

claim loans. Therefore, if the amount of loans granted to foreign investors is limited and at the same time providing resources to the government is not a difficult task, there is no prohibition and according to the principles of jurisprudence, it can be ruled permissible.

#### 4. Findings

In this study, it was stated that the presence of capital of foreign origin in the Iranian banking system can give the main owners of those capital the power to harm our economy. The final conclusion is that according to the principles of jurisprudence that have been interpreted, as well as the important issue of national security of our country, such a situation must be confronted. It is up to politicians to determine solutions to deal with such a situation, which requires a separate discussion. The political situation of our country is different from many other countries in the world, because Iran is located in a strategic region in the world that has always attracted the greed of the enemies. If in the world of politics, it can be guaranteed that the investing government is not able to harm the country's economy, the presence of their unlimited capital does not make sense, or if the tradition of international law allows the enactment of domestic laws to counter such measures, again, it can be said that there is no need for investment restrictions. However, if such an important goal cannot be achieved in politics and legislation, the ways of harming the economy may be blocked only by limiting the presence of foreign capital. The general conclusion is that the government must confront this issue that naturally requires legislation on the details of such an action. Therefore, the economy officials are advised to prevent the disruption of the country's economic system by enemies through their policies and the enactment of new laws.

solution for foreigners through bank deposits (Assari, 2018, 43). On the other hand, the Harm Principle refers to the possibility of harm, which must be countered if there is any. In order to explain the conditions stated in the principles of jurisprudence, the expert opinion of economists and politicians is considered. According to economic principles, the presence of foreign investors in the country's banking capital, if limited, has no problem and helps propelling the economy. In fact, the use of interest on bank deposits can be an incentive for foreign investors to be active in Iran, which from an economic and political point of view should be attracted with policy. But from another point of view, if a significant share of the banks' capital is dedicated to them, they are given the power to suddenly withdraw their capital and harm the country's economy. According to this theory, a general restriction on the share of foreign capital in banks should be set so that they are not given the power to harm the country, in which case only the benefits of this system can be enumerated and the jurisprudential principles regarding using it may be considered as permissible.

### 3.2. Use of Bank Facilities

Foreign investors usually benefit from good Rial and currency facilities (with low interest rates and long-term repayment) paid by the government. Granting loans requires the provision of collateral, which is usually a more favorable situation for resident foreign investors, as preventing them from leaving the country and their non-cash capital within the country is a good guarantee for repaying loans and it is referred to in the circular of the Central Bank. But non-resident investors should provide stronger guarantees to banks, the specific mechanism of which is determined by the Central Bank (Ranjbarian, 2018, 43). Property of foreign investors abroad can be used as collateral in the Iranian embassy. According to the principles of jurisprudence, in no issues exists in a mechanism, it should be ruled that it is permissible. From an economic and political point of view, granting loans to foreign investors is a good way to attract them and does not pose a particular problem if the government has the resources. The only significant issue is that if the total amount of government loans granted to investors is high and there is no adequate guarantee, it may result in delayed repayments and losses for banks. One of the biggest problems for banks is their inability to

and aimed at dominating a country's economy. If such a situation is detected, restrictions should be placed on the presence of foreigners in the field. Of course, as stated, according to current legal principles, there can be no restrictions on the entry and exit of currency. The main condition for foreign investors to enter the country is the freedom of currency transfer. Only the government can prevent the sudden outflow of currency from the country by requiring the settlement of accounts. According to this rule, the government can also prevent them from dominating the country's economic situation by imposing restrictions on foreign investment in the country's banks. If the share of foreign capital in the country's banks is small, their power to harm the country's economy will be curbed. However, if there is no restriction on foreign capital, suddenly the main part of the country's economy becomes dependent on foreign capital and the ability to harm the country's economy falls into the hands of the respective government of investors. Therefore, with the Fraud Disavow such issues should be closely monitored.

### **3. Using foreign Investor Status in Banking System**

The jurisprudential rules related to foreign investors' use of the banking system benefits were examined. Earlier, the central bank's rules regarding foreigners' use of banking system were reviewed. Here, the legitimacy of this action is discussed separately in terms of deposits and facilities.

