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Bioethics and the Death Penalty: The Transition from Retributive Criminology to Critical Criminology in Light of Expanding International Prohibitions

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The death penalty, as one of the oldest forms of response to crime, has consistently been at the center of legal, ethical, and criminological debates. In recent decades, significant developments in the field of international human rights law, along with the emergence of strong bioethical norms centered on the inherent dignity of human beings and the right to life, have raised fundamental questions regarding the legitimacy of this punishment. At the same time, within the field of criminology, the shift from classical retributive approaches to critical paradigms has transformed the perception of capital punishment from a "necessity of justice" into an "instrument of social control." The purpose of this article is to examine this complex intersection and to address the fundamental question of whether, in light of evolving international normative frameworks and critical criminological perspectives, the death penalty retains ethical legitimacy and practical effectiveness. This study employs a descriptive-analytical method, relying on documentary and library-based analysis. The theoretical framework of the article integrates principles of bioethics with critical criminological theories. The required data were collected through an examination of international instruments—such as the International Covenant on Civil and Political Rights, its Optional Protocols, the Convention against Torture, and resolutions of the United Nations General Assembly—as well as through authoritative criminological studies on deterrence, the social effects of punishment, and theories of social control. The method of analysis is qualitative and is based on logical reasoning and the internal coherence of arguments and documents. The findings indicate that the death penalty in the contemporary world has lost both its legitimacy and effectiveness. This punishment is not only incompatible with modern human rights standards and bioethical principles, but also lacks rational and social justification from the perspective of critical criminology. The future of crime management lies in the adoption of alternative models grounded in restorative justice, rehabilitation, and the strengthening of social prevention mechanisms. Ultimately, this article emphasizes the necessity of revising domestic laws (with particular reference to the Iranian context) and aligning with the global trend toward the abolition of the death penalty as an ethical imperative and a requirement of good governance.

Keywords: *Bioethics, Critical Criminology, Death Penalty, International Human Rights Law.*

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1. Introduction

The death penalty, as an enduring institution in the history of criminal justice, has always occupied a controversial position at the intersection of law, ethics, politics, and power. This punishment, which for centuries was regarded as the most violent expression of the state's response to crime, is now confronted by an

unprecedented challenge from new paradigms of thought. On the one hand, international human rights law, centered on the inherent dignity of the human person and the right to life, and on the other hand, critical criminology, through its examination of the social roots of crime and the latent functions of penal institutions, have called into question the foundations of the legitimacy of this sanction.

Within the sphere of international law, a profound transformation is underway. Instruments such as the International Covenant on Civil and Political Rights and its Second Optional Protocol, together with repeated resolutions of the United Nations General Assembly calling for a global moratorium on executions, indicate a gradual movement from a framework of "regulation" toward restriction and, ultimately, abolition of this punishment. This development is not merely a legal shift; rather, it reflects a transformation in the global understanding of concepts such as justice, torture, and human life. The question, then, is whether a state that considers itself committed to the observance of human rights can preserve the moral legitimacy of the deliberate deprivation of life, even within the framework of a judicial process.

At the same time, in the field of criminology, the traditional retributive paradigm, which regarded the death penalty as the apex of security assurance and the realization of justice, has been marginalized by the emergence of critical criminology. By focusing on structural inequalities, the role of penal systems in reproducing violence, and the "selective" nature of punishments, this approach interprets the death penalty not as a necessity of social defense but as a display of the absolute power of the state and as an instrument for final exclusion and the diversion of public attention from the inefficiencies of governing institutions. The deterrence claim of capital punishment, which long constituted the backbone of its rational justification, has been found to lack serious credibility when tested against empirical studies.

In this context, bioethics, as an interdisciplinary field, raises even more fundamental questions: where is the moral boundary of sovereign power to punish? Can human life be sacrificed as an "instrument" for social purposes, however lofty they may be? And can human dignity, which is the cornerstone of modern bioethics, ever be violated, even in the case of the gravest crimes?

Accepting this complex theoretical and legal landscape, the present article seeks to examine the hypothesis that the death penalty, as a penal institution, in the contemporary age lacks moral legitimacy, criminological effectiveness, and compatibility with the inevitable trajectory of international human rights law, through an analysis of the reciprocal relationship among the expanding international regulations restricting capital punishment, the challenges posed by critical criminology, and the foundations of bioethics. By employing a descriptive-analytical method, this study attempts to show how the convergence of these three fields of knowledge has rendered the transition from a retributive criminology to a critical and human-centered criminology not only possible, but necessary. The findings of this research may provide a basis for rethinking domestic penal policies and the prevailing discourse on punishment, while opening a horizon for more humane and equitable alternatives in the management of crime.

2. Theoretical Framework

The bioethical paradigm, as a dominant framework for analyzing the death penalty, emphasizes the intrinsic worth and dignity of the human person and subjects any interference with human life to stringent ethical principles. By moving beyond an instrumental view of the human being, this paradigm redefines the death penalty not merely as a matter of Islamic jurisprudence or domestic criminal law, but as a global ethical problem concerning the limits of state authority over the body and life of its citizens.

2.1. Concepts

A) The Right to Life

Within the bioethical paradigm, the right to life is the sovereign of human rights and the precondition for the enjoyment of every other right. This right is not absolute, since it may be qualified in situations such as legitimate self-defense, but it is inherent and non-derogable. Under the modern approach, this right is not limited merely to the prohibition of the "arbitrary deprivation" of life; it also obliges states to adopt positive measures for its active protection. From a bioethical perspective, even when accompanied by judicial formalities, execution constitutes a form of deliberate and premeditated

deprivation of life that conflicts with the essence of the right to life (Fatemi Khah et al., 2022); because it turns life into an instrument for retributive purposes.

