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Assessing the Feasibility of the Right Not to Be Punished and Its Alternatives in Iranian Law and International Instruments

Mohammad Hasan Javidnia[1], Sakineh Khanalipour Vajargah[2]*, Javad Vahedizadeh[3]

[1] Department of Criminal Law and Criminology, Ard.C., Islamic Azad University, Ardabil, Iran
[2] Department of Law, Imam Khomeini International University (RA), Qazvin, Iran
[3] Department of Jurisprudence and Law, Ard.C., Islamic Azad University, Ardabil, Iran

*** Corresponding author email address**: khanalipour@soc.ikiu.ac.ir

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The traditional association between criminal responsibility and the necessary imposition of punishment has been increasingly challenged by developments in human rights law, criminology, restorative justice, and non-custodial sentencing. This article examines whether a limited and conditional "right not to be punished" can be recognized within Iranian criminal law in light of relevant international instruments. The study adopts a qualitative, doctrinal, and normative legal method and analyses Iranian penal legislation, criminal procedure, international human rights norms, and standards governing non-custodial measures, juvenile justice, prisoners, and restorative justice. The right not to be punished is defined not as an entitlement to impunity or denial of criminal responsibility, but as a legal claim against unnecessary, disproportionate, arbitrary, or ineffective punishment when a less restrictive response can adequately achieve the legitimate objectives of criminal justice. The findings indicate that Iranian law does not expressly recognize an autonomous and enforceable right under this title. Nevertheless, institutions such as exemption from punishment, deferment of sentencing, suspension of execution, conditional release, semi-liberty, electronic monitoring, prosecutorial diversion, mediation, juvenile measures, and alternatives to imprisonment collectively provide a substantial basis for its conditional recognition. International instruments similarly do not establish a general right not to be punished, but their emphasis on human dignity, proportionality, rehabilitation, detention as a last resort, and non-custodial measures strengthens the normative foundations of the concept. The article concludes that recognition of this right is feasible primarily in minor, non-violent, reparable, juvenile, and low-risk cases, provided that victim protection, public safety, legality, equality, judicial reasoning, and effective supervision are guaranteed. Its implementation requires coordinated legislation, reasoned sentencing, reliable community-based institutions, and safeguards preventing alternatives from expanding rather than reducing penal control.

Keywords: *Right Not to Be Punished; Alternatives to Punishment; Iranian Criminal Law; International Instruments; Non-Custodial Measures; Restorative Justice; Penal Minimalism*

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1. Introduction

Punishment has traditionally been understood as the normal and almost inevitable legal consequence of criminal responsibility. Within classical penal systems, the commission of an offence established a linear relationship between crime, conviction, and the deliberate infliction of deprivation by the state. The legitimacy of criminal justice was consequently measured largely by its capacity to detect offenders, determine guilt, and impose penalties corresponding to the legal classification of their conduct. Contemporary criminal law, however, no longer treats punishment as a self-justifying response. The expansion of human rights standards, the development of criminological knowledge, the increasing recognition of the adverse effects of imprisonment, and the emergence of restorative and community-based justice have collectively challenged the assumption that every legally established offence must culminate in a conventional penal sanction. Penal intervention is now expected to satisfy several requirements beyond formal legality: it must pursue a legitimate objective, respond proportionately to culpability and harm, avoid unnecessary deprivation, respect human dignity, protect victims, and provide a rational prospect of prevention, rehabilitation, or social reintegration. The principle of minimum criminal intervention has accordingly developed as a response to the excessive expansion of criminalization and punishment, requiring penal power to be used only when less restrictive regulatory mechanisms are insufficient (Movahedi et al., 2024). This principle has also been connected to republican theories of freedom, under which domination by uncontrolled state power is itself a legal and political concern, even when that power is formally authorized (Gholami & Masoumi, 2024). The modern debate therefore concerns not merely whether the state has enacted a punishment, but whether the state can adequately justify imposing that punishment in the circumstances of the individual case.

The need for such reconsideration is particularly visible in relation to imprisonment. Incarceration may incapacitate a convicted person and communicate public condemnation, but its practical operation frequently produces consequences extending far beyond the legally pronounced deprivation of liberty. Imprisonment disrupts employment, family relationships, education, housing, social identity, and access to legitimate economic opportunities. It may expose low-risk offenders to criminogenic environments, intensify stigmatization, and make lawful reintegration more difficult after release. Contemporary reports on prison systems continue to document overcrowding, inadequate services, expanding remand populations, and the disproportionate use of incarceration against socially and economically marginalized groups (Penal Reform & Thailand Institute of, 2025). These conditions reinforce the argument that imprisonment should not be regarded as the default response whenever a criminal offence is established. Community sentencing has therefore been promoted as a mechanism through which accountability, supervision, reparation, and rehabilitation may be achieved without the disruptive consequences of confinement (Shepherd, 2025). The case for reducing imprisonment is not based solely on compassion toward offenders; it also rests on institutional efficiency, public safety, proportionality, and the recognition that poorly designed punishment may increase rather than reduce long-term social harm. Research on work-release arrangements indicates that structured transition from custody to employment and community life may improve reintegration and reduce exclusion associated with imprisonment (Reichert et al., 2025). Similarly, research on open-prison conditions and short leave suggests that controlled exposure to ordinary social life may support desistance more effectively than complete institutional isolation (Neumann et al., 2026). These developments do not demonstrate that punishment is always illegitimate, but they undermine any presumption that the most restrictive response is necessarily the most effective or just.

Against this background, the concept of the “right not to be punished” has emerged as a possible framework for limiting unjustified penal intervention. The expression may initially appear paradoxical because the criminal law is founded on the proposition that persons who culpably violate legally protected interests may be held responsible. A right not to be punished cannot therefore be coherently interpreted as a general right to escape responsibility, an entitlement to impunity, or an authorization to disregard the rights of victims and the security of society. Its more defensible meaning is a conditional claim against punishment that is unnecessary, disproportionate, arbitrary, excessively harmful, or replaceable by a less restrictive response capable of achieving the legitimate purposes of criminal justice. Iranian legal scholarship has increasingly attempted to identify the conceptual foundations, scope, and consequences of such a right (Abdollahi & Nikkhah Sarnaghi, 2025). Other analyses describe it as an emerging approach to penal responses under which the determination of guilt does not automatically settle the separate question of whether punishment should be imposed, in what form, and to what extent (Elahimanesh & Moradi Ojqaz, 2025). The conceptual innovation lies in shifting part of the analysis from the state's authority to punish toward the individual's claim that state-imposed suffering must be specifically justified. The question is no longer confined to whether the offender deserves a response, but extends to whether the proposed response is necessary, proportionate, effective, and less harmful than realistically available alternatives.