#### **3.1. Use of Bank Deposits**

The use of bank deposits, in accordance with the laws of the Iranian Central Bank, is allowed for all resident and non-resident foreigners. Governments may even open deposits in another country. For example, the Iraqi government currently has a significant amount of IRR deposits in Iranian banks. Therefore, not only natural persons, but also foreign legal entities are able to keep their capital in Iranian Rials in Iranian banks. Foreign investors, whether resident or non-resident, keep their capital in Iranian banks and can use the benefits of bank deposit interest as Iranian citizens and be exempt from taxes in accordance with the Foreign Investors Protection Act. According to the Concession Rule, if no reason can be found to forbid it, it must be ruled that it is permissible. Also, the Gharar Disavow and Fraud Disavow may be considered permissible in the absence of a fraud

to compensate the deceived, the right to terminate the transaction has been established (Tabatabai, 1419 AH, 1, 321).

According to this principle, anything that has fraud origin must be combated. Danger is usually more likely to originate from a number of places. For example, in the current situation in our country, the United States government is the flagship of the fight against the Islamic Republic of Iran, while for example Turkey is our neighbor and there we do not have much problem in relations between the two countries. The example shows that different measures shall be taken for foreign investors with different nationalities. The nationality of a foreign investor as well as the position his large capital gives to his home country requires security protections aiming at prohibiting using the position in the country's economic system with the aim of harming it. Explaining minor tasks in this area is beyond the scope of current research but based on this principle, the government can be tasked in macro-policy with the aim of making our country's economic system invulnerable to enemies. Explanation of minor policies in this area is left to the High Councils usually chaired by the President. Obviously, the role of security officials in this regard is significant.

## 2.5. Fraud Disavow

It is noteworthy that the Gharar Disavow is broader than the Fraud Disavow, because Gharar is realized in case of ignorance toward reality and no intention to deceive, while fraud is subject to the intention to deceive (Abdul Rahman, 2010, 2, 43). According to this rule, if a process leads to fraud and deception in the society, leading to harm to general public and causing sin, it is legally forbidden. For example, the increase of paper money may result in the prevalence of counterfeit money in the society, which provides grounds for fraudsters to commit fraud. Any process that creates deception in society is condemned and forbidden.

According to this rule, any source that can be a way to get harmed from the enemy must be confronted. In politics, these issues are called security issues. As mentioned, the discussion of security issues is beyond the scope of the present study. However, it has been inferred that the ways of the enemy attack must be confronted. The presence of a large number of foreign investors may be planned

The Concession Rule is the primary intellectual reason to allow possession of objects regardless of the existence of the Shari'a and the ruling on them; that is, it proves the ruling in the apparent stage. From the permissibility of possession, it can be understood that man may compromise his property to another person. According to this principle, the decision is that it is permissible, allowed and lawful. Therefore, if something is doubted to be forbidden, we will rule that it is lawful, because the Shari'ah obligation requires the text of the Shari'a, and it is assumed that no text deals with doubtful cases. Concession can also apply to normal human actions that do not harm others. We carefully consider that the Concession Rule considers as lawful human actions and possession of objects when in doubt, and the compromising party allows another party to take possession of his property or benefit by comprising it to him and the relationship is the absolute general and specific relationship (Akhund Khorasani, 1390 AH, 1, 310).

Accordingly, we must enumerate the harm involved in the presence of a foreign investor. The presence of a foreign investor is essential for the country's economy, and the policy of attracting it is applied by all governments in the world. In our country, due to high bank profits, it can be more attractive for the presence of foreign investors. Therefore, if the presence of an investor in all dimensions does not harm the country, it cannot be ruled out. But if there is a danger in their presence, it should be considered. The use of the country's banking system by foreigners that every person needs in their place of residence, has not harmed people in general and cannot be considered as forbidden. The main concern is to dominate the country's capital. If the shares of foreign investors in banks is not to an extent to give them the power to harm the country's economy, there is no prohibition on their banking activities, and according to the Concession Rule it is permissible. The conclusion is that according to the Concession Rule, if the use of the country's banking system by foreigners does not harm our country's economy, there is no reason to forbid their use of the banking system and this is allowed.

