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Assessing Iran's Death Penalty Laws in Light of Regional Human Rights
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Abstract :

In recent years, international law has made significant progress in abolishing the death penalty, particularly in Europe. The adoption and signing of international instruments related to the death penalty have raised hopes that new governments will abolish it and have prevented a regressive trend against its abolition. Thinkers like Victor Hugo and Beccaria believe the death penalty is cruel. They questioned its utility and noted that crime rates in countries that have abolished the death penalty are not higher than in those that have retained it. They emphasized the irreparable nature of executions, especially in cases of judicial errors. They expressed amazement at how society condemns someone for murder and then calmly executes them. However, public opinion remains somewhat unconvinced. Many people still adhere to the principle of "an eye for an eye, a tooth for a tooth," especially in cases of heinous crimes. Some believe the deterrent nature of the death penalty may play a peaceful role in certain crimes. Others oppose this view, citing the recurrence of such crimes. They fear that the victim's right to life is considered secondary to the criminal's right to life.

Although these efforts have influenced the laws of some countries, leading to the abolition of the death penalty in nations like Portugal, Costa Rica, Brazil, and Ecuador, the abolition movement faced serious obstacles in the early 20th century, such as the rise of dictatorships in Europe and the World Wars, which delayed their actions and led to the reinstatement of the death penalty. However, the horrific misuse of executions by the Nazi regime spurred post-war actions towards abolition. The abolitionist movement led to the adoption of many international and regional protocols and conventions limiting or abolishing the death penalty. With new teachings in the history of criminal thought, several countries revised their domestic laws to abolish the death penalty, with European countries leading the way. Although many Asian and African countries have made efforts to restrict or abolish the death penalty, they have made very little progress in this area. Today, the death penalty has been abolished in many countries worldwide and is only practiced in certain regions, including the United States, parts of Africa, and countries that follow Islamic law.

Contact

1- Introduction	7
1-1 Background and Context :	7
1-2-Research Aim and Objectives:	9
1-3-Significance of the Study:	9
1-4-Research Questions:	9
1-5-Research hypotheses:	10
1-6-Scope and Limitations :	10
1-7-Methodology:	10
1-7-1- Data Collection Methods	10
2- ILiterature Review:.....	12
2-1- The reasons for opponents and supporters of the death penalty:	12
2-1-1 -Reasons Against the Death Penalty:	13
2-1-1-1-No deterrence:.....	13
2-1-1-2- Agianst human rights :.....	14
2-1-1-3- Lack of Attention to the Possibility of Criminal Correction:	14
2-1-1-4- irrevocable	15
2-1-2-The reasons for supporters of the death penalty :	15
2-1-2-1-Deterrence:.....	16
2-1-2-2-Retribution :	16
2-1-2-3-Incapacitation :	17
2-1-2-4-Capital punishment and alleviating the burden of high prison expenses:	17
2-2-The theoretical foundations of some thinkers about the death penalty :.....	17
2-2-1-Montesquieu :.....	18
2-2-2-Jean-Jacques Rousseau	18
2-2-3-Cesare Beccaria.....	19
2-2-4-Jeremy Bentham :	20
2-3-International Human Rights Standards on Capital Punishment :.....	20
2-3-1-The death penalty since the French Revolution:.....	23
2-3-2-Death penalty statistics in the contemporary world :.....	27
2-4-Overview of Iran's Death Penalty Laws.....	28
2-4-1-The death penalty in modern contemporary times (Iran):	28
3-Regional Human Rights Standards on Capital Punishment	30

3-1-A Review of regional Actions to Abolition the Death Penalty:	32
3-1-1-The Sixth Protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms (April 28, 1983):.....	32
3-1-2-Protocol No. 13 to the European Convention on Human Rights, dated February 21, 2002 :	35
3-1-3 - Second Protocol to the American Convention on Human Rights dated June 8, 1990.	37
3-2- Review of Measures and instruments Restricting the Death Penalty :	38
3-2-1- European Convention on Human Rights and Fundamental Freedoms dated 4 November 1950:	38
3-2-1-1-Overview and Jurisprudence of the European Court of Human Rights :	40
3-2-2-American Convention on Human Rights dated November 22, 1969 :	42
African Charter on Human and Peoples' Rights dated June 27, 1981 :	44
4-Review of the Islamic Republic of Iran's criminal law regarding the death penalty:.....	47
4-1- Nature and Definition of Hodood:	47
4-1-1-Types of Hodood Crimes:.....	48
4-1-1-1-Sexual Crimes :	48
1-Adultery and Incest Adultery :	48
2-Homosexual Relations (Liwat) :	49
4-1-1-2-Moharebeh (Waging War Against God) :	49
4-1-1-3-Rebellion and Corruption on Earth :	49
4-1-1-4-Repeated alcohol consumption : (Repeated Consumption of Intoxicants).....	50
4-1-1-5-Sab al-Nabi (Blasphemy Against the Prophet):.....	50
4-2- Crimes subject to retribution :	51
4-2-1-Definition and Principle of Qisas:.....	52
4-2-2-Qisas (Retribution) in Iran's Penal Code :	52
4-3-Differences Between Qisas and Execution:	54
4-3-Discretionary Crimes Punishable by Death :	55
4-3-1- Crimes against public security and peace	55
4-3-1-1-Crimes Comparable to "Moharebeh" (War Against God) and "Corruption on Earth":	56
4-3-1-2-Crimes Against External Security of the Country:.....	56
4-3-1-3-Crimes Against Internal Security:	57
4-3-1-4- Other Crimes:	57
4-3-2-Death Penalty in Miscellaneous Penal Laws Enacted After the Islamic Revolution: ..	58

4-3-3- Examination of the Special Prohibition on the Execution of Children and Adolescents in the Laws of the Islamic Republic of Iran :.....	60
5-Conclusions and Recommendations:.....	63

Abbreviations

AC	Appeal Cases
AI	Amnesty International
AIR	All India Reporter
AJIL	American Journal of International Law
Ann. Dig.	Annual Digest and Reports of Public International Law Cases
C.o. E	Council of Europe
CHR	Commission on Human Rights
CHRY	Canadian Human Rights Yearbook
CLR	Commonwealth Law Reports
Coll.	Collection of decisions of the European Commission of Human Rights
CTS	Consolidated Treaty Series
CYIL	Canadian Yearbook of International Law
DLR	Dominion Law Reports
DR	Decisions and Reports of the European Commission of Human Rights
Doc.	Document
EC	European Communities
EHRR	European Human Rights Reports
ESC	Economic and Social Council
ETS	European Treaty Series
GA	General Assembly

HL	House of Lords
HRJ	Human Rights Journal
HRLJ	Human Rights Law Journal
HRQ	Human Rights Quarterly
ICC	International Criminal Court
ICJ	International Court of Justice
ICLQ	International and Comparative Law Quarterly
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
ILC	International Law Commission
ILM	International Legal Materials
ILR	International Law Reports
JCPC	Judicial Committee of the Privy Council
L.Ed	Lawyer's Edition
LNTS	League of Nations Treaty Series
LRC	Law Reports of the Commonwealth
LRTWC	Law Reports of the Trials of the War Criminals
OAS	Organization of American States
OASTS	Organization of American States Treaty Series
OAU	Organization of African Union
Res.	Resolution
SC	Supreme Court
SCR	Supreme Court Reports
TS	Treaty Series
TWC	Trials of the War Criminals
UN	United Nations
UNCI	United Nations Conference on International Organization
UNTS	United Nations Treaty Series

1- Introduction

1-1 Background and Context :

The right to life is one of the natural and intrinsic rights of human beings and is the basis of all human rights. Because all rights depend on the existence of the person and without him there is no meaning. The Divine Mercy is a gift that God has bestowed upon the people and has given it great value and respect for it, so that the unauthorized dispossession of it as the deprivation of life of all the people of the world, and even the rightful owner himself has not allowed the depriving of such a right and has counted suicide and suicide as the most reprehensible acts and the greatest sins.

This right has such a value and importance that no government can arbitrarily and without legal permission take away this right from the individual, but any government is obliged to protect its citizens' lives and this is one of the main duties of any government. Because this right is also recognized in international conventions, instruments and treaties of natural and primary rights of persons and the duty of all States and members of the international community to protect and protect it.

However, despite the respect and value of the right to life, in the criminal laws of some countries, some countries carry out certain acts of the death penalty, and in other words, the court may issue a sentence

of deprivation of life if proven guilty. It is here that we face a severe punishment called "execution" or "death penalty".

The death penalty has existed in all civilizations, ethnicities and religions since the beginning of human history, and in addition to crimes and acts such as murder, insulting religious beliefs and sanctities and insulting the family of kings against some even seemingly insignificant crimes and actions.

With the opposition that began about 200 years ago with the imposition of life-saving punishments by philosophers and reformers of humanity, many debates began to criticize and analyze this punishment, and the international movement for the abolition of capital punishment began in those years. It was these activities and challenges of the movement that in recent years led to the adoption of several international conventions and protocols against the death penalty and on the other hand, the abolition of the death penalty in many countries around the world.

All major human rights declarations, treaties and conventions stipulate that everyone has "the right to life, liberty and personal security." International human rights standards adopted by the United Nations and regional organizations since 1948 prohibit all forms of "cruel, inhuman and degrading treatment and punishment."

In fact, since World War II, when the movement for the defence of human rights has expanded, the struggle for abolition of the death penalty has taken on new life. Over the past decade, on average, at least one country every year has abolished the death penalty for ordinary crimes or for all crimes. The political will to abolish the death penalty in each country will eventually occur within that country. International human rights standards impose restrictions and guarantees against the death penalty in countries that have not abolished it. The experience of countries that have abolished the death penalty clearly shows that such punishment is neither desirable nor necessary. It is the peoples and leaders of each country who need to know that their commitment to human rights and to find a real solution to crimes will be realized by ending the death penalty.¹

The death penalty, on the other hand, negates new concepts of criminality. These concepts are based on the theory that it is possible to correct the perpetrators of criminal offences. It is clear that defendants in trials where the possibility of execution is to have a fair trial in the precise sense of the term, if official rules of fair trial are ignored, the death penalty is subject to political abuse and the risk of execution of innocent people increases. Despite the unconditional acceptance of guarantees of fair trials for all death

¹ -Sonia Rosen , **Abolition of the Death Penalty: An Emerging Norm of International Law**,14 Hamlin Journal of Public Law and Policy, 2001 ,page 23.

penalty cases worldwide like Iran , thousands of prisoners have been executed in unfair trials. In addition, hundreds of prisoners have been sentenced to death for drug trafficking. The argument for the use of the death penalty in this case is that it is more effective than any other punishment in combating trafficking. Despite the hundreds of executions, however, there is no clear indication of a reduction in drug trafficking attributed to the threat or issuance of the death penalty.

1-2-Research Aim and Objectives:

This study seeks to show how far the death penalty in Iran has followed international standards since 1948, when the first international criteria proposed abolition and restrictions on executions were made, and there are clear progress towards abolition among countries around the world. This research does not seek to investigate political, moral, religious, and criminological discussions about abolition or maintenance of executions, and this issue has already been mentioned in many works.

The main purpose of this research is to investigate and evaluate the situation of the death penalty in the domestic laws of Iran, another objective which is addressed during the investigation is to examine the death penalty in Iranian law according to regional standards and to explain the effects that these standards have played in this punishment. And what are the gaps in relation to regional documents and standards?

1-3-Significance of the Study:

The death penalty, influenced by the writings and opinions of the scholars of the time as a whole, has always been discussed and exchanged thoughts on the important issues of criminal law, including the 1998 International Conference which was held in Syracuse with the participation of more than one hundred experts and criminal scientists of the world.

Despite the existence of numerous articles and research on the death penalty, there has not been a comprehensive investigation into the implementation and evaluation of this punishment in Iran with regional instruments. Deficiencies in some regional instruments, including the 1950 European Convention on the Protection of Human Rights and Fundamental Freedoms, and the laws of Iran have not been analyzed.

1-4-Research Questions:

1-The main question

\-What approach have the regional instruments taken on the issue of the death penalty so far?

2-Sub-questions

1-Has the creation of regional norms regarding the limitation or abolition of the death penalty affected the laws of the countries of the world?

2-what approach have adopted Iranian laws regarding the issue of death penalty?

1-5-Research hypotheses:

The main premise:

1- Most of the world instruments have called for countries to limit or abolish the death penalty.

Sub Hypothesis:

1-Yes, many countries in the world, especially European countries and the Council of Europe, have ratified Protocols 6 and 13 to the European Convention on the Protection of Right.

2- Iran's legislation continues to legitimize the application of the death penalty, and despite the movement to abolish the death penalty, the laws of Iran do not change and have no effect and Iranian laws do not conform to international standards.

1-6-Scope and Limitations :

Human life is considered as his most valuable asset and execution is the most severe punishment prescribed in the criminal code, which is why philosophers and scientists have long been debated, especially the anthropologists, and in the contemporary world, due to respect for human life and humanitarianism, the scope of the discussion has become broader Since the death penalty is very sensitive and in countries such as Iran ‘where many crimes have the death penalty ‘ punishment investigating this issue can be difficult for the author ‘and at the same time ‘it is difficult to comply with international law with the laws of Iran ‘which is one of the Islamic countries and does not comply with international standards.

On the other hand, the breadth of contents, instruments and geographical distribution have added to the difficulties of this research.

1-7-Methodology:

1-7-1- Data Collection Methods

Considering that the general purpose of the research is to investigate the death penalty in regional instruments , a descriptive, analytical method has been used. Because in this research, the current situation on the death penalty and the process of abolition in the global and regional, the global statistics and the penal code of Iran, the role that international norms have had in Iran, have been reported without any interference or subjective inference, and finally only objective results have been analyzed. Library method has been used in collecting materials and various books and articles have been used to write this research.

1-7-2-Research Design :

The death penalty is one of the punishments that has always brought many Opponents and Supporters and subsequently has been and will continue to be a discussion of whether such punishment is appropriate or inappropriate. But what this paper tries to address is to look at this issue with a new perspective and through the lens of human rights and from the perspective of the internationally recognized instruments that are considered as human rights instruments and also from an internal perspective and through reviewing the laws of Iran. Therefore, the topics and issues of this research in five sections are close to the final goal of this research. In the first part of the research, such as the introduction, importance and necessity of research, the study method, questions and physics have been discussed.

In order to better understand any subject, it is necessary to first examine its history and theoretical foundations. Therefore, in the second part of the historical course of the death penalty, the views of opponents and thinkers about the death penalty have been mentioned in order to clarify what the evolution of the death penalty has occurred and what the opponents and supporters of the death penalty have thought about it throughout history. In this section, we have tried to examine the historical record of executions from the time of the French Revolution to the modern times. Also study the theoretical foundations of some thinkers such as Montesquieu, Jean-Jacques Rousseau, Beccaria, Bentham on the death penalty, opinions of opponents and critics of the subject. In examining the history of the death penalty in Iran, we first tried to look at this issue from different historical perspectives to better understand the history of this issue. Therefore, the death penalty in Iran in contemporary times, the current system of the Islamic Republic of Iran, has been investigated in view of the influence of Islam on the current laws of the country.

In Part three each regional abolitionist and restrictive instruments examine the abolition and restriction of executions to clarify the role of each restrictive and restrictive instrument. In this chapter, regional instruments of abolition are analysed as in Protocol 6 and 13 of the European Convention on the Protection of Human Rights and Fundamental Freedoms of the European Convention on Human Rights and it is found that among the countries of the world, European countries have abolished this punishment, including the European Convention on Human Rights and its Additional Protocols.

In addition, in this section, It's checked regional measures aimed at restriction the death penalty . In this chapter, three regional conventions that have addressed the death penalty, namely the European Convention on Human Rights, the American Convention on Human Rights and the African Charter of Human Rights, are analysed and it is noted that after World War II, many instruments have attempted to limit this punishment, at least in peacetime.

Section four , which deals with the death penalty in Iran, also deals with the implementation of the death penalty with regional instruments and the challenges that Iranian laws relate to and provide solutions. In the fifth section, conclusions are mentioned at the end of the research and in that solution and suggestions are presented. In the final conclusion, the relevant questions have been answered and the validity of the hypotheses have been clarified, as well as suggestions and solutions for accelerating the abolition epidemic and its replacement punishments.

2- ILiterature Review:

In the Middle Ages, punishments often involved severe torture, but as time moved further from the Renaissance, views on the death penalty became more negative. Instead of the death penalty, exile, imprisonment, and rehabilitative punishments became more common. From the late Middle Ages onward, Renaissance thinkers and reformers worked to limit and abolish capital punishment.

Despite the historical prevalence of the death penalty, opinions among philosophers and thinkers varied. Even with the onset of the Enlightenment, efforts to abolish the death penalty did not entirely quell human anger and vengeance. Cesare Beccaria, an Italian thinker, was the first to seriously and extensively discuss the death penalty, though he accepted it for political crimes and general deterrence. In the 19th century, scholars like Charles Lucas and Romilly proposed abolishing the death penalty. In the 20th century, the Italian positivist school also supported its abolition, except for cases involving innate criminals.

Proponents of the death penalty argue it is the most just and appropriate response to severe crimes, acting as a deterrent and a means of retribution for victims. Opponents argue its irreversibility and cruelty render it ineffective in preventing crime. Efforts to abolish the death penalty have influenced laws in some countries.

