

بررسی تطبیقی قاعده درأ با اصل برائت در قوانین و فقه جزایی

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Dara' is one of the rules that is derived Figh which most jurisprudents refer to in their books. The rule indicates that by proving doubt or hesitancy at the time of committing crime, the offence cannot be proved. The aim of this study is to determine the similarities and differences of Dara' rule with the presumption of innocence through a comparative study. This rule is in some way intended to guarantee the presumption of innocence, however, the important question that arises is that "what is the similarities and differences between the Dara' rule and the presumption of innocence and how is the relation of them"? By studying in jurisprudential and legal texts, we concluded that there is a close relationship between the Dara' rule and the presumption of innocence. The results demonstrated that in cases there is evidence and the principles of applying for punishment, like the presumption of innocence, the rule prevents the execution of penalty. Sometimes there are doubts about the punishment that both the rule and the presumption of innocence are to resolve all doubts in favor of the accused. The provisions of the rule do not invalidate the presumption of innocence, but are in line with the completion of this presumption. In the current study, the results were obtained by a descriptive-analytical method and described in three chapters.

Keywords : Presumption of Innocence, Dara' Rule, Principle of Legality, Mozoeih doubt, Hakamiyeh doubt

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