#### **2.4. Gharar Disavow**

The Gharar Disavow also is related to the Harm Principle, because Gharar (deception, bribery to falsehood) causes harm and

principle, forfeiting harm with harm, compensation for a undue harm, etc. have been derived from this rule. This rule is extracted from the text of many narrations in this field, to the extent that a number of jurists have claimed repetitive narration.

Also in Islamic law, any ruling or obligation causing harm to a person or a human being is rejected. This rule stipulates that contracts should not cause harm to the parties, and accordingly, in order to prevent or compensate for the harm, the right of termination (options) is considered in the transactions. Any binding contract may be included by "option" and except for three options of meeting, animal and consideration delay, which is specific to the contract of sale, all options (condition, false description, , cheating, fraud, breach of condition) are present in all contracts (Bojnourdi, 2013, 1, 32).

According to this rule, it is necessary to deal with any public loss that result from the presence of a foreign investor, and the task is on the shoulders of the Islamic ruler. The harmful effects of the presence of foreign capital in Iranian banks were discussed. In this regard, the government can take two steps. The first step is to clarify guarantees to counteract the strategic position of the foreign investor by enacting laws. For example, banking laws shall be codified in such a way that the outflow of foreign capital be within the quarterly deadline. Such laws could prevent the formation of a strategic position for foreigners. If such laws cannot be enacted, investment restrictions in banks are envisaged, so that a small capital share in banking system is dedicated to foreigners.

### 2.3. Concession Rule

Concession means to allow and in Islamic law it is one of the five principal rules and here it is said that there is no reward or punishment for act or commission. One of the well-known rules among the fundamentalists in doubtful verdicts is the Concession Rule. The principle has two uses: one is to prove superficial Concession in cases of doubt and there is no reason for prohibition, and the other is to prove real Concession for some generalities in the Book and Tradition. Of course, there is another application for this principle, and that is the situational (not obligatory) validity and legality in transactions, which is called the principle of authenticity in contracts.

require large capital, if this money is injected into the country's banks it will lead to dependence on the country's banking system and this is debatable. Banks are one of the important pillars of the country's economic system. Even on the domestic level, in cases where rumors of bank failures are heard and people are quick to withdraw their capital, banks are in trouble, because banks income source is from public deposits and in the economic cycle, it will go to another sector. Of course, it is emphasized that depending on the investment, banking system becomes dependent on them. It has been interpreted that if the foreign capital deposited in the country's banks is not a significant share of the total capital, no special prohibition can be considered for it. But if foreign capital has a significant share of the total capital of the bank, the situation is different. Legislators and policymakers have sometimes explained strategies to prevent sudden outflow of capital, such as the Foreign Investment Protection Act of 1334. In fact, they have provided guarantees to counter the strategic position of foreign investors. But in international law, it is almost impossible to prevent the outflow of capital, and the freedom of currency transfer is the main condition for the presence of foreign investors. Therefore, according to the non-domination rule, it is necessary to prevent foreign domination over the country's resources, which in fact is necessary to observe the limitation of capital inflow into the country.

## 2.2. Harm Principle

This principle is first on the basis of intellectual reasoning, because the intellect considers harming as indecent and condemns it, and according to the company rule (literally, the rule of reason is the rule of Sharia), this rule becomes evident (Fakhr al-Muhaqiqin, 760, 1, 48).

Secondly; We read in the Qur'an, "The mother should not harm her child by stopping breastfeeding", or "when you divorce your wife, if you do not really want to live with them, do not refer to them merely for harass them" (ibid.).

