

Sociological Analysis of the Foreign Investment Process in Iran

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Abstract

Sociological analysis of the foreign investment process in Iran during the pre and post Islamic Revolution periods has undergone many fluctuations. Foreign investment in Iran was under the influence of political fluctuations, and attempts have been undertaken in each period to create a safe environment for attracting foreign capital by resorting to various compilations. What sets Islam as a privileged and outstanding religion at any given time is that it considers all aspects of life and, principally, has put all parts of human life in the path of true evolution with its original special laws. The basic role of jurisprudence in relation to the economy and the appropriate solutions for regulating economic relations and the formulation of a standard in the economic regulations has been highlighted in the foreign investment affairs, the use of rules, regulations, and principles of the law in the conflict of individual and social interests. After the Islamic Revolution, foreign investment, with emphasis on jurisprudential and Islamic foundations, brought about tremendous changes in the field of Iranian-Islamic urban spaces.

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1. Introduction

Regarding the history of foreign investment in our country, it should be noted that the cultural context for foreign investors in Iran has always been a kind of suspicion; for example, the initial flows of foreign investment in Iran, such as Reuters and Darcy, have a colonial aspect so that these conventions created an unpleasant culture for foreign investment in the country. On the other hand, from the historical point of view, aside from the internal factors such as authoritarian and unstable nature of the governments and their rapid displacements, various insurrections, insecurity, the absence of independent trade unions have led to a loose and unlucky foreign investment in our country. James Fraser, who visited Iran from the early Qajar era, writes: "The main obstacle to the improvement and prosperity of Iran is the insecurity of the peoples' lives and property, which comes from the revolutions that such a state is constantly exposed to. (Shakibae, 1993: 84), this situation is always blocking the efforts of the people in the way of industrial production". Therefore, the negative attitude towards foreign investors and the unpopular historical record of Iran in attracting foreign investment has caused our country to always stay out of this benefit. By the victory of the Islamic Revolution and the nationalization of many manufacturing units, the flow of capital into the country was devoted to specific cases. On this basis, from the beginning of the revolution to 1987, only 160 million dollars of capital came into the country. However, in 1993, some measures were again taken to encourage foreign investment that did not succeed. In March 2002, providing the necessary conditions, in particular, the adoption of the law to encourage and support foreign investment, as well as the three positive moves - the single exchange rate, the modification of the tax law and international commercial arbitration law - paved the way for attracting such investments. But the fact is that the defects in the approach to the international community and its developments can be seen in Iranian law, Constitution and ordinary laws. Not aligning with these developments, the lack of sufficient, clear and crisp rules, how to interpret these laws, and etc. are the barriers to attract foreign investment in the country (Shahbazinia, 2011, 29).

2. literature Review

Studies in the field of foreign investment in Iran have not had a long history, but there are many general studies on the issue of foreign investment in recent years, and it has become important in economic development countries given that foreign investment in the world has grown dramatically and countries have taken benefit by this. Papers and theses have also been dedicated to attracting foreign investment in Iran. The previous scientific researches in relation to the thesis are briefly summarized as follows:

Ranjbar Moshfeghi (2013) examined legal barriers to foreign investment in the agricultural sector with a view of Iran's accession to the World Trade Organization. The study results showed that Iran has so far failed to make good return on foreign investment, despite the good practices made in the legal framework of the country for the benefit of this type of investment by the beginning of the last decade, including the adoption of the Free Zones Act (1993), The Arbitration Law (1997), The Basic Conflict Settlement (44, 81, and 139) and Constitutional Law. Azizi, Mohammad (2012) explored legal factors affecting foreign investment in Iran. Baradaran, Alireza (1999) examined the legal mechanisms for securing foreign investment in Iran, international law.

3. Methodology

This article is descriptive-analytic. This means that the necessary information has been collected using various sources such as libraries, articles, internet sites, etc., and has been analyzed using principle, legal and logical rules. The data collection method in this study is note-making from library resources.

4. Findings

Foreign Investment in the Light of Islamic-Iranian Sociology: Islamic economics is a collection of laws, theories, institutions and patterns of Islamic law that are presented in relation to the issues of production, distribution, and consumption. The social justice is pursued in all of these categories, and Islamic jurisprudence is to regulate parts of this collection. It deals with related theories and laws through specific methods such as Ijtihad; since economic rights are available to economic scholars and can be accessed by means of Ijtihad from jurisprudential references, it is possible to discover Islamic ideas through the economic rights of Islam (Kennedy Dayney, 2017, 167).