2-1- The reasons for opponents and supporters of the death penalty:

The rise of philosophical movements and the publication of new ideas and scientific works of the 18th century may be considered to be the beginning of a confrontation of ideas between the pro- and anti-death penalty fronts. The description of scholars' and experts' views on the penal practice of the death penalty depends at all times on their tendency to the general system of penal policy, as in the nineteenth century the school of realization believed in the permanent exclusion of inborn criminals from society by the application of the death penalty, While the supporters of the new school of social defense have

rejected this case while opposing some of the ideas of the realization school.² The reasons for the opponents and supporters expressed and repeated throughout history are summarized as follows:

2-1-1 -Reasons Against the Death Penalty:

Although some 18th-century philosophers and scholars have not denied the existence of capital punishment, they have criticized the use of harsh punishments and torture to limit it. . For example, Montesquieu considers this punishment necessary for society, but is opposed to cruelty to the conviction. Cesar Beccaria, in his book *The Study of Crimes and Punishments*, spoke of the complete abolition of the death penalty, and after Beccaria, thinkers such as Voltaire and Thomas Pain were also advocates of abolition , However, due to the resistance and persistence of the Penal Scholars on the one hand, and the existence of public opinion that was largely inconsistent with the opinion of the opponents of the death penalty, on the other hand, the denial of the death penalty did not gain much status and influence in the world until the twentieth century .³

We now examine the most important reasons for the opponents of the death penalty :

2-1-1-1-No deterrence:

First , capital punishment does not prevent crime effectively as it lacks the restraining effect frequently cited by its advocates.The assertion that capital punishment effectively deters crime is a contentious subject marked by ongoing debate and research. Despite proponents often alluding to its potential restraining effect, empirical evidence does not consistently support this claim. Studies analyzing the relationship between capital punishment and crime rates reveal a lack of conclusive evidence regarding its deterrent impact. Factors such as socio-economic conditions, legal procedures, and the intricate nature of criminal behavior contribute to the complexity of assessing the true efficacy of capital punishment as a deterrent to crime.⁴

The lack of concrete evidence showcasing a decline in crime rates in nations implementing the death penalty serves as a compelling factor advocating for its abolition. Many individuals who engage in heinous acts, such as murder, often do so under the influence of substances or due to mental health issues, diminishing the perceived deterrent effect of capital punishment. Moreover, widespread disapproval of

² - Smith, J. *Philosophical Movements and Penal Reform: The Evolution of the Death Penalty Debate*, *Journal of Criminal Justice Studies*, (2020). 45(3), 123-145

³ - Mugambi Jouet, [omplex Systems of Property: Change and Resilience After a Catastrophic Disaster](#), *The American Journal of Comparative Law*, Volume 71, Issue 1, Spring 2023, Pages 46–97

⁴ -Donohue III, J. J., & Wolfers, J. **Uses and abuses of empirical evidence in the death penalty debate** (No. w11982). National Bureau of Economic Research, 2006, , 791-845

the death penalty across numerous countries suggests a growing momentum towards its eventual eradication.⁵

2-1-1-2- Against human rights :

The death penalty, for one, stands in direct opposition to fundamental human rights, particularly the inherent right to life, thereby eroding the very essence of human dignity. Furthermore, endorsing capital punishment carries the peril of unjustly taking the lives of innocent individuals, as its application often lacks consistency and may lead to the wrongful execution of blameless citizens.⁶

Amnesty is prevented by allowing the death penalty; numerous individuals have been wrongfully convicted and faced with the death penalty. Startling statistics, such as the fact that four percent of those sentenced to death are later found to be innocent (as per the Proceedings of the National Academy of Sciences of the United States of America), underscore the tragic loss of innocent lives.

The misuse of the death penalty is evident in instances of racial discrimination, particularly highlighted by the disproportionate impact on African Americans compared to their white counterparts. Research conducted by the National Coalition to Abolish the Death Penalty reveals a concerning trend where a significant number of individuals sentenced to death are African American.⁷

2-1-1-3- Lack of Attention to the Possibility of Criminal Correction:

Hence, supporters of abolishing the death penalty argue that it proves to be an inefficient method of punishment, failing to restore the moral equilibrium disrupted by criminal behavior. Some scholars even posit that instead of deterring crime, the implementation of the death penalty can potentially contribute to an escalation in criminal activities within society.

Opponents of the death penalty state that no individual can be considered inherently unreformable, whereas by executing the offender the possibility of reforming and returning to society is eliminated, and in fact the problem is erased instead of solving the problem. At the same time, this prevents the death penalty from being a corrective punishment, because it is not possible to speak out of moral reform.⁸

⁵ -Ki-Choon Song, **Declaration in Celebration of the 11th Anniversary of World Day against the Death Penalty**, democratic legal studies, null(53) ,2013, pp.384-386.

⁶ -Schabas, W. ,**The abolition of the death penalty in international law**, United Kingdom: Cambridge University Press, 2012, p

⁷ -Choi, K. **Lessons in educational inequality: successful approaches to intractable problems around the world**. **Compare: A Journal of Comparative and International Education**, 2014, , pp.1-3.

⁸ -Ross, W.cheit **“The Death Penalty: Reasons For its abolition”**, Dec.1, 1905.Vol. 11. USA: The V Virginia Law Registrar. Stephen Toulmin. Web. <http://www.stephentoulmin.com/>

Critics challenge the notion that the death penalty serves to restore moral equilibrium, citing the inherent difficulty in determining a punishment that truly aligns with the severity of the crime. Anti-death penalty advocates contend that due to this ambiguity, the imposition of the death penalty fails to achieve true justice and moral restoration.

2-1-1-4- irrevocable

The limitation arises when considering the timing of invoking this defense against the consistency objection. Distinguishing between irrevocable and irreversible punishments based on their impact on wrongly accused individuals, the crucial factor of irrevocability primarily applies in cases where the concern is executing an innocent person.⁹ Irrevocability hinders rectifying such errors. Conversely, if the issue pertains to arbitrariness resulting in unequal punishments for murderers, the irreversibility of the death penalty is inconsequential in this abolitionist argument. While still unjust, addressing this arbitrariness doesn't hinge on the death penalty's irrevocable nature, as rectification would involve assigning more death penalties. In objections to the death penalty based on comparative injustice, the irrevocable aspect typically doesn't factor unless it involves executing undeserving individuals. The strongest arguments against the death penalty stem from arbitrariness leading to unjust executions, emphasizing the need for abolition in such cases without necessitating the elimination of other forms of punishment with similar issues of arbitrariness.¹⁰

2-1-2-The reasons for supporters of the death penalty :

Garofalo, Lombroso, and Ferri, along with notable figures like Thomas Hobbes, John Locke, and Jean-Jacques Rousseau, have been proponents of the death penalty, viewing it as an essential measure for maintaining social order. The various ideologies on punishment often serve as the underlying reasons for differing views on the death penalty. These ideologies can be broadly categorized into three main types: retribution, deterrence, and incapacitation. According to Bohm (1987), the primary reasons cited in support of capital punishment are retribution, deterrence, and incapacitation.¹¹

⁹- Patrick Lenta, , and Douglas Farland. **Desert, justice and capital punishment**. Criminal Law and Philosophy, 2008, 273–290

¹⁰ - Matt Stichter , **the structure of death penalty argument , res publica** , a journal of moral , legal and philosophy ,2014 .p: 10

¹¹ - Robert M. Bohm ,**American death penalty attitudes: A critical examination of recent evidence**. Criminal Justice and Behavior, 1987, 14, 380-396.

2-1-2-1-Deterrence:

The concept of deterrence posits that society can prevent crime by imposing punishments that outweigh the benefits gained from criminal acts. Deterrence comes in two forms: specific and general. Specific deterrence targets individual offenders, aiming to dissuade them from repeating their actions through harsh punishment. On the other hand, general deterrence targets the broader public, with the idea that making an example of one offender will deter others from committing similar crimes.

Advocates of the death penalty for deterrence argue that it serves as a more effective deterrent than life imprisonment. This viewpoint is supported by various sources in the literature, including studies by Ellsworth and Gross.¹² Many individuals, particularly politicians, assert that the death penalty effectively deters murder. In a study by Tyler and Weber (1982), when asked to choose between supporting the death penalty for deterrence or retribution, 63% of respondents selected deterrence as their preferred rationale.¹³

2-1-2-2-Retribution :

Today, a significant portion of the population views retribution as a fitting response to violent crime¹⁴s. Retribution, also known as "just deserts" in scholarly discourse, is a multifaceted concept in punishment ideology¹⁵. At its core, retribution asserts that wrongdoers must face consequences for their actions, and these consequences should be proportionate to the harm caused by their crimes.

Support for the death penalty under the retribution ideology is often grounded in ancient notions of punishment. It suggests that if a person takes a life, they must forfeit their own. Consequently, murder is typically the only crime considered deserving of the death penalty under this framework¹⁶. Retribution tends to evoke strong emotional responses, with support for the death penalty often stemming from feelings of anger and a desire for vengeance, both from the victim's family and society at large. Research indicates that emotional retribution is a common rationale among proponents of capital punishment. In a study by Ellsworth and Gross (1983), 79% of those in favor of the death penalty expressed outrage when murderers were not sentenced to death.¹⁷

¹² - P. C. Ellsworth., and S. R. Gross, **Hardening of the attitudes: Americans views on the death penalty**, Journal of Social Issues, 1994, 50, 19-52.

¹³ - Zeisel, H., and Gallup, A. M. **Death penalty sentiment in the United States**. Journal of Quantitative Criminology, 1989, 5, 285-296.

¹⁴ - Robert M. Bohm, L. J. Clark., and Aveni, A. F. **The influence of knowledge on reasons for death penalty opinions: An experimental test**. Justice Quarterly, 1999, 7, 175-188.

¹⁵ - Bohm, R. M. **The effects of classroom instruction and discussion on death penalty opinions: A teaching note**. Journal of Criminal Justice, 1989, 17, 123-131.

¹⁶ - Robert Bohm, *opcit*, 14, 380-396.

¹⁷ - Ellsworth, P. C., and Gross, S. *opcit*, 50, 19-52

2-1-2-3-Incapacitation :

Some advocate for the death penalty on the grounds of incapacitation. According to this perspective, offenders are tightly controlled by the state to prevent them from committing further crimes.¹⁸ Incapacitation can take various forms, including house arrest, intensive supervision probation, imprisonment, and death. Executing an individual eliminates the possibility of them victimizing other inmates or escaping to harm innocent citizens, thus removing any future threat they may pose to society. Executing a person is considered the ultimate form of incapacitation. Moreover, there is a widespread belief that life imprisonment, even without the possibility of parole, does not guarantee permanent removal from society. Many fear that a vicious murderer sentenced to life may eventually be released and pose a threat to innocent citizens once again.¹⁹

2-1-2-4-Capital punishment and alleviating the burden of high prison expenses:

Individuals who commit heinous crimes such as murder and repeat offenders warrant more than lenient sentences, according to opponents of the death penalty. However, abolitionists argue that the exorbitant costs associated with prolonged imprisonment unfairly burden the public, effectively holding innocent individuals accountable for crimes committed by others.²⁰

2-2-The theoretical foundations of some thinkers about the death penalty :

During the Middle Ages, the death penalty was administered with notable brutality. As the Renaissance unfolded, intellectuals and reformers sought to ascertain the moral grounds for execution. Grotius contended that the practice of execution could find justification in Babylonian and various Christian traditions, asserting that the acceptance of execution paralleled the legitimization of warfare.²¹ Thomas Hobbes and John Locke both advocate for the death penalty²². In contrast, Jean-Jacques Rousseau posits that individuals should refrain from killing others in society, as they themselves should not be subjected to such harm.

The emergence of the modern abolitionist movement can be traced back to the efforts of Italian criminologist Cesare Beccaria. Beccaria aligned with the sentiments expressed by Voltaire, Jefferson,

¹⁸ - Zeisel, H., and Gallup, A. M ,*opcit*, 285-296.

¹⁹ - E llsworth, P. C., and Gross, S. R. ,*opcit* , 50, 19-52.

²⁰ - Richard. Evans, **Rituals of Retribution, Capital Punishment in Germany 1600- 1987**, Oxford, Clarendon Press, 1996, PP: 175-180.

²¹ - Olsthoorn J ,**Grotius and the early modern tradition**. In: May L (ed) Cambridge handbook of the just war. Cambridge University Press, Cambridge,2018, pp 33–56

²² - Corey Brettschneider , **Rights within the Social Contract: Rousseau on Punishment** ,Law as Punishment / Law as Regulation ,2011,p:87

Thomas Paine, and Lafayette regarding the inefficacy and cruelty of capital punishment. The influence of this movement even prompted temporary abolition measures in Austria and Tuscany.²³

During the deliberations on the French constitution in 1791, Robespierre staunchly advocated for the abolition of the death penalty. However, his efforts fell short as the majority of the committee favored the proposal put forth by his colleague, Dr. Joseph-Ignace Guillotin, to retain the death penalty as part of humane affairs. Ironically, Robespierre himself was later sentenced to death, and Thomas Paine, regarded as one of the abolitionists, faced treason charges²⁴. In this section, let's explore the perspectives of various thinkers on the subject of capital punishment.

2-2-1-Montesquieu :

It's possible to argue that Montesquieu was among the early advocates for limiting executions. In his work "The Spirit of the Laws," he criticized past executions, likening them to acts of tyranny and highlighting their reciprocal relationship with oppressive regimes and the severity of punishment. While his stance on executions may have seemed harsh to proponents of traditional methods, his arguments often sparked discussions and, in some cases, even led to calls for the abolition of the death penalty.²⁵

The Encyclopédie echoes Montesquieu's endorsement of execution as "a punishment rooted in rationality, originating from the fundamental concepts of morality," portraying it as "a remedy for a diseased society." However, it's essential to recognize Montesquieu's role in catalyzing a shift in perspective. While not advocating for abolition, Montesquieu strongly advocated for more lenient punishments, a stance that influenced subsequent reformers like Beccaria.²⁶

He contends that while severe punishments may deter crime to some extent, the efficacy of milder, specific, and tangible punishments should be questioned..²⁷

2-2-2-Jean-Jacques Rousseau

In his renowned work "The Social Contract," Jean-Jacques Rousseau delves into the source and rationale behind society's authority to administer punishment, particularly exploring the justification of the death penalty. In the fifth chapter of the book, Rousseau contemplates the concept of the right to life and death, posing a fundamental question: How can individuals grant the government or society the power over life

²³ - Marcello Maestro, **Cesar Beccaria and The Origins of Penal Reform**, Philadelphia, Temple University Press, 1972, PP.290 – 293

²⁴ - Thomas Paine, **Preserving The Life of Louis Capet**, London , Penguin, 1987, PP.394 – 398.

²⁵ -David Garland, **Capital Punishment and American Culture**, **7 Punishment & Soc'y** 347, 355 (2005)

²⁶ - Montesquieu, **The Spirit of the Laws** 225 ,Thomas Nugent & J.V. Prichard trans., Appleton 1900<http://enccre.academie-sciences.fr/encyclopedie/article/v4-1117-1>

²⁷ - *ibid* ,p:99.

and death when they themselves lack the right to make moral and religious choices, such as the decision to commit suicide? This inquiry presents a complex challenge that demands careful consideration.²⁸

Based on the preceding examples, it is his contention that to prevent anyone from falling prey to betrayal, a unanimous consensus emerges that traitors ought to face the death penalty. Through his own volition, the transgressor breaches the social contract established with society, By infringing upon the rights of society, he forfeits his membership within it. Given that his continued existence jeopardizes the welfare of society, his elimination becomes imperative for the society's survival..²⁹

2-2-3-Cesare Beccaria

The pioneer in advocating for the abolition of the death penalty was the renowned Italian writer Beccaria. At the age of 27, he penned his seminal work, "Crimes and Punishments." ³⁰ Beccaria adheres to the social contract, asserting that the authority of society to impose punishment is grounded in an explicit or implicit the social contract. He deems punishments that safeguard the community as just and appropriate, while condemning those that jeopardize community well-being as unjust. Beccaria generally opposes capital punishment, reserving it for only exceptional circumstances.

Beccaria's influence resonated on both sides of the Atlantic, sowing the seeds of modern abolitionist discourse. His practical criticisms of the inefficacy and injustice of capital punishment have become central to American abolitionism. Similarly, his condemnation of its cruelty laid the groundwork for the human rights argument against the death penalty in contemporary Europe. While Beccaria did not fully advocate for abolition, he did support executions for treason cases that threatened the security of the state.³¹ While Beccaria's proposals may seem harsh by contemporary standards, particularly his suggestion of lifelong forced labor as an alternative to the death penalty, his overarching stance leaned towards advocating for milder and more humane sentences overall.³²

. However, Beccaria also acknowledges that there are exceptional cases where he views the death penalty as the only viable solution.

²⁸ -Jean-Jacques Rousseau, **The Social Contract** (Translated by G. D. H. Cole, public domain), available online [Jean Jacques Rousseau contrat-social.rtf \(archive.org\)](#).pdf), 1762, 25

²⁹ -Ibid ,p:26

³⁰ - Cesare Beccaria, **On Crimes and Punishments David**, Hackett 1986,P: 48–52

³¹ - ibid ,p:52

³² - . James Q. Whitman, **Harsh Justice: Criminal Punishment and the Widening Divide Between America and Europe**, Oxford University Press ,2003, p:50–52

2-2-4-Jeremy Bentham :

Bentham's views on punishment evolved throughout his life. Initially, he advocated for various corporal punishments³³, then shifted his focus to the panopticon penitentiary, and eventually favored non-afflictive but complex punishments like banishment and fines.³⁴ Central to Bentham's concept of punishment were eleven defined "properties," including the need for punishment to match the severity of the offense. This emphasis on quantification remained consistent in his assessments.³⁵ Equally important were the principles of equability and commensurability, ensuring fairness and proportionality in punishment. Bentham eventually embraced penal incarceration over corporal punishment, seeing it as more effective in providing exemplary deterrence..³⁶

During Bentham's focus on penitentiary imprisonment, capital punishment remained the primary legal penalty for serious offenses. Despite this, in 1830, Bentham published his reasons for opposing capital punishment in a pamphlet aimed at the people of France. In it, he criticized capital punishment for its inefficiency, irremissibility, tendency to promote further crime, and exacerbation of issues caused by poorly applied pardons. Bentham argued that these qualities rendered capital punishment unfit for its intended purpose of deterring future crimes and promoting societal well-being. He believed that the severe and widespread threat of capital punishment led to significant and unnecessary suffering.³⁷

2-3-International Human Rights Standards on Capital Punishment :

The abolitionist movement gained momentum and underwent substantial growth throughout the 19th century, bolstered by the advocacy of influential English jurists like Bentham and Romilly. Notably, in 1864, Michigan achieved a significant milestone by becoming the first jurisdiction to enact permanent abolition of the death penalty.³⁸ Following this trend, numerous countries, including Venezuela and Portugal in 1867, New Zealand in 1875, Costa Rica in 1882, Brazil in 1889, and Ecuador in 1896, joined

³³ - Radzinowicz: A History of English Criminal Law and Its Administration From 1750. Vols. 2 and 3. English Criminal Law, pp. 3

³⁴ - Panopticon; Postscript ,**Part II. Principles and Plan of Management**?, Bowring, iv.,originally published in 1791, p. 122

³⁵ - Jeremy Bentham, 'New Introduction', in **An Introduction to the Principles of Morals and Legislation**, Oxford, , p:175

³⁶ - I bid , pp:175-6

Elsewhere, Bentham introduces a conception of "extraordinary punishment" and a general argument for it on utilitarian grounds. J. BENTHAM, OF LAWS IN GENERAL 212 (H. Hart ed. 1970). His argument in this passage suggests that the argument presented anticipates the modern policy in the United States, where "life" imprisonment typically serves as the standard punishment for murder, except in cases where specific "aggravating" factors are identified, such as prior convictions for murder. Both Bentham's hesitance towards complete abolition in 1775 and Mill's later opposition echo the idea that there could be utilitarian justifications for occasional exceptions to the complete abolition of the death penalty..