B) The Prohibition of Torture

Article 38 emphasizes the inviolability of the physical and psychological integrity of the individual. From a bioethical perspective, the suffering caused by awaiting execution, known as the death row phenomenon, may itself constitute psychological torture. Moreover, the very implementation of the death penalty, regardless of the method employed, may fall within the category of inhuman or degrading punishment because it severs the individual's connection with the human community and negates his or her dignity (Tahmasbi, 2024). This perspective evaluates punishment not on the basis of the intensity of physical pain, but rather according to its humiliating nature and its denial of the person's humanity.

C) The Inherent Dignity of the Human Person

This concept is the cornerstone of bioethics and modern human rights. Inherent dignity means that the value of the human being is intrinsic, absolute, and unconditional, and does not depend on variable attributes such as legal status (criminal or innocent), social utility, or the severity of the offense committed. By ultimately and irreversibly denying the possibility of repair, transformation, and restitution by the individual, the death penalty effectively negates that person's inherent dignity. This punishment embodies the proposition that the individual has become so "corrupt" that he or she has lost the worthiness of membership in the human community; a proposition that stands in direct conflict with the principle of inherent dignity (Zamani & Feyz, 2024).

2.2. Analysis of the Concepts in International Instruments

The death penalty, as a penal institution, lies at the intersection of the concepts of the right to life, human dignity, and bioethics. An examination of international instruments and the jurisprudence of regional judicial bodies reveals a fundamental transformation and a gradual transition from the traditional retributive paradigm toward the dominant bioethical paradigm, which emphasizes the preservation of the physical and psychological integrity of the person and his or her unconditional inherent dignity. This transition, at the normative, interpretive, and operational levels, has significantly weakened the legitimacy of capital punishment and is moving toward the formation of a strong international norm in favor of its abolition.

At the level of global instruments, the International Covenant on Civil and Political Rights marks the starting point of this transformation. Although Article 6 does not expressly prohibit the death penalty, by severely restricting it to the "most serious crimes," emphasizing the right to seek pardon, and affirming that no right exists to disregard life, it paved the way toward abolition. The progressive interpretations of the United Nations Human Rights Committee of this provision indicate that the ultimate objective of the Covenant is the complete abolition of this punishment. This trajectory reaches its culmination in the Second Optional Protocol to the Covenant, a document that clearly reflects the bioethical paradigm. In its preamble, abolition is regarded as a means of "enhancing human dignity" and "promoting the progressive development of human rights," thereby creating a binding commitment to abolish.

From the perspective of the prohibition of torture and cruel treatment as well, a close link with bioethics has emerged. Although the Convention against Torture does not directly refer to the death penalty, the dynamic interpretations of the Committee against Torture and international judicial practice have shown that conditions associated with the implementation of capital punishment, such as prolonged confinement on death row under unbearable psychological pressure or public execution, may fall within the definition of torture or cruel, inhuman, or degrading treatment under Article 16. This interpretation places both the physical and psychological dimensions of suffering at the center of attention and sets the death penalty in clear opposition to the foundational principles of bioethics, namely the preservation of integrity and the prohibition of human degradation (Nowak, 2022).

This development has continued with even greater force at the level of regional judicial institutions. The European Court of Human Rights, by expanding the scope of Article 3 of the European Convention, which prohibits torture and inhuman treatment, has effectively rendered the death penalty unacceptable within the judicial space of the Council of Europe. Even recourse to the principle of non-extradition in cases where an individual is exposed to the risk of execution demonstrates that this court classifies the death penalty as an inhuman punishment

and protects persons against it. Similarly, the Inter-American Court of Human Rights, in a firm body of jurisprudence, has regarded execution as contrary to the right to life and the principle prohibiting aggravated punishment, and has emphasized its inadmissibility for member states (Schabas, 2022).

Accordingly, it may be said that bioethics, as the dominant paradigm, by centering concepts such as the non-derogable right to life, the inherent dignity of the human person, and the absolute prohibition of humiliation and degradation, provides a powerful analytical lens for the fundamental critique of the death penalty. Through evolutionary and progressive interpretation, international instruments and supervisory and judicial bodies are gradually absorbing, reflecting, and consolidating this ethical framework. The result of this process is the formation of an expanding international norm that not only challenges the moral and legal legitimacy of capital punishment, but also turns the transition toward alternative penal models based on rehabilitation, resocialization, the preservation of dignity, and respect for the inherent right to life into a necessity. This analytical framework also provides a strong theoretical foundation for criticizing classical retributive criminology and for moving toward a critical and human-centered criminology in which punishment is redefined not as revenge or physical elimination, but in light of respect for human rights and dignity.

3. Retributive Criminology in an Ethical Deadlock

The paradigm of retributive criminology, which constitutes the intellectual pillar of supporters of the death penalty, is built on a set of philosophical and ethical assumptions that for centuries appeared self-evident. At its core, this paradigm regards punishment as a necessary and proportionate response to the moral culpability of the offender and attributes two principal objectives to it: first, the realization of retributive justice, meaning the infliction of suffering proportionate to the offender's blameworthiness; and second, deterrence, meaning the creation of fear of consequences to prevent the future commission of crime (Sabouri Pour, 2019). However, when these traditional foundations are exposed to the sharp and relentless light of bioethical principles, deep cracks appear in their theoretical basis, leaving them in a contradictory and unresolved position—a full ethical deadlock. This deadlock challenges not only the practical effectiveness of this paradigm, but also its intrinsic legitimacy.