In jurisprudential references, Islamic laws are all attributed to Allah Almighty. Some of them are clearly explained in the Holy Qur'an, and the rest are either from narratives or the result of Ijtihad from the main sources. The main sources of deducing the Islamic commandments are the Qur'an, tradition, reason, and consensus. The compilation of the Islamic economic system cannot be explained by collecting and translating some verses or narratives, but Ijtihad method can be used for the full and accurate knowledge of the verses and other sources. The result of the discussion makes the Economic School of Islam different from other schools because this school is based on verses, narratives, commandments, and rational concepts with revelation basis. Non-divine schools are founded with the public aspirations and will, while the economic school and law of Islam use the method of Ijtihad. This method plays an important role in the discovery of the economic school and the principles governing it. Hence, the Islamic Economic School is a coherent set of basic economic theories, which are tailored to the principles and values of society and aimed at solving economic problems. It includes issues such as the property, economic freedom and social justice, which requires the pavement of the grounds for the generalization of Islamic law in the financial resources.

The scarcity and limitation of resources and capital in the importance of foreign investment have led humans to study their relationship with financial resources. By the management of scarce resources, the advancement of technology, and the addition of material needs, humans have become obliged to plan and attempt to provide the grounds for other financial sources in production, survival and living conditions (Rezazadeh and Najaflo, 2012: 2).

The basic role of jurisprudence in relation to the economy and the appropriate solutions for regulating economic relations and the formulation of a standard in on economic issues relating to the rights of property and trade and environmental rights and the formulation of social, economic and political rights and the creation of order and security has been highlighted in the foreign investment affairs, the use of rules, regulations and principles of the law in the conflict of individual and social interests. The rules of jurisprudence are fundamentally and efficiently rules in the formulation of laws, especially economic laws. In Islamic jurisprudence, the correctness and inaccuracy of the construed regulations and rules are verified by these rules, and the consistent commandments are confirmed so that the grounds for the realization of social justice in other laws are adapted with the soul of social justice. According to the principle of harm (لا ضرر و

(لاضرار في الاسلام), broad dimensions must be proved in terms of reason, including the formulation of economic regulations regarding the rights of property and trade and the protection of the environment and taking measures to create economic security and investment that ultimately form the basis of economic planning. Based on the principle of non-dominance (ولن يجعل الله للكافرين على المؤمنين سبيلا), the social, economic, and political rights and the prohibition of foreign domination on resources and other issues are formulated in financial contracts (Ibid). The principle of negation of Distress and Constriction (يريد الله بكم اليسر ولا يريد بكم العسر) (Bojnurdy, 1412: 167) refuses all unconventional hardship in the human life, it can make the mental and physical force of human, which is the most important factor of sustainable development in each society, to move towards a balanced and reasonable direction and to accelerate the growth trend. Other special jurisprudential laws which apply exclusively to the economy must be based on the principle of the absolute legal power of the owner to exercise dominion or control over the property. The principle of waste (و جزاء سيئه سيئه مثلها) entails the incurred losses while considering the religious sanctity of wasting other's property. In accordance with the principle of absolute domination, Prophet (PBUH) (من سبق الى ما) allows domination by economic work in order to exploit the objects of nature. Finally, the rule of dominion is the most famous jurisprudential rules in the field of economics and investment. The Prophet's saying (الناس مسطرون على اموالهم), which is the legal origin of the emergence of economic freedoms in Islamic jurisprudence, encompasses all interests and property types.

Foreign Investment in Iranian-Islamic Urban Spaces: The second principle of the Islamic economic system is granting limited freedom within the framework of Islamic spiritual and moral values. The restriction of individual economic freedom is the logical consequence of the Islamic attitude toward the individual and society. The freedom of individuals in the Islamic economic system has two limitations; one is inherent, and the other is objective. The inherent limitation is one that comes from the spirit of humans, as the combination of Islamic economic and social orders with beliefs. However, since this limitation comes from inner beliefs and freely accepted and chosen by individuals, they do not feel constrained. The rules related to the prohibition of the gavel, hoarding, waste, Zakat payment, banned businesses, exploitation of natural resources are among these restrictions.

The objective limitation is one that exists out of human existence and based on the principle of the Islamic state oversight because it is not possible to rely only on the internal factor and inner beliefs of individuals for the implementation of Islamic law (Namazi, 2001: 234). Human beings have the freedom to spend the earnings from the supply of their own products, whether in the form of wages or rent or profits or other income and wealth, to cover all expenses that seems necessary after paying the prescribed legal rights thereon; hence, it is not conceivable to limit their freedom. Certainly, the believers who live in a religious sphere and believe in the principle of universal unity and integrity and the mutual responsibility of beings do not choose their concepts incompatible with their beliefs; therefore, how their earnings are spent will be in line with its religious aspirations while maintaining the freedom and security. The liberation of a Muslim in the production or consumption will resolve problems that may occur in the event of a possible conflict between the interests of the individual and society; in other words, the observance of freedom in the context of religious beliefs not only respects the principle of the human's responsibility toward the universe but also have not conflict with the general process of society (Sobhani, 1993: 82).