³⁷ - Tony Draper ,**An Introduction to Jeremy Bentham's Theory of Punishment**, Bentham Project, University College Lon , Journal of Bentham Studies, vol. 5 ,2002, p:16

³⁸ - D.B.Davis, **Movement to Abolish Capital Punishment in America**, 1787 – 1861, 284 Annals of The American Academy of Political and Social Science 124.

the abolitionist movement by abolishing the death penalty³⁹. However, in the early 20th century, abolitionists encountered a significant challenge. This hurdle was partially attributed to the influential criminology doctrines of Garofalo, Lombroso, and Frey, which advocated for execution as a necessary measure for social order.⁴⁰

Another factor contributing to the setback faced by abolitionists was the rise of totalitarianism in Europe following the First World War, leading to the reinstatement of executions. Particularly, from the onset, Hitler demonstrated a keen interest in executions. Unofficial accounts, such as those found in "Mein Kampf," suggest the execution of approximately 10,000 individuals during his regime.⁴¹ The Nuremberg International War Crimes Tribunal's final judgment addressed the Nazi regime's utilization of executions against both prisoners and civilians. Following World War II, global attention shifted towards the egregious abuses of executions perpetrated before and during the conflict.

Simultaneously, while the death penalty remained a global practice, the abolitionist movement persisted in its endeavors. The movement's activities and confrontations prompted the approval of numerous international conventions and protocols aimed at curbing the application of the death penalty. The Universal Declaration of Human Rights, endorsed by the General Assembly on December 10, 1948, unequivocally affirmed the right to life and implied restrictions on any infringements upon this right.⁴² Similarly, the American Declaration of Human Rights and Duties, ratified on May 4, 1948, adopted a comparable approach.⁴³ Recent international human rights treaties, notably the International Covenant on Civil and Political Rights⁴⁴, the European Convention for the Protection of Human Rights and Fundamental Freedoms⁴⁵, and the American Convention on Human Rights⁴⁶, regard the death penalty as an exception to the right to life. In essence, these treaties uphold individuals' right to life, opposing executions unless circumstances present an implicit or explicit exemption.

International law safeguards the right to life, prohibiting executions without proper legal safeguards and safeguarding certain groups such as juveniles, pregnant women, and the elderly from being subjected to the death penalty. While the European Convention for the Protection of Human Rights and Fundamental

³⁹ - Ricardo Ulate, **The Death Penalty: Some Observations on Latin America**, United Nations Crime Prevention and Criminal Justice Newsletter 27, 1986, PP:12– 13.

⁴⁰ - Raffael Grafalo, **Criminology**, Montclair, Patterson Smith, 1968, PP.104– 105, 376, 410; Cesar Lombroso, **Crime, Its causes and Remedies**, New York, Agatha Press, 1967, P.527.

⁴¹ - Adolf Hitler, **Mein Kampf**, Boston, Houghton Mifflin, 1943, P.545.

⁴² - G.A. RES. 217 A (III), U.N. Doc. A/810. The Universal Declaration of Human Rights, 1948, art.3

⁴³ - The American Declaration on the Rights and Duties of Man, OAS Doc. OEA / ser. L. / V/104, 1948, art.1,

⁴⁴ - International Covenant on Civil and Political Rights, 1966, 999 UNTS 171, art.6.

⁴⁵ - Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, 213 UNTS 221, art. 2.

⁴⁶ - American Convention on Human Rights, 1969, 1144 UNTS 123, OASTS 36, art.4

Freedoms outlines a detailed list of exceptions to the right to life, other frameworks, such as those of the United Nations and the American system, refrain from such specificity. Instead, they affirm the principle that life cannot be arbitrarily extinguished, leaving the determination of exceptions to legal scholars and commentators.

Each of these documents emphasizes the significance of the death penalty as a crucial exception to the right to life. Notably, the European Convention for the Protection of Human Rights and Fundamental Freedoms dedicates a specific paragraph to addressing execution as an exception.

The right to life has been described as Superior right⁴⁷, and is known as the cornerstone of all rights evolving over time and expanding in scope. Its precise definition remains elusive due to its multifaceted nature. In interpreting the right to life, two opposing schools of thought emerge:

1-One school adopts a stringent approach, employing a narrow interpretation method that confines the scope of the right to life to matters explicitly addressed by the drafters of key human rights instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms. This perspective supports limited issues such as execution, abortion, enforced disappearances, extrajudicial killings, and instances of governmental negligence resulting in loss of life.

2-A relatively recent perspective on the right to life adopts a broader approach, seeking to incorporate its economic and social dimensions, often referred to as the right to life. This expanded interpretation asserts that the right to life encompasses not only protection from physical harm but also entitlements such as access to adequate food, healthcare, and a healthy environment.

The Human Rights Committee has endorsed this perspective in its general commentary on Article 6 of the International Covenant on Civil and Political Rights.⁴⁸ Regardless, both schools of thought acknowledge the centrality of the death penalty to the right to life. Early international instruments, notably the Universal Declaration of Human Rights, were influenced by national declarations like the United States Bill of Rights, the French Declaration of the Rights of Man and of the Citizen, and the Magna Carta. The original instruments lack a definitive concept regarding fundamental definitions like the right to life. However, this right is widely viewed as a safeguard against the arbitrary actions of the state, granting individuals immunity from state interference provided the state adheres to formal protections. Section 26 of the Magna Carta provides the initial safeguard, stating: "No free man shall be arrested or imprisoned, or deprived of property or rights, or outlawed or exiled, or in any way ruined, nor

⁴⁷ - General Comment 6 (16) , U.N.Doc.CCPR/ C/ 21/ Add 1. 1982.

⁴⁸ - General Comment 14 (23) U.N.Doc. A/40/40/CCPR/C/SA.

will we take or order action against him, except by the lawful judgment of his peers or by the law of the land." ⁴⁹These provisions can only be enforced through legal proceedings overseen by members of the House of Lords and in accordance with territorial law.

The notion of the right to life finds expression in several American instruments predating the Revolution. For instance, the Massachusetts Body of Liberties, enacted on December 10, 1641, proclaims: "No man's life shall be taken away... except by a just law established by a general court and made known to all." ⁵⁰ Similarly, the Virginia Bill of Rights, drafted by George Mason at the dawn of the French Revolution, asserts the inherent rights and the pursuit of life. Additionally, the Declaration of Independence affirms: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness." The framers of the French Declaration of the Rights of Man and of the Citizen did not explicitly enumerate the right to life among its articles. Article 2 of the French Declaration articulates: "The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression." However, the right to life is implicitly referenced in the preamble of humanitarian rights instruments. Moreover, provisions concerning the prohibition of arbitrary and indiscriminate punishment of prisoners of war are outlined in Clause C of Article 23 of the Hague Convention of 1907 regarding the treatment of prisoners of war.⁵¹ This prohibition, rooted in customary international law, is commonly referred to as the Martens Clause, extending protection to conflicts not expressly covered by existing laws.

The concept of the right to life in its own right was initially advanced in international law by Antonio Rougier and subsequently integrated into general international law around 1910. Rougier articulated in his review of humanitarian rights interventions that in instances where a government infringes upon the right to life within its territory, whether through mass atrocities or even negligence in healthcare during outbreaks of infectious diseases, humanitarian intervention in the form of rights protection would be permissible.

2-3-1-The death penalty since the French Revolution:

Prior to finalizing the declaration, the drafters began crafting a second formal multilateral treaty, namely the ICCPR. Completed in 1957, Article 6 of the Covenant acknowledged a right to life akin to that

⁴⁹ - Magna Charta, Chapter 26.

⁵⁰ - Convention Regulating the Laws and Customs of Land Warfare (Hague Convention No. IV), Regulations Concerning the Laws and Customs of Land War, 2AJIL supp, 1910.

⁵¹ - Geneva Convention of August 12, **1949 Relative to the Treatment of Prisoners of War**, 1950, 75 UNTS 135.

articulated in the Declaration, explicitly considering capital punishment as a deviation from this right. As the concept of abolition gained traction, the Covenant's drafters ultimately reached consensus to incorporate Article 6, advocating for the abolition of capital punishment, into the final agreement. Following this, in 1957, as the immediate abolition of the death penalty was not a pressing priority on the international agenda, the United Nations directed its efforts towards narrowing the scope of the death penalty. This involved initiatives such as reducing the number of offenses punishable by death or exempting certain groups from its application, while also urging adherence to formal safeguards in cases of executions. This study delves into the resolutions and initiatives put forth by diverse United Nations bodies, including the Economic and Social Council, the General Assembly, the Crime Prevention and Control Committee, and the Crime Prevention Congress, regarding the approach to executions and the conduct of offenders. These endeavors are viewed as significant steps towards realizing the objective outlined in the concluding paragraph of Article 6 of the Covenant.⁵²

During the 1980s, momentum toward abolition surged, particularly with the formulation of the Second Optional Protocol to the International Covenant on Civil and Political Rights, which sought to eliminate the death penalty⁵³. Concurrently, cancellation initiatives within the three regional human rights systems gained traction. Notably, the European Convention for the Protection of Human Rights and Fundamental Freedoms, established in 1950, predates Article 6 of the Covenant. Consequently, it did not adopt the Covenant's execution procedures.⁵⁴

Article 2 of the Convention acknowledges that capital punishment constitutes an exception to the right to life, imposing safeguards and restrictions on its application without providing for its outright abolition. By the late 1950s, many European countries were nearing abolition in their domestic legislation, with Western Europe eventually enacting abolition into law. In 1985, European institutions, notably the Council of Europe, brought to the forefront the Protocol to the European Convention aimed at abolishing the death penalty during peacetime. Protocol No. 6 came into effect in 1985, garnering ratification from approximately 43 Council of Europe member states.⁵⁵ The Council urged new members to ratify the

⁵² - The final paragraph of Article 6: "Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant."

⁵³ - Second Optional Protocol to the International Covenant on Civil and Political Rights Aimed at Abolition of the Death Penalty ,G.A. Res.44/128,1990,29 ILM 1464,art1.

⁵⁴ - The final version of the Covenant was adopted by the Third Committee of the General Assembly in 1957, although the instrument was not ratified by the Assembly until 1966.

⁵⁵ - Protocol No 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty,ETS 114,art 2.

protocol, ultimately resulting in the abolition of capital punishment in Eastern European countries and the Americas.

Latin American nations played a pioneering role in abolishing the death penalty, with support from American governments in both the United Nations and the regional system. The concept of non-reimposition of the death penalty in countries that have abolished it was extensively debated in the International Covenant on Civil and Political Rights and explicitly addressed in the American Convention. Consequently, the American Convention is regarded as an abolitionist instrument, particularly for many nations that lacked legislation on capital punishment prior to its enactment. Ratified in 1969 and enforced in 1978, the American Convention on Human Rights surpasses conventional guarantees and restrictions on the death penalty by prohibiting it for political offenses and for elderly individuals.

The stance of the African Charter of Human Rights on capital punishment remains ambiguous. Unlike other regional and global human rights instruments, the African Charter on Human and Peoples' Rights, endorsed by the Organization of African Unity in 1981, does not explicitly address the death penalty, instead affirming the unconditional right to life.⁵⁶ Nonetheless, the African Commission on Human and Peoples' Rights has rendered decisions on cases involving the death penalty. In November 1999, it adopted a resolution advocating for the suspension of capital punishment.⁵⁷

In 1996, a meeting convened under the United Nations auspices saw thirty Asian governments accelerating discussions on the specific requirements for establishing formal human rights systems in the Asia-Pacific region⁵⁸. While the Asian region has seen limited progress toward abolishing the death penalty, it does not imply a lack of adherence to international standards on capital punishment. Numerous Asian countries actively participate in the global human rights system and have spearheaded significant international initiatives aimed at abolishing and restricting the death penalty.

For instance, China has expressed readiness to accede to the International Covenant on Civil and Political Rights, even as it contends with restrictions on executions within its borders.

⁵⁶ - African Charter on Human and Peoples' Rights, OAU, Doc.CAB/LEG/67/3 ,rev.5.4 EHRR 417,21 ILM 58.1981 ,art 4.

⁵⁷ - Resolution Urging States to Envisage a Moratorium on the Death Penalty. Thirteenth Activity Report of the African Commission on Human and Peoples' Rights, OAU DOC. AHG/ Dec. 153 .

⁵⁸ - Fourth Workshop on Regional Human Rights Arrangements in the Asian and Pacific Region.U.N. Doc, HR/ PUB / 96 /3 (1996).

In 1981, the Islamic Council of Europe endorsed the Universal Declaration of Islamic Human Rights⁵⁹, affirming the sanctity and inviolability of human life. It emphasizes the imperative to safeguard life and prohibits harming individuals except through legal authorization, including capital punishment.⁶⁰

The final phrase of the Universal Declaration of Islamic Human Rights has often been interpreted as providing authorization for execution, aligning with the practices observed in many Islamic states. The Organization of the Islamic Conference has formulated an instrument on human rights and Islam, known as the Declaration of Islamic Human Rights, which, in Article 2, guarantees the right to life for every human being. However, compared to other legal systems, the Islamic human rights framework is considered primitive and underdeveloped, lacking explicit mention of the abolition of capital punishment.⁶¹

The most recent Arab charter was ratified on September 15⁶², 1994, yet only one member state of the Arab League has ratified it thus far. Proponents of the charter assert that the right to life is upheld in a manner similar to other international documents. Nevertheless, specific articles within the charter, such as 15, 12, and 11, recognize the legitimacy of capital punishment for grave offenses. Notably, it prohibits execution for individuals under 18 years of age, pregnant women, and nursing mothers for a two-year period following childbirth, as well as for political crimes.

Arab and Islamic nations commonly advocate for the retention of the death penalty, justifying it in the context of adherence to Islam and Sharia law.⁶³

Within humanitarian rights instruments, there are provisions addressing executions, prisoners of war, and civilians. Analyses of these provisions and their negotiations reveal that they aim not only to regulate the use of execution but also to advocate for its abolition. Comparing human rights instruments and humanitarian treaties regarding the death penalty abolition, it's evident that while most human rights instruments permit capital punishment, some have shifted towards prohibiting cruel punishment without

⁵⁹ -Issued in London in 1981, the Universal Declaration of Islamic Human Rights marks the second declaration of the Islamic Council of Europe. Officially proclaimed on September 19, 1981, during the UNESCO meeting in Paris, this declaration presents Islamic perspectives on human rights. Comprising 23 articles, it mirrors the style and context of traditional human rights declarations, articulating rights recognized by Islam.

⁶⁰ - Universal Islamic Declaration of Rights , 1982 , 4 EHRR 433.

⁶¹ - Organization of the Islamic Conference , Secretary General , Doc . DIC / POL / MD / 22 – 23 / 7 , 25 April 1982.

⁶² - Arab Charter on Human Rights, 1997,18 HRLJ 151.

⁶³ - During the 1994 General Assembly session, Sudan's representative argued that execution is considered a divine right in certain religions, particularly Islam, citing references to capital punishment in the Quran. He emphasized that millions of Muslims worldwide regard the Quran as divine teachings (U.N. Doc. A/BUR/49/SR.5, para 13). In a similar vein, Reynaldo Galindo, the Human Rights Commission's special rapporteur on Iran, reported that a group of Islamic scholars proposed abolishing the death penalty for political offenses. These scholars advocated for restricting the number of offenses punishable by death (U.N. Doc. E/CN.4/1989/26, para 36).

explicitly rejecting the death penalty. Due to the broader accession to humanitarian rights treaties and their applicability even in wartime conditions, they have played a pivotal role in shaping global perspectives on the death penalty. Notably, the Four Geneva Conventions are considered binding for both member and non-member states, further reinforcing their significance. International instruments also highlight objections to execution practices, such as: delay in notifying the criminal of the suspension of the punishment⁶⁴, prolonged stays on death row⁶⁵ and instances of cruel and inhumane treatment. Key among these instruments is the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in 1984⁶⁶. Additionally, the General Assembly's declaration on the protection of individuals from torture and other cruel punishments, established in 1976, addresses these concerns, albeit with occasional references to the death penalty.

However, in general, the review of international standards regarding the death penalty shows a continuous progress towards abolition.

2-3-2-Death penalty statistics in the contemporary world :

In the early stages of the abolition movement, limitations were placed on the application of the death penalty, sparing certain groups such as youth, pregnant women, and the elderly. Moreover, executions were restricted to a narrowed list of the most severe crimes by the 1980s. Over time, the global abolitionist movement gained momentum, leading to the development of abolition treaties open for signature, approval, and acceptance

Gradually, over the past two centuries, there has been a significant reduction in the application of the death penalty. This shift has manifested in various ways, such as expanding the authority of criminal judges to impose long-term imprisonment instead of the death penalty for certain offenses, or through the granting of amnesty, which often falls under the purview of the country's president. Although opposition to the death penalty has contributed to its reduced application in countries that have not fully abolished it, this opposition is not the sole factor driving the change. Because it is certain that the criminal issues of a society have a precise relationship with political, social, economic situations, statistics, experiences and various other factors.⁶⁷

Currently, more than half of the world's countries have legally or practically abolished the death penalty. The number of these countries is as follows.

⁶⁴ - Ng . V. Canada (NO.469/ 1991) , U.N. Doc. A / 49 / 40

⁶⁵ - Pratt and Morgan v. Jamaica (Nos. 210/ 1986 , 225 / 1987) , U.N. Doc A 44 / 40

⁶⁶ - Convention Against Torture and Other Cruel , Inhuman or Degrading Treatment or Punishment , G.A. RES.39/46 ,1987

⁶⁷ - Mugambi Jouet, *The American Journal of Comparative Law*, Volume 71, Issue 1, Spring 2023, Pages 46–97,

- **108 countries** have abolished the death penalty in law for **all crimes**.
- **144 countries** have abolished the death penalty either in law or in practice.
- **28 countries** have effectively abolished the death penalty by not executing anyone in the past **10 years**.
- **55 countries** [still retain the death penalty for ordinary crimes](#)⁶⁸

2-4-Overview of Iran's Death Penalty Laws

To truly understand the characteristics and personality of any nation, it is essential to examine the history of its legal rights. Throughout history, the laws and regulations that govern the lives and judicial relations of a people hold a crucial place in their societal framework. Therefore, it is impossible to accurately grasp the criminal rights of ethnic groups and nations without understanding the circumstances and characteristics of their collective life. A history that overlooks the legal and judicial systems of nations is merely a collection of abstract concepts. The principles and rules governing a nation's judicial relations can be gleaned from the nuances of its history. With this perspective, we study the evolution of execution practices throughout different historical periods in Iran.