The distinction between non-punishment and non-responsibility is central to this formulation. A person benefiting from a restorative agreement, deferred sentence, exemption from punishment, suspended sentence, treatment order, community-service obligation, or electronic monitoring measure may remain legally and morally accountable for the offence. The person may be required to acknowledge wrongdoing, compensate the victim, comply with rehabilitative conditions, participate in mediation, avoid specified conduct, or submit to proportionate supervision. The right not to be punished is therefore not a right to receive no response; it is a right to have the necessity of punitive suffering examined before conventional punishment is imposed. This interpretation corresponds with scholarship that treats the right as a distinct legal concept rather than as a synonym for acquittal, justification, excuse, pardon, mitigation, or the extinction of punishment (Hosseini et al., 2023). It also allows the concept to operate across the different stages of criminal justice. Unnecessary penal intervention may begin before sentencing through overcriminalization, intrusive investigation, excessive pretrial detention, or prosecution that could reasonably have been diverted. It may arise at sentencing when a court selects imprisonment despite the availability of an effective community response. It may continue during enforcement when the complete execution of an initially lawful sentence no longer serves a proportionate preventive or rehabilitative purpose. A mature conception of the right must therefore be understood more broadly as a right against unnecessary criminal intervention, while retaining punishment as its most intensive and visible manifestation.

Iranian criminal law provides an important context for examining the feasibility of this right because it combines a traditionally punishment-oriented structure with a considerable number of institutions designed to mitigate, postpone, replace, suspend, or terminate penal sanctions. The Islamic Penal Code adopted in 2013 recognizes mitigation, exemption from punishment, deferment of sentencing, suspension of execution, conditional release, semi-liberty, electronic supervision, and alternatives to imprisonment. The Criminal Procedure Code also provides procedural mechanisms through which prosecution may be discontinued, suspended, mediated, or redirected under defined conditions. Juvenile justice provisions give greater prominence to educational, protective, and rehabilitative measures than to conventional adult punishment. These institutions demonstrate that conviction and punishment are not treated as inseparable in every case. Nevertheless, they do not automatically establish a subjective and enforceable right. Many remain dependent on statutory classifications, judicial discretion, prosecutorial practice, institutional capacity, or the offender's access to material and social resources. Iranian scholarship on leniency institutions has shown that these mechanisms operate at different stages and pursue different objectives, making their systematic coordination difficult (Tavajohi, 2022). The prosecutorial stage contains its own forms of leniency and diversion, but their application may vary according to institutional practice and interpretations of public interest (Amadeh, 2025). The central legal question is therefore whether these dispersed institutions should continue to be regarded merely as exceptional privileges or whether they may be reconstructed as manifestations of a more general principle requiring avoidance of unnecessary punishment.

The international dimension of the subject is equally significant. General human rights instruments protect liberty, security, dignity, bodily integrity, fair trial, legality, equality, and freedom from cruel, inhuman, or degrading treatment. Specialized criminal justice instruments encourage non-custodial measures, diversion, individualized sentencing, rehabilitation, restorative processes, and the treatment of detention as a last resort, particularly for children. These instruments do not ordinarily employ the precise expression "right not to be punished," and it would be legally inaccurate to claim that contemporary international law recognizes an unrestricted freestanding right under that title. Their cumulative normative direction nevertheless limits the state's freedom to punish. A punishment may be formally authorized yet incompatible with human rights principles if it is grossly disproportionate, degrading, discriminatory, arbitrarily imposed, or unnecessarily restrictive. The right to life further imposes the highest level of justification where the penal response is irreversible. Studies of state responsibility for violations of the right to life demonstrate that the exercise of public authority is subject to substantive and procedural obligations extending beyond formal domestic authorization (Ashouri et al., 2024). Iranian scholarship concerning the possibility of refraining from execution has similarly examined the interaction between Islamic legal reasoning, contemporary human rights requirements, and the changing conditions under which penal rules are implemented (Mirali, 2023). The issue is therefore not whether international instruments abolish penal authority, but whether they provide interpretive principles that support restriction, substitution, or non-implementation where punishment exceeds what justice and public protection require.

The present study seeks to assess whether a limited and conditional right not to be punished can be recognized in Iranian law by interpreting domestic penal institutions in light of the principles reflected in international human rights and criminal justice instruments. It examines the concept's normative foundations, its distinction from related legal institutions, the capacity of Iranian criminal law to accommodate it, the contribution of international standards, the legitimacy of available alternatives, and the safeguards needed to prevent the right from becoming either an empty slogan or a source of unjustified impunity. The study adopts a qualitative, doctrinal, and normative method based on the structured analysis of legislation, legal scholarship, international instruments, and relevant research on non-custodial responses. Doctrinal legal research requires interpretation not only of isolated rules but also of the principles, relationships, and institutional structures through which those rules acquire meaning (Momeni, 2021). A systematic legal methodology is particularly necessary where the subject is an emerging right that has not yet been expressly formulated in legislation (Pourbakhsh, 2022). Qualitative analysis is appropriate because the objective is not to measure the numerical frequency of judicial decisions but to identify legal meanings, normative relationships, institutional capacities, and conditions of legitimate application (Creswell & Poth, 2024). The article argues that Iranian law does not presently recognize an absolute right not to be punished, but that its existing legal principles and institutions support a derivative right against unnecessary, disproportionate, and inadequately justified punishment. Such a right can become practically meaningful only if it is accompanied by reasoned decision-making, victim protection, equality of access, effective alternatives, institutional supervision, and clear restrictions in cases involving serious violence, high dangerousness, repeated offending, or substantial threats to public safety.

2. Conceptual and Normative Foundations of the Right Not to Be Punished

The concept of the right not to be punished must begin with the legal meaning of a right. A right may describe a protected liberty, a claim correlating with another party's duty, a legal power, or an immunity against the exercise of authority. In the present context, the strongest formulation is that of a claim-right against the state: where punishment cannot be justified as necessary, proportionate, lawful, and responsive to a legitimate criminal justice objective, the individual has a claim that the state refrain from imposing it or substitute a less restrictive response. The corresponding state duty is not an unconditional obligation never to punish, but an obligation to examine and articulate the grounds that make punishment necessary. This structure avoids the conceptual weakness of treating non-punishment as a mere moral aspiration. It also prevents the opposite error of presenting it as a categorical immunity applicable whenever an offender prefers an alternative. Iranian scholarship has described the right as a legal position arising from the limitations inherent in penal power, particularly the principles of dignity, necessity, proportionality, and minimum intervention (Abdollahi & Nikkhah Sarnaghi, 2025). Its existence is therefore connected to the transformation of punishment from an automatic consequence into a public measure whose imposition requires separate justification after responsibility has been established (Hosseini et al., 2023). The proposed right is derivative because it is reconstructed from established principles and institutions rather than expressly announced as a single constitutional or statutory entitlement. It is conditional because its operation depends on the circumstances of the offence, the offender, the victim, and the availability of an effective substitute.

The object of the right must also be defined carefully. A literal interpretation might suggest that the right concerns only the final imposition or execution of a formally classified punishment. Such a narrow view fails to account for the wider burdens generated by the criminal process. Criminalization itself may expose individuals to surveillance, arrest, stigma, professional exclusion, and social control. Investigation and prosecution may involve intrusive searches, restrictions on movement, financial costs, reputational harm, and psychological pressure. Pretrial detention can inflict consequences comparable to or greater than those of a short custodial sentence even though guilt has not been finally determined. For that reason, the right not to be punished is best understood as the most concentrated expression of a broader right against unnecessary penal intervention. The principle of minimum criminal law supports this extension because it limits not only the length of sentences but the use of criminal law as a regulatory instrument (Movahedi et al., 2025). Research on penalism and de-penalizing models similarly demonstrates that excessive punishment is sustained not only by harsh statutory sanctions but by institutional cultures that treat criminalization, prosecution, and confinement as preferred responses to social problems (Moradipasand et al., 2021). The right should therefore require justification at each stage. Legislators should justify criminalization; prosecutors should justify continuation of proceedings where diversion is available; courts should justify the selection and severity of punishment; and enforcement authorities should justify continued restriction when the original grounds have substantially changed.

