasonable punishments can better deter from committing crime than the severe punishments. It means that a reasonable punishment should be acceptable level and in proportion to the severity of the crime. The procedure of the court to make judgment on some minor crimes like using the satellite receivers are not the same. Some judges make severe punishments for the offenders who use satellite receivers; some others are more flexible and make more reasonable punishments for the offenders.

### *3.6. Being concerned about decreasing the power of the criminal system and government*

Many government officials believe that any behavior that lies out of control of criminal law is uncontrollable. However, decriminalizing a conduct or action does not mean that those conducts are from among the personal freedom, that conduct can be under the control of the government by applying the alternative solutions (Mahmoudi Janaki, 2008: 336)

### *3.7. Misinterpreting the events and not having knowledge about the problems and their solutions*

When the number of the crimes increases due to over-criminalization and the criminal justice system does not have enough efficiency to prosecute minor crimes, some may think that the criminal justice system has not enough efficiency to fight against the indictable and major crimes. We can solve this problem by referring this kind of the crimes to alternative systems.

### *3.8. Supposing that the wrong action will not be blamable by exercising the alternatives of the criminal prosecution*

There is so much concern that by exercising the alternatives of the criminal prosecution on some of the specific crimes, that crime will not be blamable any longer. This concern is justifiable if the early criminalization of the conduct was based on the ethical codes. However, many conducts which are criminalized are not against the ethical codes, the reason for criminalizing them often is technical affairs or breaching the public order and regulations.

### *3.9. Being concern that exercising the alternatives of the criminal prosecution is just due to their novelty and innovative aspect*

The innovative aspect and novelty of the laws concerning the alternatives of the criminal prosecution can be an obstacle to develop these laws. The conservative and traditional judges are not willing to apply the alternatives and mostly are interested in applying the traditional methods of the prosecution.

### *3.10. Not considering the ethnic and tribal rituals and traditions in settling the disputes and conflicts*

Our trial system can make use of the too much capacities provided by Iranian tribes and ethnic groups to achieve our favorite goals. Referring the case to chieftains and elderly relatives has been stipulated in Article 82 of the criminal procedure Act approved in 2013.

Settling the disputes by the elderly relatives and chieftains are considered to be an aspect of the restorative justice. It has the potential to make considerable changes in our legal systems. Unfortunately, the advances in societies and changing the life made this opportunity to remain intact.

### **Practical challenges**

In addition to the theoretical challenges, we can find lots of obstacles and practical challenges against developing the alternatives of the criminal prosecution. These challenges either generates from the strategies of the courts or that of the legislative system. We will provide some examples here:

#### *3.11. Lack of mechanism for exercising the alternatives of the criminal prosecution*

Lack of mechanism and the possibilities to rehabilitate the criminals and not constructing the required infrastructures is one of the most important factors of ignoring the alternatives of the criminal prosecution (Mir Khalili, 2014: 698). For example, we can establish the “organization for taking care of the criminal” by designating the required budget to provide the medical services, social and consulting services for people, to whom the prosecution is not conducted.

#### *3.12. Lack of interest in steeling the disputes at the early on filing the case due to the high number of the judiciary cases*

The legislative bodies have limited capacity, at times they fail to make the laws compatible based on the social and international changes or they can change the laws due to social conditions or lack of satisfaction. One reason for the high number of criminal laws is decriminalizing the crimes that have been criminalized in special conditions and time. This matter can be an obstacle for the judges and police to exercise the alternatives of the criminal prosecution and settling the disputes on the early stages of filing the complaint (Mahmoudi Janaki, 2008: 336).

#### *3.13. Plaintiff and victim's unwillingness to exercise the alternatives of the criminal prosecution*

Giving the power to the judicial authorities to assess the requirements (advisability) of the prosecution, they may assess the requirements and public interests and decide not to conduct the criminal prosecution. In this case, if the victim request for conducting the penal prosecution and imposing the punishment on the criminal can the evaluating official (prosecutor) ignore the tendency of the victim and just act based on his own assessment results? This question arises another conflict.

