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Practical Position and Its Status in Iranian Law

Seyed Hasan. Mousavi Hashemi[1], Hasan. Pashazadeh[1*], Esmail. Saghiri[1], Ali. Gharibe[1]

[1] Department of Law, Ta.C., Islamic Azad University, Tabriz, Iran

*** Corresponding author email address**: Pashazade@iau.ac.ir

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A practical position is a situation in which a person continuously benefits from the property or act of another without having any legal right of enjoyment under established legal rules. When such a position arises, the beneficiary may, for various reasons—such as the refusal of the benefit-provider or interference by a third party—be deprived of the enjoyment or utilization of that position. Consequently, due to the aforementioned deprivation, the beneficiary may seek compensation for the resulting loss. The key question here is: what constitutes a practical position? Moreover, can the loss of benefit arising from such a position be considered a compensable damage? In this article, while defining and describing the characteristics of this position, the above questions will be addressed. The conclusion ultimately reached is that to claim compensation for a lost benefit, the existence of a legal obligation on the part of the benefit-provider and statutory protection is necessary. Therefore, a benefit arising merely from a practical position—if lost—is not compensable under law.

Keywords: *practical position, benefit, legal protection, beneficiary, benefit-provider.*

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1. Introduction

In the legal systems of most countries, including Iran, the concept of *practical position* is discussed within the framework of civil liability law (Ṣaghīrī, 2009). In this domain of civil law, which deals with the compensation of damages sustained by individuals, some jurists—under the discussion of *recoverable loss* as one of the essential conditions for establishing civil liability—have examined the notion of practical position and the necessity of legal protection for compensable damages (Keshavarz, 2019).

According to certain jurists, in order to claim compensation for damages, it is necessary that the lost benefit be protected by a legal rule; thus, if a benefit is lost due to another's act but the law does not provide protection for that benefit, the loss—though legitimate—cannot be considered recoverable damage (Ṣaghīrī, 2009). In other words, if the lost benefit is not legally protected, it cannot be deemed a *legal right* of the beneficiary and therefore is not compensable.

Conversely, another group of scholars holds the opposite view and, under specific circumstances, considers the loss of such benefit compensable, albeit based on different legal and doctrinal arguments (Bārīklū, 2017; Kātouziān, 2008; Ṣafā'ī & Raḥīmī, 2018). According to this second group, the criterion for recoverability of such a benefit is the absence of a *legal prohibition* against its enjoyment, and legal protection is not a prerequisite for its compensability (Lourasa, 1996).

A well-known example illustrating this concept is the case of a wealthy brother who financially supports his impoverished sibling. The first group believes that if the benefit received by the dependent brother does not stem from a binding legal rule—such as a contractual or statutory obligation—it cannot be deemed a *right*, and the loss of that benefit is not compensable unless it has

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entered the legal sphere under specific conditions (Jourdan, 2006). The second group, however, maintains that as long as the enjoyment of such benefit is not legally prohibited, its loss is recoverable, since the absence of a legal prohibition is sufficient to render the benefit legally recognizable (Amīd Zanjānī, 2010).

This theoretical divergence also manifests in judicial practice. The ambiguity arises primarily from the interpretation of Article 1 of the Iranian Civil Liability Act, which, as the general foundation of civil liability, defines recoverable damage as "harm inflicted upon a person's legal right." Accordingly, for damage to be recoverable, it must be protected by law (Kātouziān, 2000). Given that a practical position is not legally protected, doubt arises as to whether the benefit derived from it can be claimed as compensable loss.

Thus, the central questions are: *What is a practical position? What legal guarantees govern it?* In other words, if the benefit-provider abstains from conferring the benefit, or if the benefit is lost due to a third party's act, can the beneficiary claim compensation for the loss of such enjoyment? To answer these questions, a precise understanding of the concept of *practical position* is indispensable. Consequently, this study aims to define the concept, identify its instances, and analyze the stance of the Iranian legal system on this matter.

2. Concept and Instances of Practical Position

The Iranian legal doctrine has not yet offered a precise definition of *practical position* (Bādīnī & Aqdas Ṭīnat, 2017). In the works of some jurists, the legal effects of this institution have been discussed without providing a specific definition or identifying concrete examples. This section of the article is therefore devoted to clarifying both the concept and the instances of *practical position*.