3.1. A Critique of Retribution and Deterrence in Light of Bioethical Principles

A) The Principle of Retribution

The doctrine of retribution, in its simplest and starkest form, is embodied in the theory of retaliation: "an eye for an eye." In its more sophisticated and philosophical form, reflected in the works of thinkers such as Kant, punishment is a moral imperative rather than merely a utilitarian measure (Jafari, 2020). From this perspective, by committing a crime, the offender has disturbed the moral equilibrium of society, and justice requires that this balance be restored through the imposition of suffering proportionate to the offense. For a crime as grave as intentional homicide, the only punishment that can be proportionate is the deprivation of the offender's life. This argument appears strong and logical.

Yet bioethics, by advancing the notion of the "unconditional inherent dignity of the human person," attacks this logic at its most fundamental level. Inherent dignity means that the value of a person is absolute and dependent on no condition, including moral purity, social utility, or the gravity of the offense committed. This dignity cannot be withdrawn or suspended (Sabouri Pour, 2023). When the state proceeds to execution, it effectively declares that the dignity of this individual is no longer worthy of respect because of his or her act, and that the individual may be expelled from the circle of humanity. This is precisely the point of conflict: retribution in the form of execution, in order to realize one concept of justice, namely proportionality, violates the more fundamental ethical principle of the inherent dignity of the person. This is a profound operational contradiction. How can a society that seeks to affirm the sanctity of human life do so by carrying out the planned killing of one of its own members? Put differently, can one destroy life in order to affirm the value of life? This paradox shakes the ethical foundation of retribution and leaves it with an unanswerable question.

B) The Principle of Deterrence

The utilitarian justification for the death penalty revolves around deterrence. This argument holds that even if retribution is set aside, execution remains justified because of its beneficial social effects, namely

frightening others away from committing crime. At first glance, this argument also appears persuasive.

Nevertheless, critique from a bioethical perspective proceeds on two fronts: empirical failure and ethical transgression. Empirically, decades of criminological research have shown that the death penalty has no statistically significant advantage over alternative punishments such as life imprisonment without parole in reducing homicide rates. The determinants of crime lie primarily in social, economic, and cultural domains rather than in the severity of punishment. The deterrence claim is rooted more in intuitive assumption than in data (Dulmer, 2020).

The ethical critique, however, is even deeper. Even if one assumes that execution is deterrent, the question remains: are we morally permitted to use one human being as an instrument to instill fear in others and control society? Kantian moral philosophy explicitly states that humanity, whether in oneself or in another, must always be treated as an end in itself and never merely as a means. Execution in the name of deterrence reduces the offender precisely to a symbol, a cautionary message, and ultimately an instrument for public policy objectives. In this process, the individual's uniqueness, life story, criminogenic background, and capacity for rehabilitation are entirely disregarded. The person is no longer a moral subject endowed with inherent rights, but an instructional object for others. This perspective is a clear violation of the central principle of bioethics, which insists upon the non-instrumental dignity of the human being (Miao, 2020). Therefore, the deterrence rationale not only lacks a firm empirical foundation, but is also ethically unacceptable because of its instrumental view of the person.

3.2. The Crisis of the Exclusive Legitimacy of Violence

Classical social theory, such as that of Weber, grants the state a monopoly over the legitimate use of physical violence. On this basis, what occurs in the form of law and after judicial procedures is legitimate violence, whereas the same act committed by an individual constitutes a crime.

Yet bioethics and critical political philosophy challenge this distinction at the essential level, including the following points:

1. **The sameness of the act in essence:** From the standpoint of an ethics grounded in the intrinsic value of life, the act of deliberate and premeditated deprivation of life is, in essence, the same whether committed by an individual in the street or by an executioner in prison. The difference lies in the source of authority and the procedures, not in the moral nature of the act. Law may authorize an act, but such authorization does not necessarily make it justified from the perspective of universal ethics. Bioethics asks us: is beheading by judicial order ethically different from beheading with a knife out of personal hatred? Both lead to the same result: the intentional taking of a human life.
2. **The production and repetition of violence:** A powerful argument may be made that by executing, the state perpetuates the very cycle of violence it condemns and even sanctifies it. Instead of enabling society to find a path out of the logic of hatred and revenge, the state reproduces that logic in an official and ceremonial form. This may send a dangerous implicit message to society: that killing, under certain conditions, is not only acceptable but necessary. Such a message can contribute to the cultural normalization of violence.
3. **The problem of radical fallibility:** The foundations of bioethics emphasize the precautionary principle and extraordinary responsibility in the face of irreversible decisions. The history of criminal justice is replete with cases of judicial error leading to the execution of innocent persons. Given this inherent and unavoidable fallibility of human systems, delegating the power to take life—the most irreversible decision imaginable—to any institution is an act of extreme irresponsibility and a violation of the foundational bioethical principle of protecting the innocent (Smit, 2023). How can a state that may itself commit a fatal error claim moral legitimacy for executing others?

It thus appears that retributive criminology, in its attempt to justify the death penalty, has sunk into a vortex of ethical contradictions. On the one hand, it claims to realize justice, yet in doing so violates a more fundamental principle of justice, namely dignity. On the

other hand, it claims social utility, yet its evidence is inadequate and its method violates human dignity. Finally, it claims to exercise legitimate violence, while the nature of its act is ethically of the same جنس as prohibited violence and is accompanied by the risk of catastrophic error.