Due to this conflict some legal systems that put emphasis on advisability have stipulated some reformative mechanisms to protect the victim's interests. According to the some legal systems like legal system of the France, Portugal, Belgium and Luxemburg, even if the public prosecutor's office, the victim can refer to the court and request for conducting the prosecution again. The prosecutor office has to conduct prosecution contrary to its will and willing (Pradle, 1986)

But does the court obliged to conduct a prosecution upon the request of the victim, despite his intention?

The Islamic criminal procedure system gives priority to the interests of the victim and compensating the losses sustained by him, and other advisable make the stopping the prosecution necessary does not have preference over victim interests. However, although Islamic law put emphasis on compensating the loss sustained by the victim, but prosecutor has the power to stop the prosecution in spite of the victim. It is obvious that the governor should take the proper measures (not penal) to compensate the loss of the victim.

#### *3.14. The limited authority of the police to deal with the crimes*

In legal system of Iran, the scope of authority of the police is limited. Any action of police forces should be done under the control of the judicial courts. They can act based on their free will just in case of flagrant offences. This is not sufficient for them. If the police of Iran have had as much authority as England police, the police would file away many minor crime cases at it early stages. So, the large load of the criminal's files in the judiciary system will be decreased. The fulfillment of this matter entails the police forces have the same amount of specialty in the law as the judicial forces have and perform their tasks based on the law.

#### *3.15. No obligation to exercise the alternatives of the criminal prosecution*

Articles 80, 81 and 82, Rules of Criminal Procedure Act adopted in 2013, that are considered as some aspect of the criminal prosecution, if we take these Articles into consideration, we will find out that the judiciary officials have no obligation to apply these rules, the word "can" shows that this is not an obligation but it is a right and authority for judicial officials. If it was obligatory for the judicial officials to exercise alternatives of the criminal prosecution with respect to the specified crimes, obstacles in the way of developing the alternatives of the criminal prosecution may be removed.

#### *3.16. Not precisely determining the crime which entails to exercise the alternatives of the criminal prosecution*

Another challenge against developing the alternatives of the criminal prosecution is that the scope of the crimes which requires to apply the alternatives of the criminal prosecution is not exactly determined because if we do not determine these crimes based on precise criteria, the prosecutors will be confused and cannot distinguish between the crimes to which, he should

apply the alternatives to the criminal prosecution and other crimes. The delimitation can play a major role in motivating the judges to exercise the alternatives of the criminal prosecution.

### *3.17. Not paying attention to the personality of the individuals at the early stages of the prosecution*

One of the effective factors on avoiding from alternatives of the criminal prosecution is not taking the personality of the people and not forming the personality record at the early stages of the prosecution. As we mentioned in the previous section, one criterion for applying the alternatives of the criminal prosecution is the personality and social status of the criminals. If the personality of the criminals be ignored, person who does not deserve to be prosecuted with respect to his personality is quite likely to be prosecuted.

### *3.18. The difficult conditions laid for applying the alternatives of the criminal conditions*

During the process of applying the alternatives of the criminal prosecution, the defendant has to perform special actions and applying alternatives depends upon fulfilling certain conditions including assent of the victim and compensating the losses and the defendant's clean record.

## **4. Conclusion**

In the criminal prosecution system, the legislator empowers the prosecutor to decide whether to conduct a prosecution against some summary offences or not. The prosecutor plays an important role in this process. He decides based on the teachings of criminology, decriminalization, objectives of the punishment and advisability of the prosecution. After cancelling and stopping the process of prosecution, the prosecutor should take required action in order to secure the interests of the society, to compensate the loss of the victim and to rehabilitate the criminals. The measures and actions taken by the prosecutor can be carried out as the alternatives to the criminal prosecution. This law can improve the efficacy criminal justice system. Due to the above-mentioned reasons, the criminal justice system in many countries has prepared the ground for applying and exercising the alternatives of the criminal prosecution. The international organizations also motivate the legislators to take the alternative into the consideration to improve the prosecutor's performance in controlling the offences and to manage the criminal punishments. Iran recognized the said principle in Iranian Code of Criminal Procedure Act approved in 2013 that is a very significant action, but it is not enough because there are many theoretical and practical challenges in the way of enforcing the alternatives of the criminal prosecution. The theoretical challenges in the way of developing the alternatives of the criminal prosecution consists of lack of tendency and desire to apply the alternatives of the criminal prosecution and many other factors which runs the idea of developing the alternatives of the criminal prosecution into the problem. These