This right is distinct from the absence of criminal responsibility. Where the material or mental elements of an offence are not established, punishment is prohibited because no crime attributable to the defendant has been proved. The same is true where a justification renders the conduct lawful or an excuse removes personal blameworthiness. In those situations, non-punishment follows from the absence of a substantive condition of liability. The right examined here operates after the possibility of responsibility has been established. It asks whether responsibility must necessarily be expressed through conventional punishment. The right is likewise distinguishable from amnesty, pardon, limitation periods, and the extinction of punishment. Those institutions depend on specific legal grounds and may operate for political, procedural, humanitarian, or temporal reasons without requiring a general assessment of whether punishment is necessary. Mitigation reduces punishment but does not necessarily question its underlying necessity. Suspension recognizes a sentence but postpones or conditions its execution. Exemption from punishment comes closest to the right because guilt may be established without the imposition of a sanction, yet it remains a defined statutory institution with limited eligibility requirements. Deferment, conditional release, electronic monitoring, and alternative sanctions are implementation mechanisms rather than the right itself. Elahimanesh and Moradi Ojqaz argue that these mechanisms can be interpreted as practical manifestations of a right not to be subjected to a penal response exceeding what the case requires (Elahimanesh & Moradi Ojqaz, 2025). This distinction is essential because a general principle can guide the interpretation of several institutions while remaining conceptually broader than each of them.

The normative foundation of the right begins with human dignity. Punishment deliberately subjects a person to deprivation, censure, restriction, or suffering through the authority of the state. Even when lawfully convicted, the offender remains a rights-bearing person rather than an object through which social anger may be expressed. Dignity requires punishment to be administered without humiliation, degradation, arbitrary severity, or denial of the person’s capacity for moral change. It also requires recognition that the burdens of punishment frequently extend to innocent family members, dependants, and communities. The right not to be punished does not arise simply because punishment is unpleasant; unpleasantness is inherent in most sanctions. It arises where the imposed suffering lacks sufficient justification or exceeds the deprivation necessary to achieve a legitimate purpose. The relationship between dignity and penal minimality is particularly strong because minimum intervention requires the state to select the least rights-restrictive measure capable of protecting legally recognized interests (Gholami & Masoumi, 2024). The principle is not identical to leniency. Leniency may be discretionary and compassionate, whereas dignity imposes a structural limitation on state authority. A dignitarian analysis asks whether the offender has been treated as a responsible agent capable of restoration and reintegration or merely as a target of exclusion and control.

Freedom provides a second foundation. Criminal punishment represents one of the most intensive exercises of coercive public power, particularly where it involves incarceration, surveillance, occupational prohibition, or restrictions on movement and association. In a legal order committed to freedom, the burden should rest on the state to justify such restrictions. Minimum criminal law translates this general commitment into penal doctrine by requiring criminalization and punishment to function as measures of last resort (Movahedi et al., 2024). The principle of last resort does not mean that criminal law must be delayed until all other measures have literally failed in every individual case. It requires a reasoned determination that non-criminal or less punitive measures are unlikely to provide adequate protection. This requirement has implications for sentencing. If restitution, supervision, treatment, or community service can respond effectively to a non-violent offence committed by a low-risk first offender, imprisonment requires a stronger justification than the general statement that the conduct is criminal. The right not to be punished therefore reverses the conventional assumption that the defendant must prove why punishment should be avoided. It requires the state to explain why the more restrictive response is needed.

Proportionality is the most immediate doctrinal foundation of the right. Penal proportionality ordinarily requires a relationship between the gravity of the offence and the severity of the sanction. Gravity includes the harm caused or threatened, the offender's culpability, the circumstances of commission, and the protected interest. A punishment may violate proportionality because it is excessive in duration or severity, but proportionality also has a qualitative dimension. Even a comparatively short term of imprisonment may be more intrusive than necessary where a community response would adequately satisfy the relevant objectives. Conversely, a non-custodial measure may become disproportionate if it involves extensive surveillance, numerous conditions, or a duration exceeding that which could reasonably have been imposed through a conventional sentence. Behavioral research on the perception of punishment warns that formal severity does not always correspond to the manner in which sanctions are experienced or influence decision-making (Mehrabi & Allahverdi Meygouni, 2022). Proportionality should consequently evaluate the real burdens of both punishment and its alternatives. The right not to be punished cannot be implemented merely by changing the legal label attached to an equally oppressive intervention.

Necessity complements proportionality by requiring a rational connection between punishment and a legitimate purpose. Retributive theories may regard punishment as justified by desert, but desert also limits the amount and type of suffering that may be imposed. Utilitarian theories justify punishment through deterrence, incapacitation, rehabilitation, or prevention, but punishment becomes unjustified when it does not materially advance those objectives or when the same benefit can be obtained through a less harmful response. Rehabilitation supports individualized treatment, but coercive rehabilitation can become paternalistic and excessive if it imposes intrusive obligations unrelated to the offender's needs or the offence. Restorative justice seeks to repair harm, involve victims, and encourage responsible participation, but it too requires voluntariness, procedural fairness, and safeguards against coercive settlements. The right not to be punished is thus not dependent on the exclusive acceptance of one theory of punishment. It emerges from the limiting implications shared by several theories: punishment must correspond to culpability, pursue a defensible purpose, remain no more severe than required, and yield to less harmful measures when they can achieve the same legitimate end.

Individualization is another essential foundation. Equal justice does not require identical penalties for all persons convicted under the same offence title. It requires relevantly similar cases to be treated alike and materially different cases to be distinguished on legally legitimate grounds. The offender's criminal history, age, role in the offence, motivation, social circumstances, degree of remorse, willingness to repair harm, rehabilitative needs, and risk of repetition may affect the appropriate response. The victim's circumstances, the seriousness of the harm, and the need for protection must also be considered. A purely offence-based approach may ignore the substantial differences between a first-time, low-risk offender who promptly repairs the harm and a repeated offender who presents a continuing danger. Yet individualization also creates risks of inconsistency and discrimination. Wealthier defendants may be better able to compensate victims, obtain treatment, demonstrate stable employment, or satisfy supervision conditions. Socially marginalized defendants may be classified as higher risk because they lack housing, employment, or family support. The right not to be punished must therefore include an equality dimension. Access to alternatives cannot become a privilege available primarily to those possessing social and economic resources.

The right must also be reconciled with victim rights. A weak formulation could appear to place the offender's interest in avoiding punishment above the victim's interest in recognition, safety, participation, and redress. Such an interpretation would be normatively unacceptable and politically unsustainable. The right not to be punished does not extinguish the duty to respond to harm. It requires the response to be justified and, where possible, more directly connected to repairing that harm. Conventional punishment often marginalizes victims by transforming the offence into a dispute between the state and the offender. Restorative measures may provide opportunities for acknowledgement, restitution, apology, explanation, and participation that imprisonment alone does not offer. However, victim participation must be voluntary, informed, and protected from intimidation. Serious power imbalances, domestic violence, organized criminal influence, or continuing threats may make direct mediation inappropriate. The right not to be punished is therefore compatible with victim-centred justice only where the selected alternative protects the victim's dignity and safety and does not pressure the victim into forgiving or settling.