The Harm Principle is derived from the above arguments and is one of the common principles of Sunnis and Imamis and is seen in narrative books as a repetitive narration, and jurists have introduced it as "the major jurisprudential discussion". Rulings such as the harm

emphasized; and in military aspect, it includes domination of military decisions and tactics (Mohaghegh Helli, 1418 AH, 89). In addition, economic independence and cultural influence prevention and prohibition of consultation in cultural and military fields in foreign relations are considered. This rule expresses both positive and negative aspects, the negative aspect of which refers to the denial of foreign domination over political and social destiny of Muslims and the positive aspect reflects the religious responsibility of the Islamic Ummah in maintaining political independence and eliminating dependencies (Naeini, 1413 AH, 3, 328).

Therefore, infidels cannot legally control Muslims' fate. God has never (in the past or in the future) opened the way for disbelievers to dominate the believers (al-Nisa/ 141). The meaning of this verse is to obstruct legislative and religious domination of infidels over Muslims; That is, the laws of Islamic jurisprudence and international law do not legally allow infidels and non-Muslims domination over the political, social, cultural, economic and security life and fate of Muslims. The most important topics under the rule in the early Islamic jurisprudence accepted by the majority of Islamic jurists are as follows: (Ansari, 1420 AH, 2, 321).

- A) Impermissibility of non-Muslims guardianship over Muslims.
- B) Impermissibility of getting advice from non-Muslims in Muslims affairs.
- C) Fall of the right of non-Muslim retribution.
- D) It is not permissible to marry a non-Muslim with a Muslim; E) Lack of proof of the right of pre-emption for non-Muslims.

### 2.1.1. Non-Domination Rule for Foreign Investors

According to the non-domination rule, foreign domination of the country's strategic resources is prohibited. Foreign investors act as foreigners in the country. In most cases, their presence is very insignificant in front of the political and economic system of the whole country. For example, investors who want to launch a project with a low cost that is of little value relative to the country's economy as a whole, naturally have no role in the country's economy and cannot dominate the country's strategic resources. However, the presence of foreign investors in large-scale projects such as oil and gas that

To prove this rule, verse 141 of Surah Al-Nisa has been cited, meaning that in the world of legislation, there is no ruling that causes the infidels to dominate over the believers and Muslims. The “Ascension” *Hadith* is also quoted, narrated from the Holy Prophet (PBUH): “Islam is always superior to other schools and nations and nothing is superior to it, and the infidels are like the dead, they do not prevent the inheritance of others, and they do not inherit.” (Bojnourdi, 2010, 1, 1).

Article 152 of the Constitution of the Islamic Republic of Iran states that Iran’s foreign policy must be based on the denial of any hegemony and domination.

The issue of tobacco embargo and capitulation (by Mirza Shirazi and Imam Khomeini) and the principle of neither the East nor the West, only the Islamic Republic in foreign policy arise from such a rule. The Iranian Constitution, in its various principles, designs and directs the political behavior of the Iranian diplomatic apparatus, citing the non-dominance rule, especially in foreign policy.

From the Islamic point of view, maintaining the ascension and supremacy of Muslims and the religious ruling system is a fundamental principle and an important goal. In the view of Islamic jurisprudence, especially Imamieh jurisprudence, the domination of enemies over Islamic society and Muslims is wrong and the superiority of infidels over Muslims in the current system is not possible and acceptable. According to this belief, any exchanges and interactions that increase and expand the influence of non-Muslims and foreigners in the Islamic society in such a way that they can interfere with the affairs of Muslims, is forbidden and incorrect (Isfahani, 1416 AH, 2, 213).

Islamic scholars and jurists have established a jurisprudential rule called Non-Domination Rule in order to preserve the dignity and greatness of Muslims, citing the verses of the Holy Quran and the narrations of the Infallibles (PBUH). According to the jurisprudential rule, ways of infidels’ influence and domination over Islamic societies in various political, military, economic and cultural arenas must be blocked. Politically, rejection of patronage, denial of oppression, tyranny and colonialism, the impermissibility of foreign interference in internal affairs of Islamic countries, and political decisions are

