

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

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Received: 2026-02-10	Revised: 2026-07-13	Accepted: 2026-07-20	Initial Publish: 2026-07-21	Final Publish: 2026-11-01
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1. Round 1

1.1. Reviewer 1

Reviewer:

The paragraph beginning with “Against this background, the concept of the ‘right not to be punished’ has emerged” presents the central concept, but the manuscript should provide a more rigorous explanation of the precise type of right being proposed. The article later describes it as a “claim-right against the state,” yet it remains unclear whether the authors regard it as a constitutional right, a statutory right, a principle of sentencing, an interpretive presumption, a human rights derivative, or a normative policy proposal. These classifications have materially different legal consequences. A constitutional right could invalidate legislation; a statutory right would depend on express enactment; an interpretive principle would guide judicial discretion without independently creating remedies; and a policy principle would primarily address legislative reform. The authors should identify the proposed right’s current *de lege lata* status and distinguish it from its desirable *de lege ferenda* status. This distinction should appear early in the article and should remain consistent throughout the analysis.

The statement that the right is “a conditional claim against punishment that is unnecessary, disproportionate, arbitrary, excessively harmful, or replaceable by a less restrictive response” needs conceptual refinement because it combines several distinct standards. Unnecessary punishment is not necessarily identical to disproportionate punishment; arbitrary punishment may be procedurally or substantively defective; and “excessively harmful” is too indeterminate unless compared with a legal baseline. The manuscript should define each ground separately and explain whether these requirements are cumulative or alternative. It should also address whether “replaceability” is assessed according to equal effectiveness, reasonable effectiveness, or sufficient effectiveness in achieving specified sentencing purposes. A formal analytical test would be helpful. For instance, the authors could distinguish legality, suitability, necessity, proportionality in the strict sense, and enforceability

as separate stages. This would convert the proposed right from a broad moral proposition into a more operational legal framework capable of guiding judicial decisions.

The proportionality discussion correctly observes that proportionality has both quantitative and qualitative dimensions, but the manuscript should more clearly differentiate ordinal proportionality, cardinal proportionality, and the necessity component commonly used in constitutional rights adjudication. The sentence that “even a comparatively short term of imprisonment may be more intrusive than necessary where a community response would adequately satisfy the relevant objectives” primarily concerns necessity rather than proportionality in the traditional desert-based sense. The authors should clarify which model of proportionality they employ. If they propose a rights-based proportionality test, the analysis should include legitimate purpose, rational connection, least restrictive means, and balancing. If they rely on penal proportionality, greater attention should be given to offence seriousness, culpability, and comparative sentencing consistency. The present combination of these models is potentially productive but analytically incomplete.

The section on Iranian law refers generally to constitutional protections of “life, property, dignity, residence, occupation, legality, fair process, and humane treatment,” but it should cite and analyse the specific constitutional provisions supporting these claims. A doctrinal article cannot rely on generalized references to constitutional values. The authors should identify the relevant articles of the Constitution of the Islamic Republic of Iran, explain their established legal meaning, and show how they can support a principle restricting unnecessary punishment. They should also consider whether constitutional review mechanisms in Iran permit individuals to invoke these provisions against penal legislation or sentencing decisions. The practical enforceability of constitutional rights in the Iranian legal system is crucial to the feasibility inquiry. Without this analysis, the constitutional foundation remains abstract and may overstate the capacity of constitutional norms to generate an enforceable right.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

The methodological paragraph in the Introduction states that the study adopts “a qualitative, doctrinal, and normative method,” but the research design remains insufficiently transparent. The authors should explain how the legal sources were selected, which Iranian statutes and international instruments were included, why particular sources were prioritized, and how conflicting interpretations were resolved. The manuscript should also specify the temporal scope of the analysis and clarify whether judicial decisions, legislative history, administrative regulations, and implementation reports were examined. The reference to qualitative inquiry is not enough, because doctrinal legal analysis requires a clearly articulated method of interpretation and synthesis. The authors should indicate whether they used textual, systematic, purposive, constitutional, or rights-consistent interpretation. They should also distinguish the descriptive stage, which identifies the current law, from the normative stage, which proposes reforms. The absence of a more detailed methodology weakens the replicability and verifiability of the study.

The first paragraph of “Conceptual and Normative Foundations” states that the right should be understood as a claim-right whose correlative is a state duty “to examine and articulate the grounds that make punishment necessary.” This is one of the article’s strongest propositions, but its legal consequences remain underdeveloped. The authors should specify who holds the corresponding duty at each stage: the legislature, prosecutor, trial judge, appellate court, or enforcement authority. They should also explain what remedy follows if the duty is violated. Would failure to consider a non-custodial alternative invalidate the sentence, constitute an error of law, justify appellate review, or merely amount to poor judicial reasoning? A right without an identifiable duty bearer and remedy risks remaining rhetorical. The manuscript should therefore add a paragraph explaining the institutional structure of the proposed claim, including standing, burden of proof, standards of review, and possible judicial remedies.

The paragraph that extends the right beyond sentencing to “criminalization, prosecution, pretrial restrictions, sentencing, and enforcement” significantly broadens the subject of the article. This expansion is intellectually interesting but may render

the concept overly diffuse. A right against criminalization, a right to diversion, a right against pretrial detention, and a right against continued punishment involve different legal principles and institutional actors. The authors should either narrow the article to punishment in the strict sense or explicitly develop a layered model distinguishing the right not to be criminalized unnecessarily, the right not to be prosecuted unnecessarily, the right not to be detained unnecessarily, and the right not to be punished unnecessarily. At present, the manuscript sometimes uses “punishment” and “penal intervention” interchangeably, which may create doctrinal confusion. Greater terminological discipline is required to preserve the analytical boundaries of the central concept.

The discussion distinguishing the right from “amnesty, pardon, limitation periods, extinction of prosecution or punishment, mitigation, exemption, deferment, suspension, conditional release, electronic monitoring, and alternative sanctions” is important but should be reorganized into a systematic taxonomy. The current discussion moves between institutions that negate liability, terminate proceedings, modify sentencing, postpone enforcement, or replace custody without clearly classifying them. The authors should distinguish at least four categories: institutions preventing conviction, institutions permitting conviction without punishment, institutions modifying the type or severity of punishment, and institutions changing the manner or duration of enforcement. This classification would clarify which institutions genuinely instantiate the proposed right and which merely reduce penal severity. The authors should also explain whether a person serving an electronically monitored sentence has truly “not been punished” or has instead received a different form of punishment. Such distinctions are essential because the article’s title refers to both non-punishment and alternatives, implying that these concepts are related but not identical.

The paragraph on human dignity states that “the offender remains a rights-bearing person rather than an object through which social anger may be expressed.” Although normatively persuasive, this formulation risks suggesting that retributive punishment is necessarily an expression of social anger. The authors should engage more carefully with contemporary communicative and retributive theories, which may understand punishment as public censure, recognition of responsibility, or restoration of legal equality rather than emotional retaliation. A credible feasibility study should test the proposed right against the strongest opposing theories, not only against simplistic punitive models. The authors should therefore include a more balanced treatment of retributivism and explain whether desert creates a positive reason to punish even when deterrence or rehabilitation can be achieved through non-punitive measures. The article should confront the difficult possibility that a deserved punishment may remain normatively justified despite the availability of a less restrictive response. Addressing this objection would materially strengthen the manuscript.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor’s decision: Accepted.

Editor in Chief’s decision: Accepted.