Finally, the proposed right must be limited by public safety, seriousness, and the prevention of impunity. It is strongest in relation to minor, non-violent, reparable offences committed by first-time or low-risk offenders and in juvenile cases where education and reintegration are especially important. It may also apply where the offender's conduct is closely connected to treatable addiction, mental vulnerability, or social deprivation, provided that the response remains accountable and protective. It becomes more restricted where offences involve intentional serious violence, repeated victimization, organized crime, abuse of authority, high dangerousness, or grave violations of fundamental rights. The debate concerning the death penalty demonstrates the difficulty of balancing legality, religious and jurisprudential reasoning, human rights, irreversibility, and changing penal objectives. Iranian research on economic offences has examined whether the most severe punishment can remain justified when its jurisprudential and policy foundations are contested (Amanab et al., 2022). Scholarship on the jurisprudence of execution emphasizes that capital punishment cannot be analysed without attention to its legal classifications and doctrinal foundations (Golestanrou, 2023). The right not to be punished should not be used to erase these complexities, but it requires the highest level of justification wherever punishment is irreversible. In its defensible form, the right is neither an absolute bar to punishment nor a discretionary act of mercy. It is a structured demand that the state demonstrate why punitive intervention is legally, morally, and practically necessary.

3. The Capacity of Iranian Law to Recognize and Implement the Right Not to Be Punished

The feasibility of recognizing the right not to be punished in Iranian law depends first on whether the domestic legal order contains principles capable of limiting penal authority beyond the literal boundaries of individual sentencing provisions. The Constitution does not expressly identify a right under this title, but several constitutional guarantees provide a normative foundation for it. Protection of life, property, dignity, residence, and occupation from unlawful interference; the prohibition of arrest except according to law; the requirement that punishment be imposed only by a competent court and under law; the presumption of innocence; the prohibition of torture; and the protection of the dignity of detained and imprisoned persons collectively establish that criminal justice power is legally limited. These guarantees primarily protect individuals against unlawful punishment, but their logic also supports the proposition that lawful authority must be exercised proportionately and for legitimate purposes. The constitutional commitment to judicial protection and the restoration of rights may be interpreted as requiring criminal courts to consider whether the selected response advances justice rather than merely reproducing statutory severity. The right not to be punished cannot be deduced from these provisions as an absolute constitutional immunity, but they create an interpretive environment in which unnecessary and degrading penal intervention should be disfavoured. The minimum-intervention literature in Iranian criminal policy similarly treats constitutional rights and the rule of law as foundations for restricting the expansion of punitive power (Movahedi et al., 2025).

The Islamic Penal Code of 2013 contains the clearest statutory capacities for implementing the proposed right. The Code retains the principal categories of hudud, qisas, diyat, and ta'zir, and the flexibility available in each category is not identical. The right is most readily developed within discretionary and corrective areas of ta'zir punishment, where the legislature has expressly authorized courts to consider the offender's circumstances and employ alternatives. Article 18 requires courts, when determining ta'zir punishment, to take account of matters such as the offender's motivation, mental condition, manner of commission, conduct after the offence, background, and personal, family, and social circumstances. The supplementary requirement that a court explain the reasons for selecting imprisonment above the statutory minimum reflects an emerging duty of sentencing justification. This duty remains narrower than a general obligation to explain why imprisonment itself was necessary, yet it is conceptually important. It indicates that penal severity should not be assumed and that movement beyond the minimum requires articulated reasons. The right not to be punished could develop this logic further by requiring courts to explain why a less restrictive measure, exemption, suspension, or alternative would be inadequate.

Mitigation under Articles 37 and 38 provides another important mechanism. The court may reduce or convert ta'zir punishment where legally recognized mitigating factors exist, including the complainant's forgiveness, cooperation by the accused, circumstances influencing the commission of the offence, confession, remorse, good background, personal condition, efforts to reduce the effects of the offence, and limited participation. Mitigation demonstrates that the legal consequence of an offence is not determined solely by its abstract classification. It enables the court to align the response with culpability, post-offence conduct, and prospects of reform. Tavajohi's analysis of leniency institutions shows that mitigation forms part of a wider legislative movement toward individualized sentencing, although the breadth of judicial discretion may produce inconsistent application (Tavajohi, 2022). From the perspective of the right not to be punished, mitigation should not be regarded only as generosity. Where the recognized factors establish that the statutory punishment would exceed what is necessary or proportionate, application of the minimum lawful response should become a reasoned judicial obligation rather than an unexplained option.

Exemption from punishment under Article 39 represents one of the closest statutory approximations to a right not to be punished. In qualifying low-level ta'zir offences, a court may establish guilt but refrain from imposing punishment where the offender lacks an effective criminal record, the complainant has forgiven or the harm has been repaired, and the court considers that the offender has been corrected without punishment. The institution directly separates criminal responsibility from penal suffering. It recognizes that the declaratory effect of conviction, the offender's conduct after the offence, reparation, and the experience of proceedings may sufficiently achieve the purposes of criminal justice. Elahimanesh and Moradi Ojqaz regard exemption as a central manifestation of the right because the offender's guilt does not compel the court to impose a sanction once the statutory conditions demonstrate that punishment is unnecessary (Elahimanesh & Moradi Ojqaz, 2025). The difficulty is that the provision is limited in scope and formulated through judicial discretion. A stronger rights-based approach would require courts to address an adequately reasoned request for exemption and explain why punishment remains necessary despite satisfaction of the relevant conditions.

Deferment of sentencing under Articles 40 to 45 further supports the separation between conviction and immediate punishment. In eligible offences, the court may postpone issuance of the sentence for a specified period after considering the offender's individual and social circumstances, the likelihood of reform, compensation, and the absence of an effective criminal record. Deferment may be simple or supervised and may include obligations designed to encourage lawful conduct and rehabilitation. This mechanism allows the court to assess whether the offender's subsequent behaviour confirms that punishment is unnecessary. It is particularly relevant to the right not to be punished because it treats necessity as capable of empirical reassessment over time rather than as fixed at the moment guilt is established. Nevertheless, deferment can become punitive in practice if its conditions are excessive, vague, unrelated to the offence, or difficult for economically disadvantaged persons to satisfy. A rights-based interpretation should require conditions to be proportionate, individualized, and realistically achievable. Failure arising from poverty, unstable housing, or lack of treatment access should not automatically be treated as proof that punishment is necessary.