impermissibility of non-Muslim marriage with a Muslim, and the lack of proof of pre-emption right for non-Muslims are among the cases that invoke the rule of non-dominance. The domination of the enemy over the Islamic society and Muslims is wrong from the point of view of Islamic jurisprudence, and any communication that increases and expands the influence of non-Muslims and foreigners in the Islamic society so that they can interfere with the affairs of Muslims is forbidden. Islamic jurists have established a jurisprudential rule as the rule of non-dominance of non-Muslims in order to preserve the dignity and greatness of Muslims, citing the verses of the Holy Quran and the narrations of the Infallible Imams. According to this rule, all ways of the influence and domination of infidels on Islamic societies in various political, military, economic and cultural fields must be blocked. From the political point of view, non-acceptance of domination, denial of oppression, tyranny and colonialism, the impermissibility of foreign interference with internal affairs of Islamic countries and political decisions are emphasized, and from the military point of view, it includes military domination and military tactics. This rule expresses both affirmative and negative aspects, the negative aspect of which refers to the denial of foreign domination over political and social destiny of Muslims, and the positive aspect reflects the religious responsibility of Muslims to maintain political independence and eliminate dependencies (Zarei et al., 2014, 169).

In Islamic law, there are two types of rules: basic rules valid as long as they are not contrary to primary rules. The second type is the secondary rules governing primary rules and regulations. In special cases, whenever the vital interests and values of the Islamic world are endangered, the secondary rules of jurisprudence, which guarantee the provision of the transcendent and vital values of Islam, invalidate the primary rules. The non-dominance rule is a secondary rule of jurisprudence, that is, any relationship between Muslims and infidels results in the influence and domination of infidels over Muslims will be invalid according to this rule. The rule in foreign relations of Islam and Muslims has a veto right. In any action, contract and decision in various economic, political, military, cultural, etc. fields, if it provides the ground for domination of infidels over Muslims, the rule will be invalidated and the contract will be annulled (Zanganeh Shahraki, 2012, 149).

means having shares in total capital of banks. In fact, we can say that foreign investors contribute to a part of the country's economy. Even taking low-interest loans from the country refers to their role in the country's budget and planning, as the government uses the resources allocated in the budget to lend to them. The strategic position of foreign investors is described in such a way that they can damage the country's economy at any time by withdrawing their capital. During post-JCPOA currency fluctuations in 2018, one of the reasons for the exchange rate jump from 4,000 to 13,000 Iranian Tomans was the departure of foreign investment companies from the country (Assari, 2018, 76), which according to the Foreign Investors Protection ACT, the freedom of foreign exchange is guaranteed. Even Afghan immigrants have taken out Iranian capital, which has affected the price of currency. Failure to repay government loans granted to foreign investors complicates the banking system in other respects. The result is that the presence of foreign investors in the country and their use of the privileges of banking system, if it goes beyond a certain amount, may lead to their domination of the country's economy. This issue can be discussed from a security perspective.

## **2. Jurisprudential Rules and Foreign Investment**

The presence of foreigners in the country's economic projects may lead to their domination of part of the country's resources. Given that foreign investors are not a citizen of our country and the supervision of their actions is subject to certain laws, if they are instructed by a foreign government, it may lead to issues for the country. From the long past, respected jurists have been sensitive to the dominance of foreigners over the country's resources, and at the same time have recommended that the rights of foreign guests should be respected. In this section, jurisprudential discussions related to the presence of foreign investors in the country are discussed.

### **2.1. Non-Domination over Muslims Rule**

The Non-Domination over Muslims Rule is a jurisprudential rule forbidding dominance of infidels over the Muslim. To prove this principle, verse 141 of Surah Al-Nisa has been cited. The impermissibility of non-Muslim guardianship over a Muslim, the revocation of the right of non-Muslim retaliation in kind, the

foreigner residents, is allowed in this circular (Rezaei, 2019, 1, 17). Granting facilities to foreigners requires the provision of valid collateral, and president of branches decide the relevant details and responsibilities. In fact, with the opinion and responsibility of the branch president or internal directives of banks, the necessary guarantee for granting loans to foreigners residing in the country is received.