This threefold deadlock shows that the traditional paradigm no longer has the capacity to answer the complex ethical questions of the present age. This theoretical gap is precisely the space into which critical criminology steps. By setting aside the question "how severe should punishment be?" and instead asking more fundamental questions such as "whom does the state control through punishment?", "what interests does penal power preserve?", and "does the penal system itself not contribute to the reproduction of violence and inequality?", critical criminology opens a path out of this ethical deadlock (Nowak, 2022). This new paradigm analyzes the death penalty not as a necessity of justice, but as the apex of sovereign power and a mechanism of final exclusion, thereby fundamentally casting doubt on the foundations that have traditionally legitimized it.

4. Critical Criminology and Reading the Death Penalty as "Political Control"

At precisely the point where the retributive paradigm comes to a halt, burdened by its internal contradictions and ethical dead ends, critical criminology advances and, with analytical boldness, subjects not only the death penalty but the penal institution itself to radical examination as a political apparatus serving relations of power. This approach interprets punishment not through the lens of "abstract justice" or "instrumental deterrence," but as the executive arm of a broader political project for managing social order. Within this framework, the death penalty is no longer merely a severe penal reaction; rather, it is the culmination and turning point of a governmental logic that uses punishment to produce and reproduce norms, exclude undesirable elements, and preserve the hegemony of dominant groups. Reading execution as "political control" reveals two fundamental layers of its function: first, its operation as a mechanism of final labeling and radical exclusion; and second, its role in diverting collective awareness and structurally absolving power.

4.1. An Analysis of the Death Penalty from the Perspective of Labeling Theory and Social Control

Labeling theory offers a fundamental starting point for understanding the political character of punishment. This theory argues that "crime" and "criminality" are not inherently intrinsic to acts or persons, but are products of a process of social construction. Definitional power, exercised through law, policing, and the judicial apparatus, decides which behaviors are to be regarded as "deviant" and which individuals are to be considered "dangerous." This process is selective, discriminatory, and profoundly affected by power relations, social class, race, and ideology (Rayejian Asli, 2023).

A death sentence must be regarded as the most final and irreversible label that a socio-judicial system can impose upon an individual. This label goes beyond all prior labels, such as accused, offender, or dangerous. Its message is clear and radical: this individual is not merely a "criminal," but an "anti-human" or an "absolute surplus." He or she is neither worthy of reform, nor rehabilitation, nor even tolerance at the margins of society. The value of this person's life is wholly denied, and his or her place in the human community is declared void. This sentence buries all of the individual's other multiple identities—parent, child, worker, dissenter—beneath the heaviest possible identity, "condemned to death," and transforms the person in public discourse into a one-dimensional symbol of evil (Smit, 2023).

Some sociologists, such as Zygmunt Bauman, have explained modernity through the logic of "social gardening" and processes of exclusion. In this view, modern society is like a garden that must be cleared of weeds. The death penalty is the most violent possible form of such cleansing: symbolic physical elimination. This act is not only the removal of a body, but also the removal of a symbolic social existence. The executed person is erased as an absolute impurity from the imagined body of society so that the symbolic boundaries of a pure and orderly society may once again be affirmed. This exclusion serves a dual purpose: it purifies society of the "threat," while simultaneously warning those who remain that resistance may result in complete exclusion from the circle of collective protection and recognition.

The carrying out of an execution, or even the dissemination of news of it, is a fully theatrical act, even when it occurs in the privacy of a prison. This

performance conveys the most powerful possible message about the nature of sovereignty. By issuing and implementing such a sentence, the government openly demonstrates its exclusive right to determine the boundary between life and death, between those worthy of living and those deemed unworthy. This spectacle is a political lesson: sovereignty possesses the ultimate power. Through the internalization of this symbolic reality in the public mind, the act institutionalizes fear of the state's power not through direct coercion, but through symbolic domination. The death penalty is the display of unconditional sovereignty over bodies.

4.2. The Ideological Rationalization of the Death Penalty

Edwin Lemert's theory of primary and secondary deviance distinguishes between initial deviant behavior and the catastrophic consequences of the formal institutional response to that behavior. Secondary deviance occurs when society's reaction—arrest, conviction, imprisonment—throws the individual into a vicious cycle, imposes upon him or her the identity of "criminal," closes off avenues of return to society, and thus pushes the person toward accepting that identity and continuing deviant conduct (Rayejian Asli, 2023). Within this framework, execution is no longer merely a response to primary deviance; it is the ultimate realization and extreme intensification of the logic of secondary deviance. Instead of examining and addressing the underlying and generative causes of primary deviance—such as structural poverty, systemic inequality, institutional discrimination, structural violence, and deprivation of education and care—the judicial system, by selecting the death penalty, concentrates all social attention and energy on the "ultimate victim" of that flawed system, namely the offender. This process serves several vital ideological functions for the governing order:

1. **The individualization of complex social phenomena:** Deeply structural and collective problems that lead to high crime rates in a society, such as class inequality, chronic unemployment, and the collapse of support networks, are reduced to the moral or psychological failure of isolated individuals. The problem shifts from unjust structures to individual wickedness. This conceptual displacement skillfully removes the burden of responsibility from the governing political-economic system and places it upon the victims of that very system. It is as though the problem were bad people, rather than bad policies (Zhong & Liu, 2020).
2. **The creation of a common enemy and false unity:** The spectacle of pursuing and punishing the "most dangerous criminals" constructs a hypothetical enemy against whom the entire society can unite. This fear-based unity diverts public attention from the real fault lines and structural conflicts within society, for example between rich and poor or between majority and minority groups. Instead of asking why such violence and despair exist in society, people become absorbed in a false sense of security and solidarity in the face of an externalized threat. The death penalty thus becomes an instrument for managing dissatisfaction (Liu & Halliday, 2021).
3. **The absolution of structures of power and the naturalization of the existing order:** When the roots of social problems are sought in wicked individuals, there is no longer any felt need for fundamental changes in the distribution of resources, power, or opportunity. By physically eliminating a few corrupt examples, the system itself appears purified and blameless. The death penalty exempts existing economic and political structures from accountability and responsibility and stabilizes the current unjust order as the only possible and natural one. This punishment discourages society from imagining alternatives (Wang, 2023).