Suspension of the execution of punishment under Articles 46 to 55 operates after the court has selected a sentence but postpones its enforcement subject to compliance. Suspension may protect the offender from the disintegrative effects of imprisonment while retaining the threat of execution as an incentive for lawful behaviour. It may be appropriate where conviction and conditional supervision are sufficient to achieve deterrence and rehabilitation. Yet suspension is not equivalent to non-punishment because the sentence continues to exist and the offender remains subject to conditions and the risk of enforcement. Its relationship to the proposed right is therefore instrumental. Suspension may implement the right where immediate execution would be unnecessary, but it may also preserve a level of penal control exceeding what the case requires. The legal assessment should distinguish between offenders who need structured supervision and those for whom the conviction itself is sufficient. A court applying the right should consider whether suspension is the least restrictive suitable measure or whether exemption, deferment, or a procedural alternative would better satisfy proportionality.

The Code's provisions on semi-liberty, conditional release, and electronic monitoring demonstrate that the necessity of confinement may be reconsidered during enforcement. Semi-liberty under Article 56 allows certain convicted persons to engage in occupational, educational, treatment, family-support, or similar activities outside prison under supervision. Conditional release under Article 58 permits release after execution of part of the sentence where conduct, reformation, compensation, and other statutory conditions support the conclusion that continued incarceration is unnecessary. Electronic monitoring under Article 62 enables eligible convicted persons to remain outside prison within a defined geographical area under electronic supervision. These institutions recognize that the purposes of punishment may be achieved through partial liberty or supervised community residence. Empirical research suggests that electronic monitoring may reduce some of the social exclusion associated with incarceration, particularly where it genuinely replaces imprisonment (Al Weswasi & Bäckman, 2025). Studies of probation populations indicate that monitoring can contribute to compliance when integrated with appropriate supervision and support rather than used as a purely technological form of control (Bouffard & Butler, 2024). Research on global positioning systems also produces qualified findings, showing that effects on recidivism depend on programme design, population, supervision intensity, and the manner in which monitoring is combined with rehabilitative services (Hawkes et al., 2024).

Electronic monitoring nevertheless illustrates the danger of net-widening. If it replaces a prison term that would otherwise have been executed, it may reduce harm and preserve employment, family relationships, and community integration. If it is imposed on a person who would otherwise have received no custodial sanction, it expands penal surveillance rather than implementing a right against unnecessary intervention. Iranian scholarship has identified legal, technical, and practical weaknesses in the use of electronic handcuffs and ankle monitors, including infrastructure, proportionality, geographical restrictions, privacy, and implementation difficulties (Bazgir & Safari-Kakeroudi, 2022). Criminal policymaking on electronic monitoring must consequently determine eligibility, duration, data protection, supervision, and review mechanisms with greater precision (Shiri, 2024). A rights-based model should require the court to compare electronic monitoring not only with imprisonment but also with unrestricted release, ordinary probation, and non-supervisory alternatives. The relevant question is whether monitoring is less restrictive than the sanction otherwise necessary, not merely whether it appears technologically modern.

Alternatives to imprisonment under Articles 64 onward constitute a major statutory basis for penal minimality. These alternatives include periods of supervision, unpaid public service, fines, and deprivation of social rights within the conditions prescribed by law. Their significance lies in enabling accountability without confinement. Community service can express condemnation, repair social harm, maintain family and employment ties, and avoid the criminogenic effects of prison. Supervision can provide structured support and risk management. Financial sanctions may be appropriate in some cases but can become discriminatory where the offender lacks the capacity to pay. Deprivation of social rights must remain closely related to the offence and should not create long-term exclusion disproportionate to the original harm. Rezaei argues that alternatives to imprisonment should be evaluated not merely by the number of prison sentences formally replaced but by their contribution to correction, resocialization, and the reduction of prison populations (Rezaei, 2025). Strategies for reducing incarceration also require institutional support, judicial acceptance, and careful adaptation to Iran's legal and social environment (Shojaei et al., 2023). If alternatives are automatically added to offences that would previously have received minimal sanctions, they may increase rather than decrease the overall intensity of control.

The Criminal Procedure Code expands the relevant analysis beyond sentencing. Mechanisms such as withdrawal from prosecution in eligible complainant-driven cases, suspension of prosecution, mediation, reconciliation, and conditional prosecutorial decisions make it possible to avoid a full punitive process. Amadeh's study of leniency institutions within the prosecutor's office emphasizes that prosecutorial discretion is a significant component of modern criminal policy (Amadeh, 2025). These mechanisms may provide earlier and less stigmatizing responses than conviction followed by judicial leniency. They are particularly appropriate where the harm is reparable, the suspect has no significant record, the victim's safety is protected, and the offence does not create a substantial public danger. However, prosecutorial diversion also raises concerns regarding transparency, equality, and review. Similar cases may receive different outcomes depending on location, prosecutorial attitudes, victim participation, or access to legal representation. The right not to be punished should therefore include procedural safeguards requiring recorded reasons, equal eligibility standards, informed consent, and review of discriminatory or arbitrary refusals.

Mediation is especially important because it may redirect attention from the abstract violation of public law toward the concrete harm experienced by the victim. A successful process can require acknowledgement, restitution, apology, treatment, or other agreed obligations. Yet mediation should not be romanticized. It may be inappropriate where there is serious violence, intimidation, significant power imbalance, or risk of repeated harm. The victim must not be pressured to participate in order to secure institutional efficiency or reduce caseloads. The offender must also understand the legal consequences of participation and should not be coerced into accepting disproportionate obligations through fear of prosecution. The right not to be punished and restorative justice are compatible only when both victim and offender rights are protected and the process remains subject to legal oversight.

Juvenile justice provides perhaps the strongest domestic setting for recognizing a right against unnecessary punishment. The Islamic Penal Code authorizes a range of educational, supervisory, family-based, rehabilitative, and corrective measures for children and adolescents. These measures reflect reduced culpability, developmental immaturity, heightened capacity for change, and vulnerability to the stigmatizing effects of formal punishment. Delivery to parents or guardians, warnings, educational obligations, social-work involvement, vocational training, treatment, and placement in correctional facilities of last resort demonstrate that the legal response need not replicate adult punishment. In juvenile cases, the best interests of the child, reintegration, and avoidance of harmful institutionalization should carry substantial weight. The right not to be punished is therefore strongest where the offence is non-violent, the child presents a low risk, family or social support is available, and community measures can provide protection and education. At the same time, formally protective measures can become intrusive if they are prolonged, poorly supervised, or disconnected from individualized needs. Minimum intervention must apply to welfare-oriented control as well as traditional punishment.

Despite these capacities, Iranian law does not yet establish a coherent enforceable right. The first obstacle is fragmentation. Each leniency institution has separate conditions, legal effects, and procedural stages, and no general provision requires every criminal justice authority to consider the least restrictive adequate response. The second obstacle is discretion. Judicial discretion is necessary for individualization, but without clear reasoning duties it may produce unequal outcomes. The third obstacle is institutional capacity. Community service, treatment, mediation, social supervision, and electronic monitoring require trained personnel, reliable organizations, financing, data systems, and local availability. The fourth obstacle is socioeconomic inequality. Offenders with stable employment, housing, family support, and the ability to compensate victims may appear more suitable for alternatives than equally low-risk persons living in poverty. The fifth obstacle concerns public and judicial confidence. Prison-reduction policies may be interpreted as weakness unless their objectives, safeguards, and results are communicated effectively. Research on persuading public opinion regarding alternative punishments demonstrates that successful reform requires public explanation of accountability, victim protection, and evidence-based effectiveness (Momeni Moghadam et al., 2024). The legal capacity for recognition therefore exists, but its transformation into a right requires statutory coordination, equality safeguards, reasoned decisions, institutional investment, and an explicit presumption that unnecessary imprisonment should be avoided.