According to the latest amendments to the Central Bank's regulations, foreigners residing in Iran are distinguished from non-residents and enjoy the benefits of bank investments just as Iranians in the field of bank profits, both for deposits and loans. Currently, there is no restriction on these activities. Given that banks' capital is financed by deposits, the strong presence of foreign investors may lead to their significant share in banks' capital. The Foreign Investors Protection Act also provides for special loan facilities for foreign investors, the guarantee of which being usually their travel ban. These loans are granted with the aim of launching projects in a shorter time and its resources are financed exclusively by the government and granted to the agent banks. The conditions detailed above are granted in the form of IRR accounts, but there is the possibility of using foreign currency accounts for resident foreigners. According to the circular of 2019, the interest rate on foreign currency deposits is 5%. Also, dollar loans are provided by the government and its repayment is in the form of the same paid currency with a specified interest rate. Although the government does not guarantee loans repayment by these individuals, it shows the utmost flexibility in repayment. All these measures are aimed at encouraging foreigners to bring their capital to the country in order to implement projects. Using bank deposits is no different for resident and non-resident foreigners. In the Central Bank Directive, non-resident foreigners can also take advantage of bank deposits. However, for granting loans, non-residents are only allowed to use bank facilities if they make a valid deposit in the country. However, they have the right to use bank loans by providing the intended collateral.

### **1.3. The Role of Foreign Investors in the Country's Economy**

As mentioned, foreign investors enjoy the benefits of bank deposit interest by depositing their capital in Iranian banks. This

important methods of debt-free foreign financing (without the need to return the original money) which, unlike the debt-free foreign financing (repayment of the same amount at a specified time) that is regarded as debt in developing countries payment balance, is considered as investment resource. That is why today many developing countries consider foreign investment as one of the important resources in their economic development and implement many of their economic plans using this method of foreign financing (Ibid: 90).

### **1.1. Residence of Foreign Investors in Host Country**

Foreign investors can be resident or non-resident in the host country. Resident means staying in the country for more than thirty days. Sometimes investors do not reside in the country and come to the project site only to review the plans. But in some cases, they stay in the country until the project is completed. According to the current regulations of the Ministry of Foreign Affairs approved in 1398, when someone stays in the country for more than one month, they are recognized as a resident and otherwise referred to as a non-resident (Nowruzzi, 2019, 1, 52). Of course, the basis for deciding this case is the received visa, but it is possible that a person who holds a residence visa for more than one month and is considered a resident, travels several times to his home country and is not actually considered a resident. However, the legal basis of residence is to have a valid residence visa for more than thirty days.

### **1.2. Foreign Investor Use of the Country's Banking System**

A foreign investor is, in the first instance, a foreigner residing in the country. Special laws related to foreigners residing in Iran encompasses such individuals, and the Foreign Investors Protection Act provides them some privileges. According to the latest directive of the Central Bank approved in 2019, if foreigners residing in Iran provide proof of residence for a specific purpose, can use the Iranian banking facilities by having provided the original passport and valid residence document. Natural persons with permanent residence and legal entities with an official representative in Iran have the least restrictions on opening a deposit account. Restrictions are more for non-resident natural and legal persons. Privileges include opening interest-free savings accounts and bank deposits and using ATM card. Current account, opening of which was previously prohibited for

consumed, but in the future someone will need it and that commodity will be profitable for him. In financial science, investing means that someone buys a financial asset such as stocks and predicts that the financial asset will be profitable in the future and its price will increase, so it will make a good profit by selling at a higher price (Erfani, 1992, 1, 14).

In the theory of economics or macroeconomics, investment is the amount of goods purchased per unit of time not consumed but used for future production, for example, by railroad or factory building. Investing in human capital includes the cost of further training or on-the-job training. Invoicing the investment refers to the collection of goods that can be positive or negative, and can be inclined or non-inclined (Abbasianfar, ٢٠١٥, 1, 12).

Theoretically, all economists consider capital as the driving force of economic growth and development of societies and design all models and patterns of economic development based on this idea. The use of domestic and foreign investment opportunities through the optimal use of production resources is one of the most important factors in achieving comprehensive economic progress. It is obvious that financing the formation of domestic capital is possible through various means such as making use of domestic savings, foreign debt and attracting foreign capital. Communities that do not have enough capital for their development, will consider the recourse to foreign capital as a necessity for economic development (Zolghadr, 2009, 90).