Sociology of Foreign Investment Based on Islamic Standards in Urban Spaces: In every country, economic growth and development require the formation of capital to fund the basic and infrastructural projects (Zolghadr, 2007: 89). Today, the authority and durability of governments and societies are interconnected to the economy, and foreign investment is an important factor in strengthening the economic foundations of each country. Foreign investment creates new opportunities and features in the national economic system, increases the development along with new job opportunities, improves welfare and ultimately people's livelihoods (Jaf, 85: 2000). In the past, while other countries were highly attached to foreign investment for their development, such a need was less felt in our country since high oil income had eliminated the context of various investments and the need to attract foreign investment. After the Islamic Revolution in Iran and the withdrawal of foreign investors from our country, they almost compensated for all their losses with the order of the international courts to withdraw the property seized outside Iran. But today, the country's need for foreign investment is increasingly on the rise, and legal deficiencies and political, economic, and cultural obstacles create massive barriers to attracting foreign investment in Iran.

There may be a perception that Islam is fundamentally opposed to the principle of wealth and knows it as a filthy thing; therefore, something that is dispensable can no longer have any rules; hence, a school that believes that an object is dispensable cannot set rules about that and its provisions will be as follows: do not create it, do not touch it, do not use it and etc. In response to this great mistake, it can be stated that the Islamic Sharia has never abandoned wealth and properties; neither the production of wealth, nor its exchange and use has been humiliated, but all these things have been emphasized and advised. Perhaps, the waste of money is certainly prohibited such as extravagance. Islam prohibits the greed for money; it has not condemned money and wealth because the prodigality is banned in Islam. The production of wealth, such as agriculture and industry, is recommended; the exchange of wealth has been emphasized, strict penal rules have been imposed for burglars and usurpers, the defense of the property is considered as jihad, legal principles have been set out for the property, and the Holy Qur'an recalls the wealth as "benefit", as the following verse says: "كتب عليكم اذا حضر احدكم الموت ان ترك خيراً الوصيه للوالدين و الاقربين" (Baqara, 180).

Based on the above and the reasons from the Quran and the tradition, wealth and its exploitation are worthy in Islam. The Islamic view to the property and capital is basically positive. Across the Islamic teachings, it is clearly seen that property and any product that meets human needs is crucial to the continuation of human life, religion, and religious belief; so the use of foreign investment cannot violate the goals of the Islamic society because in the foreign investment the government or private sector invests its own capital in the territory of another country and without having to demand capital, interest, profits and the like from the host country; The only thing that affects the mind in this regard is Islam's emphasis on the independence of Islamic society. If this activity is to be considered sensitive and to provide sufficient prospects for the activities of investors, this activity is not only contrary to the independence of the society, but it can also increase the level of production and employment through the benefits provided to the host economy, and as a result, it will be effective by increasing the public welfare and improving their livelihoods. As it is seen, this type of investment can even increase the dignity and strengthen the independence of the society. The Iranian community must take a step toward globalization with dignity and power in various aspects. It shouldn't be assumed that trade is a gift from a foreign country so that our country can take benefit from foreign investments according to the value of Islamic and Iranian culture and consequently, realize the economic development of Iran (Khazaei, 2009: 59).

Foreign investment that brings about the exchange of capital, technology, technical knowledge, and other capabilities is always looking for a place with little risk and high profit or returns. However, countries are always worried about the adverse effects of foreign investment and try to regulate their policies in such a way that avoid its unwanted effects while taking benefit of this new method as much as possible (Alidousti Shahraki, Naser, Foreign Investment Law).

In the Islamic system, policies need to preserve the independence and national dignity of the society in all economic, political, and social affairs. In general, it cannot be asserted that the use of foreign investment is in conflict with these principles and undermine the dignity of the Islamic community. If the society matters the economic development that leads to the independence and dignity of the Islamic society, the use of foreign sources is considered desirable sometimes due to the lack of sufficient domestic resources. In this case, all explicit and implicit terms of the investor should be carefully examined, and its short-term and long-term effects must be recognized. Then, the decision for accepting or rejecting should be made taking into account the positive and negative consequences; in fact, what makes Islam a privileged and prominent religion at any time is that all aspects of life and are considered in this religion. In essence, it has put all parts of human life in the path of true evolution with its original special rules (Salehi Kermani, No. 1).