2.1. The Concept of Practical Position

If *right* and *rule* are regarded as two distinct legal statuses, the *practical position* can be described as a *non-legal status* wherein a person continuously and legitimately benefits from the property or act of another without possessing a legal right to do so under established legal rules (Jourdan, 2012).

This definition comprises several essential elements that must be examined to fully grasp the meaning of a *practical position*: (a) the origin of the position, (b) the parties involved, (c) its continuity, and (d) the legitimacy of the derived benefit (Gordly & von mehren, 2007).

2.1.1. Origin of the Position

Like other moral or legal institutions, a practical position has a source of existence. While the origin of a legal right is a *legal relationship*, the origin of a practical position lies in a *non-legal relationship*—one that lacks enforceability and imposes no legal obligation upon violation (Keshavarz, 2019).

Accordingly, relationships derived from moral norms, religious precepts, customary practices (*ʿurf* in its general sense), or voluntary undertakings, as well as *invalid legal relationships* that have not entered the sphere of enforceable law, may all serve as the source of a practical position. For instance, one who considers himself morally bound to support his brother, or one who voluntarily gives religious alms (*vujūhāt sharʿīyah*) to a needy person, or informal acts of assistance and customary donations—each may, under certain conditions, constitute a *practical position* (Amīd Zanjānī, 2010).

Hence, the origins of a practical position may include moral principles, general customs, voluntary intent of individuals, or invalid legal acts (Yazdāniān, 2000).

Among legal positions, there are some that, despite having a legal origin, do not create enforceable obligations. Such positions should be termed *non-obligatory legal positions*. Occasionally, these positions yield benefits to others—for instance, benefits derived from *permission (idhn)* or *lawful use (ibāḥah)*.

A crucial question arises here: can non-obligatory legal positions such as those arising from permission or lawful use be considered *practical positions*? Some scholars have answered affirmatively (Ṣaghīrī, 2009). According to this view, benefits obtained through the owner's permission, or from public and lawful resources, should be classified as *practical positions*.

The rationale for this question lies in the fact that while both *permission* and *lawful use* are recognized by law, neither creates a binding obligation upon any party. Does the mere absence of a legal duty to preserve the established situation suffice to categorize it as a practical position, or does the lack of a *legal origin* transform a situation into a *practical* rather than a *legal* one?

If the absence of an enforceable duty is enough for a position to be deemed *practical*, then benefits obtained

through lawful use or permission must be considered *practical positions*. However, if possessing a legal origin makes a situation a *legal position* (a right), then such benefits should not be labeled as practical but as *legal positions* (Kātouziān, 2008).

In response, it must be emphasized that the *non-compensability of loss* does not necessarily imply that the position producing such loss is practical. For instance, the inability to claim damages for the deprivation of benefit obtained by the owner's permission stems from the *revocability* of such permission, not from the non-legal nature of the relationship.

The benefit of a permitted user undoubtedly has a legal basis and is not prohibited by law; however, if the property is destroyed by a third party, or the benefit-provider dies—resulting in the termination of enjoyment—the loss is considered *non-compensable* due to the *uncertainty* and *probabilistic nature* of the benefit (Bārīklū, 2017). The same reasoning applies to benefits derived from *lawful objects* (*mubāḥāt*).

Since lawful objects are subject to appropriation, anyone may acquire them—for example, a fish in a river is *mubāḥ* and may be captured by anyone. Thus, if one person catches or destroys the fish, depriving another of potential benefit, the act is lawful and non-compensable, as the benefit was uncertain and unestablished.

Therefore, the impossibility of claiming compensation for loss of such benefits does not stem from the absence of a legal right but from the non-fulfillment of other conditions of civil liability (Gordly, 2007). Consequently, enjoyment by the owner's permission or from lawful resources, given their legal origins, should be considered *legal positions*.

As for enjoyment of *public common property*, since it has a legal foundation, such benefit should also be deemed a *legal position*. However, given the nature and legal regime governing public property, such enjoyment is treated as *definite*, and deprivation thereof constitutes compensable harm. Hence, if an individual blocks a public street and thereby causes another's loss, the injured party has the right to claim damages from the wrongdoer (Jourdan, 2012).