Financing of projects is one of the responsibilities of economic authorities who are able to properly advance projects with good management of resources. In fact, financing the projects requires proper government management through attracting capital from domestic and foreign sources.

Foreign investment refers to transferring funds from materials from one country to another to be used for the establishment of an enterprise in a country in exchange for direct or indirect participation in its revenues. Foreign investment is a form of capital export from the investing country to investable countries and is performed in the form of investment in the production and manufacture of goods, extraction of raw materials, establishment and expansion of financial institutions, etc. across national borders. Foreign investment is one of the most

policies and, on the other hand, can lead to their presence in the country's economic sector. Unrestricted entry of investors is not acceptable anywhere in the world. This is because the inflow and outflow of large amounts of foreign money into a country can harm the economy of that country, and therefore relevant laws must be set in order to minimize the damage. In our Islamic Iran, which is the flagship of the struggle against imperialism, there is another issue that has made the monitoring of the performance of foreign investors very sensitive. The jurisprudential rule of Non-Domination over Muslims strongly recommends that foreigners should not dominate the important resources of the country. On the other hand, receiving interest and bank loans, which the government often provides low-interest loans to attract foreign investors, is an important issue that needs to be discussed from a jurisprudential point of view.

Regarding the background of the research: Asari (2018) in his research examined the insurance of foreign investors and stated that in granting insurance to foreigners, their influence in the country should be prevented. Ranjbarian (2018) in the study that deals with construction, operation and transfer contracts, has pointed to the rule of Non-domination that attracting foreign capital to fund this project should be under the support umbrella of this rule. There has been a lot of research on bank interest, including Mousavian et al. (2008) and Afshari and Bagheri (2014), and in the current situation in the country, they have recognized bank deposit interest, but did not say anything about foreign investment deposits. Therefore, this research is carried out in a descriptive-analytical method with the aim of examining the jurisprudential-legal status of bank profits related to foreign investors.

## 1. Capital and Foreign Investment

Literally, capital means money or goods that form the basis of business (Amid, 2017, 2, 212) and property that provides monetary income (Moein, 2016, 1, 121). Investing means putting money into something with the expectation of making a profit. More precisely, investing is the commitment of giving additional money to financially purchase other assets or properties in order to benefit from useful returns in the form of interest, dividends or appreciation of the value of assets (capital gains) (Dehkhoda, 2015, 1, 121). In economics, investment means buying a commodity that is not currently

## Introduction

Part of each country's capital needs is met through foreign investment, so that most countries in the world have put the policy of attracting foreign investors in their country's macro-management plans. In Iran, there is a law to encourage and protect foreign investors, specifying the legal mechanism for managing this issue. Investors who move their capital to another country, benefit from the economic potential of that host country due to their presence in the economic sector. This benefit may be in the form of deposits interest or loans for productive and economic projects, the amount and status of which can be effective in attracting investors.

When foreign investors enter our country, invest their capital either in foreign currency or in Iranian Rials in the banks and use the interest on deposits in accordance with the rules of the Central Bank. At the same time, in order to support them, the government has granted foreign currency or Iranian Rial loans with good interest rates, which can be an incentive for investors to enter the country.

The activity of foreign investors in economic arena can be examined in several ways:

- 1- As the name of the foreign investor implies, the investor imports his capital from abroad in the form of currency and injects it into the economic system of the country. The first effect of this measure is to reduce the exchange rate in the country, which may harm the economic system.
- 2- After converting the capital into the host country's currency, the amounts are kept in the country's banks and the foreign investor can use banking facilities like the citizens of the country.
- 3- On the other hand, receiving bank loans is also required for investors because their financial income is often not enough for their complementary project. 4- The imported capitals are large and can lead to stocking of a large part of the country's economy.