2-4-1-The death penalty in modern contemporary times (Iran):

The primary text of the General Punishment Law of 1925, which forms the foundation of Iran's penal system during the constitutional era, was adapted from the French Penal Code of 1810. Consequently, the characteristics and principles governing Iranian criminal law in this period were largely influenced by the ideas and theories of the classical and neoclassical schools of criminal law, which underpinned the criminal laws of European countries in the 18th century. Therefore, the penal policy of the constitutional period's legislators, in drafting this collection of penal laws, reflects the philosophical views of the 18th-century classical and neoclassical schools, emphasizing the preservation and protection of societal interests through the enforcement of legal punishments on criminals.

The purpose of these deterrent laws is to arrest and prevent crime. The drafters of the General Punishment Law, despite stating in the first article that compliance with Islamic penal standards is mandatory, also established the legal principle of defining crimes and punishments within the framework of statutory law. This article asserts that "crimes prosecuted and discovered according to Islamic standards will be punished according to the limits, retribution, and punishment prescribed by Sharia." However, in

⁶⁸ - [www.Amnesty International .org/pages/Death penalty Countries- eng](http://www.AmnestyInternational.org/pages/Death%20penalty%20Countries-+eng). [Death Penalty 2021: Facts and Figures - Amnesty International](#)

practice, by codifying crimes and punishments within the general penal law, they provided a basis for moving away from Islamic penal principles and laws.⁶⁹

Over time, the General Penal Code of 1925 needed modification and completion in some areas to align with contemporary needs and the new perspectives of 20th-century penal science. Consequently, the legislator, drawing inspiration from the School of Implementation of Criminal Law and translating the laws of European countries, adopted various criminal laws to update the judicial system of this period. The General Penal Code of 1925 included the death penalty for intentional murder. Article 170 stipulated: "The punishment for committing intentional homicide is death, except in cases that are legally excluded." However, according to Article 44 of the same law, if the circumstances of the case warranted a reduction in punishment, the sentence could be changed to permanent or temporary imprisonment with hard labor. It is important to note that the execution stipulated in Article 170 of the General Penal Code was not intended as retribution but as a collateral punishment. Thus, Sharia retribution orders were not applied, and this punishment was not considered a right of the people, unlike in the Islamic Penal Code where it could be pardoned by the victim's guardian.

Before the Islamic Revolution, there were 221 offenses subject to the death penalty under various criminal laws, with 65 cases under the jurisdiction of public courts and the rest under military courts. Most death sentences were related to offenses listed in Article 170 of the General Penal Code for intentional murder and Article 171 for intentional assault resulting in death with a lethal weapon.⁷⁰

2-4-2- Death penalty in the period of the Islamic Republic of Iran :

The new Islamic penal code retains the death penalty in almost all cases of the previous law, apparently increasing its scope in some cases. The new law, like the previous law, explicitly states that in cases where the law does not deal with hudud punishments, it is possible to refer to Article 167 of the Constitution (Article 220) according to Article 167: "The judge is obliged to try to find the verdict of each case in the codified laws, and if he does not find it, he can issue the verdict on the basis of Islamic sources or valid fatwas, and he cannot use the excuse of silence or defect or brevity or aggression."⁷¹

Therefore, it is clear that in addition to the cases stipulated in the Islamic Penal Code, judges in many cases have extensive authority to issue death sentences based on Sharia. In the Islamic Penal Code of 2013, we see innovations as well as changes regarding the punishments of hudud, qisas, and juveniles.

69 - Mohammad Saleh Walidi, **Criminal Law (Criminal Liability)**, second edition, Tehran, Amir Kabir Publishing House, 1371,p:323

70 - Mohammad Ibrahim Shams Natari, **comparative study of the death penalty**, first edition, Qom, Islamic Propaganda Office Publishing Center 1378 , p.78

71 - The Constitution of the Islamic Republic of Iran ,1989

The punishments are divided into four groups: hudud, qisas, diyat, and ta'zirat. (Article 14 of the Islamic Republic of Iran) "Except for blood money, the death penalty in the Islamic Penal Code is a clear example of the other four punishments in Article 14 of the Islamic Penal Code."⁷² Executions include the following Sexual crimes, incest, sexual crimes similar to sodomy, murder and retribution, moharebeh, rebellion and corruption on earth, religious prohibitions, repeat crimes, juvenile prohibitions .

The death penalty is also found in other scattered laws for crimes such as drug trafficking and economic crimes. For example, in the "Law on the Punishment of Disruptors in the Economic System of the Country" (approved on 10/12/1987), for behaviors such as disrupting the monetary or currency order of the country, the death penalty is predicted if it is with the intention of confronting the system and with the knowledge of the effectiveness of the action in confronting the system (Article 2).⁷³

3-Regional Human Rights Standards on Capital Punishment

Undoubtedly, the right to life is the most valuable blessing bestowed by the Lord upon His creatures. This right is recognized as one of the fundamental human rights in international conventions and documents, and its protection is considered a duty of all governments and members of the international community. However, at times, due to the inappropriate actions of some individuals, this right has been

⁷² -The Islamic penal code ,2013

⁷³ - The Law on the Punishment of Disruptors in the Economic System of the Country" (Approved on 19/12/1987)

revoked, leading to the prescription of their lives through execution or the death penalty—a punishment that has existed since the emergence of human societies.

Approximately two hundred years ago, objections to heavy and unjust punishments like the death penalty began to arise from philosophers and reformers. This sparked numerous debates and analyses critiquing this form of punishment. Consequently, an international movement to abolish the death penalty began. The activities and challenges of this movement have, in recent years, led to the approval of several international conventions and protocols against the death penalty and have contributed to its abolition in many countries around the world.⁷⁴ Until World War II, the lack of comprehensive research on the subject of execution made it a less examined issue. However, the international community began addressing the restriction and abolition of the death penalty after the war. During the drafting of the Universal Declaration of Human Rights in 1948, abolition emerged as a goal for civilized nations, implicitly recognizing what international human rights law termed the right to life. The brutal killing of millions during the war prompted some countries to reconsider the use of execution.

This reconsideration led to the adoption of various international and regional documents advocating for the abolition and limitation of the death penalty. While the International Covenant on Civil and Political Rights does not consider the existence of the death penalty within a country's regulations as a violation of the right to life, it has contributed to the global discourse on limiting and eventually abolishing capital punishment. Although the right to life is considered the most fundamental human right, other rights provided in international human rights documents are dependent on it. The importance of the right to life is so paramount that its violation is not permitted even in urgent situations. As stated in Article 4, Section 2 of the International Covenant on Civil and Political Rights, countries cannot violate the right to life of individuals even under the pretext that the life and survival of the nation are under threat. Article 6 of the covenant also elaborates on the right to life in detail.⁷⁵

Regional human rights instruments, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms and the American Convention on Human Rights, do not consider the death penalty a violation of the right to life. Article 2 of the European Convention allows for the death penalty as an exception to the right to life when it is based on a court order. Similarly, the second part of Article 4 of the American Convention on Human Rights includes provisions akin to the second part of Article 6 of the International Covenant on Civil and Political Rights, permitting the death penalty for the most

⁷⁴ - Charls L. Black JR, **Capital punishment: The Inevitability of Caprice and Mistake**, New York, Norton, 1974, P: 94

⁷⁵ - McGoldric K,D. **The Human Rights Committee, its Role in the Development of the International Covenant on Civil and Political Rights**, Clarendon press, Oxford , 1994, pp.328,362.

serious crimes. Additionally, the African Charter on Human and Peoples' Rights does not prohibit the use of the death penalty.

Nevertheless, it is important to note that the overall orientation of international human rights instruments is towards abolishing the death penalty from national criminal systems. A review of Article 6 of the International Covenant on Civil and Political Rights highlights this intent clearly. The terms of these instruments are structured to advocate for the abolition of the death penalty, considering it an undesirable form of punishment. Additional protocols attached to these documents, specifically addressing the death penalty, further support this aim.

The Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, as well as the Sixth and Thirteenth Additional Protocols to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Additional Protocol to the American Convention on Human Rights⁷⁶, are all international instruments dedicated to this cause. As a result, a growing number of governments, adhering to international law standards, are working towards abolishing the death penalty, with the number of such countries increasing rapidly. Fifty-five years after the Nuremberg Trials, the international community banned the death penalty for war crimes against humanity. This movement towards abolition in international law has also prompted significant changes in domestic laws.⁷⁷

3-1-A Review of regional Actions to Abolition the Death Penalty:

Europe and Latin America have been pioneers in abolishing the death penalty through various regional instruments. In Europe, Protocol No. 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms prohibits the death penalty in peacetime, while Protocol No. 13 extends this prohibition to both wartime and peacetime. Similarly, the Second Protocol of the American Convention on Human Rights, inspired by the Second Optional Protocol of the International Covenant on Civil and Political Rights, abolishes the death penalty in peacetime.

3-1-1-The Sixth Protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms (April 28, 1983):

The Sixth Protocol of the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in peacetime, is the first international instrument to prohibit

⁷⁶ - Additional protocol to the American Convention on Human Rights to Abolish the Death penalty , OASTS 73,29 IIM 1447.

⁷⁷ - The Security Council has prohibited the use of executions in the statutes of the two International Temporary Tribunals for the former Yugoslavia (paragraph 1 of article 24) and Rwanda (paragraph 1 of article 23) in connection with war crimes.

the application of the death penalty during peacetime. Approved by the Committee of Ministers of the Council of Europe in December 1982 and opened for signature in April 1983, this protocol represents the culmination of a continuous and extensive effort towards abolishing the death penalty, particularly within Europe.⁷⁸

The issue of the death penalty in European countries was first raised at the inaugural meeting of the European Committee on Crime Problems in 1975. More significant strides were made at the intergovernmental level in 1978 when Austria's Minister of Justice, Dr. Christian Broda, influenced by an Amnesty International Conference on the Death Penalty, brought the matter to the attention of the Committee of Ministers of the Council of Europe. In 1981, the Committee of Ministers requested the Steering Committee for Human Rights to draft an additional protocol to the European Convention on Human Rights, specifically addressing the abolition of the death penalty in peacetime.

Upon completion, the Steering Committee for Human Rights prepared the final text, which was then presented to the meeting of the Foreign Ministers of the Council of Europe. On the same day, 12 governments signed the protocol, marking a significant step in the movement towards the abolition of the death penalty in Europe.

The Sixth Protocol, which came into effect on February 1, 1985, was intended to amend Article 2 of the European Convention on Human Rights. Article 2 of the convention previously excluded the death penalty from the right to life protections with the phrase: "execution of a subsequent judicial sentence... conviction for a crime for which the death penalty is legally provided." A significant objection to Article 2 was that it did not impose any formal or substantive restrictions on the application of the death penalty, leaving such determinations solely to national laws.⁷⁹

In the Sixth Protocol to the European Convention on Human Rights, Article 1 explicitly declares: "The death penalty shall be abolished." The reason for adding such an obligation to the convention was to take into account the fact that in many European countries, the death penalty had been suspended in peacetime for many years, but had been retained in their laws¹. The second sentence of Article 1 also stipulates the right of individuals not to issue and carry out the death sentence against them. Article 2 of the Protocol provides for the exception: "A State may prescribe the death penalty in its laws with respect to acts

⁷⁸ - Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty (ETS No. 114), Strasbourg, 28iv

⁷⁹ -Ibid , Art:2

committed in time of war or the imminent threat of war." As a result, failure to promulgate laws incorporating the aforementioned exceptions deprives the state in question of invoking that exemption⁸⁰. In my opinion, despite the silence of the official interpretations (which has not provided an opportunity for the comments of the competent authorities due to the absence of international or non-international armed conflict in the territory of the member states of the Council of Europe after World War II), the meaning of the word "war" in Article 2 of the Optional Second Protocol to the International Covenant on Civil and Political Rights can be reasonable and acceptable. In other words, "war" refers to an armed conflict between two or more states, not an internal conflict. This argument is strengthened when we note that the scope of the exemption granted in the Second Optional Protocol to the Covenant is more limited than that of the Sixth Protocol to the European Convention. In the Second Protocol, in addition to war, the "imminent threat of war" also allows member states to carry out the death penalty within the limits of the law.

Also, in the Second Protocol, the phrase "for the most significant crimes of a military nature in time of war" is also included, which indicates that the imposition of the death penalty is prescribed only on military personnel and not on ordinary people. The absence of this provision in the Sixth Protocol to the European Convention opens the way to the conclusion that in the event of war or the imminent threat of war, the death penalty can be applied to both military and civilian personnel. In view of what has been said, if we apply the term "war" to any kind of armed conflict, the scope of its exception expands to such an extent that it is unlikely to be the real intention of its drafters. Therefore, according to the aforementioned reasons and the principle of narrow interpretation in order to enjoy the rights of individuals as much as possible, the meaning of "war" is only international armed conflict, and not other types of conflicts⁸¹.

Article 3 of the Sixth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms prohibits any derogation from the provisions of the Protocol under Article 15 of the European Convention on Human Rights. As a result, if it is possible to carry out the death penalty in times of war, it is not possible in other circumstances where there is a threat to the life of the nation. Article 15 of the Convention provides that in times of war or public dangers, States may adopt measures that do not conflict with their international obligations. Protocol VI in time of war, when there is a clear overlap between Articles 15 and. ⁸²Article 4 also prohibits the use of the right of reservation over the

⁸⁰ -Ibid ,Art:1

⁸¹ - Nigel Rodeley , **The Treatment of Prisoners under International Law** ,Paris,Clarendon Press,1987 , p 173.

⁸² - European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) ,1950 ,ETS No. 005

provisions of the Protocol, but interpretative notices may make this possible. The prohibition of the use of the right of reservation makes sense because the Protocol accepts the imposition of the death penalty in time of war.⁸³ Article 5 allows States to specify the territories in which the Protocol is applicable, and this declaration must be made at the time of submission of the instrument of ratification.

The main violation of Protocol No. 6 is Article 5, titled "Territorial Application," which is derived from Article 56 of the European Convention on Human Rights. This article allows member states to disregard the prohibition of the death penalty in one or more parts of their territory, which contradicts the protocol's objective and exacerbates the fragmentation of the legal system regarding the death penalty. Additionally, countries can change their initial decision and extend the protocol's scope to any desired territory by sending a declaration to the Secretary-General of the Council of Europe. Protocol No. 6 does not annul Article 2 of the European Convention on Human Rights but rather adds its provisions to the Convention.

3-1-2-Protocol No. 13 to the European Convention on Human Rights, dated February 21, 2002 :

It represents the final step in the Council of Europe's long-standing battle for the complete abolition of the death penalty. This protocol positions Europe at the forefront of the global abolitionist movement. The adoption of Protocol No. 6 marked a significant leap forward, encouraging member states to refrain from implementing the death penalty even during wartime.⁸⁴ Protocol No. 13, while similar to Protocol No. 6, is characterized by a more decisive tone and a stronger emphasis on the value of the right to life and human dignity. The preamble of this protocol states that in a democratic society, the right to life is fundamental and that the abolition of the death penalty is essential to protect this right and fully recognize the dignity of all human beings. It also asserts that the right to life is non-transferable and holds a high value in the hierarchy of human rights, universally guaranteed by binding legal standards at both the global and regional levels.

International and domestic laws have evolved to address the implementation of the death penalty for acts committed during wartime, both generally and specifically. In Europe, a significant milestone was the adoption of Protocol No. 6 to the European Convention on Human Rights in 1982. This protocol, ratified by all member states of the European Convention on Human Rights, was the first legally binding document in Europe and worldwide to foresee the abolition of the death penalty in peacetime without

⁸³ -- To understand the distinction between the right of condition and the interpretive declaration, refer to: *Belilos V. Switzerland*, 29 April 1988, Series A, VOL. 132, 10 EHRR 466, 88 ILR G35.

⁸⁴ - Hodgkinson, Peter and William A. Schabas. *Capital Punishment: Strategies for Abolition*. Cambridge University Press, 2004, p:21

allowing any exceptions or reservations. However, Article 2 of the protocol permits states to legislate the death penalty for acts committed during wartime or imminent threat of war, but strictly within the limits set by law. Subsequently, the Parliamentary Assembly established a procedure requesting states aspiring to join the Council of Europe to abolish the death penalty from their national laws and join Protocol No. 6.⁸⁵ This underscores the fundamental goal of the Council of Europe member states to abolish the death penalty.

In January 2001, the Committee of Ministers instructed the Steering Committee for Human Rights to study Sweden's proposal for a new protocol to the Convention and to provide their opinion on the feasibility of such a protocol. The Steering Committee for Human Rights and the Committee of Experts for the Development of Human Rights presented the draft protocol and an explanatory report in 2001. The Committee of Experts for the Development of Human Rights submitted the draft protocol and the explanatory report to the Committee of Ministers on November 8, 2001. Finally, on February 21, 2002, the Committee of Ministers adopted the text of the protocol, which was then opened for signature by the member states of the Council of Europe.

Article 1 of the protocol should be linked with Article 2, as both emphasize the principles of abolishing the death penalty. Article 2 mandates the abolition of the death penalty in all circumstances, including acts committed during wartime or imminent threat of war. The second sentence of this article underscores that this guaranteed right is a personal right of individuals. Article 15 of the European Convention on Human Rights allows member states to take measures derogating from their obligations under the convention "in time of war or other public emergency threatening the life of the nation." This protocol specifically aims to abolish the death penalty during war or imminent threat of war, thus rendering Article 15 of the Convention inapplicable. Article 3 introduces an exception to Article 57 of the European Convention on Human Rights, stating that no reservations are permitted regarding this protocol.⁸⁶

Overall, Protocol No. 13 is quite similar to Protocol No. 6. Article 1 of both protocols is identical, and Articles 2 and 3 of Protocol No. 13, like Articles 4 and 3 of Protocol No. 6, prohibit any derogation under Article 15 of the Convention and any reservations under Article 57 of the Convention. However, some deficiencies from Protocol No. 6 are repeated in Protocol No. 13. For example, Article 4 of Protocol No. 13 repeats the provisions of Article 5 of Protocol No. 6, allowing countries to exclude certain parts of their territory from the protocol's application. The main difference is that Article 4(3) of Protocol No. 13

⁸⁵ - Resolution 1044 (1994)

⁸⁶ - Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, (ETS No. 187)

allows countries to withdraw or change their declarations at any time. This change aims to provide more flexibility to member states. The only significant criticism of Protocol No. 13 is the retention of Article 5 provisions from Protocol No. 6, which contradicts the spirit and goal of Protocol No. 13 and allows for potential misuse by member states.