4. International Instruments, Alternatives to Punishment, and a Feasibility Framework for Iran

International law does not generally formulate a universal right not to be punished in those precise terms. Nevertheless, international human rights law progressively restricts the power of states to criminalize, prosecute, sentence, and confine. The Universal Declaration of Human Rights affirms dignity, liberty, security, equality, fair trial, legality, and protection against cruel, inhuman, or degrading treatment. The International Covenant on Civil and Political Rights converts many of these guarantees into binding obligations, including protection against arbitrary deprivation of life and liberty, humane treatment of persons deprived of liberty, fair proceedings, legality, and protection against double jeopardy. These rules primarily address unlawful or abusive punishment, yet their combined effect supports a wider principle: penal suffering requires legal authorization, procedural fairness, substantive proportionality, and respect for the continuing humanity of the convicted person. The rehabilitative orientation of imprisonment in the Covenant further indicates that confinement should not be organized solely around retribution or exclusion. The right not to be punished may consequently be reconstructed as an interpretive implication of several established rights, particularly where punishment is arbitrary, degrading, grossly disproportionate, discriminatory, or unnecessary to achieve a legitimate protective objective.

The right to life presents the most demanding application of this reasoning. Capital punishment is irreversible and eliminates the possibility of correcting judicial error, reassessing dangerousness, or recognizing subsequent rehabilitation. International standards have increasingly restricted its permissible scope, procedures, and application, even where complete abolition has not been accepted. State responsibility for violations of the right to life may arise from both the direct use of lethal power and failures to establish adequate legal and procedural safeguards (Ashouri et al., 2024). In Iran, jurisprudential and legal debates concerning non-implementation of execution demonstrate that penal rules are interpreted within changing social, legal, and human rights contexts (Mirali, 2023). Studies examining abolition or restriction of execution for economic disruption also show that the relationship between deterrence, public interest, jurisprudential classification, and proportionality remains contested (Amanab et al., 2022). The right not to be punished does not itself resolve the death-penalty debate, but it requires the state to apply the strictest tests of legality, necessity, proportionality, evidentiary certainty, and non-availability of less irreversible measures.

The Convention on the Rights of the Child provides a more explicit basis for non-punitive and minimally punitive responses. It requires that detention be used only as a measure of last resort and for the shortest appropriate period. It emphasizes dignity, reintegration, and the child's constructive role in society. These principles are developed through the United Nations Standard Minimum Rules for the Administration of

Juvenile Justice, commonly known as the Beijing Rules, which support diversion, proportionality, individualized treatment, welfare, and restricted institutionalization. In juvenile justice, the right not to be punished is not merely a general plea for leniency. It reflects developmental differences, reduced blameworthiness, vulnerability to coercion, and a greater capacity for behavioural change. International standards thus support a presumption that educational, family-based, restorative, and community measures should be considered before formal punishment. Iranian juvenile law contains compatible mechanisms, but effective implementation requires specialized courts, trained professionals, social services, family support, and periodic review.

The Tokyo Rules, formally the United Nations Standard Minimum Rules for Non-custodial Measures, are the most directly relevant international instrument for alternatives to punishment. They encourage states to develop non-custodial measures across the pretrial, trial, sentencing, and post-sentencing stages. Their significance lies not only in listing alternatives but in articulating principles governing their use. Selection should consider the nature and gravity of the offence, the offender's background, sentencing purposes, victim rights, and social protection. Measures should respect legality, dignity, privacy, proportionality, and informed participation where consent is required. The Rules reject unnecessary pretrial detention and support supervision, verbal sanctions, conditional discharge, economic penalties, restitution, suspended sentences, probation, community service, referral centres, house arrest, treatment, and combinations of appropriate measures. Their structure supports the central proposition of this article: criminal justice should possess a continuum of responses, and imprisonment should not be selected without considering less restrictive options.

The Nelson Mandela Rules address the treatment of prisoners rather than the direct substitution of punishment, but they remain relevant because they clarify that imprisonment should not impose suffering beyond the deprivation of liberty inherent in the sentence. They emphasize dignity, healthcare, protection from abuse, individualized treatment, preparation for release, and social reintegration. These principles restrict the internal content of punishment and support release-oriented practices. If the legitimate purposes of a custodial sentence have been achieved, continued confinement requires justification. Research on open prisons and temporary leave is relevant to this reintegrative dimension because controlled contact with employment, family, and community may reduce the destabilizing effects of institutional isolation (Neumann et al., 2026). Work-release research similarly indicates that structured employment opportunities can support reintegration and reduce post-release exclusion (Reichert et al., 2025). Such measures do not eliminate punishment, but they reduce its unnecessary collateral damage and create a pathway toward eventual non-custodial status.

The Bangkok Rules supplement this framework by addressing the circumstances of women in criminal justice. Women offenders may have histories of victimization, caregiving responsibilities, poverty, mental-health needs, or substance dependence that are inadequately addressed by conventional imprisonment. The imprisonment of primary caregivers may impose substantial harm on children who bear no responsibility for the offence. Gender-sensitive non-custodial measures are therefore essential to substantive proportionality. This does not mean that women should be exempt from responsibility as a class, but that sentencing should consider the differentiated effects of imprisonment and the availability of treatment, supervision, reparation, or community measures. A right not to be unnecessarily punished must be attentive to these consequences rather than treating formally identical sentences as necessarily equal.

International restorative justice principles provide another foundation. Restorative justice conceptualizes crime as harm to persons and relationships as well as a violation of public law. Its principal objectives include acknowledgement, participation, reparation, responsibility, and restoration. Victim–offender mediation, conferencing, community circles, restitution agreements, and restorative sentencing may provide forms of accountability more directly responsive to the victim than imprisonment. Restorative processes should not be understood as informal impunity. The offender may be required to confront the consequences of the offence, listen to the victim, repair harm, undertake treatment, or perform agreed community obligations. In some cases, these requirements may demand greater personal responsibility than passive incarceration. Nevertheless, safeguards are indispensable.

Participation must be voluntary, facilitators must be impartial, admissions must not be improperly used in subsequent proceedings, agreements must remain proportionate, and cases involving serious intimidation or unequal power require heightened protection.

Alternatives to punishment can be organized into several functional groups, although their boundaries overlap. Restorative alternatives include mediation, restitution, compensation, apology, conferencing, and community-repair agreements. Community-based alternatives include unpaid public service, probation-style supervision, vocational training, reporting duties, and structured reintegration. Therapeutic alternatives include addiction treatment, psychological intervention, counselling, anger management, and mental-health care. Supervisory alternatives include electronic monitoring, geographical restrictions, home confinement, semi-liberty, and conditional release. Procedural alternatives include diversion, suspension of prosecution, deferred sentencing, conditional discharge, and exemption from punishment. The legality and legitimacy of each alternative depend on whether it genuinely replaces a more restrictive response. An intervention should not be classified as an alternative merely because it occurs outside prison. Extensive surveillance, burdensome conditions, or prolonged supervision may produce substantial deprivation. The minimum-intervention principle requires comparison with the response that would otherwise be justified, including the possibility of no formal control beyond conviction or reparation.