Accordingly, the presence of foreign investors in the country, on the one hand, contributes to the strategy of the country's economic

## **Abstract:-**

Usually, a part of the capital required by countries is provided by foreign investors and the policy of attracting them is applied by all governments in the world. A foreign investor uses the host country's banking system, and if the volume of foreign capital in Iranian banks is large, it gives them the power to damage the country's economy by withdrawing their capital if necessary. In this study, jurisprudential rules such as the rule of Non-Domination over Muslims, Harm Principle, Concession, Gharar Disavow (an aleatory commutative contract or contract of sale, that is one in which buyer does not know exactly what he is to receive and is therefore at risk) , and Fraud Disavow and it was concluded that according to such principles and rules, the enemy should be dealt with at every turn. Although attracting foreign capital is the policy of any government, in policy-making as well as legislation, it should be borne in mind that large foreign capital in the country's banks, enables foreign governments to suddenly withdraw their capital so as to damage the economy of the country concerned. Of course, it is up to the authorities to determine minor policies in this regard.

**Key words:** Bank Interest, Foreign Investor, Bank Deposits, Non-Domination over Muslims Rule.

## **الملخص:-**

عادة تم تأمين قسم من الرساميل اللازمة والضرورية في إيران، من قبل المستثمرين الأجبيين وتطبق سياسة جذبها من جانب كل الدول.

الاستثمار الخارجي يستخدم النظام البنكي للبلد المضيف و اذا كان حجم الرساميل الأجنبية في البنوك الإيرانية كثيرا، قدروا على الإضرار باقتصاد البلد عند الضرورة و اللزوم من خلال خروج رروس الأموال لهم. في هذا البحث، تمت دراسة القواعد الفقهية مثل قواعد النفي في السبيل و لاضرر و الإباحة و منع الغرر و منع التديس و حاصله أنه يجب مواجهة و مكافحة أي ثقب إزاء ضربة العدو على أساس هذه الأصول و المبادئ.

رغم أن جذب الرساميل الخارجية، سياسة أي دولة، لكن بالنسبة إلى وضع السياسة و أيضا التشريع، يجب علينا أن نهتم بأن الرساميل الأجنبية الكلية في بنوك إيران، لاتسمح للدول الأجنبية أن تخرج راس المال لها خروجاً فجائياً مع هدف الإضرار باقتصاد البلد. البتة في هذا الشأن، يتحمل المسؤولون مسؤولية تحديد و تعيين السياسات الجزئية.

**الكلمات المفتاحية:** الربح البنكي، المستثمر الخارجي، الودائع البنكية، قاعدة نفي في السبيل.

# **Jurisprudential study of the use of bank profits by foreign investors in Iran**

**Haydeh Darvishi**

Ph.D. Student , Department of Fiqh (Jurisprudence) and Principles of Islamic Law , Qom Branch , Islamic Azad University , Qom , Iran  
haydehdarvishi@gmail.com

**Esmat al-Sadat Tabatabaei Lotfi**

Corresponding Author : Assistant Professor , Department of Fiqh (jurisprudence) and principles of Islamic law , Qom Branch , Islamic Azad University , Qom, Iran  
esmat.tab@gmail.com

**Sayyed Muhammad Shafiei mazandarani**

Assistant Professor , Department of Fiqh (jurisprudence) and principles of Islamic law , Qom Branch , Islamic Azad University , Qom , Iran  
shafieimazandarani@yahoo.com

## **دراسة فقهية لاستخدام الربح البنكي من جانب المستثمرين الأجانب في إيران**

**طالبة الدكتوراه هايده درويشي**

قسم الفقه وأصول القانون الإسلامي ، فرع قم ، جامعة آزاد الإسلامية ، قم ، إيران

**عصمت السادات طباطبائي لطفی**

المؤلف المسؤول : أستاذ مساعد بقسم الفقه وأصول القانون الإسلامي ، فرع قم ، جامعة آزاد الإسلامية ، قم ، إيران

**سيد محمد شفيعي مازندراني**

أستاذ مساعد بقسم الفقه وأصول القانون الإسلامي ، فرع قم ، جامعة آزاد الإسلامية ، قم ، إيران