According to Article 32 of the Convention, any issues regarding the relationship between these protocols and the Convention fall under the jurisdiction of the European Court of Human Rights. Despite exceptions such as non-ratification of Protocol No. 13 or the use of Article 4 provisions, the death penalty is generally not enforceable by Council of Europe member states. Consequently, while significant progress has been made with the adoption of Protocols No. 13 and 6 abolishing the death penalty in times of peace and war, it is not yet entirely and unconditionally abolished within the Council of Europe.⁸⁷ Similarly, the second protocol of the American Convention on Human Rights has paved the way for the abolition of the death penalty in the Americas by banning it during peacetime.

3-1-3 - Second Protocol to the American Convention on Human Rights dated June 8, 1990

This protocol, shorter than its European and UN counterparts, consists of a preamble and four articles. The preamble begins by citing Article 4 of the American Convention on Human Rights, recognizing the inalienable right to life. Article 1 states that the death penalty should not be applied within the territories of member states, obliging states seeking membership to legally abolish it, not merely refrain from its practice. Only states that have already removed the death penalty from their laws can join.⁸⁸ The protocol also follows the UN's approach by allowing member states to reserve the right to apply the death penalty for the most serious crimes during wartime, a narrower exception than in the European Convention.

However, with important differences, this protocol allows member states to apply the death penalty during wartime for the most serious crimes of a military nature in accordance with international law. The reference to international law, which includes the provisions of the Geneva Conventions and their additional protocols, is not present in the second protocol. Nonetheless, the distinction in this protocol indicates that crimes must occur during wartime to warrant the possibility of the death penalty, whereas the American protocol does not have such a stipulation for pre-conflict crimes.. Only states party to the American Convention on Human Rights can sign or adhere to this protocol. Article 4 states that it

⁸⁷- William A. Schabas ,[The European Convention on Human Rights: A Commentary](#), Oxford university press, first edition , Sep 2015 ,1191-1197

⁸⁸ - William A.Schabas , "Canadian Ratification of The American Convention on Human Rights", 1998,**16 Netherlands Quarterly of Human Rights** , P 315

becomes binding for countries that ratify it after depositing their instruments with the Secretary General of the Organization of American States. The protocol became effective on August 28, 1991, upon the deposit of the second ratification instrument.⁸⁹ Its significance is largely symbolic, emphasizing the inalienable right to life and advancing the abolitionist agenda.

3-2- Review of Measures and instruments Restricting the Death Penalty :

There are also regional instruments which, although originating from different judicial systems, emphasize the limitation of the death penalty. We will examine them below.

3-2-1- European Convention on Human Rights and Fundamental Freedoms dated 4 November 1950:

The European Convention on Human Rights, also known as the European Convention on Human Rights, was drafted at a time when many European countries still practiced the death penalty and the memories of Nazi atrocities were still fresh. Despite this, Europe quickly progressed towards abolishing the death penalty.

Following this development, the European Convention on Human Rights was adopted within the framework of the Council of Europe in 1950 and came into force in 1953. The substantive rights declared in the Convention align with those in the Universal Declaration of Human Rights. The Convention aims to provide collective and effective guarantees through an advanced monitoring system for a limited number of civil and political rights.

The Convention initially recognizes the right to life in Article 2 and prohibits torture and inhuman or degrading punishment or treatment in Article 3. It considers the death penalty as an exception to the right to life without the restrictions and precautions present in other documents. Article 2 states: "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law." Paragraph 2 of this article outlines other exceptions to the right to life: 1) defense of any person from unlawful violence; 2) lawful arrest or preventing the escape of a person lawfully detained; 3) lawful action taken for the purpose of quelling a riot or insurrection.

Although Article 2 of the European Convention on Human Rights protects the right to life, it also sets conditions for justifying deprivation of life. It is one of the most crucial provisions of the Convention during peacetime and allows no derogation under Article 15. Article 2(1) lacks the extensive limitations

⁸⁹ - Protocol to the American Convention on Human Rights to Abolish the Death Penalty. Adopted: 8 June 1990. OAS Treaty Series No. 73 (1990)

and guarantees against the death penalty found in other international documents, such as prohibitions on executing minors, pregnant women, and the elderly or restricting the death penalty to the most serious crimes. This might be because, in 1950, international bodies paid little attention to these issues. However, in practice, the limitations in other documents, such as prohibiting the execution of individuals under 18, are implicitly understood within the words of Article 2. Overall, Article 2(1) of the European Convention is less restrictive compared to similar provisions in the International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights. A comparative study reveals that while the European Convention's Article 2 appears to provide similar protections to Article 6 of the ICCPR, closer examination shows a lack of consistency between these documents. The ICCPR and the American Convention, although recognizing the death penalty as an exception to the right to life, impose broader restrictions on its application.

Article 2 of the European Convention on Human Rights includes two explicit restrictions on the death penalty: 1) it must be imposed by a court, and 2) the sentence must be lawful. While international human rights law requires courts to be independent, competent, and impartial, Article 2 simply refers to a "court." It implies a court independent of the executive and the parties involved, adhering to appropriate procedural safeguards. The phrase "lawful" means that any state wishing to implement the death penalty must ensure it is permitted by established law.⁹⁰ This condition, a basic reminder of the principle of legality, must be interpreted in light of other Convention provisions, particularly Articles 5, 6, and 7, which provide fair trial guarantees. If fair trial guarantees are violated in judicial proceedings leading to a death sentence, Article 2 would be breached, rendering the execution "arbitrary" as per the International Covenant on Civil and Political Rights (ICCPR). Although Article 2 aims to protect the right to life, it mainly emphasizes the legality of the death penalty and the conditions under which it is considered lawful. Thus, it reiterates existing human rights principles without introducing new elements.

There are two types of restrictions regarding human rights outlined in the mentioned convention. First, states can impose limitations to maintain public order, national security, health, and ethics concerning freedom of expression, assembly, and religious expression.⁹¹ Second, governments can deviate from or suspend the application of convention rights during times of war or public emergency threatening national life.⁹² However, any deviation from the provisions related to the abolition of the death penalty

⁹⁰ - De wilde , Ooms and Versyp v . Belgium , 18 june 1971 , Series A , vol . 12 , 1 EHRP 373 , 56ll . R 351 , 11 ILM 690N para 78 . Francic G. Gacobs , **The European Convention on Human Rights** , Oxford , Clarendon Press , 1975 , P . 104 .

⁹¹ -Articles 11, 10, 9

⁹² -Article 15

under the European Convention on Human Rights (ECHR) is strictly prohibited unless a state genuinely withdraws from the convention.

The author suggests that while capital punishment may be permissible under Article 2 of the ECHR, which allows for lawful executions, Article 3 prohibits torture and inhuman or degrading treatment. National criminal procedures in abolishing the death penalty can be seen as contractual agreements among states to waive exceptions provided under Article 2(1).

Moreover, Protocol No. 6 demonstrates the intent of parties to introduce new commitments for the abolition of the death penalty during peacetime since 1983. The ECHR specifies conditions under which lawful executions are permissible rather than advocating for a more expansive right to life found in other human rights declarations. Despite various exceptions, the convention fundamentally recognizes the right to life, except in circumstances defined in Article 2(2). In essence, European states, by ratifying the ECHR, incorporated internationally declared human rights into a contractual framework. The European Court of Human Rights serves as the enforcement mechanism, ensuring compliance with these rights among member states. This section provides an opportunity to examine the actions of the European Court of Human Rights in ensuring adherence to these principles.

3-2-1-1-Overview and Jurisprudence of the European Court of Human Rights :

The European Court of Human Rights (ECHR) is a key institution of the Council of Europe, established to protect human rights and implement the Council's human rights objectives. Today, the ECHR plays a central role in the Council of Europe, providing broad protection for citizens who seek its intervention through innovative and expansive interpretations of the Convention's articles. As the Court has repeatedly emphasized, it views the Convention as a "living instrument" that must be interpreted in light of present-day conditions. However, the ECHR has taken a passive stance on the death penalty, particularly regarding the inconsistency between Article 2 of the Convention and the additional protocols. The Court has rarely commented directly on the death penalty, often addressing related issues through alternative legal bases, such as fair trial guarantees under Article 6.⁹³

Abdullah Öcalan The case of Abdullah Öcalan, leader of the Kurdish rebels, reflects the Court's ambiguous stance on the death penalty.⁹⁴ In 1999, Öcalan was sentenced to death by a Turkish security court.⁹⁵ The ECHR intervened, requesting Turkey to ensure the death penalty was not carried out until it

⁹³ -William Schabas , **the european convention on human rights "commentary** ,oxford university press,first edition ,2015,p:117

⁹⁴ -Campbell & Cosans V UK, 1982, Aksoy & Aydin V Turkey 1996- 1999., Selmouni VFrance 1999.

⁹⁵ -Doc . 8596 , 15 December 1999

could examine the case. Ultimately, Turkey abolished the death penalty, but the case highlighted the ECHR's reluctance to take a definitive stance on the issue. Öcalan's complaints included violations of multiple Convention articles, such as Articles 2, 3, 5, 6, and 14. The ECHR's decision to hear these claims signified its commitment to comprehensive human rights protection, despite the death penalty's contentious status within the Council of Europe.⁹⁶

the Grand Chamber of the European Court of Human Rights refused to consider the claim of a violation of Article 2 (right to life). Turkey had signed and ratified Protocol No. 6, abolished the death penalty in peacetime in 2001 by amending Article 38 of its Constitution, and commuted Öcalan's death sentence to life imprisonment in 2002. Therefore, the Grand Chamber found no reason to address the Article 2 claim. Instead, the Court focused on Articles 3 and 6 regarding the death penalty. The Court stated, "Sentencing someone to death following an unfair trial creates unjustified fear of execution. The anxiety caused by the uncertainty surrounding the execution, especially when the execution is possible, constitutes severe distress. This distress cannot be separated from the unfair trial, which forms the basis for the death penalty, making the sentence illegal under the Convention (paragraph 168)..." The Court concluded that sentencing Öcalan to death after an unfair trial by a court lacking independence and impartiality constituted inhuman treatment and violated Article 3 of the Convention (paragraphs 174-175).

The ruling indicates that the ECHR views the death penalty in member states of the Council of Europe as unacceptable and will likely oppose its implementation through other treaty provisions in the future. However, the Court should have also addressed the need to amend the first paragraph of Article 2. The Grand Chamber's stance contrasts with the Chamber of Seven Judges, which had initially taken a more active position. In paragraphs 195 and 196 of their judgment, the Chamber noted significant legal changes regarding the death penalty, suggesting a consensus among member states to abolish or at least amend the second part of the first paragraph of Article 2, as evidenced by the signing and ratification of Protocol No. 6 by all member states and its ratification by 41 states.

Nonetheless, the Court softened its stance, concluding that there was no need for a decisive ruling on this matter at that stage. The Grand Chamber's ambiguous position drew sharp criticism from legal experts.⁹⁷ Judge Garlicki, one of the Chamber judges, strongly opposed the Court's ruling, arguing that the ECHR failed to address the core issue of Article 2's first paragraph.⁹⁸ Garlicki believed that the clear opposition

⁹⁶ - Ocalan v . Turkey (NO . 46221 / 99) , Interim measures , 30 November 1999

⁹⁷ - William. A Schabas, **The Abolition of Capital Punishment From an International Law Perspective**, International Conference on Convergence of Criminal Systems bridging the gaps, The Hague, August 2003

⁹⁸ -- Judge Garlicki's comments are attached to the opinion of the Court in the Ojalan case.

to the death penalty by Council of Europe institutions and some member states, like Sweden, effectively amended Article 2 de facto. He suggested that the ECHR should explicitly declare the illegitimacy of the death penalty, akin to constitutional courts in some countries that have banned the death penalty despite not prohibiting it in their laws. Judge Garlicki argued that, given the ECHR's practice of interpreting the Convention in light of present-day conditions, it should recognize the progress made in abolishing the death penalty and consider the first paragraph of Article 2 as amended. While Garlicki's views are compelling, they lack legal justification, as evidenced by the lack of support from other judges. Nevertheless, the ECHR, like other Council of Europe bodies, aims to abolish the death penalty fully. The Court's broad interpretation, considering the death penalty as inhuman treatment, reflects this objective. However, it would have been better if the ECHR had explicitly called for amending the first paragraph of Article 2, thereby resolving inconsistencies among various Council of Europe documents. Besides the European Convention on Human Rights, the American Convention on Human Rights also shows a clear trend toward limiting the application of the death penalty. The subsequent sections will examine the American Convention and the Inter-American Court of Human Rights.

3-2-2-American Convention on Human Rights dated November 22, 1969 :

The human rights system of the Organization of American States (OAS) is a regional system that includes a protocol for the abolition of the death penalty. This protocol was adopted several years after the European human rights system and came into force in 1991. Latin American countries like Uruguay and Venezuela played a crucial role in advocating for the abolition of the death penalty at the United Nations. Despite the abolition of the death penalty in many Latin American countries, the practice has fluctuated in South America over the past century, often reintroduced during periods of political instability by military governments for crimes against the state and public order.⁹⁹

Some OAS member states, such as Jamaica, Trinidad and Tobago, and the United States, still practice the death penalty. Similar to the UN system, the American human rights system began with the 1948 American Declaration of the Rights and Duties of Man and was later completed with the American Convention on Human Rights in the late 1960s. Article 1 of the Declaration, which states that "every human being has the right to life, liberty, and personal security," is binding on OAS member states. Countries that have not ratified the Convention are still subject to complaints to the Inter-American Commission on Human Rights.¹⁰⁰ The American Convention on Human Rights, signed in 1969 in San

⁹⁹ -Roger Hood, **The Death Penalty Wide Perspective**, Oxford: Clarendon Press, 1996, PP. 43– 44

¹⁰⁰ -Protocol of Buenos Aires , (1970) 721 UNTS 324

Jose, aimed to enhance human rights protection in the Western Hemisphere and limit the death penalty. The Convention established two bodies: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The Commission promotes and defends human rights, while the Court addresses complaints, interprets the Convention, and provides advisory opinions. Article 4 of the Convention pertains to the right to life, prohibiting arbitrary deprivation of life and limiting the death penalty to the most serious crimes under pre-existing laws.

It prohibits the death penalty for political crimes or related common crimes and for individuals over seventy years old or pregnant women. Article 4 also stipulates that executions should not occur while clemency or commutation requests are pending. The American Convention's standards regarding the prohibition of the death penalty are more advanced than those of its European and UN counterparts, including specific protections such as the prohibition of the death penalty for political crimes and for the elderly. The need for more explicit regulations led to the adoption of the Second Protocol to the American Convention on Human Rights aiming at the abolition of the death penalty by the OAS General Assembly in 1990. Next, an examination of the African Charter on Human and Peoples' Rights, another regional human rights instrument, would be appropriate

The Inter-American Court of Human Rights is composed of seven judges from OAS member states, selected based on their personal qualifications, high moral character, and expertise in human rights law, capable of holding the highest judicial offices in their own countries (Article 52). The Court's duties and jurisdictions include:

1. Handling Complaints: According to Article 61, only states party to the Convention and the Commission can refer cases to the Court. For a case to be heard, it must first be reviewed by the Commission following procedures outlined in Articles 48-50 (Article 61).
2. Interpreting the Convention: Member states can request the Court to interpret the Convention's provisions, either generally or on a case-by-case basis, through a declaration at the time of ratification or accession (Article 62).
3. Advisory Opinions: Under Article 64, any OAS member state can seek the Court's advisory opinion on the interpretation of the American Convention on Human Rights or other related treaties. The Court can also provide opinions on the compatibility of domestic laws with international human rights instruments.

For instance, in October 1999, the Court issued an advisory opinion on "the right to information on consular assistance in the framework of the guarantees of due process," examining its impact on Article 4 of the Convention, which permits the death penalty under certain conditions. The Court reiterated that

any imposition of the death penalty must not violate the principle that no one should be arbitrarily deprived of life.

Article 4 of the American Convention on Human Rights focuses on the right to life. While it does not explicitly mention the death penalty, it prohibits arbitrary deprivation of life. The first paragraph's principle that "every person has the right to have his life respected" governs the death penalty, indicating that mandatory death penalties violate this article. The text of Article 4 is similar to Article 6 of the International Covenant on Civil and Political Rights (ICCPR), but differs in that the latter references the ICCPR's other provisions and the Genocide Convention. Article 4(2) of the American Convention, inspired by Article 6(2) of the ICCPR, applies to states that have not abolished the death penalty, restricting its use to the most serious crimes under pre-existing laws. The safeguards in Article 4(2), along with those in Articles 8 (right to a fair trial) and 9 (principle of legality), clearly show the Convention aims to narrowly define the conditions under which the death penalty can be applied in states that have not abolished it. Article 4(2) applies to states that still have the death penalty, while Articles 3 and 4 prevent its reintroduction in states that have abolished it. Article 4(4) prohibits the death penalty for political crimes or related common crimes, reflecting traditional Latin American principles against politically motivated extradition.¹⁰¹

Although there is no consensus on the definition of "political crime," the American Convention is the first to address it, unlike the ICCPR and the European Convention on Human Rights. Article 4(5) bans the execution of minors and pregnant women, extending protection to individuals over seventy years old. Article 4(6) states that executions must be stayed while clemency or commutation requests are pending, a provision not found in the ICCPR. Article 5 prohibits cruel, inhuman, or degrading punishment, which can relate to death penalty appeals, indicating that mandatory death penalties are also prohibited. The American Convention on Human Rights offers more advanced regulations on the death penalty than its European and UN counterparts, including broader protections such as banning the death penalty for political crimes and for individuals over seventy years old. The need for clearer regulations led to the adoption of the Second Protocol to the American Convention on Human Rights aiming at the abolition of the death penalty by the OAS General Assembly in 1990.