Community sentencing offers substantial advantages where it is properly designed. It allows offenders to maintain employment, education, caregiving, and family relationships while remaining accountable. It may also enable direct reparation and reduce the public cost of imprisonment. Shepherd argues that expanded and credible community sentencing can reduce reoffending when sanctions combine supervision with interventions addressing the causes of offending (Shepherd, 2025). Community measures nevertheless require sufficient institutional credibility. Courts may avoid them if they believe that supervision is weak, treatment programmes are unavailable, or violations will not receive a timely response. Public confidence may also decline if alternatives are described only as efforts to reduce prison numbers rather than as structured forms of accountability. The feasibility of the right not to be punished therefore depends on the state's capacity to provide meaningful alternatives rather than simply removing custody without replacing necessary protective or rehabilitative functions.

Electronic monitoring requires particularly careful assessment. Research indicates that replacing incarceration with monitoring can reduce mortality, criminal involvement, and labour-market exclusion in some contexts (Al Weswasi & Bäckman, 2025). Other studies suggest that monitoring may assist supervision but that its effect depends on the characteristics of the monitored population and the services accompanying the technology (Bouffard & Butler, 2024). GPS-based monitoring may improve detection and compliance, yet evidence concerning long-term recidivism is mixed and does not support treating technology as a substitute for individualized intervention (Hawkes et al., 2024). For Iran, electronic monitoring should therefore be used primarily where a custodial sentence would otherwise be necessary and where community residence does not create an unacceptable risk. It should not become a routine sanction for persons who could safely receive ordinary release, restitution, or minimal supervision. Restrictions should be geographically and temporally proportionate, privacy rules should govern data, technical failures should not automatically trigger incarceration, and inability to pay should never exclude an otherwise eligible person.

Semi-liberty, open prisons, temporary leave, and work release occupy an intermediate position between custody and full community sanctions. They may preserve employment, family responsibility, and gradual reintegration while permitting structured supervision. Evidence concerning open institutions and leave suggests that reduced institutional isolation can support desistance without necessarily undermining public safety (Neumann et al., 2026). Work-release programmes may improve employment outcomes and reduce some forms of exclusion following imprisonment (Reichert et al., 2025). These arrangements are especially relevant where immediate full release is not justified but complete confinement is unnecessarily restrictive. They should nevertheless be treated as transitional rather than permanent control mechanisms. The purpose should be progression toward ordinary social participation.

A defensible feasibility framework for Iran must begin with legality. Courts and prosecutors cannot create non-punishment through unrestricted personal discretion. Every decision must have a statutory basis or arise from a legitimate interpretation of recognized legal principles. Legality protects both the accused and the public by preventing arbitrary preferences. The framework must next identify the legitimate purpose of intervention. A court should state whether the response seeks reparation, deterrence, rehabilitation, incapacitation, denunciation, or protection. Vague references to public interest are insufficient. Once the purpose is identified, necessity must be tested. The authority should ask whether a less restrictive measure can reasonably achieve the same purpose. Proportionality should then compare the burdens of the proposed punishment and the alternative with the seriousness of the offence, culpability, harm, and risk.

Individual assessment is equally necessary. The authority should consider criminal history, role in the offence, age, motivation, remorse, efforts to compensate, treatment needs, social circumstances, and realistic risk of repetition. Such assessment should not rely mechanically on socioeconomic stability. Poverty, unemployment, or weak family support should lead to supportive services rather than automatic classification as unsuitable for alternatives. Equality requires publicly defined eligibility standards, reasoned decisions, legal assistance, and review. The Iranian system should develop assessment instruments that inform rather than replace judicial judgment. Algorithmic or standardized risk tools must not reproduce discrimination through variables closely connected to class, residence, or prior exposure to policing.

Victim protection constitutes a separate and indispensable component. The authority must assess safety, risk of intimidation, the victim's need for information, compensation, participation, and the psychological consequences of the proposed response. Victim consent is essential for direct mediation, but absence of consent should not always require imprisonment where another non-custodial measure can provide protection and accountability. Conversely, victim forgiveness should not automatically eliminate public-interest concerns in serious offences. The feasibility framework must balance private reparation with the public dimension of criminal law.

The availability and quality of the alternative must also be demonstrated. A nominal treatment order is ineffective where no treatment provider exists. Community service is not meaningful where placements are unavailable or unrelated to the offender's abilities. Electronic monitoring is not legitimate where equipment is unreliable or privacy safeguards are absent. Courts should receive verified information concerning programme capacity before imposing alternatives. Compliance conditions should be limited to those necessary for the purpose of the measure. Technical or minor breaches should not automatically activate imprisonment; responses should be graduated and proportionate. Successful compliance should lead to termination of supervision and removal of avoidable collateral consequences.

Reasoned sentencing is the institutional mechanism through which the proposed right can become reviewable. The court should explain why punishment is necessary, why the selected type and severity are proportionate, and why less restrictive alternatives are inadequate. Independent sentencing review can identify inconsistency, excessive custody, and outdated assumptions about public protection (Gauke, 2025). Responses to sentencing review initiatives also emphasize that reform must preserve coherence, judicial independence, public confidence, and principled proportionality (Roberts et al., 2025). Iran could develop appellate standards under which failure to consider an available statutory alternative or failure to justify imprisonment constitutes a reviewable sentencing defect. This would not compel non-punishment in every eligible case, but it would transform consideration of alternatives from an invisible discretionary act into a legal duty.

Legislative reform should consolidate the principle that deprivation of liberty is a last resort in eligible ta'zir offences. The Code could require courts to consider exemption, deferment, suspension, community measures, and restorative responses before imposing short imprisonment. The law should define factors supporting and limiting non-punishment, including seriousness, violence, repetition, dangerousness, reparation, victim protection, and rehabilitative prospects. Prosecutorial diversion should be governed by transparent criteria and recorded reasons. Juvenile diversion should receive priority. Electronic monitoring should be free of discriminatory financial barriers. Community-service hours should correspond to culpability and personal capacity. Treatment should be based on professional assessment and informed participation.

Institutional reform is equally important. A national network of mediation services, treatment providers, social workers, community-service placements, probation-style supervision, and electronic-monitoring support is necessary. Judicial education should address the objectives and limits of alternatives. Data should be collected on eligibility, judicial use, completion, breach, recidivism, victim satisfaction, and socioeconomic disparities. Public communication should explain that non-custodial measures are forms of structured accountability rather than unrestricted forgiveness. Research on public persuasion in prison-reduction policies indicates that reform is more credible when it demonstrates concrete protection, proportionality, and social benefit (Momeni Moghadam et al., 2024). The global trend toward reassessing imprisonment further indicates that prison reduction must be accompanied by sustained investment in community justice rather than temporary administrative measures (Penal Reform & Thailand Institute of, 2025).