Critical criminological analysis demonstrates that the death penalty is not merely a penal institution, but a deeply ideological political institution. While displaying the apex of the state's legitimate violence, it simultaneously functions as a complex mechanism to: (a) radically exclude seemingly undesirable elements; (b) reinforce the hegemony of dominant groups by displaying unquestioned power; and (c) divert public attention from structural injustices and inefficiencies that themselves form the primary ground of crime by focusing on "individual evil." Therefore, the struggle for the abolition of the death penalty is not merely a

humanitarian or human rights effort; it is also a struggle for political transparency, the accountability of power structures, and the reclamation of the right to determine social destiny from a governmental logic that turns human life into an instrument of political control. The abolition of the death penalty is a necessary step toward a society that sees crime not as a pretext for the display of power, but as a sign calling for self-critique and reform.

5. International Regulations: From Regulation to Radical Prohibition

The evolution of the international system's response to the phenomenon of capital punishment is a classic example of a gradual transition from the paradigm of absolute state sovereignty to the paradigm of universal human rights. This transition may be observed in three successive and mutually reinforcing layers: first, in binding treaty instruments that have moved from restriction toward complete abolition; second, in the political resolutions of the United Nations General Assembly that have generated a wave of delegitimation of this punishment; and third, in the gradual formation of an international customary rule that is turning abolition into a dominant and emerging norm.

The birth of the obligation to abolish requires that the Second Optional Protocol to the International Covenant on Civil and Political Rights (1989) be understood not in isolation, but within its broader historical and conceptual context. This Protocol marks a turning point in the evolutionary path of international human rights law, in which the instrumental view of the human being and the state's exclusive right to impose the harshest punishment were formally and bindingly challenged and replaced by a paradigm grounded in non-derogable inherent dignity. Analysis of this document shows how law can be not only reflective of, but also a driving force behind, ethical transformation in global society (Schabas, 2022).

Article 6 of the International Covenant on Civil and Political Rights (1966) was the product of an era in which the death penalty was still widely accepted as a global norm. At that time, the role of international law was not abolition but management and restriction. Thus, Article 6, by recognizing the death penalty for the most serious crimes, sought to establish minimum standards of due process to prevent arbitrariness and lawlessness. Yet within that very provision, a progressive possibility was embedded: paragraph 6 expressly declared that nothing in the Article should be invoked to delay or prevent the abolition of capital punishment by any state. That paragraph functioned as an opening through which future transformation could occur. The Second Optional Protocol is, in effect, the practical and intensified realization of that very possibility. It moves from passive acceptance of the possibility of abolition toward the creation of an active obligation to abolish.

The first and perhaps most important part of the Protocol is its preamble. In treaty law, although the preamble is not technically the binding portion of the instrument, it expresses the spirit of the treaty and its ultimate objectives, and thus plays a decisive role in interpreting subsequent provisions. The preamble to the Second Optional Protocol, with unprecedented clarity, declares that "abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights." This brief statement contains several fundamental propositions:

1. **The primacy of dignity over sovereignty:** inherent human dignity is introduced as the ultimate standard above state sovereignty. Every state action, including punishment, must be measured against that dignity.
2. **The intrinsic relationship between abolition and progress:** abolition of the death penalty is regarded not as an optional choice, but as a necessary condition for the progressive development of human rights. Capital punishment is thus transformed into an obstacle to the moral progress of humanity.
3. **An unavoidable direction of movement:** this proposition defines the trajectory of the international community: abolition. It is no longer one option among others; it is the progressive and desirable path (Johnson & Zimring, 2020).

This preamble places the philosophical foundation of the Protocol on deontological ethics rather than on utilitarianism; its argument is grounded not in deterrent results, but in the nature of the act itself as a violation of dignity.

Article 1 of the Protocol, in concise and decisive language, transforms the philosophy of opposition to the death penalty into a binding legal rule. The text, which

states that "No one within the jurisdiction of a State Party to the present Protocol shall be executed," may appear simple at first glance, but a major revolution lies within that simplicity.

Its first revolutionary feature is its absolute universality. By using the phrase "No one," the provision extends its protection to all human beings without distinction. This rule offers a categorical and preemptive response to any attempt to justify execution on the basis of the gravity of the crime, the status of the offender, or any other particular condition. In effect, it transcends the distinction between guilty and innocent, citizen and non-citizen, and ordinary and exceptional crimes, extending protection to all. Its second feature is the unquestionable certainty of the language employed. The use of the future tense in the phrase "shall be executed" expresses a decisive and preventive commitment. This is not a wish or a recommendation; it is the statement of an obligation, leaving no doubt as to its binding force. This certainty is the cornerstone of the effective implementation of the Protocol. Its third and perhaps most crucial feature is its deliberate simplicity and clarity. This provision is free of legal complexity, conditions, and weakening qualifications. That simplicity is not accidental; it is designed to eliminate any interpretive space that might be used to justify violation of the obligation. Its clarity creates a barrier against equivocation and hesitation.

A comparison of this provision with Article 6 of the original Covenant makes the paradigmatic divide unmistakable. Article 6 stated, "In countries which have not abolished the death penalty..." that is, it spoke from a position of accommodation to existing reality. Article 1 of the Protocol, by contrast, states, "No one shall be executed"; it creates the desired and binding reality.