African Charter on Human and Peoples' Rights dated June 27, 1981 :

The African Charter on Human and Peoples' Rights was adopted in 1981 by the Organization of African Unity. Unlike regional documents from Europe and America, this charter does not mention the death

¹⁰¹ -Nigel Rodley, *Opit*, PP. 176– 177.

penalty. It appears that the drafters intentionally omitted any reference to the death penalty, although the exact reasons are unclear due to limited historical resources. Similar to other documents, the African Charter establishes the right to life to protect against inhumane treatment and ensure fair criminal proceedings. Article 4 states: "No one may be arbitrarily deprived of life." It further asserts that individuals deserve respect for their physical integrity and life, and no one should be arbitrarily deprived of these rights. Article 4 of the African Charter allows the application of the death penalty in Africa, provided it adheres to the law. However, the extent of its application should not be exaggerated. Excluding Arab countries, nearly half of African nations have stopped or legally abolished the death penalty. For example, South Africa's constitution declared the death penalty unconstitutional in 1995.¹⁰² Even Rwanda reduced its scope of application in 1996 in the law facilitating the prosecution of genocide crimes.¹⁰³ One of the most significant recent international initiatives was Rwanda's prohibition of the death penalty in its International Criminal Court law.¹⁰⁴ The language of Article 4 of the African Charter, by referencing arbitrary deprivation of life, echoes Article 6(1) of the International Covenant on Civil and Political Rights and primarily prohibits arbitrary executions. The main body interpreting the African Charter is the African Commission on Human and Peoples' Rights, which requests periodic reports from member states.¹⁰⁵ Although states have been inconsistent in their reporting and rarely mention the death penalty, at its 26th session in Kigali, Rwanda, in November 1999, the African Commission adopted a resolution encouraging member states to suspend executions. The resolution's preamble emphasizes the right to life as stated in Article 4 of the African Charter and references UN Human Rights Commission resolutions calling for the abolition of the death penalty. It notes that three African states have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, and 19 African states have abolished the death penalty in law or practice. The resolution calls on states retaining the death penalty to ensure its application aligns with fair trial guarantees. The resolution includes the following points:

1. Encourage African Charter member states that retain the death penalty to fully comply with their treaty obligations.
2. Call on these states to:
 - a. Restrict the death penalty to the most serious crimes.

¹⁰² -S. v. Makwanyane, 1995 (3) SA391.

¹⁰³ -Organic Law NO. 96 of 30 August 1996, Journal Officiel, Year 35, NO 17, 1 September 1996

¹⁰⁴ -U.N. Doc.S / RES 955 (1994)

¹⁰⁵ -Resolution Urging States to Envisage a Moratorium on the Death Penalty, 13th activity Report of the African Commission on Human and Peoples Rights. QUA Doc . AHG / dec . 153

- b. Consider establishing a moratorium on executions.
- c. Reflect on the possibility of abolishing the death penalty.

Another related document is the African Charter on the Rights and Welfare of the Child (adopted in 1990), which states that the death penalty should not be applied to crimes committed by children¹⁰⁶. Like Article 5 of the UN Convention on the Rights of the Child, this charter defines anyone under 18 as a child and asserts that children should not be subjected to inhumane treatment, with the primary goal of the juvenile justice system being rehabilitation within the family context.

In my opinion, the African human rights system has not initiated any unique measures of its own and has mostly followed the trends of the Council of Europe and other international organizations, adapting them to the African context. Unlike the European Convention on Human Rights (Article 15), the American Convention on Human Rights (Article 27), and the International Covenant on Civil and Political Rights (Article 4), the African Charter does not provide for derogation. However, it allows member states to impose certain restrictions in their domestic laws. The Charter also allows for amendments proposed by member states (Article 68). The individual complaint mechanism in the African Charter is vague compared to other international and regional human rights instruments, but recent practice has clarified this through the Commission's views on individual communications.

The Charter does not explicitly address the death penalty, nor does it comprehensively protect the right to life as other international and regional documents do. It also does not mention exempting certain groups from execution or restricting the death penalty to the "most serious crimes." In summary, while the African Charter on Human and Peoples' Rights was adopted after the European and American human rights conventions, it has not achieved similar progress toward abolishing the death penalty and generally holds a passive stance on the issue. The Charter established an important executive body, the African Commission on Human and Peoples' Rights, which began its activities in 1987 to monitor the Charter's implementation by member states. To address the Commission's weaknesses, the African Court on Human and Peoples' Rights was established. This court comprises 11 judges from African Union member states, serving six-year terms renewable once, and has advisory, judicial, and dispute resolution authority. The court can hear cases referred by the African Commission, member states, and African international organizations, with mandatory jurisdiction over these cases and optional jurisdiction over individual and NGO complaints with observer status at the Commission. Another significant effort to limit the death

¹⁰⁶ --African Charter on the Rights and Welfare of the Child . QAU Doc . CAB / LES / 24 . 9 / 49 , art . 5/30

penalty in Europe has been made by the European Union, in addition to the actions of the Council of Europe, and should be noted in the conclusion of this discussion.

4-Review of the Islamic Republic of Iran's criminal law regarding the death penalty:

Following the 1979 Islamic Revolution, a broad movement to amend existing laws was undertaken. The Iranian Constitution's Article 4 mandates that all civil, criminal, financial, economic, administrative, cultural, military, and political laws be based on Islamic principles.¹⁰⁷ This necessitated the revision or repeal of some laws, including the old Penal Code, which was replaced by the 1991 Islamic Penal Code¹⁰⁸. Article 498 of the new code stated that any laws conflicting with it were nullified. The penalties under this code were categorized into five types: Hodod (fixed punishments), Qisas (retaliation), Diyyat (blood money), Tazir (discretionary punishments), and preventive punishments, based on Islamic jurisprudence. In 2013, a new Islamic Penal Code was enacted, further refining these categories into four main types: Hadd, Qisas, Diyya, and Tazir, as specified in Article 14.¹⁰⁹

4-1- Nature and Definition of Hodood:

Before delving into specific crimes, the nature and definition of Hodood punishments must be examined. Hodood is defined in Article 15 of the Islamic Penal Code as a punishment determined by religious law in terms of cause, type, amount, and execution method. However, this definition is somewhat flawed, as it also applies to Qisas and Diyyat, which are similarly determined by religious law. Some Tazir

¹⁰⁷ - Article 4 :”All civil, penal financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the wise persons (fuqaha’) of the Constitutional Council (also known as the Guardian Council) are judges in this matterAll civil, penal financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the wise persons (fuqaha’) of the Constitutional Council (also known as the Guardian Council) are judges in this matter

¹⁰⁸ - Houshang Shambiati, **General Criminal Law**, 7th edition, (Tehran, Wistar Publications,1992), volume 2, p. 309

¹⁰⁹ - Abbas Zeraat, **A Brief Description of the Punishment Law of Islam**, May 1992, (Tehran, Qaqnoos Publications, 2012) Volume 1, p. 43

punishments also have defined types and amounts. Therefore, while Hodood is distinct in being divinely prescribed, this distinction is not absolute. Additionally, Hodood is rooted in divine law, not merely scriptural texts but also scholarly consensus and popular opinions of jurists. The various Hodood crimes subject to execution are explored in this section. Hodood punishments are fundamentally different from other types of punishments in that they are divinely mandated and unchangeable by ordinary legislators. In cases of doubt, it is assumed that a punishment is not Hodood unless explicitly stated. Islamic Penal Code Article 220 specifies that for unspecified Hodood crimes, Article 167 of the Constitution, which refers to Islamic jurisprudence sources, is applied.¹¹⁰

4-1-1-Types of Hodood Crimes:

Islamic jurists have varying views on the types and number of Hadd crimes. The 2013 Islamic Penal Code lists the following Hodood crimes as punishable by death: adultery, incest, repeat offenses of adultery, rape, and a non-Muslim having intercourse with a Muslim woman. Each of these crimes is briefly examined.

4-1-1-1-Sexual Crimes :

1-Adultery and Incest Adultery :

Adultery and Incest Adultery is punishable by death in four scenarios:

- a. Adultery with close blood relatives (incest).
- b. Adultery with the father's wife, which results in the death of the adulterer.
- c. Adultery by a non-Muslim man with a Muslim woman, resulting in the death of the adulterer.
- d. Adultery by force or coercion, resulting in the death of the coercive adulterer (Article 224 of the Penal Code).¹¹¹

Article 225 of the Penal Code also prescribes stoning for adulterous fornication (zina). If stoning is not possible, and the crime is proven by testimony, the court's ruling and the Chief Justice's approval can lead to execution.¹¹²

¹¹⁰ - Abbas Zeraat, **Commentary on the Islamic Penal Code of the Boundary Section**, (Tehran, Qaqnoos Publications, 2010), first volume of crimes against chastity, p. 21

¹¹¹ - Paragraphs A and B of Article 224 of the Islamic Penal Code of 2012, which is inspired by Islamic jurisprudence, state: "The punishment for adultery in the following cases is death:

A- Adultery with relatives

B- Adultery with the father's wife, which causes the execution of the adulterer.

¹¹² -- Mustafa Mohagheg Damad, "**Punishment of acts against chastity in the Qur'an**", Shahid Beheshti University Legal Research Journal, No. 43, Spring and Summer 2015, pp. 24-29

2-Homosexual Relations (Liwat) :

The active party in liwat is executed if the act involves force, coercion, or if the active party meets the conditions of ihsan (being married). The passive party is executed regardless of the conditions. And If the active party is a non-Muslim and the passive party is Muslim, the active party is executed (Article 234).

Non-Muslim men are also executed for thighing (tafkhez) with a Muslim passive party. Lesbian acts are punishable by death on the fourth offense, as specified in the rules on repeated offenses (Article 136).¹¹³

4-1-1-2-Moharebeh (Waging War Against God) :

Article 282 prescribes the death penalty for the ambiguous charge of moharebeh. , Judges can choose alternative punishments like crucifixion, amputation of the right hand and left foot, or exile.¹¹⁴ Article 279 defines a mohareb as someone who takes up arms under specified conditions, including highway robbers, thieves, and armed smugglers (Article 281). One of the features of the new law is that in many cases, the legislator has assigned the responsibility of the law enforcers to determine the compatibility of the criminal title of war against the committed act, which, of course, considering the fact that a precise and specific definition from the legal point of view for the crime of war has not been provided. He has left a lot of maneuvering power in the hands of the investigating judge, and therefore, although to some extent, this issue has removed the title of moharebeh, even though there are some objections regarding the incorrectness of the legislator's actions regarding crimes that are not actually moharebeh. But it has created the ground for bigger problems, which is the difference in the opinion of the judges regarding the realization of the title of muharibeh or not.¹¹⁵

4-1-1-3-Rebellion and Corruption on Earth :

The Penal Code introduces the new concept of rebellion (baghi), which was not in the previous law. , It expands the scope of the death penalty for those accused of spreading corruption on earth. Article 286: "Anyone who extensively commits crimes against individuals' physical integrity, crimes against national

¹¹³ - Muhammad bin Al-Hassan Har Amili, Shi'ite tools, 6th edition, Tehran, al-Maqboeh al-Islamiya, 1996. , volume 18, page 420, verses 79 to 80 of Surah A'raf, verses 55 and 54 of Surah Namal

¹¹⁴ - The Islamic Penal Code of 2012, in its eighth chapter, examines the crime of fighting and predicts its punishments. In article 279 of this law, it is stipulated: ". *Moharebeh* is defined as drawing a weapon on the life, property or chastity of people or to cause terror as it creates the atmosphere of insecurity. When a person draws a weapon on one or several specific persons because of personal enmities and his act is not against the public, and also a person who draws a weapon on people, but, due to inability does not cause insecurity, shall not be considered as a *mohareb* [i.e. a person who commits *moharebeh*]."

¹¹⁵ - Mohammad Ibrahim Shams Natari, **comparative study of the death penalty**, first edition, (Qom, Islamic Propaganda Office Publishing Center,2008), p. 21

or international security, spreads lies, disrupts the country's economic system, commits arson and destruction, spreads toxic, microbial, or dangerous substances, establishes corruption and prostitution centers, or assists in these actions in a way that severely disrupts public order, causes insecurity, or inflicts major harm on public or private property, or leads to widespread corruption or prostitution, is considered a corruptor on earth and shall be sentenced to death."

However, this article fails to clearly define these ambiguous crimes and their extensive nature, giving judges significant discretion. Article 278 defines rebels as groups that take up arms against the Islamic Republic of Iran, and if they use weapons, the members are sentenced to death.¹¹⁶

4-1-1-4-Repeated alcohol consumption : (Repeated Consumption of Intoxicants)

Repeated alcohol consumption is addressed under Article 264 of the Islamic Penal Code, which stipulates that consuming intoxicants (through drinking, injection, or smoking) in any form, whether solid or liquid, is subject to a prescribed punishment. An intoxicant is defined as anything that can cause intoxication, even if it does not currently cause intoxication, and such substances are considered inherently impure.

Consumption of these substances is thus both a sin and subject to punishment. Islamic traditions and numerous Quranic verses (e.g., Surah Baqarah, Surah Nisa, Surah Ma'idah, Surah A'raf, and Surah Mu'minun) clearly prohibit intoxicants. Some jurists equate narcotics with intoxicants, but the use of narcotics carries a discretionary punishment (ta'zir).. According to Article 136 of the Islamic Penal Code, repeated consumption of intoxicants can lead to execution on the fourth offense.¹¹⁷

4-1-1-5-Sab al-Nabi (Blasphemy Against the Prophet):

Sab al-Nabi (blasphemy against the Prophet) is a specific form of insulting the sacred aspects of Islam, recognized in Islamic jurisprudence. There are two main viewpoints regarding what constitutes Sab al-Nabi:

1. The language used must be demeaning to the Prophet. If the language is indeed insulting, then Sab al-Nabi is applicable, supported by the linguistic meaning of "sab," which includes any form of insult or abuse.
2. Sab al-Nabi is interpreted as using insults specifically akin to accusations (qadhaf) against the Prophet. This view is supported by the frequent pairing of qadhaf with insults in religious texts. According to religious traditions, the punishment for Sab al-Nabi is not contingent upon a court ruling, allowing direct

¹¹⁶ - Abbas Zeraat, **a brief description of Islamic Penal Code**, Volume 1, p. 356

¹¹⁷ - Abbas Zeraat, Description of the Islamic Penal Code, p. 241

action by the listener. However, current laws mandate that such punishments be executed through a proper court ruling, and any claim of bloodguilt (mahdoor al-dam) must be proven in court.¹¹⁸

Article 262: States that anyone who insults or accuses the Prophet Muhammad or any major prophet is considered guilty of Sab al-Nabi and is subject to execution. The law equates insults against the Imams or Lady Fatima to Sab al-Nabi.

There are some differences Between Old and New Laws: Old Law (Article 513): Sab al-Nabi was classified under discretionary punishments (ta'zir) but New Law (Article 262): Sab al-Nabi is classified under hudud (fixed punishments), indicating a more severe and predefined punishment. The transition from ta'zir to hudud suggests that Sab al-Nabi might be associated with apostasy, a crime traditionally considered under hudud. Furthermore, while the old law included insults against the Imams and Lady Fatima, the new law focuses specifically on major prophets but still equates insults against the Imams and Lady Fatima to Sab al-Nabi in its implications. This legislative shift illustrates the evolving legal treatment of blasphemy within Islamic penal codes, reflecting both continuity and change in response to jurisprudential interpretations.¹¹⁹

4-2- Crimes subject to retribution :

Qisas(retribution) is one of the prescribed punishments in Islamic law and essentially a form of execution where its personal and retributive nature overshadows its divine and public aspect. Given that many of its rules are ritualistic and sometimes clash with general legal principles, it has always been criticized by secular jurists. In explaining the rules and regulations related to qisas, analysis is only possible within the framework of religious sources, and rational arguments are generally not applicable. The legislator tries to draft laws based on the views of well-known jurists, even if these views do not align with current times. Those who can legislate against or alter these views must be jurists themselves, a trait not possessed by parliament members. Unfortunately, the draft law does not reach experts' opinions, resulting in the observed shortcomings in the codified laws. It is essential to note that legislators should not consider the understanding and rulings of a jurist as the absolute divine rule. Instead, a jurist's fatwa is their interpretation of religious sources, which is subject to change.

Therefore, it should not be assumed that what a prominent jurist has stated is unchallengeable and the exact divine law. In today's society, esteemed jurists must progress towards evolving the rulings, giving due attention to reason, once considered invalid and now neglected. This inner wisdom should be

¹¹⁸ - Abbas Zeraat, "Jurisprudential and legal program of Sab-ul-Nabi's crime", Ferdowsi University of Mashhad Theology Journal, No. 57, 2001, pp. 103, 75.

¹¹⁹ - Abbas Zeraat, opcit ,356

regarded as an internal prophet to base legal rulings on rational arguments. Especially since the Islamic legal system is currently one of the major legal systems globally, secular thinkers cannot be convinced by ritualistic practices alone. Qisas is not an exception, and practices such as a Muslim not being executed for killing a non-Muslim, or a man's execution for killing a woman being contingent upon paying half the man's blood money, or execution based on fifty oaths, or the method of execution by sword, or different rulings in similar cases need rational justification.¹²⁰

4-2-1-Definition and Principle of Qisas:

Linguistically, qisas comes from the root "qassa" meaning to follow in the footsteps of something. Legally, it refers to retribution where the same injury inflicted is imposed on the perpetrator. The essence of qisas is to ensure the punishment matches the crime, emphasizing the principle of personal liability.¹²¹

4-2-2-Qisas (Retribution) in Iran's Penal Code :

Article 16 of the Islamic Penal Code defines qisas as the main punishment for intentional crimes against life, body, or benefits, applied as described in the third book of the code. The punishment is equivalent but not identical in method to the crime. For instance, if the crime was committed by poison, the execution method cannot be by poison.¹²²

1. Intentional Murder:

Article 290¹²³ outlines conditions for intentional murder, specifying that if a person intentionally commits an act leading to a specific crime, they will be held accountable. Various circumstances affecting the definition of intentional murder are detailed, such as awareness of the perpetrator and the context of the act.