theoretical challenges include the following cases: not paying attention to the objectives of the punishments, not taking the teachings of Islam about not revealing the crime into consideration, no predetermined mechanism for institutionalizing the values, diminishing the deterring and intimidating aspect of the punishment, being concerned about reducing the power of government and criminal system, misinterpretation of the events, not considering the ethnic and tribal rituals and traditions in settling the disputes and conflicts, not having the knowledge of the problems and their solution. The practical challenges in the way of developing the increasing the alternatives of the criminal prosecution include: lack of enough possibilities and mechanisms for applying the alternatives of the criminal prosecution, lack of interest in steeling the disputes at the early on filing the case due to the high number of the judiciary cases, plaintiff and victim's unwillingness to exercise the alternatives of the criminal prosecution, the limited authority of the police to deal with the crimes, no obligation to exercise the alternatives of the criminal prosecution, not precisely determining the crime which entails to exercise the alternatives of the criminal prosecution, not paying attention to the personality of the individuals at the early stages of the prosecution, the difficult conditions laid for applying the alternatives of the criminal conditions.

## References

- Ansari, B. (2004). Instrumentality of law for the judge, *Mofid Magazine*, 46.
- Ashworth, A. & Horder, J. (1999). *Principles of criminal law*. Oxford University Press.
- Ashworth, A. & Redmayne, M. (2010). *The criminal process*. Oxford University Press, USA.
- Beccaria, C. (1995). *Treatise of crimes and punishments*, Translated by of Muhammad Ali Ardabili, Tehran: Shahid Beheshti University Press.
- Bix, B. (2010). *The dictionary of legal theory*. Translated by Mohammad Rasekh, Tehran: Nashre Ney Press.
- Cavendish Researchers' Board (2008). *Legal system of England*, Translated by Nasrin Mehra. Tehran: Mizan publication.
- Gholami, A. & Meybodi, H. (2013). The principle of the fixed and discretionary punishment's enforcement from jurists' viewpoint and mechanism for solving the conflicts. *Ahle Beyt Law Journal*, 75 & 76.

- Jamshidi, A. (2013). The proportionality of the prosecution: the concept, principles and its aspects in Iran and England, *Criminal Law Research Journal*. 3
- Johnstone, G. (2013). *Restorative justice: Ideas, values, debates*. Routledge.
- Kazemi Najaf Abadi, A. (n.d.). *Formal statements of the Criminology (theories)*, Shahid Beheshti University School of Law.
- Khaleghi, A. (2008). *Code of Criminal Procedure*. Tehran: Institute of Legal Studies and Research of Shahre Danesh.
- Krug, P. (2002). Prosecutorial discretion and its limits. *The American Journal of Comparative Law*, 50, 643-664.
- Mahmoudi Janaki, F. (2008). Decriminalization as a change, *Law Quarterly*, 38(1)
- Mir Khalili, S. M. (2014). The hierarchy of the discretionary punishment, *legal research*, 1(4)
- Niazpour, A. H. (2011). *The relative nature of the Code of Criminal Procedure*. Tehran: Mizan Publication
- Piriaei, M. (2013). *Alternative to prosecution in criminal law of Iran*. Tehran: Dad Gosar Publication.
- Pradle, J. (1986). Qualifying in Comparative Law of Criminal Procedure. *Law Quarterly*, fifth volume.
- Slapper, G. & Kelly, D. (2011). *The English Legal System: 2011-2012*. Taylor & Francis.
- Sprack, J. (2002). *Emmins on criminal procedure* (pp. 74-75). New York: Oxford University Press.
- Tak, P. J., & Institut d'Helsinki pour la prévention du crime et la lutte contre la délinquance affilié à l'Organisation des Nations Unies (1986). *The legal scope of non-prosecution in Europe*. Helsinki Institute for Crime Prevention and Control.
- Zeraat, A. (2012). *An Introduction to Criminal Sciences*. Tehran: Jungle Publication.