Article 2 of the Protocol, which permits states to make a reservation under limited conditions, may at first appear to be a weakness or an escape from the principal obligation. A deeper analysis, however, shows that this provision is not a threat to the spirit of the Protocol, but rather an intelligent mechanism for managing political realism without compromising its ultimate objective. It establishes a delicate balance between aspiration and pragmatism.

The permission to make a reservation is neither absolute nor unlimited, but defined within a highly restricted and conditional framework. This limitation is imposed, first, in terms of subject matter and time: only in time of war and only for the most serious crimes of a military nature committed during wartime. This restriction reduces the scope of the reservation to the minimum possible and clearly distinguishes it from the broad scope of Article 1. This limitation itself is evidence that even in this exception, the Protocol seeks the severe restriction of the death penalty.

The provision then creates transparency by requiring notification. A state entering a reservation must communicate to the Secretary-General of the United Nations the relevant provisions of its domestic law. This obligation removes reservations from the realm of secrecy and places them under the scrutiny of the international community. That transparency is itself an instrument of accountability.

Yet the most powerful and decisive part of this provision is the clause that imposes a fundamental limitation on reservations themselves: "A reservation contrary to the object and purpose of the present Protocol shall not be permitted." Since the object and purpose of the Protocol, as stated in its preamble, is the complete abolition of the death penalty, this clause in fact provides the ultimate standard of assessment. Accordingly, any reservation that effectively exempts a state from moving toward abolition, or that expands the scope of execution in ordinary circumstances, would be contrary to the essence of the Protocol and therefore illegitimate. This mechanism operates as a precise filter, ensuring that the spirit of the general rule in Article 1 is not sacrificed to political compromise.

Thus, Article 2 is not a retreat, but rather evidence of a realistic understanding of the complex path from national sovereignty toward a global ideal. It offers a way to include states that are not yet prepared to accept complete abolition in all circumstances, while simultaneously establishing strong safeguards—substantive limitation, transparency obligations, and the requirement of consistency with the purpose of the Protocol—to prevent that path from becoming a permanent deviation or a weakening of the general principle. In fact, this provision facilitates gradual abolition while always preserving complete abolition as its guiding star.

Article 3 of the Protocol, with crucial subtlety, elevates the instrument from a silent binding document to a dynamic and interactive process. By requiring state parties to include in the reports they submit periodically

to the United Nations Human Rights Committee information regarding the measures they have adopted and the progress they have made in implementing the Protocol, this provision places international supervision and accountability at the heart of the treaty. This mandatory reporting is not merely an administrative step; it stimulates three fundamental developments.

First, it enables continuous and expert supervision. The Human Rights Committee, as a monitoring body composed of independent experts, is able to track the progress or delays of each state not only on the basis of formal documents, but also through regular and current reports. This supervision is not reactive or passive; on the basis of those reports, the Committee may raise precise and targeted questions regarding legal gaps, practical obstacles, or particular interpretations, thereby compelling states to clarify and explain their positions. Second, it strengthens constructive dialogue and the exchange of experience. The reporting process, and the interaction that follows with the Committee, becomes a two-way channel. States may present their challenges, and the Committee may, by offering interpretive guidance, technical recommendations, and the experiences of other states, play the role of advisor and facilitator. This dialogue creates an opportunity for collective learning and course correction in pursuit of the full realization of the Protocol's objectives. Third, and perhaps most effectively, it institutionalizes disclosure and ethical pressure. This system does not allow non-compliance or failure of implementation to remain hidden behind the walls of national sovereignty. Failure to report, incomplete reports, or plainly inaccurate reports themselves become matters for scrutiny and discussion before a credible international body. They may be raised in public sessions of the Committee and reflected in its documents. Although the Protocol lacks a punitive judicial enforcement mechanism, this transparency and public exposure create a powerful form of moral and political pressure that can affect the international standing of states and equip domestic civil society and human rights organizations with tools for advocacy.

The Second Optional Protocol is not merely a technical appendix. It is the legal abstraction of an emerging ethical consensus. It demonstrates that international human rights law has moved beyond the stage of formulating defensive rights, in which the right to life was understood merely as a right against interference, and has advanced toward the creation of positive obligations for states: the obligation to establish a penal system compatible with human dignity. The Protocol is a bridge between the philosophical critiques of punishment advanced by criminology and bioethics, on the one hand, and the binding international legal system, on the other. It sends a message to state parties that membership in the modern international community means not only compliance with the rules of trade or security, but also acceptance of a shared ethical obligation to renounce the most violent forms of punishment. Ratification of this Protocol is not the signing of a political declaration; it is the acceptance of the principle that sovereign power, even when clothed in law and judicial process, cannot erase the inherent dignity of the human person.

The political delegitimation of capital punishment and the construction of a global consensus through the regular adoption of United Nations General Assembly resolutions calling for a global moratorium on the use of the death penalty, beginning in 2007 and renewed every two or three years, is not a merely routine or ceremonial phenomenon. Rather, it is a calculated and sophisticated political strategy at the level of the international system, the ultimate objective of which is nothing less than a fundamental transformation of the legitimacy and place of the death penalty in the global order. Despite lacking direct enforcement power, these resolutions have become one of the most effective tools of international social engineering and of global normative change. Their power lies not in coercion, but in their capacity for persuasion, delegitimation, and the redefinition of consensus (Frost & Clear, 2021).