The right not to be punished should ultimately be recognized in Iran as a rebuttable principle against unnecessary penal intervention. It should be most influential in minor and non-violent offences, juvenile cases, first-time offending, reparable harm, low recidivism risk, and cases where treatment or social intervention directly addresses the causes of offending. It should be restricted where serious violence, organized criminality, repeated victimization, abuse of public power, grave danger, or substantial risks to victims make non-punitive measures inadequate. Even in serious cases, however, the right retains a limiting function by requiring proportionality, humane enforcement, periodic review, and avoidance of suffering exceeding the legitimate purposes of the sentence. The feasibility of the right therefore does not depend on eliminating punishment. It depends on replacing automatic punishment with justified punishment and replacing unnecessary punishment with accountable, proportionate, and effective alternatives.

5. Conclusion

The right not to be punished is a challenging concept because it appears to conflict with the conventional structure of criminal law, in which the establishment of criminal responsibility is ordinarily followed by the imposition of a sanction. A closer analysis demonstrates that the apparent conflict results from an overly broad understanding of the proposed right. Properly formulated, the right does not deny the authority of the state to define offences, prosecute harmful conduct, determine responsibility, protect victims, or impose punishment where punishment is genuinely necessary. It does not establish a general entitlement to impunity and does not release an offender from legal, moral, or social accountability. It instead requires that the transition from responsibility to punishment be treated as a distinct decision that must be justified by reference to legality, necessity, proportionality, effectiveness, public safety, victim protection, and the availability of less restrictive responses.

The most defensible meaning of the right is therefore a conditional right against unnecessary penal intervention. Punishment is the most intensive manifestation of that intervention, but the principle extends to criminalization, prosecution, pretrial restrictions, sentencing, and enforcement. At each stage, public authorities should select no more intervention than is necessary to achieve legitimate criminal justice purposes. The right consequently reallocates the burden of justification. The individual should not be required to establish an abstract entitlement to mercy. The state should demonstrate why the proposed restriction is needed, why a less harmful measure is insufficient, and why the burdens imposed remain proportionate to the offence and the individual's culpability.

The conceptual distinction between the right and existing leniency institutions must be preserved. Exemption from punishment, mitigation, deferment, suspension, conditional release, semi-liberty, electronic monitoring, prosecutorial diversion, mediation, and alternatives to imprisonment are not individually equivalent to the right. They are legal mechanisms through which the right may be implemented. The right functions at a higher normative level by providing a common justification for interpreting and coordinating those mechanisms. It explains why guilt need not invariably result in conventional punishment and why a court should examine whether responsibility can be expressed through reparation, supervision, treatment, education, community service, or restorative participation.

Iranian law contains substantial foundations for this interpretation. Constitutional protections of dignity, liberty, legality, fair process, and humane treatment restrict penal authority. The Islamic Penal Code recognizes individualized sentencing and numerous institutions capable of reducing, postponing, replacing, or terminating punishment. The Criminal Procedure Code permits forms of diversion, mediation, and prosecutorial leniency. Juvenile law prioritizes educational and corrective measures. These institutions collectively show that Iranian criminal policy has already moved beyond the idea that every conviction must result in the immediate and complete execution of conventional punishment.

These capacities remain fragmented and incomplete. Iranian law does not presently articulate a general right requiring courts to avoid unnecessary punishment. Eligibility for leniency is divided among separate provisions, and many decisions depend on broad discretion. Courts are not consistently required to explain why a custodial sentence is necessary when a statutory alternative exists. The availability of community service, mediation, treatment, supervision, and electronic monitoring differs across locations. Socioeconomic inequality may affect who can compensate victims, obtain treatment, maintain stable housing, or demonstrate suitability for community measures. Without equality safeguards, alternatives may become more accessible to socially advantaged offenders. Without institutional capacity, they may remain formal legislative possibilities rather than operational responses.

International human rights and criminal justice instruments reinforce but do not independently create an unrestricted right not to be punished. Their contribution lies in establishing a normative environment in which arbitrary detention, degrading treatment, grossly disproportionate punishment, unnecessary juvenile confinement, and indiscriminate reliance on custody are unacceptable. The Tokyo Rules support non-custodial measures throughout the criminal process. The Beijing Rules and the Convention on the Rights of the Child prioritize diversion, rehabilitation, and detention as a last resort. The Nelson Mandela Rules protect dignity and reintegration within imprisonment. The Bangkok Rules require gender-sensitive consideration of non-custodial responses. Restorative justice principles support participation, reparation, responsibility, and restoration. Together, these instruments demonstrate that modern criminal justice is not limited to a binary choice between punishment and complete inaction.

The alternatives capable of implementing the right are diverse. Restorative responses may provide restitution, acknowledgement, apology, mediation, and victim participation. Community service may combine accountability with maintenance of employment and family relationships. Supervision may manage risk without confinement. Treatment may address addiction, psychological vulnerability, or behavioural factors connected to offending. Educational and vocational programmes may strengthen reintegration. Electronic monitoring, semi-liberty, open institutions, and work release may reduce the harmful effects of custody where immediate unrestricted release is not appropriate. Procedural diversion and deferred sentencing may prevent unnecessary conviction or execution of punishment.

The legitimacy of these alternatives depends on their actual function. A measure cannot be regarded as an implementation of the right merely because it occurs outside prison. Excessive surveillance, prolonged conditions, unaffordable financial obligations, geographically restrictive monitoring, or coercive treatment may reproduce punitive severity under a different legal label. Alternatives must genuinely replace a more restrictive response, remain proportionate, and terminate when their purpose has been achieved. They should not widen the population subject to penal control.

A workable model for Iran should therefore require a structured judicial assessment. The court or prosecutor should identify the lawful objective of intervention, evaluate the seriousness of the offence and culpability, assess danger and risk of repetition, examine the offender's personal and social circumstances, determine the needs and safety of the victim, and consider whether an effective less restrictive response is available. The decision should be reasoned and reviewable. Access to alternatives should not depend on wealth, family influence, or geographical location. Restorative participation should be voluntary. Treatment should be professionally justified. Breaches should receive graduated responses rather than automatic imprisonment. Data should be collected to identify unequal application and evaluate outcomes.

The right should have its strongest operation in minor and non-violent offences, juvenile cases, first-time offending, reparable harm, genuine remorse, successful compensation, low dangerousness, and circumstances in which rehabilitation can be achieved through community-based intervention. Its application should be more restricted in cases involving serious intentional violence, organized offending, repeated victimization, substantial dangerousness, grave abuses of public authority, or continuing threats to victims and society. These restrictions do not eliminate the right's relevance in serious cases. Even where punishment is necessary, the right continues to demand proportionality, humane treatment, avoidance of excessive collateral harm, and periodic reassessment of continued confinement.

The recognition of this right would not weaken criminal justice. It would strengthen its legitimacy by ensuring that state coercion is used for identifiable purposes and only to the extent required. It would distinguish principled accountability from reflexive punishment, protect victims through more responsive forms of reparation, reduce unnecessary imprisonment, preserve opportunities for reintegration, and direct institutional resources toward offenders who present genuine risks. The central conclusion is therefore that Iranian law possesses sufficient normative and statutory capacity to recognize a limited and derivative right not to be punished, but not yet a comprehensive and directly enforceable right. Its future development requires legislative clarification, reasoned sentencing, equality safeguards, effective community institutions, victim protection, empirical evaluation, and a clear presumption that punishment must remain the last justified response rather than the first automatic consequence of crime.

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.

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