Sociological analysis of foreign investment law: The process of foreign investment in Iran during the pre and post Islamic Revolution has undergone many fluctuations. Foreign investment in Iran has been affected by political fluctuations, and attempts have been undertaken in each period to create a safe environment for attracting foreign capital by resorting to various compilations. In the end, we have faced numerous problems with the formulation of laws that are not sufficiently coherent.

Foreign investment before the revolution: By 1931, there was little foreign investment in Iran, and most of the contracts were a concession. However, such contracts should not be considered as a direct investment in the true sense of the word. These contracts entail the full ownership of natural resources in the concession region and monopoly of harvest, and the income from concessions was very small for the government so that it was in some way a colonial intervention in Iran; hence, no taxes or customs duties were levied on the host government. On the other hand, the local government has no control over the operations of franchisee; in case of any intervention, it would face the coercive reaction of the central government and forced to retreat. However, it must be admitted that primary franchises had some basic features of foreign investment and somehow keep the flag of foreign investment in our industry. For example, the franchisees take the risk of investment in oil exploration and, if successful, they would create job opportunities for the people of the region. The countries of Russia and Britain were among the major investors. The concession of establishing the Iranian and British oil company and the establishment of the Shahi Bank were among their investments. Since 1931, at the same time as the enactment of the registration law and the adoption of the Trade Code in 1932, another type of foreign investment was initiated privately in the company (Enayat, 2008, 149).

Foreign investment from beginning to 1955: As discussed in the previous section, foreign direct investment was established by European countries from the nineteenth century. Foreign investment in Iran has begun since the late nineteenth century. At that time, Iran was not a colony of any foreign government, but politically under the influence of both Britain and Russia. Perhaps because of this political weakness, the first investors who looked towards Iran were Russian and English investors. From 1879 to 1952, 27 concessions and contracts were signed by the Iranian government with Russian citizens or the Russian government. The subject of these contracts was very diverse: the exploitation of telegraph lines, fishing in

the Caspian Sea, the establishment of the Russian borrowing bank in Iran, the monopolization of transportation and insurance, Iran's borrowing from Russia, the transfer of Anzali oil to Rasht and the construction of the Jolfa-Tabriz railway. However, English investors were also more active and successful in this regard; from 1862 to 1913, about 217 contracts were signed between the Iranian government and the United Kingdom. The subject of these contracts were the construction and operation of telegraph lines, the establishment of banks and the right to issue bank notes, exploitation of resources, construction and operation of roads, monopoly of Iranian oil exploitation, Iran's borrowing from Britain, construction of the Khorramshahr-Khorramabad-Boroujerd railway and construction of sea lighthouses in the Persian Gulf. Among the most important contracts of this period was the Reuter concession in 1872 and D'Arcy Concession in 1901, which ultimately led to the formation of the Iranian-British oil company. In fact, the aforementioned contracts in addition to the North Sea Fisheries Agreement and several other investment contracts imposed by the imperial governments on resources and mines in our country at that time have created an unpleasant experience of foreign investment. It was many years since World War II and the flourishing era of foreign investment in the world, but Iran continued to work with the same colonial investments so that Iran's share of foreign investment contracts remained negligible (Zenoz, 2000, p. 85-84). Although after a the nationalization of the oil industry and, in fact, the nationalization of foreign state capital in Iran and the increase of the national exchange rate, private foreign investors also noted the rising income of Iran from oil and its market, the fear of nationalization during the years 1951 Until 1953 caused the private foreign investment of Iranian companies not to be registered. However, failure to nationalize the private capitals and then approval (foreign investment attraction and protection law) of the registration of companies with private foreign shareholders in Iran have increased the foreign investment from 1953 to 1955. A total of 167 Iranian companies with private foreign shareholders were registered (Gray, Kevin, 2002, 121)

Private foreign investment from 1956 to 1978: From 1956 to 1978, followed by the consolidation of the dictatorship and creation of the necessary political stability, the foreign investment increased and the United States entered the scene. The law on attraction and protection of foreign investment approved in 1955 and its executive regulations adopted in 1956 are considered a turning point in the history of private foreign investment in our country. The government thereby covered a portion of the foreign private and production capitals and provided them with special supports and facilities; however, the inclusion of the law was optional, not obligatory; that is, a foreign private shareholder could apply for legal authorization and the government will cover foreign capital under this law, in the event of a cost-effective detection (Kiani, 2002, 201).