At the core of these resolutions lies a powerful process of delegitimation. Before this process began, the death penalty was largely treated in international discourse as a domestic issue or a cultural difference into which intervention would amount to a violation of national sovereignty. By creating a recurring and public opportunity for voting, General Assembly resolutions shatter this assumption. They remove capital punishment from the sphere of reserved domestic authority and transform it into a legitimate and urgent subject for collective scrutiny by the international community. Every time an overwhelming majority of states votes in favor of such a resolution, they are in

effect affirming that the death penalty is a human rights defect, not a sovereign privilege. This gradual process makes execution "illegitimate," meaning that carrying it out damages a state's international standing and reputation. States such as China, Saudi Arabia, and the United States, which find themselves in the opposing minority, are compelled either to adopt a defensive posture toward this growing consensus or to bear the cost of isolation.

The General Assembly, as the most inclusive intergovernmental institution with 193 members, is in fact a living and dynamic chart of the moral balance of power in the world. The steady increase in the number of states supporting the resolution—from approximately 104 states in 2007 to 125 in 2022—is not merely a numerical change; it reflects a qualitative transformation in the governing discourse. This increase indicates that opposition to the death penalty has moved from the position of a progressive minority, largely European and Latin American, to a global mainstream that now includes African, Asia-Pacific, and even some Muslim-majority states. These votes exert growing pressure on hesitant states, including abstaining states, to reconsider their positions, because remaining in the opposing minority, or even remaining neutral, carries ever greater diplomatic cost. This process is self-reinforcing: the broader the consensus becomes, the stronger the delegitimation becomes, and the more states are pushed toward changing their position in order to avoid being labeled human rights violators (Kaleck & Singh, 2023).

These resolutions, especially when accompanied by statistics and maps of global abolition trends, shift the burden of proof. It is no longer abolitionists who must explain why a long-standing tradition should be changed; rather, it is the defenders of the death penalty who must justify why a state should remain among a dwindling number of outlier states and accept isolation in order to preserve a doubtful and controversial punishment. In practice, these resolutions provide domestic activists with a powerful frame of reference through which to evaluate and challenge their own country's policy not in isolation, but in the mirror of the global community. They build a bridge between local struggle and a global movement, and give internal reformers the sense that they are not alone and that their demands reflect the will of the majority of the family of nations. This is one of the most subtle and, at the same time, most effective mechanisms of change, expanding from within the boundaries of what is politically possible for reform.

General Assembly moratorium resolutions are a prime example of the power of soft norm-creation in international relations. By generating a recurring cycle of collective expression, delegitimation, domestic empowerment, and future projection, they provide the political groundwork necessary for tangible legal transformations, such as accession to the Second Optional Protocol or the reform of domestic laws. These resolutions warn retentionist states that adherence to the death penalty is no longer a cost-free choice, and that full and respected membership in the international community requires respect for a consensus that views abolition as a sign of a nation's legal and ethical maturity. In this sense, the General Assembly acts not as a global legislature, but as the moral conscience and discursive engineer of the society of nations.

Analysis of international law in relation to the death penalty is not confined to written treaty texts and resolutions. At the deeper level of dynamic state interaction and judicial decisions, an even more fundamental and powerful process is underway: the gradual formation of an international customary rule moving toward the prohibition of execution. This process demonstrates the maturation of a socio-legal norm that emerges from below, through the behavior and beliefs of states, and may ultimately become more binding than formal treaties, because it applies to all states regardless of accession to a particular agreement. The formation of a customary rule requires the simultaneous and mutually reinforcing presence of two essential elements: general practice and opinio juris.

The first element: broad and one-directional state practice

The most important evidence of the emergence of a new custom is the dominant pattern of behavior within the international community. Credible statistics from organizations such as Amnesty International clearly show that at present an overwhelming majority of the world's states, more than two-thirds, or approximately 170 states, fall into one of the following two categories:

1. **Abolitionist states:** those that have abolished the death penalty for all crimes in their constitutions or ordinary legislation.

2. **Abolitionist in practice states:** those that, while still retaining capital punishment in law, have carried out no executions for at least a decade and display no indication of intent to resume it. These states adhere to a de facto moratorium.

By contrast, only a small and shrinking minority of states, approximately 20, continue to carry out executions on a regular basis. This remarkable numerical imbalance itself provides powerful raw material for the emergence of a custom. The crucial point is the one-directional and persistent nature of the practice. Over the past half century, the movement of states has been almost exclusively from execution toward abolition. Rare instances of reversal have met with severe international condemnation and have generally been temporary, which in itself confirms the power of the norm in formation (United Nations General Assembly, 2022).

The second element: opinio juris

Yet uniform behavior alone is not sufficient. It must also be shown that states engage in that behavior not merely for temporary political reasons or expediency, but out of a legal conviction that it is binding. Proving this element is more complex, but persuasive evidence is accumulating.

1. **The change in the justificatory discourse of retentionist states:** An analysis of the official statements and diplomatic positions of states such as China, Iran, Saudi Arabia, and the United States in international fora reveals a meaningful discursive shift. These states rarely present the death penalty today as an "absolute and unquestionable sovereign right." Instead, their arguments generally revolve around the following points:
    - the preservation of public order and the will of the people;
    - reliance on domestic law and sovereign authority in determining punishment;
    - cultural and historical differences, including reference to specific legal or religious traditions (Hood & Deva, 2022).

This discursive shift is highly revealing. These states feel the need to justify their practice. They are in a defensive posture, responding to an external and increasingly assertive norm that regards execution as wrongful. This very need for defense is itself an acknowledgment of the existence of that pressuring norm.