2.1.2. Parties to the Position

For a practical position to come into existence, the presence of at least two parties is essential. Just as, in legal positions (rights and rules), there must be at least two parties—"the holder of the right" (*man lahu al-haqq*) or "the holder of the rule" (*man lahu al-ḥukm*) on one side, and "the person against whom the right or rule operates" (*man ʿalayhi al-haqq* or *man ʿalayhi al-ḥukm*) on the other—so too, in a practical position, there must be two parties, referred to as the *benefit-provider* and the *beneficiary*. The benefit-provider is the person who, through their act, confers a benefit upon another—in effect, the person who creates the position is termed the benefit-provider. The *beneficiary* is the person who derives a benefit from the act or property of the benefit-provider; in other words, the person who enjoys the practical position is the beneficiary. Consequently, conceiving of a practical position without two parties is impossible.

2.1.3. Existence of a Continuous and Regular Benefit

A practical position arises only when there is a continuous benefit for the beneficiary; put differently, continuity is a condition for the realization of a practical position. Therefore, if a person happens to pay an amount to someone—even if such payments recur in the future—so long as the recurrence is not regular, habitual, and does not take on the character of a *stipend*, it does not constitute a practical position. The continuity and persistence of the relevant benefit is what creates the position for the beneficiary, on the basis of which the beneficiary organizes life arrangements. Otherwise, where the benefit is not continuous and does not give rise to an expectation of further enjoyment, no position is created. (Keshavarz, 2019)

2.1.4. Existence of a Lawful Benefit[1]

Where persons derive benefits from prohibited relationships, such benefits are not considered lawful and, even if regular and continuous, do not amount to a practical position. Thus, an allowance paid by a person in return for an illicit relationship, although a *benefit* and perhaps a *position* in a loose sense, cannot be counted as

[1] From another perspective, one might consider the element of lawfulness not to be necessary for the realization of a practical position; on this basis, practical positions could be divided into lawful and unlawful practical positions

a practical position due to its illegality. That said, as we shall later see, some Western legal systems sometimes do not require lawfulness for the creation of such a position. (Gordly, 2007)

2.2. *Instances of Practical Position*

As discussed, the presence or absence of a *legal origin* distinguishes a practical position from legal positions (rights and rules). On this basis, the following can be regarded as instances of practical position: (Jourdan, 2012; Keshavarz, 2019)

2.2.1. *Positions Arising from Moral Norms (Natural Positions)*

At times, individuals consider themselves morally obligated toward friends or relatives; a sense of kinship or affinity may lead them to confer benefits upon friends or needy relations. The benefit-provider, without any legal commitment and solely by virtue of moral norms, regards themselves as bound to the other. Accordingly, the origin of such commitment is none of the legal rules. The most salient example is the financial support provided by a financially able brother to his indigent brother, without any legal rule imposing a duty toward the beneficiary. As noted earlier, because such positions lack a legal origin, they fall outside the domain of law and are not considered rights; deprivation thereof does not constitute recoverable damage. (Kātouziān, 2000)

2.2.2. *Positions Arising from Customary Relations (General Custom[1])*

In the customs of traditional societies—often among persons belonging to the same clan or tribe—agreements are sometimes made regarding the sharing of certain expenses or interactions with other groups. By virtue of such understandings, positions are created among the persons concerned from which they benefit. Examples include agreements among members of a tribe to assist one another in bearing the costs of various ceremonies (festivities or mourning) and arrangements concerning the civil liability of tribal members vis-à-vis other tribes. These understandings are not concluded with the intent to create legal obligations; they may even lack moral merit or conflict with morality[2], Therefore, if two persons guarantee their respective shares of such expenses to one another, this guarantee lies outside the scope of legal rules. Such understandings can be regarded as instances of social agreements. In consequence, if one party fails to perform toward the other, the latter cannot seek judicial enforcement, because the relationship between them is not a binding legal relationship. These relations lack legal sanctions[3] unless they are formed with the intent to create legal obligations—in which case the resulting benefit is a legal benefit, and its deprivation constitutes recoverable loss. (Kātouziān, 2000; Lourasa, 1996)

2.2.3. *Positions Arising from Friendly Agreements*

Friendships are grounded in the parties' emotions and sentiments. Ordinarily, understandings between friends are not binding upon either party—unless a relationship is formed with the intent to create legal obligations. Thus, based on such sentiments, friends may confer benefits upon each other; for example, one friend, out of strong affection, may invite the other to dinner every month after receiving their salary. Plainly, such a situation does not constitute a legal position for the other friend (the beneficiary) and does not create a right. Consequently, upon the death of the salaried friend, the surviving party cannot claim the lost benefit as damage from the person responsible for the death. (Jourdan, 2006)