Private foreign investment in Iran, as in many countries, was formed during this period and continued along with improving the country's economic needs, especially the increase in foreign exchange earnings and the consolidation of domestic market ties with international markets. Even at the end of this period, the Iranian government decided to invest outside Iran, and the country took huge investments abroad. By the time, the foreign capitals had increased under the law of foreign investment attraction and protection so that it reached the peak during the period of the oil boom from 1973 to 1978. Most of the investments were related to industrial machinery and other machine tools. At that time, about 1,641 Iranian companies with foreign private shareholders were registered in the country, the highest of which was in the years of 1975 and 1976.

Foreign investment after the Islamic revolution: This era is divided into two periods of 1979-2002 and after 2002. In the first period, the foreign investment was decreased due to the changes in the country's legal,

political, and social processes. The constitution also took an uncertain position regarding foreign investment; but after the adoption of the new law on encouragement and protection of foreign investment, the political atmosphere to attract foreign investment was changed (Motalebi, 2001, 318).

Private investment from 1979 to 2002: After the victory of the Islamic Revolution, the government had faced industrial and economic crisis due to the escape of capitalists abroad, the withdrawal of significant amounts of capital from the country, the debt of industry owners to the banking system, the defects of imports and exports, and the tense relations of employers and workers in industrial environments. In such a situation, the government had no choice but to nationalize the industries and banks; therefore, a major constraint was imposed on foreign capital attraction under the constitution of the Islamic Republic of Iran and the state-owned economic activities. Looking at the first economical, social, cultural and political development plan, we realize that there has been no trace of foreign investment. With the adoption of the Second Development Plan Law in the second half of 1993 and the acceptance of foreign investment and the adoption of the law on the management of free industrial-commercial zones of the Islamic Republic of Iran, once again the attraction of foreign capital was considered by the legislator after a 15-year suspension period. However, in practice, the attraction of foreign investments in the country was poor due to the special economic and political conditions, the fluctuations of the foreign exchange system, and various interpretations of principles (44) and (81) of the constitution. This trend continued in the 3rd Development Plan and allowed the government to get or secure foreign financial facilities. In this period, we see a reduction in the risk of investment in Iran because of adopting a policy of détente. But eventually, we fail to achieve significant successes in foreign investment, especially foreign direct investment (Salehinejad, 2012, 43).

The openness of the political and legal environment for foreign investment: 48 years after the adoption of the Foreign Investment Law in Iran, a new law was enacted in 2002 entitled the Law on the Promotion and Protection of Foreign Investments, which was replaced by the Foreign Investment Attraction and Protection Act of 1955. In fact, the new law aimed to provide an appropriate legal context for attracting and employing foreign capital and technology and fulfilling the country's economic development. The legislature has obviously tried to attract the maximum amount of foreign investment. Article 8 of the law stipulates that foreign capital will have the same legal protections as domestic capital. Article 9 of the same law obliges the government not to expropriate from the foreign investor except in accordance with the law and in favor of the public with the appropriate payment of compensation to the real amount of capital before expropriation (Behkish, 2010, 28).

In fact, the policy of openness to foreign investment was followed up in 2002 in line with the international movements and the acceleration of foreign investment trend; the adoption of the new foreign investment law is only part of the developments and programs aimed at protecting the rights and interests of foreign investors. In this regard, major developments and reforms have taken place, including the adoption of the new tax law, the establishment of nongovernmental banks, and the emphasis on privatization. However, it should be acknowledged that there is a huge gap between the current situation and the ideal situation in this area.

5. Conclusion

In Iran, the history of foreign investment sociologically returns to more than a century ago and the era of the state of the traditional privileges. At this time, although the benefits of such investments were one-sided and merely for the investors, this one-sided privilege system made significant changes in recognizing the sovereignty of states on their natural resources by international law. The first step for states to exercise their sovereignty was to establish rules that would regulate the relations between the host government and foreign investors on the mutual benefits so that foreign investment is used as an effective means of sustainable development. In Iran, before the enactment of a specific law on foreign investment, this was achieved by means of concessions and then investment contracts; as the first concessions that embedded the mining and exploitation privileges, including oil, was granted to Baron Julius Reuter on July 25, 1872; this process continued until the end of the concessions period and the establishment of the contract system in the exact sense of the word. The first Iranian investment law is the Law on the Attraction and Protection of Foreign Investments, adopted in 1965; this law was set out in 7 articles including general terms and conditions of foreign investment. After that, several bilateral investment agreements were signed between the Iranian government and other governments; until the adoption of the law on the encouragement and support of foreign investment approved by the Islamic Parliament in 2001.

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