
CONSTITUTIONAL PROTECTION OF RIGHTS AND LIBERTIES IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 41 OF THE BASIC LAW OF THE SULTANATE OF OMAN: AN INDUCTIVE ANALYTICAL STUDY

Dr. Majed Ahmed Saleh Al- Adwan¹, Dr. Hassan Sami Alabady², Dr. Asraf Mohamad Gharibeh³, Dr. Shereen Nabil Abu Ghazaleh⁴

¹ Associate Professor in Administration Law, Faculty of Law, Sohar University-Sultanate of Oman. Email: majeed_aledwan@yahoo.com.

² PhD in Philosophy of Law, Amman Arab University. Associate Professor in Law -Faculty of Business- Amman

Arab University (جامعة عمان العربية). Email: h.alabady@aau.edu.jo. Authors research available at https://scholar.google.com/citations?view_op=list_works&hl=en&hl=en&user=AhnltVMAAAAJ&gmla=AJsN-F4TMAnE7uPrI15xprCj-DIij0YHrmMOSUgswRFCN_frP8vdp1FpGHxVkJGVObsIQLzB0DNHDPbBgIoHRE1JMSAInBACEnvr9GoM23DJk9z1a9eNPc&sciund=8206219713318441306

³ Assistant Professor in International Public Law, Faculty of Law- Sohar University, Sultanate of Oman. Email: amohamadgharibeh@su.edu.om.

⁴ PhD in Philosophy of Law, University of Aberdeen- United Kingdom. Associate Professor in Law. Email: 2022laws@gmail.com. Authors research available at <https://scholar.google.com/citations?user=EeG08rsAAAAJ&hl=en>

Abstract

This study aims to define the role of the provisions of the Basic Law of the Omani State in protecting public rights and liberties, and to know how far they are guaranteed in achieving justice and economic development, in accordance with the legal Articles governing them. It discusses the nature of this protection, as an attempt to identify the role of some constitutional legal provisions in consolidating and protecting these rights by presenting a clear realistic and practical image in interpreting the provision of Article 41 of the Basic Law of the State, the true guarantor of these rights and liberties. Accordingly, this study concludes that the Omani constitutional legislator has kept up with the advanced legislations in the field of protecting public rights and liberties as well as ensuring the achievement of justice, which this study has supported. However, according to the provisions of Article 41 of the Basic Law, the authors could not find the nature and characteristic of the competent authorities in terms of the related public matters in a narrow, precise or broad form. In view of the importance of this constitutional protection, the study called for devoting and stipulating Article 41 of the Basic Law of the Omani State in all areas and legal applications prevailing in the state in line with the legislative development achieved in the Sultanate of Oman. By following an inductive and analytical approach, the subject of this study has been divided into two chapters; Chapter one focused on the constitutional protection of public rights and liberties under the Basic Law of the State of Oman, while Chapter two dealt with the competent authority concerned with perpetuating the protection of rights and liberties in accordance with the provisions of Article 41 of the Basic Law of the State.

Keywords: Rights and liberties, Justice, Economic Development & Basic Law of the Sultanate of Oman

1. Introduction:

There are many categories of issuance of laws and regulations in the Omani legal system¹ despite the common name of these legislative categories, where each of which is applied according to a specific system, a specific

¹ The Basic Law of the State No. 6/2021 comes in the highest rank, then the laws in force in the Sultanate of Oman with their different titles, followed by royal decrees, ending with ministerial decisions.

time, and a specific mechanism. Among these categories, there are some of which that occupied its real actual basic existence through its high legislation authority in the Sultanate, namely, the Basic Law of the State. There is no doubt, that such legislation category, given the legal link between it and the source competent authority is robust and correct, as it is under its supreme legal entity in the state through which the true and direct meaning of its existence and entity is achieved.¹ However, all that can be relied upon on the other hand is the issue of linking the laws and other regulations in effect with this system according to an official permit for their issuance and in a way that these legal systems existing in the state's legal system shall not contradict with its well-established legal provisions. In both cases, ordinary laws are issued by the legislative authority, and temporary laws by the executive authority, but all comes under the basic law of the state.²