2.2.4. *Positions Arising from Family Relations (Domestic Agreements)*

The family institution is formed on the basis of a binding relationship called *marriage*; however, not all relations between spouses are legally binding. Certain aspects of spousal relations fall outside the domain of legal rules. Matters such as the wife's recreational expenses or the costs of gifts for friends' birthdays and weddings that are paid by the husband—so long as they are not instances

[1] what generates a legal rule and creates binding force is special custom; general custom does not create a legal rule and is not binding between persons. Professor Nasser Kātouziān refers to these positions as "habits.

[2] for example, an agreement among tribe members that, if one intentionally kills another, the blood money (diya) shall be borne by all members appears contrary to moral norms.

[3] though they may carry customary or tribal sanctions, such as expulsion of the offending member or retaliation by refusing future cooperation

of *maintenance (nafaqa)*—do not fall within legal rules, and, if the husband refuses to pay them, the wife cannot compel him to do so. Consequently, the benefit arising from such positions is not protected by legal rules; these are treated as *practical positions*, and deprivation thereof does not constitute recoverable damage. (Jourdan, 2012; Kātouziān, 2008)

2.2.5. *Positions Arising from Invalid Legal Acts*

Sometimes, persons conclude contracts with one another to obtain benefits or achieve other aims, committing themselves to such contracts, unaware that the contracts are void and without legal effect for legal reasons. For example, someone may, in the form of a *security settlement*[1] and with a stipulation of *personal performance*, undertake to pay a specified allowance[2] to another for one year. One month later, the promisor dies in a traffic accident, and, due to the condition of personal performance, the settlement appears to be dissolved. If the beneficiary seeks to recover the lost benefit from the person causing the death, then, upon proving the invalidity of the settlement, the beneficiary's interest is deemed a *practical position* and is not recoverable from the person who caused the death. The same rule applies to other contracts that, in some manner, create a benefit for a person but, due to the intervention of a third party, the counterparty is deprived of enjoyment; if the invalidity of the benefit-creating contract is established by any means, the lost benefit is no longer recoverable (Kātouziān, 2000).

2.2.6. *Voluntary Legal Positions*

In some cases, individuals, without any commitment—moral, customary, or legal—and purely on a voluntary basis, undertake actions that confer benefits upon others. For instance, Ms. A, the spouse of a corporate CEO, voluntarily spends time at the company each day, and her presence attracts more customers for the company's products, resulting in significant profits. Ms. A is seriously injured in a traffic accident and remains homebound for a year, unable to be present at the company. Due to her absence, the company loses clientele and substantial profits. Because Ms. A had no employment relationship with the company and the company, in this respect, had no right against her, the lost profits are not recoverable by the company from the person causing the accident (Gordly & von mehren, 2007).

2.3. *Theories Based on the Non-Recoverability of Loss Arising from a Practical Position*

First — Dr. Esmāʿīl Ṣaghīrī, in his *Lecture Notes on Civil Liability* at the master's level, discusses the practical position and its distinction from a right (Ṣaghīrī, 2009). Faithful to his analytical style, he defines this concept as follows: "A practical position means that an individual is *benefited* but not *entitled*." Citing the well-known example of the killing of a wealthy brother who financially supported his indigent sibling, he argues that while the poor brother is a *beneficiary* in this situation, he is not a *right-holder*; hence, the lost benefit is not recoverable. Referring to Articles 1 and 6 of the Civil Liability Act, he contends that the legislator's inclusion of the word *"legal"* (*qānūnī*) in Article 1 serves specifically to exclude the practical position from the definition of recoverable damage.

Dr. Ṣaghīrī critiques Professor Kātouziān's view on the recoverability of losses resulting from practical positions and insists that legal protection of the lost benefit is indispensable for compensation. In his view, only losses resulting from the violation of *legal rights* (those derived from legal rules) are recoverable; injuries to other advantages or privileges not protected by law are not. He holds that a right represents a legal relation between a person and property, whereas in a practical position such a relation does not exist.

