



A Comparative Study of the Right to Resistance in the Contemporary Constitutional Law

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Abstract

The right of people and citizens to protest against the decisions of rulers and politicians is one of the principles of contemporary democratic and developed systems. This type of political regime, which is derived from the teachings of modern constitutional law, claims to be the most complete and developed model of human governance. Regardless of the correctness or incorrectness of this theory, due to the deep belief of modern societies in the legitimacy and acceptability of the democratic system, which is one of the important foundations of the teachings of contemporary constitutionalism, along with principles such as the rule of law, safeguard of the fundamental rights of citizens, separation of powers, respect for human rights and limiting the power of rulers, thinkers do not deny the benefits of the generalities and fundamental principles of the democratic system; however, this does not mean that citizens and people cannot oppose the decisions of apparently democratic governments under any circumstances. Therefore, there is no doubt that the right to protest is one of the fundamental human rights that can be expressed through numerous and different methods, such as people's participation in peaceful gatherings. However, the subject of this article is not to understand more precisely the framework of the concept of the people's right to protest against a specific government action (for example, the approval of an organic law), but rather to examine the less studied concept of "the right to resistance" against rulers established in a democratic and developed system due to the betrayal of the ruling body towards the high and fundamental guidelines declared in the constitution and higher-level laws. Therefore, in some cases, the attack of politicians on the foundations takes on extensive dimensions, and the nation must benefit from extraordinary tools such as the "right to resistance" to confront these unconstitutional actions. In this article, based on the descriptive-analytical method and to correctly outline the foundations and principles related to the "right to resistance", we answer these questions: What is the definition of the concept of the people's "right to resistance" against a political power that has violated the fundamental principles of the constitution? Does this concept have legal legitimacy or does this right only have an idealistic and political aspect? After examining the views of the doctrine and some constitutional laws in a comparative manner, we conclude that the right to resistance is theoretically considered the nation's last resort against criminal politicians, and if it is



not possible to refer to impartial supervisory bodies and independent courts, citizens find the freedom to fight directly against the government officials to preserve the constitution. However, in practice, due to the widespread disagreement between lawyers and constitutional laws of the 20th century (contemporary historical period) about the stipulation of the right to resistance, the conditions for its implementation, and the possibility or impossibility of resorting to force to fight the corrupt ruling body, it seems that the political dimension of the right to resistance still prevails over its legal aspect. In other words, the right to resistance in contemporary constitutional law is a clear concept in theory and complex in terms of implementation. From a theoretical perspective, this concept can be considered as a direct response of the people to the severe violations of the ruling body against the important principles of the constitution. In other words, this right can be invoked exceptionally and limitedly, and people cannot always and under any circumstances benefit from it. Therefore, in practice, the implementation of this right faces various difficulties and challenges. On the one hand, not all organic laws and constitutional systems recognize this right. On the other hand, the right to resistance includes the uprising of the nation and may cause the violation of the organic laws and government regulations about maintaining public order; therefore, in practice, it is difficult to make a serious difference between this concept and a popular uprising against the political system. Even though theoretically the content of these two processes is different, because the right to resistance is the uprising of the nation to preserve the system and the rebellion is considered the uprising of the nation against the system. In addition, the issue of the possibility of resorting to force in the manifestation of the right to resistance is very controversial; because if violence is allowed, the moral aspect of the right to resistance may be violated. Regimes that recognize the right to resistance and even in some very minor cases allow the right to resort to violence in this context, on the one hand, accept the risk of some citizens abusing this principle, but on the other hand, they declare their trust in the people of their country to everyone; because in these types of political regimes, the people are known as the ultimate defenders of the system. In any case, regardless of whether or not the right to resistance is explicitly mentioned in the constitutions and beyond whether the right to resistance can be implemented with or without violence, due to differences in the interpretation of this right in the field of implementation among jurists and also the plurality of opinions in the constitutions in this regard, it seems that this right still has a powerful political and ideal aspect and a weak legal dimension. In practice, the fact that people can directly defend the status quo stipulated in the constitution by any possible means increases the risk of instability and chaos in society, which may ultimately be considered destructive for the survival of the high values of the system.

Keywords: Right to Protest, Constitutional Law, Right to Resistance, Comparative Law, Democracy.



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