



## Feasibility of Claiming Loss due to Loss of Alimony Position

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### Introduction

Civil liability, as a cornerstone of the legal system, rests upon a set of fundamental principles aimed ultimately at compensating individuals for losses they have sustained. Within this framework, the principle of full compensation holds a special place. Under this principle, whenever a person's harmful conduct causes loss to another—and the conditions for civil liability are met—the injured party is entitled to claim full reparation for the damage incurred. This rule is recognized not only in Iranian law but also in most legal systems worldwide, serving as the basis for numerous judicial decisions. Nevertheless, significant ambiguities and differences of opinion persist in certain areas, particularly regarding lost profits.

One of the most significant challenges in this area is examining the recoverability of damages arising from the “loss of a chance” (*tafvit-e mowqe'iyat*). This concept refers to the loss of a genuine opportunity to secure a benefit—an opportunity extinguished by the harmful conduct of another party. The fundamental question is whether such an opportunity—even where the ultimate outcome remains uncertain—can serve as a valid basis for a damages claim. This issue takes on heightened importance within the context of family relations and the institution of maintenance (*nafaqah*); maintenance is a crucial financial right in this sphere, playing a decisive role in meeting individuals' basic needs. Consequently, being deprived of the opportunity to benefit from it can lead to significant economic and social consequences.

The present study aims to examine the feasibility of claiming damages for the loss of an opportunity to receive maintenance under Iranian law, drawing upon French judicial practice. The core questions addressed are: Can the loss of an opportunity be recognized as a compensable harm? If so, what are the conditions for its establishment, and can a distinction be drawn between continuous and unstable opportunities? The study proceeds on the premise that, given specific conditions, this type of harm is compensable and can be analyzed within the framework of general principles of civil liability.

### Literature Review

The subject of compensation for damages within the realm of civil liability law has consistently engaged legal scholars, leading to extensive research into various types of harm—including material damage, non-pecuniary loss, and lost profits. In Iranian law, a significant portion of discourse has focused on analyzing the feasibility of compensating for lost profits, giving rise to divergent viewpoints. Some jurists, emphasizing the necessity of certainty regarding the harm, deem compensation for



prospective benefits inadmissible; conversely, others have adopted a more flexible approach by invoking principles such as the rule of “no harm” (*la-darar*) and justice. In the field of comparative law—particularly within European legal systems—the concept of “loss of chance” has emerged as a significant development in theories of compensation. This perspective treats the “chance” itself as an independent value, deeming its loss compensable even when the ultimate outcome remains uncertain. However, the adoption of this theory across various legal systems has been subject to specific limitations and conditions.

A review of the literature indicates that most existing studies address these concepts in general terms, paying less attention to their specific applications. In particular, within the context of Iranian law, the analysis of the loss of opportunity regarding family relations and the institution of *nafaqah* (maintenance) has received limited attention. This is despite the fact that *nafaqah* possesses characteristics—such as its protective nature and its role in securing a livelihood—that distinguish it from other types of interests.

Accordingly, focusing on this gap, the present study seeks to provide an analytical framework by closely examining the issue of the loss of a position regarding maintenance. The research’s innovation lies in addressing this subject at two levels—that of a “continuous right” and a “potential opportunity”—as well as in drawing upon French judicial practice.

#### **Research Methodology**

This study employs a descriptive-analytical method. Initially, fundamental concepts—such as “opportunity,” “loss of opportunity,” and the distinction between a “situation” and an “opportunity”—are defined and elucidated. Subsequently, various perspectives are examined through a review of authoritative legal sources, including statutes, books, and articles.

In addition to this method, a comparative approach has been employed, examining French case law as an advanced example in this field. Analyzing the case law of that country—particularly regarding the recognition of the “loss of a chance” (*perte de chance*)—has enabled the identification of criteria applicable to the analysis of Iranian law.

#### **Research Findings**

The results indicate that disagreements regarding the compensability of a “lost chance” stem primarily from differing interpretations of the concept of loss and the requisite degree of certainty. The traditional view emphasizes the necessity of certainty regarding the loss, excluding potential benefits from the scope of compensation. In contrast, the modern view recognizes the independent value of an opportunity and supports compensating for such losses.

Regarding maintenance (*nafaqah*), a distinction can be drawn between two scenarios: first, continuous situations where an individual holds a specific legal right; in this instance, the loss of that right constitutes a definite, compensable loss. Second, unstable situations involving merely a probability of benefit; in these cases, too,



provided the value of the lost opportunity is established, financial compensation may be deemed appropriate.

### **Conclusion**

Based on the analysis conducted, it can be stated that the “loss of position”—as a novel concept—is capable of being accepted within the Iranian legal system. Although this matter is not explicitly addressed in the statutes, it can be justified through the interpretation of general principles, particularly the principle of full compensation for damages.

Regarding maintenance (alimony), where a continuous legal right exists, compensation for damages is undoubtedly permissible. In other instances, provided a genuine opportunity is established, partial compensation is also possible. Overall, adopting this approach could lead to the strengthening of compensatory justice and more effective protection for injured parties.

**Keywords:** Loss claim, loss of position, legal right, continued position, loss of opportunity