The second category of laws is represented in – those laws protecting public rights and liberties, which is the focus of our interest herein, which will be later highlighted in this study. The authors would stress herein the scarcity of similar studies in such detailed statement of such type of law in terms of its applicability in comparison to the areas of the provisions of Article Forty-one of the Basic Law of the Sultanate of Oman, despite this timbre Article in terms of its legal rank, which itself reaches the rank of static and relatively rigid legislation. Therefore, the authors proceed with proposals based on propositions about the extent to which it is possible to accept the application of what came within the folds of this legal Article in the various stations of the legislation, regulations and bylaws of the state. Or in other words, the extent to which this Article can be considered of a legislative rank, as a reason not to prejudice the rights and liberties, and to place it within the realm of defense within the frameworks of confronting the executive authorities only.

The laws and regulations applied in the Sultanate of Oman, have laid the foundations for defending public rights and liberties, and explicitly limiting the means of infringing them,³ through the official state institutions and administrative bodies concerned with preserving them, through both legislative and executive authorities in maintaining the legislative or practical protective cover that surrounds these rights.⁴

In this way, given the seriousness of this issue in terms of calling a legal text (Article 41) that is issued under a legislative authority and by following it heart and soul with a legislative rank that precedes less laws thereof, because its source shall be the Basic Law of the State,⁵ in look and feel. It may be tailed by judicial consideration before courts of all kinds in legal defense in the event that these rights and liberties are exposed to any risk. Therefore, the state's judiciary has no choice but to abide by it in order to prevent any possible future appeal.⁶ That is why the authors decided to discuss the issue of protecting rights and liberties in accordance with Article Thirty-Four of the Basic Law of the Sultanate of Oman,.

<https://mjla.gov.om/index.asp>, the website of the Ministry of Justice and Legal Affairs of the Sultanate of Oman, the date of the visit 10/02/1443 AH, corresponding to: 05/03/2022.

¹ In this regard, and in accordance with the provisions of Article (97) of the Basic Law of the Omani State; It is not permissible to issue any legislation or regulation that contradicts this law, as this Article stipulates the following: - “No authority in the state may issue regulations, decisions, or instructions that contradict the provisions of the laws and royal decrees in force, or the international treaties and agreements that are part of the law of the country.”

² Article (96) of the Basic Law of the Omani State stipulates the following: “Laws, procedures that have the force of law, royal decrees, and regulations shall conform to the provisions of the Basic Law of the State.”

³ According to the introduction to the Royal Decree No (6) of 2021, which was published in Official Gazette No. 1374, the introduction to the decree states the following: “We, Haitham bin Tariq, Sultan of Oman... – and to promote rights, duties, and public liberties.” This confirms the promotion and protection of these rights.

⁴ This is what is guaranteed by the third and fourth sections of the first chapter of the Basic Law of the Omani State and the third chapter of the same Basic law.

⁵ This is stated by Article (41) of *the Basic Law of the State* No. 6/2021 issued on Jumada I 27, 1442 AH, corresponding to January 11, 2021, which stipulates the following: - “Every citizen has the right to address the public authorities regarding what he personally suffered, or In matters related to public affairs, in the manner and conditions specified by the law.

⁶ After examining the laws in force in the Sultanate of Oman, it becomes clear to the researcher that: - The basic law of the state is a general law that regulates the protection of rights and civil liberties for all residents

1.2 Objectives & Importance of the Study

The importance of this study does not stem only from the fact that it deals with a recent issue related to the applicability and designation of qualitative and trusteeship framework of the issue of respecting public rights and liberties based on a constitutional provision emanating from the folds of the Basic Law of the State. Rather, it can transcend to the legislative and judicial space on the one hand, and the issue of the jurisprudential aspect that did not deal with such issue in much detail and clarification on the other hand. Thus, it was necessary to describe and analyze the legal framework for Article forty-one, which is of great importance.

At this point, the authors see the specificity in singling out a legal space with legal provisions related to the addition of legal texts belonging to most of the applicable legislations, regulations, and bylaws that agree not to contradict the aforementioned constitutional text, whether according to the systems of procedures for ordinary litigation of different types and names, or according to the system of administrative and constitutional litigation procedures for the high rank of Article forty-one in the state and its basic role that it plays in the event of its approval and its practical risk that may result in simultaneous suspension of the validity of any regulation that contradicts what was stated in its explicit legal text.