2. **The jurisprudential and interpretive practice of international bodies:** The practice of courts and monitoring institutions provides further strong evidence of the formation of opinio juris. The European Court of Human Rights, in key cases such as *Soering v. United Kingdom* (1989) and *Al-Saadoon and Mufdhi v. United Kingdom* (2010), reasoned that extraditing an individual to a country where he or she faces the risk of execution, especially in light of the psychologically tormenting conditions of death row, violates Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment. These decisions place the death penalty, at least in the extradition context, in direct tension with one of the peremptory norms of international law, namely the prohibition of torture. This reasoning elevates capital punishment from the level of a "debatable sanction" to that of a quasi-torture measure or an act inconsistent with international public order. Likewise, in its General Comment No. 36 (2018) on Article 6 of the Covenant, the United Nations Human Rights Committee emphasized that abolition is desirable and that states should move toward it, while any use of the death penalty must remain exceptional and extremely limited (Smit, 2023).
3. **The function of repeated General Assembly resolutions:** As discussed earlier, moratorium resolutions do not merely express a political opinion. The continuing and increasing support for them may be interpreted as evidence of the formation of a collective normative conviction. By repeatedly voting in favor of these resolutions, states are, in effect, legitimizing the idea that the suspension of executions is the proper and desirable conduct of the international community.

Although it may still be premature to claim that a complete and universal customary rule prohibiting the death penalty has fully formed, since the practical conduct of a powerful minority and fully consolidated legal conviction have not yet entirely crystallized, there

is no doubt that the international community is in the midst of a profound normative transition. The evidence points to the emergence of an evolving norm, or a customary rule in formation. Along this path, the death penalty is no longer a legitimate and normal component of global penal systems; it has become a controversial, marginal, and declining exception. This emerging norm defines a new normative framework for retentionist states: continuation of the death penalty entails bearing the increasing cost of international delegitimation and remaining in a defensive position against the mainstream of global human rights. Thus, the formation of this customary trend constitutes the final, and perhaps strongest, link in the chain of international pressure for abolition, because it is rooted in the beliefs and practices of states themselves and leaves no meaningful sanctuary for sovereignty against it.

6. Conclusion

This study, through an interdisciplinary examination of the death penalty from the perspectives of critical criminology, bioethics, and international law, leads to the conclusion that capital punishment in the sphere of twenty-first century criminal policy is not only devoid of ethical justification and practical effectiveness, but also functions as an obstacle to the realization of restorative justice, good governance, and dignity-centeredness in the global community. This conclusion rests on three lines of argument, each of which reinforces and complements the others.

The deadlock of the retributive paradigm and the necessity of a transition to dignity-centered ethics

Analysis of the philosophical foundations of the death penalty demonstrated that the traditional retributive paradigm is caught in an intrinsic contradiction. On the one hand, the principle of retribution in the form of execution, in the name of justice, violates the most fundamental principle of justice itself, namely the unconditional inherent dignity of the human person. On the other hand, the principle of deterrence, in addition to lacking conclusive empirical support, reduces the human being to the level of an "instrument" for purposes of control and thus conflicts with the principles of autonomy and human dignity. Inquiry into the legitimacy of the state's monopoly on violence likewise revealed that no essential difference exists between killing as a crime and killing as a punishment, and that by resorting to execution, the state legitimizes the cycle of violence. These deadlocks show that the continuation of capital punishment requires the disregard of fundamental bioethical questions concerning the limits of state authority over the lives of citizens.

The death penalty as an instrument of political control and social exclusion

The critical criminological reading uncovered the latent functions of the death penalty. In practice, this punishment is less an instrument for the realization of justice and more a mechanism for the exercise of absolute sovereignty, the radical exclusion of undesirable elements, and the management of social discontent. From the perspective of labeling theory, execution is the ultimate stigma and the symbolic elimination of the individual from society. From the perspective of secondary deviance theory, by focusing on "individual evil," the death penalty diverts public attention away from the inefficiencies and structural injustices that themselves constitute the primary ground of crime production, and thereby absolves structures of power from responsibility. Accordingly, execution serves the preservation of the status quo and the reproduction of unequal power relations.

The convergence of international law toward abolition: from voluntary commitment to an emerging norm

Examination of international instruments confirms that the foregoing theoretical transformation is being steadily institutionalized in international law. The Second Optional Protocol to the Covenant, by converting abolition into an absolute treaty obligation, has provided a legal framework for this transition. The repeated resolutions of the United Nations General Assembly, through the delegitimation of the death penalty and the creation of a growing moral consensus, have increased the political cost of maintaining it. Most importantly, the evidence of the formation of a strong customary trend toward prohibiting execution reflects a shift in the collective conscience of the international community. Today, the continuation of capital punishment is seen not as a norm, but as a controversial and norm-breaking exception that places states adhering to it at the margins of the human rights mainstream.

The abolition of the death penalty has now become, beyond an academic debate or an idealistic demand, an objective necessity for any penal system that seeks moral

coherence, social effectiveness, and acceptance within the international community. This abolition is not merely the removal of a punishment from the statute book; it requires a paradigmatic transformation in criminal policy: a transition from a retributive and revenge-centered model of punishment to a model that emphasizes structural social prevention, restorative justice, rehabilitation, and compensation for victims.

For a country such as Iran, which stands at the intersection of Islamic legal tradition and international human rights commitments, this transition is complex but unavoidable. It is proposed that the following steps be considered as a practical path:

1. The adoption of an official and immediate moratorium on all executions, as the first practical step toward escaping the current deadlock.
2. The formation of interdisciplinary national working groups composed of Islamic jurists, legal scholars, criminologists, and social actors in order to develop new and more humane understandings of criminal justice within the framework of Islamic and national values.

Authors' Contributions

Authors contributed equally to this article.

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

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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