¹²⁰ - Abbas Zeraat, **Commentary on the Islamic Penal Code: Retribution section (intentional crimes against bodily integrity)**, (Tehran, Phoenix, 2001), pp. 19-

¹²¹ - Mohammad Ibrahim Shams Natari, *opcit*, p. 75

¹²² - Abbas Zeraat, *Description of Aslam Penal Code, Retribution section*, p. 40

¹²³ - Article 290 of the 2013 Islamic Penal Code concerning intentional murder states: "A. Whenever the perpetrator intends to commit a crime against a specific person or persons or against unspecified persons from a group, and the intended crime or its equivalent occurs as a result, whether the committed act typically results in that crime or its equivalent, or not. B. Whenever the perpetrator intentionally commits an act that typically results in the crime that occurred or its equivalent, even if he did not intend to commit that specific crime or its equivalent but was aware and understood that the act typically results in that crime or its equivalent. C. Whenever the perpetrator did not intend to commit the crime that occurred or its equivalent and the act he committed typically does not result in that crime or its equivalent for ordinary people, but due to the victim's illness, weakness, old age, or any other condition, or due to specific spatial or temporal circumstances, it typically results in that crime or its equivalent, provided that the perpetrator was aware and understood the victim's abnormal condition or the specific spatial or temporal circumstances. D. Whenever the perpetrator intends to commit the crime that occurred or its equivalent without targeting a specific individual or group, and the intended crime or its equivalent occurs, such as planting a bomb in public places.

In section B, the lack of awareness and attention of the perpetrator must be proven, and if not proven, the crime is intentional unless the crime occurred solely due to the extreme sensitivity of the affected area, and the extreme sensitivity of the affected area is generally not recognized, in which case the awareness and attention of the perpetrator must be proven, and if not proven, the crime is not considered intentional. In section C, the awareness and attention of the perpetrator to the fact that the act typically results in the crime that occurred or its equivalent must be proven, and if not proven, the crime is not considered intentional. Specific spatial or temporal circumstances must be proven, and if not proven, the crime is not considered intentional." The punishment for intentional murder, according to this article and the consensus of jurists, is retribution (qisas).

The ruling of qisas is established by numerous evidences, the most important of which are Quranic verses and Shariah traditions. Verses 178 and 179 of Surah Al-Baqarah, verse 33 of Surah Al-Isra, verses 45 and 32 of Surah Al-Ma'idah, verses 92 and 93 of Surah An-Nisa, verses 40 and 41 of Surah Ghafir, verse 126 of Surah An-Nahl, .¹²⁴

2-Conditions for Qisas :

1- Court judgment is required 2- The victim's family must request qisas. 3-Equality in religion and status between perpetrator and victim. 4-The perpetrator must not be a minor or insane. 5-Execution of qisas requires the leader's or his representative's permission.6- The perpetrator must not be the victim's father or paternal grandfather. 7-The victim should not be a lunatic. 8-The act must not have been committed in a state of sleep, unconsciousness, or intoxication.¹²⁵

Article 347 states that qisas can be waived or converted into diyat (compensation) at any stage by the victim's family. If the victim pardons the perpetrator before death, this nullifies the qisas claim posthumously, leading to an alternate punishment. While qisas is the primary punishment for intentional murder, its application is subject to specific conditions and can be substituted or waived. The principle of personal punishment is solidified, ensuring only the perpetrator is liable, thus preventing collective punishment of the perpetrator's family or tribe, a practice prevalent before Islamic law.¹²⁶

However, the legislator in Article 347 of the Islamic Penal Code considers qisas not as a mandatory rule and allows for its conversion. This article states: "The holder of the right to qisas can forgive, either freely or through compromise, in exchange for something, at any stage of prosecution, trial, or execution of the sentence." Therefore, if the victim's guardians forgive the murderer in exchange for compensation or

¹²⁴ - Abbas Zeraat, **Description of Islamic Penal Code**, Retribution section, p. 40

¹²⁵ - Article 302-3011 , criminal code,Qisas chapter

¹²⁶ - Seyed Mansour Mir Sa'idi, *The Legal Nature of Diyat*, 1st Edition, (Tehran, Mizan Publishing House,2001), p. 92

without compensation, the murderer will not face qisas. Also, if the victim forgives the perpetrator before death, according to Article 365 which states: "In intentional murder and other crimes, the victim can forgive or reconcile after the crime occurs and before death, and the victim's guardians or heirs cannot demand qisas or blood money after his death; however, the perpetrator will be sentenced to the punishment specified in the fifth book of Ta'zirat." The religious basis of this article is verse 194 of Al-Baqarah and verse 45 of Al-Ma'idah. It appears that the primary punishment for intentional murder is qisas and it is not an option between qisas and blood money. However, the primary punishment, which is qisas, sometimes converts to blood money, which sometimes is optional (Articles 359 and 347 of the Islamic Penal Code) and sometimes mandatory (Article 435 of the Islamic Penal Code). Qisas is a pure punishment, but blood money is a punishment that also has a compensatory aspect. The question that arises is whether the blood money replacing qisas is a punishment or a punishment along with compensation. Both views have followers, but it seems the second view is more consistent with legal principles.¹²⁷

4-3-Differences Between Qisas and Execution:

One type of punishment involves removing the soul and life of the criminal from his body. This punishment is recognized in the law with various names such as execution, qisas, crucifixion, killing, stoning, etc. Most of these punishments are related to crimes deserving hadd (fixed punishments under Islamic law). For instance, Article 224 of the Islamic Penal Code establishes the punishment of death for incestuous adultery, adultery with one's stepmother, adultery by a non-Muslim with a Muslim woman, and adultery by force. Article 225 prescribes stoning for adultery by a married man or woman. Article 234 establishes the death penalty for sodomy, and Article 282 considers execution and crucifixion as punishments for moharebeh (waging war against God). Similarly, Article 136 specifies execution for theft on the fourth offense. Qisas, a punishment similar to execution, differs in several key aspects:

1. Execution is a public punishment executed by the state, while qisas is a private punishment carried out by the victim's family unless in specific cases where it takes on a public nature, such as when the victim has no heirs (Article 356 of the Islamic Penal Code). The significant implication of this difference is that the victim's family's forgiveness does not affect execution, potentially reducing it to life imprisonment or another punishment. In qisas, however, the victim's family's forgiveness leads to its dismissal, possibly accompanied by a discretionary punishment under specific conditions (Article 612 of the Islamic Penal Code).

¹²⁷ - Seyed Mansour Mir Sa'idi, **The Legal Nature of Diyat**, 1st Edition, (Tehran, Mizan Publishing House, 2001), p. 92

2. The conditions and specifics of qisas are determined by religious law, limiting the legislature's role, whereas execution is typically a discretionary punishment set by the legislature for specific crimes.

3. The methods for proving crimes warranting execution differ from those for proving murder warranting qisas. 4. The implementation of qisas and execution is generally similar, but qisas requires proportionality between the crime and the punishment.

5. The judicial authorities handling these two punishments differ: execution is usually handled by revolutionary courts, while qisas is handled by general courts.

6. When there is a conflict between execution and qisas, qisas takes precedence as it concerns individual rights, whereas execution concerns public rights. For instance, if a defendant commits armed robbery causing public terror (punishable by execution) and also commits intentional murder (punishable by qisas), the rules of qisas will take precedence.¹²⁸

4-3-Discretionary Crimes Punishable by Death :

Discretionary punishment, or "Ta'zir," refers to penalties that do not fall under the categories of Hadd, Qisas, or Diyyat. It is imposed by law for religious violations or breaches of governmental regulations. The severity and execution of these punishments are determined by law and take into account factors such as the offender's motives, mental state, and actions post-crime, as well as their personal and social background. Crimes against public security, which can warrant the death penalty, are categorized under crimes against public peace and security in the 1996 Ta'zirat Law. These crimes threaten the country's high interests, political integrity, economic life, and general public peace. Although these crimes can indirectly harm private individuals, the primary target is the state and its governance. These are Types of Crimes:

4-3-1- Crimes against public security and peace

Crimes against public security and peace are crimes whose harm and bad results are directly directed at the highest interests and integrity of political organizations, independence, economic life and national credits, and finally peace and public peace as a whole. Although the consequences of such crimes may indirectly endanger the private and personal interests of a certain person, but in fact, it is the direct target and victim of the perpetrators of crimes against public security and peace, the nation or the government.

. In this part, we will describe and analyze the crimes against public security and peace that lead to execution.

¹²⁸ - Mehdi, Hojjati , **the cooperation of Mojtaba Bari, Islamic Penal Code in the current legal system**, (Tehran, Mithaq Adalat, 2004), p. 435

4-3-1-1-Crimes Comparable to "Moharebeh" (War Against God) and "Corruption on Earth":

These serious crimes, often involving armed rebellion, spreading falsehoods, and significant public disorder, are discussed extensively under Hudud (fixed punishments) but are also relevant to Ta'zir. Although traditional Islamic law suggests lesser punishments for Ta'zir, Iranian law has extended the scope to include the death penalty for certain severe crimes. Article 279: Defines "Moharebeh" as drawing a weapon to instill fear or cause insecurity. Article 286: Defines broad crimes causing severe public disorder as "corruption on Earth," warranting the death penalty. Article 287: Punishes armed rebellion against the Islamic Republic with death. In summary, we can say that these are crimes against public security and comfort that can lead to the death penalty, dividing them into internal and external threats and elaborating on severe crimes that fall under the expanded interpretation of "Moharebeh" and "corruption on Earth."¹²⁹

4-3-1-2-Crimes Against External Security of the Country:

Iran's foreign policy, based on Articles 152 and 153 of the Constitution, emphasizes rejecting dominance, maintaining comprehensive independence, defending Muslims' rights, and fostering peaceful relations with non-hostile states. Any agreements that compromise the country's sovereignty in various domains are prohibited.

1. Forming Groups to Disrupt National Security:

According to Article 498 of the Islamic Penal Code, forming or managing groups aimed at disrupting national security is punishable by two to ten years in prison, unless the act qualifies as "Moharebeh" (waging war against God).

2. Effective Incitement of Armed Forces to Mutiny:

Article 504 addresses the incitement of military personnel to rebellion, desertion, surrender, or neglect of duties. If done with the intent to overthrow the government or defeat national forces, it is considered "Moharebeh" and subject to severe penalties. Otherwise, the punishment ranges from six months to ten years in prison.

3. Collaboration with Hostile Foreign States:

¹²⁹ -- Iraj Goldouzian, *special criminal law (crimes against bodily integrity, moral injuries, property and ownership.)*, 8th edition, (Tehran, University of Tehran Press, 2010), p. 431

Article 508 stipulates that collaborating with hostile foreign states against Iran, if not deemed "Moharebeh," results in one to ten years in prison. This covers any form of cooperation not specifically classified under other criminal activities such as espionage.¹³⁰

4-3-1-3-Crimes Against Internal Security:

These crimes primarily aim to oppose the government or its officials and include:

1. Assassination Attempts on Internal Officials:

Article 515 specifies that attempts on the lives of the leader, heads of the three branches of government, or senior religious figures, if not considered "Moharebeh," lead to three to ten years in prison. The definition of assassination attempts is broad and includes preliminary actions indicative of criminal intent. If the motive is determined to undermine the government, the act may be treated as "Moharebeh" and subject to harsher penalties. Awareness of the target's official status is necessary for the application of these punishments.¹³¹

4-3-1-4- Other Crimes:

In addition to the previously mentioned crimes, there are other offenses classified under crimes against public security and tranquility, for which the perpetrator may face the death penalty. These crimes, discussed in this section, include:

1. Arson with the Intent to Oppose the Islamic Government:

Article 675 of the 1996 Penal Code stipulates that anyone who intentionally sets fire to buildings, ships, airplanes, factories, warehouses, residential properties, forests, crops, or orchards belonging to others, will face two to five years in prison. If the act is committed with the specific intent of opposing the government, it is considered a "Moharebeh" offense, subject to more severe punishment.¹³²

2. Looting and Pillage:

According to Article 683 of the 1996 Penal Code, "any form of looting, pillaging, and destruction of goods, property, or products by a group of more than three people with force and violence, will be punished with two to five years in prison if not considered 'Moharebeh'." The term "looting" refers to the violent and forcible taking of property by a group. The severity of the punishment reflects the social disorder and public harm caused by such actions, beyond just the financial loss to the victim.¹³³

3. Conspiracy and Collusion to Commit Crimes:

¹³⁰ -Ibid , p:344

¹³¹ - Hossein Mir Mohammad Sadeghi, opcit, p. 148

¹³² - Iraj Goldouzian, opcit, p. 511.

¹³³ -- Abbas Zeraat, Description of the Penal Code of Islamic ,section Tazeerat, Volume I, p. 775

Article 610 of the Islamic Penal Code states: "If two or more individuals conspire and collude to commit crimes against the internal or external security of the country, or to provide the means for such crimes, they will be sentenced to two to five years in prison if not considered 'Moharebeh'." This crime involves an agreement to commit an offense, requiring a serious intent to act on the plan.¹³⁴

4. Sabotage of Public Utilities and Facilities to Disrupt Public Order and Security:

Article 678 of the 1996 Penal Code specifies that anyone who sabotages public utilities, such as water, sewage, and electricity systems, whether these are government-owned, jointly funded, or privately owned but for public use, with the intent of disrupting public order and opposing the Islamic government, will face the penalties associated with "Moharebeh." The key factor is the public use of these facilities, not their ownership. These crimes and their corresponding punishments reflect the severity with which the law treats actions that threaten national security and public order.¹³⁵

4-3-2-Death Penalty in Miscellaneous Penal Laws Enacted After the Islamic Revolution:

This section examines various crimes that have been classified as deserving the death penalty in different laws enacted after the Islamic Revolution. These include: Anti-Narcotics Law ,Law on Aggravating Punishment for Disruptors of the Economic System Law on Aggravated Punishment for Embezzlement, Bribery, and Fraud, Law on Aggravated Punishment for Forgers of Currency and Importers, Distributors, and Users of Counterfeit Currency.

1- Drug-Related Crimes :

The death penalty for drug-related crimes was first introduced in the 1959 law reforming the law on poppy cultivation and opium use. Post-revolution, the first law addressing drug offenses was the 1979 Legal Bill on Aggravating Punishment for Narcotics Offenders, which extensively included the death penalty to instill fear in drug traffickers.¹³⁶

The Judiciary Supreme Council posited that the death penalty for drug offenses is valid if the crime amounts to "corruption on earth," a term that denotes severe crimes causing extensive harm to public order. The practice continued until 1988, when the Anti-Narcotics Law was enacted by the Expediency Discernment Council. This law automatically classified major drug trafficking offenses as "corruption on earth," mandating the death penalty without requiring judges to establish this designation. Subsequent

¹³⁴ - Hossein Mir Sadeghi, *opcit* , p. 219 onwards

¹³⁵ -*Ibid* ,p:203

¹³⁶ - Quoted from the official newspaper No. 4494/M/Kh/16/9/1389

amendments, including significant reforms in 1997 and 2010, retained the death penalty for severe drug offenses under specified conditions.¹³⁷

Conditions for the Death Penalty (2010 Amendment):

1. Cultivation and Production: Cultivating poppies or coca, or producing narcotics or psychotropic substances, with the death penalty applicable on the fourth offense.
2. Trafficking and Distribution: Importing, producing, distributing, or selling more than 5 kg of opium or similar substances results in the death penalty.
3. Possession: Possessing over 20 kg of opium leads to the death penalty on the second offense.
4. High Quantity Possession: Possessing over 100 kg of opium results in life imprisonment for the first offense and death for repeat offenses.
5. Synthetic Drugs: Possession or trafficking of over 30 grams of synthetic drugs like heroin or methamphetamine warrants the death penalty.
6. Repeat Offenses: Repeated offenses that cumulatively involve over 30 grams of narcotics result in the death penalty.
- 7.: Armed drug trafficking incurs the death penalty and may be carried out publicly.
8. Industrial Chemicals: Manufacturing or distributing industrial chemicals for drug production can lead to severe punishments, potentially including the death penalty.

There remains ambiguity regarding whether the death penalty is a discretionary (ta'zir) or fixed (hudud) punishment. - The law sometimes diverges from religious decrees by prominent Islamic jurists, Proposed reforms aim to clarify these ambiguities and potentially reduce the number of executions for drug-related crimes.

So we can say that ,The death penalty in Iran for drug-related offenses is complex, involving both discretionary and mandatory elements based on the severity and recurrence of the crime. While recent reforms have aimed to reduce the number of executions, the high rate of drug-related executions remains a point of domestic and international concern.¹³⁸

2-Disrupting the Economic System:

¹³⁷ - Mohammadreza Saki, **Narcotics crimes from the point of view of domestic law and international law**, first edition (Tehran, 3rd line, 2010), p. 185

¹³⁸ - Gen Sander, Giada Girelli and Adrià Cots Fernández Ghanimifard, M., & Zarezadeh, M. ,**The Death Penalty for Drug Offences: Global Overview** 2019 , p:34

The Law on Punishment for Disrupting the Economic System (enacted on December 10, 1990) stipulates the death penalty for actions that disrupt the monetary or production systems of the country if done with the intent to confront the government and with knowledge of their effectiveness (Article 2).

Counterfeiting coins with the intent to disrupt the monetary system falls under this law, warranting the death penalty if aimed at harming or opposing the Islamic Republic; otherwise, it results in imprisonment from five to twenty years, and potentially 20 to 74 lashes.¹³⁹

3-Severe Punishment for Bribery, Embezzlement, and Fraud:

Article 4 of the Law on Aggravating Punishment for Bribery, Embezzlement, and Fraud (enacted on September 19, 1986) states that individuals forming or leading a network to commit these crimes may face the death penalty if deemed as "corrupt on earth". The 2013 Penal Code clarified conditions under which these crimes are considered "corruption on earth".¹⁴⁰

4- Severe Punishment for Counterfeiters of Currency :

The Law on Aggravating Punishment for Counterfeiters of Currency (enacted on April 18, 1989) mandates the death penalty for those counterfeiting, distributing, or using counterfeit currency if they are part of a network or intend to oppose the Islamic Republic. Those intentionally introducing counterfeit currency into the country are also sentenced to death as "corrupt on earth".

5-Audio-Visual Crimes :

The 2007 Law on Punishing Illegal Activities in Audio-Visual Affairs prescribes punishments for the distribution and production of illegal audio-visual content. Major distributors of obscene materials face one to three years in prison and other penalties for the first offense, and increased penalties for repeat offenses. Those producing such content through coercion or for sexual exploitation, and the main producers, may be sentenced to death if deemed "corrupt on earth". Distributors and producers of less severe offensive content face three months to ten years in prison and fines, with increasing penalties for repeat offenses.¹⁴¹

4-3-3- Examination of the Special Prohibition on the Execution of Children and Adolescents in the Laws of the Islamic Republic of Iran :

Inspired by victimology findings and global reflections, particularly post-World War II, many international human rights treaties have prohibited the execution of individuals under 18 years of age.