To supplement and confirm this view, it may be added that if a practical position lacks a legal source, it lies outside the realm of law and creates neither legal authority for its holder nor obligation for others. Although such a position may be colloquially called a "right," it is not a *legal* right but at best a *moral* or *religious* one. Consequently, since it falls beyond the scope of law, the harm caused by its violation cannot be claimed under civil liability. (Keshavarz, 2019)

Second — Another jurist, while recognizing the *lawful* benefit arising from a practical position as a kind of right, nonetheless denies the possibility of claiming it because

[1] rente viagère: a settlement contract in which payment of an allowance is undertaken monthly or annually

[2] contractual maintenance

the benefit is *uncertain and contingent* (Bārīklū, 2017). He states that for a situation to be regarded as a right, it suffices that it is not prohibited by law; explicit legal acknowledgment is unnecessary. As long as a benefit does not contravene public order or morality, it is lawful and may be considered recoverable—even if the other party bears no legal duty to provide it. In practical positions, since the benefit-provider has no legal obligation to continue providing the benefit, they may cease at any moment, rendering the beneficiary's interest *probabilistic* rather than *certain*.

He illustrates this by the example of a brother who gives alms to his impoverished sibling: the benefactor can stop giving at any time, since he has no duty to continue. Conversely, when a person provides maintenance to a legal dependent, the obligation is binding, and the benefit is definite; hence, if that benefit is lost, the loss is compensable. (Bārīklū, 2017)

In response, it must be said that *lawfulness* does not necessarily entail *right-hood*. Numerous lawful positions—those arising from general custom, moral duty, friendship, or family—are legitimate but not legal rights in any sense. Although such practical positions may yield *potential* benefits, their core problem is not the *uncertainty* of those benefits but the *absence of legal protection*, which precludes recovery for deprivation. (Ṣafā'ī & Raḥīmī, 2018)

Third — Elsewhere, under the discussion of the *legitimacy of claiming damages*, another scholar emphasizes that compensation requires an infringement upon the injured party's *lawful and legal rights*, interpreting legal recognition by statute as a condition of legitimacy. Where a right is not recognized by law, loss to it is not recoverable (Yazdāniān, 2000). In critique of this view, it should be noted that *legitimacy* means *non-contradiction* with mandatory legal norms, not *conformity* with or *recognition* by them. The *principle of permissibility (ibāḥah)* and the *principle of contractual freedom* confirm this understanding of legitimacy.

Fourth — Āyatollāh ʿAmīd Zanjānī, in his *Grounds for Liability (Mawjibāt-e Ḍamān)*, under the discussion of *existence of damage* as an element of civil liability, states that according to Article 1 of the Civil Liability Act, compensable damage is limited to harm inflicted upon a person's *legal right*; hence, damage not legally recognized falls outside the scope of civil liability (Amīd Zanjānī, 2010). Although recognition of the right beforehand is unnecessary—what matters is legal protection after infringement—this author's reasoning implies that loss resulting from the destruction of a practical position is not recoverable.

Fifth — Dr. Hasan Bādīnī, in his article *Ordinary Risks of Life and Their Role in Civil Liability*, classifies the loss of a practical position as one of the *ordinary risks of life* and argues that recognizing compensation for such loss would unduly restrict individual freedom. He therefore concludes that such damage is not recoverable (Bādīnī & Aqdas Ṭīnat, 2017).

3. Conclusion

Based on the discussions presented throughout the article, the following conclusions can be drawn:

1. A *practical position* is a situation in which a person continuously and lawfully benefits from the property or act of another, without possessing any legal right to such enjoyment under established legal rules.
2. For a practical position to be realized, the presence of certain essential elements is necessary—namely, the existence of a source or origin, the participation of two parties, and the presence of a lawful and continuous benefit.
3. Despite the opinions of some domestic jurists who support the recoverability of losses arising from practical positions, it must be stated that such losses are not compensable under Articles 1 and 6 of the Civil Liability Act, owing to the absence of a legal basis and lack of statutory protection.
4. Certain legal positions—such as acts performed under permission (*idhn*) or involving lawful objects (*mubāḥāt*)—although having a legal origin, involve benefits that are inherently uncertain. Consequently, the loss of such benefits cannot give rise to a claim for damages.

Authors' Contributions

Authors contributed equally to this article.

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

Transparency Statement

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

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