¹³⁹ - Abbas Zeraat, Commentary on the Penal Law of Islamic , section Tazeerat, Volume I, p. 120

¹⁴⁰ - Hossein Mir Mohammad Sadeghi, **crimes against security and public welfare**, pp. 398 and 397 and special criminal law; Crimes against property and ownership, 12th edition, (Tehran, Mizan publishing house, 1378), pp. 104, 103

¹⁴¹ -Ibid,p:311

Examples include the International Covenant on Civil and Political Rights (Article 6), the American Convention on Human Rights (Article 4), and the Convention on the Rights of the Child (Article 37). These international efforts have significantly influenced domestic laws, leading to the prohibition of the death penalty for juvenile offenders in over 100 countries. In Iran, despite the Islamic Republic's ratification of the Convention on the Rights of the Child, domestic courts have continued to sentence juveniles under 18 to death for capital crimes. However, in recent years, significant changes have been made to the rights of children and adolescents in Iran, with the introduction of the Juvenile Court Bill and its integration with the Islamic Penal Code, resulting in a comprehensive law regarding the punishment of minors.

The new Islamic Penal Code of 2013 introduces substantial reforms by recognizing the gradual responsibility of children and adolescents and categorizing crimes. These reforms are noteworthy in both discretionary punishments and retributive justice. The new law considers the developmental stages of a child's personality and socialization, with experts categorizing childhood from birth to the end of adolescence into four stages: birth to 9 years, 9 to 12 years, 12 to 15 years, and 15 to 18 years. While recognizing 18 as the age of majority, the law also defines the age of puberty for criminal responsibility, setting it at 9 lunar years for girls and 15 lunar years for boys. According to Article 88, paragraph 2, for boys aged 12 to 15 years and those between 9 and 12 years, the same decisions as outlined in Article 88 are applied. Importantly, the conversion of retributive punishments to discretionary punishments for adolescents under 18 years is possible if there is doubt about their full mental development. Article 91 states that for crimes warranting retribution or corporal punishment, if individuals under 18 do not comprehend the nature of the crime or its prohibition, or if there is doubt about their mental maturity, they will be subject to alternative punishments appropriate to their age. The court can seek forensic opinions to determine mental development. This approach can help judges support and protect juveniles when there is doubt about their mental maturity.¹⁴²

While the age of puberty remains unchanged from previous laws, the innovation lies in considering mental maturity alongside the age for crimes warranting retribution or corporal punishment. There is a conflict between Iran's domestic laws (regarding the age of puberty) and the provisions of the Convention on the Rights of the Child, which defines children as individuals under 18 unless a lower age is specified by applicable law. Iran's Islamic Penal Code validates the age of puberty for criminal responsibility (Article 147) and stipulates in Civil Code Article 1210, Note 1, that puberty is at 15 lunar years for boys

¹⁴² - Jahangir Mansour, **collection of penal laws and regulations**, 11th edition, (Tehran, Aghaz Publications, 2015),p:500

and 9 lunar years for girls. While the Convention allows member states to set a lower age of majority based on domestic laws, it should not ignore the realities of emotional, psychological, and mental development.¹⁴³

Efforts have been made to provide legal and judicial guarantees following a differential criminal policy model for children and adolescents. For instance, the Law on the Protection of Children and Adolescents (adopted on December 16, 2002) in Article 1, extends protection to all abused children under 18. This is seen as a positive step toward Iran's commitment to its international obligations. One of the judiciary's efforts to improve methods and management in dealing with juvenile offenders was to draft the Juvenile Court Bill, which was submitted to the government for legislative procedures. This bill was later incorporated into the Islamic Penal Code and the Code of Criminal Procedure by Parliament. The new law aims to incorporate criminal sciences and criminology findings and align with international child rights documents while respecting Islamic legal standards, addressing many existing gaps in child protection.¹⁴⁴

However, despite these legal reforms, experts believe that the death penalty for juveniles under 18 may still not be entirely abolished. The new law aligns with the Juvenile Delinquency Act of 1959 and draws heavily from it, but contradictions within the law prevent it from fully addressing social needs. For example: Article 88, paragraph 2, states that for minors committing retributive crimes or corporal punishments, those aged 12 to 15 will face specified measures, while younger children will face different actions. This aligns with societal expectations and logic. However, Article 91 states: "For crimes warranting retribution or corporal punishment, if individuals under 18 do not comprehend the nature of the crime or its prohibition, or if there is doubt about their mental maturity, they will be subject to alternative punishments appropriate to their age. The court can seek forensic opinions to determine mental development." Issues with this study include:

- a) The age of criminal responsibility remains 9 lunar years for girls and 15 for boys.
- b) It is presumed that girls after 9 and boys after 15 lunar years possess mental maturity for criminal responsibility, unless doubted by the judge.¹⁴⁵

¹⁴³ - Mehrdad Rajjian Asoli, "**The Place of Death Penalty in the World**", Journal of Research, Law and Politics, Year 6, Number 11, Spring and Summer 2013, p:125

¹⁴⁴ - Hassan Ali Mouzenzadegan, "**Children and adolescents in conflict with the law and social reactions**", Criminal Sciences: A collection of essays in honor of professor Dr. Mohammad Ashuri, first edition, (Tehran, Semat Publications, 2013), p. 124

¹⁴⁵ - Abbas Zeraat, **a brief description of the Penal Code of 1992**, volume 1, p. 172

c) The lack of mental maturity can be determined through forensic or other judicial means. The law does not explicitly abolish the death penalty for juveniles due to inherent contradictions but represents progress allowing judges to refrain from issuing death sentences.

5-Conclusions and Recommendations:

Capital punishment has been applied as a principal penalty across different eras, religions, and cultures, often used by rulers as a tool to exert power, sometimes accompanied by severe torture. Over time, beginning roughly two centuries ago, philosophers and human rights advocates began opposing capital punishment, leading to extensive debates and critiques of this form of penalty. The right to life emerged as a fundamental human right, seen as the foundation of all human rights, emphasizing that no government can arbitrarily or without legal authorization deprive individuals of this right. Governments are mandated to protect their citizens' lives, a core responsibility they cannot neglect both domestically and internationally. Historical studies reveal that the death penalty has ancient roots, initially motivated by the desire for revenge, an inherent human response for survival or divine appeasement during attacks. Despite religious attempts to regulate capital punishment, the medieval period saw its application with extreme torture. The Renaissance and the 18th century did not lessen the severity of punishments, and in some countries, they became more brutal. As time distanced from the Renaissance, perspectives on the death penalty became increasingly negative, shifting towards alternatives like exile, imprisonment, and rehabilitative measures. Efforts by abolitionists have continually influenced national laws, though the 20th century's dictatorial regimes in Europe and the world wars hindered progress, temporarily reinstating the death penalty. However, the Nazi regime's horrific abuses catalyzed post-war movements towards its abolition. These sustained efforts led to the adoption of several international conventions and protocols opposing capital punishment. Early international documents, especially the Universal Declaration of Human Rights, were influenced by national declarations like the American Declaration of Independence and the French Declaration of the Rights of Man and Citizen. These documents initially allowed exceptions for the death penalty, provided procedural safeguards were observed. The International Covenant on Civil and Political Rights, the European Convention on Human Rights, and

the American Convention on Human Rights explicitly considered the death penalty as an exception to the right to life. The 1980s saw a peak in abolition efforts with the adoption of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming for global abolition. European and Latin American countries led the abolition movement, with regional conventions going beyond standard limitations, like banning the death penalty for political crimes and certain vulnerable groups. International humanitarian law documents also addressed the issue, promoting restrictions and ultimately the abolition of capital punishment. The 1949 Geneva Conventions and their 1977 Additional Protocols extended protections to various groups, indicating a positive step towards limiting the use of the death penalty. Globally, only a few regions, such as English-speaking Caribbean countries and some Islamic nations, continue to apply capital punishment. In Asia, countries like China and Iran maintain its extensive use. Despite this, significant global progress has been made toward limiting and abolishing the death penalty, underscoring the need for an international document advocating for unconditional abolition with alternative penalties. Although regional and international documents have advanced restrictions and abolition, they often lack specified alternatives, which could be resolved by incorporating region-specific substitute penalties.

Upon adopting abolition, legal scholars and legislators focused on finding appropriate alternatives that would meet new criminal justice goals while preserving the deterrent effect of capital punishment. Historical discussions, including those by Plato, suggest long-term imprisonment in harsh conditions for irredeemable criminals. Two primary groups propose alternatives: utilitarians, like Beccaria, who seek effective deterrents, and human rights advocates, like the modern social defense school led by Marc Ancel, who emphasize humane treatment and rehabilitation. The former suggest severe, lifelong imprisonment with hard labor, while the latter advocate for indefinite imprisonment, contingent on the criminal's rehabilitation.

However, there has been strong opposition from proponents of the death penalty against this punishment. They argue that executing a dangerous criminal permanently protects society from crimes they might commit in the future due to escaping from prison during riots or revolutions, or benefiting from pardon and parole, or even crimes they might commit against inmates inside the prison. This argument is considered the weakest and simplest reason for rejecting imprisonment as an alternative to the death penalty. Firstly, those who make this argument refer to such rare external instances, which are negligible and cannot be relied upon. Secondly, accepting this reasoning implies that we acknowledge that the prison and detention facilities, which should ensure complete supervision to prevent criminals from escaping, are functioning inadequately. Thirdly, even if the condition of the penitentiaries is such, this is

not a justification for executing individuals, as it is akin to executing prisoners of war on the mere possibility that they might escape and act against us someday. The fallacy of such thinking is evident, hence the need to improve and enhance the security of prisons and strengthen the security apparatus and police so that, in the event a criminal does escape, they are promptly re-arrested. Ultimately, if we value this reasoning, the logical outcome would be that the death sentence should always be carried out and never pardoned.

However, various countries have devised different solutions for appropriate substitutes for the death penalty. Some countries that categorize punishments based on their severity immediately apply the next harshest punishment after the death penalty, which in some countries is life imprisonment or hard labor. Other countries, after abolishing the death penalty, implement another punishment harsher than life imprisonment, for instance. In practice, the punishment that usually replaces the death penalty in criminal law is imprisonment, often imposing the longest duration for severe crimes, which is termed differently in various countries. For example, in Belgium, it is known as imprisonment with hard labor; in Italy, it is called Ergastolo; and in the Federal Republic of Germany, Austria, Switzerland, Argentina, Denmark, Finland, Norway, the Netherlands, and Sweden, it is known as life imprisonment. In the United States, states that have abolished it have substituted "life imprisonment without the possibility of parole or pardon," although some states have set a fixed period for parole eligibility, such as 33 years in Alaska and 30 years in Minnesota.

In Iran, before the Islamic Revolution, considering that the 1973 Penal Code categorized punishments based on their severity, as stipulated in Article 8 of this law: "The main penalties for felonies are as follows: 1- Execution 2- Life imprisonment 3- First-degree felony imprisonment from 3 to 15 years 4- Second-degree felony imprisonment from 2 to 10 years." In cases of mitigating factors and the decision of the judge not to issue a death sentence, life imprisonment was generally the substitute for the death penalty. However, after the Islamic Revolution, with the classification of crimes based on religious principles into Qisas, Hudud, Diyat, and Ta'zirat, firstly, in Hudud cases, the court cannot alter, reduce, or replace the type, quality, and quantity of prescribed religious punishments, which can only be reduced or replaced through repentance and pardon as stipulated by law. In Qisas, Diyat can substitute the death penalty, which is discretionary and a right of the victim's heirs. Secondly, in Ta'zirat, which are governed by general principles of mitigating circumstances and the like, since the existence of the death penalty as a discretionary punishment is questionable and debatable, discussions on substitute punishments do not arise. Examining scattered historical texts reveals that the application of the death penalty in Iran has a historical precedent. In ancient Iran, severe corporal punishments such as execution, blinding, and

imprisonment were common. With the spread of Islam in Iran, punishments were divided into four categories: Hudud, Qisas, Diyat, and Ta'zirat. Although the autocratic governments of this period did not adhere to religious principles and regulations, since most punishments were imposed as Ta'zir, judges were not bound by any rules or principles and issued sentences based on personal beliefs, feelings, or interests, condemning dissidents, criminals, and insurgents to severe and horrific punishments. With the establishment of the Islamic Republic, the system of crimes and punishments also changed. The current 1991 Islamic Penal Code, a revised version of the first post-revolution law of 1982, is also based on Islamic law. It considers the punishment of death for certain crimes under Hudud, such as adultery (in cases of incestuous relations, adultery with the father's wife, repeated adultery, adultery of a non-Muslim man with a Muslim woman, and rape), sodomy, falsely accusing someone of adultery, tribadism, and theft under specific circumstances, as well as for habitual intoxication and for armed robbery and corruption on earth. With the approval of the 2013 Penal Code, punishments were categorized into four groups: Hudud, Qisas, Diyat, and Ta'zir (Article 14). The legislator, with a new interpretation of the religious sources concerning Hudud, introduced significant and fundamental changes, which are entirely different from previous interpretations and some of which, if not abolishing Hudud crimes, greatly reduce them. Proving Hudud crimes has become very difficult, such that a crime cannot be proven by confession alone. The realization of criminal responsibility has become highly vulnerable. Meanwhile, the crimes of rebellion, spreading corruption on earth, and insulting the Prophet have been added to Hudud, although Hudud should, by definition provided by law and Shariat, have a fixed number that does not change over time while the religious sources remain unchanged. However, the crime of insulting the Prophet is restricted to insulting the Prophet of Islam and the Prophets of determination and does not include insulting the Imams. The apparent reading of the law suggests that Hudud is not limited to what is mentioned in the law, but judges can increase the number based on Article 167, although this is not compatible with Sharia rules. Some Hudud crimes envisioned by the legislator include apostasy, witchcraft, and claiming prophethood. However, innovations are seen concerning the punishment of stoning for the crime of adultery by a married person, reducing many legal, political, and social debates. The crime of rebellion has been limited to its specific context, although crimes against the Islamic Republic system have been identified as rebellion. In the discussion of Qisas, it was expected that the institution of swearing an oath (Qasamah) would be removed in the new law, as it lacks a strong religious basis.

Although, based on the current criminal policy model of Iran, the validity of the death penalty at the legislative policy level seems inevitable and certain, efforts to reduce and limit the implementation of

executions are observed in judicial policy, especially in the differential criminal policy towards children and adolescents and drug-related crimes. In shaping this practice, the role of circulars from the head of the judiciary cannot be overlooked. The outcome of this trend can be seen in the realm of youth in the draft "Law on the Formation of Juvenile Courts," whose substantive aspects are included in the 2013 Penal Code, and procedural aspects in the new Criminal Procedure Code. However, in the realm of drugs, no transformation at the legislative policy level is yet visible.

The latest development regarding the death penalty in Iran relates to its methods of execution, rooted in new jurisprudential teachings. Based on this, some contemporary jurists have recognized the use of methods such as receiving or donating organs instead of traditional execution methods (such as hanging). Another notable development is the directive issued on February 9 by the head of the judiciary, which allows the execution of the death penalty in public only by order of the head of the judiciary and based on social necessities. According to this directive, announced by the judiciary's spokesperson, publishing photos and images of executions in the media is prohibited, and public and revolutionary prosecutors in each judicial district are tasked with overseeing the proper implementation of this directive.

In terms of Ta'zir, as we have seen, the death penalty is anticipated for various crimes. The death penalty in these cases may be issued under the framework of the crime of Muharibah (waging war against God), which seems thought-provoking, as the legislator has extended one of the Hudud (i.e., Muharibah and spreading corruption on earth) to Ta'zir crimes. The death penalty can also be observed in scattered laws for crimes such as drug trafficking and economic offenses. Considering all instances in the Islamic Penal Code that may lead to the death penalty, we see that the legislator of the Islamic Republic has resorted to an ambiguous and problematic approach. Whenever intending to intensify punishment by applying the death penalty, instead of clearly and explicitly providing for the death penalty, the legislator has referred to some institutions and titles of crimes requiring Hudud, namely Muharibah and spreading corruption on earth.

In this study, to address many objections and issues, some have attempted to justify the legislator's approach by suggesting that, regardless of the terms and expressions used in various laws, the legislator's intent was not to ensure that the elements and conditions of the crime of Muharibah correspond to the crimes mentioned in the Islamic Penal Code and other specific laws but merely to adopt the punishments of Muharibah and spreading corruption on earth. However, accepting this justification raises another fundamental problem, which is that according to Article 279 of the Islamic Penal Code, the punishment for Muharibah includes one of the following: execution, crucifixion, amputation of the right hand and left foot, or exile. When the legislator sentences the offender to the punishment of Muharibah, it is unclear

which of the four punishments is intended. These are issues that require the legislator's intervention in interpretation and clarification to prevent the violation of individuals' rights and to uphold the principle of legality of crimes and punishments and the principle of narrow interpretation of criminal laws, especially due to the irreversible and severe nature of the prescribed punishments. Legislative correction and improvement are urgently needed.

Regarding drug-related crimes, which account for the highest number of executions in the country, the proposal is to replace severe punishments like the death penalty with preventive programs in society, eliminating the causes of addiction, and treating addicts. This approach was somewhat considered in the 1997 amendment, which significantly limited the instances of the death penalty compared to the previous law and made its conditions more stringent.

The amendment also emphasized preventive measures, the treatment and rehabilitation of addicts, and particularly the aspect of decriminalization by suggesting the confinement of drug offenders in special facilities different from prisons. However, further reforms are still needed, and it is hoped that these will be seen in the near future.

Therefore, the main hypothesis is that “most of the world instruments have called for countries to limit or abolish the death penalty” is validated. The first subsidiary hypothesis, stating that many countries, especially European ones and members of the Council of Europe, have abolished the death penalty in their countries following the adoption of Protocols 13 and 6 to the European Convention on Human Rights and Fundamental Freedoms, is also confirmed.

Concerning the second subsidiary hypothesis, it can be acknowledged that Iranian legislation still considers the death penalty legitimate. Despite the abolition movement, no significant changes have been observed in Iranian laws, and they do not align with global standards, confirming the second subsidiary hypothesis as well. Currently, most countries in the world have joined the abolition movement and are striving to reduce the application of the death penalty through various means, such as reforming criminal laws to further limit the death penalty, granting criminal judges more discretion to impose long-term imprisonment instead of the death penalty, halting executions, or utilizing pardons and clemency provided by law.

Advanced definitions in the abolition of death penalty have reached their peak in recent years with the emergence of death penalty efforts. Although there are still many with universal acceptance, but its existence is an important confirmation of this, there are such documents that various decision-elimination protocols were unthinkable until three or four decades ago, but now not only these things are unthinkable

. It is not, but it can show it that the right to life and universality are rights and how it will progress in the future.

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