The authors address the issue of applying and adhering to the content of Article 41 before the state's authorities represented by its departments of public bodies and institutions, or even before its competent judicial authorities by a judicial referral in a matter affecting the rights and liberties of individuals. This issue has become something necessary in present, with the inclusion and activation of the content of this Article.

This study aims to: highlight the importance and seriousness of the actual or even implicit commitment to the constitutional texts that protect public rights and liberties, and the jurisprudential importance of these texts to make the matter a reason for referring this type of texts to a stable legal principle for most laws and legislative divisions that are specific or related to them.

1.2 Research Problem & Discussion

The nature of this research and its scope raised a major problem revolving around: how far does the constitutional protection of rights and liberties apply in accordance with the provisions of Article 41 of the Basic Law of the Sultanate of Oman?

In that sense, and based on the foregoing, is such a legislative and constitutional role considered sufficient to preserve the protection of public rights and liberties in the sphere of ordinary and administrative judicial application, or not?

Hence, based on above questions, the main problem to be discussed by the current study emerges, which lies in: - The effective constitutional legal treatment in Omani legislation if its legal texts had an importance based on aspects of great material importance, by highlighting this role in the light of both legislative and executive authorities, and specifically the latter in its mandatory affirmative effect, which requires us to describe, analyze, and discuss the provisions of the Basic law and other relevant laws, as well, the reasons and methods behind resorting to them. Thus, it gives the appropriate legal framework for the protection of rights and liberties and the competent court to approve such protection, since it was issued according to constitutional patriotic Articles on the one hand, and because it regulates very dangerous issues at the international level on the other hand. Finally, it may be accompanied by stopping applicable laws in force in the country.

of the geographical location of the Sultanate of Oman, and with regard to the competent court according to the principles of civil pleading systems in the Sultanate of Oman, it is represented by the jurisdiction of the court of occurrence. Crime, and the Criminal Court in the Sultanate of Oman is competent to consider cases related to public order and what is related to the protection of the rights from assault on money and individuals. Article (33), Chapter One, Part Two of the Omani Criminal Procedures Law issued by Royal Decree No (79/99) The date of December 1, 1999: - "The judicial control officer shall accept claims and complaints that come to them about all crimes."

1.3 Methodology

The research relies on the inductive approach by using the descriptive analytical method, through objective reading and in-depth analysis of the constitutional legislative texts and judicial decrees related to the laws concerned with the protection of rights and liberties and their role in formulating and drawing the need for their implementation at all levels or not. Leading to specific conclusions and recommendations, it shall contribute to analyzing the nature of these texts and making them a justification for advancing them in a legislative hierarchy befitting their importance and the importance of the right they protect. It also provided recommendations that help clarify this issue and enshrine it on the organizational and judicial side by the constitutional and ordinary legislator together.

1.4 Research challenges

The most prominent difficulties encountered by this study were as follow: The absence of previous constitutional legal studies on this subject. The researcher did not find specialized legal studies that detail and clarify the current issue of the supremacy of laws protecting the rights and civil liberties of individuals as a legal justification for accepting them within a range of law and special or general judiciary and its hierarchy of legislation. This prompted the researcher herein to move forward.

In order to determine the extent to which the constitutional legislative role can be highlighted in Omani legislation, and to reach a comprehensive answer to the aforementioned problems related to this type of legislative role. However, a number of questions are raised in this regard, which focused mainly on the following points:

1. What are public rights and liberties?
2. What is the risk of violating public rights and liberties?
3. What are the reasons for activating the provisions of the Articles of the Basic law in terms of passing judgments for protecting public rights and liberties?
4. What is the role of the Basic law in consolidating and stipulating them?
5. What are the other laws that show the importance of rights and liberties at the level of the Sultanate of Oman and their impact and legal status resulting from the provision of such rights?

Based on the aforementioned, this study is divided as follows:

Chapter One: Constitutional protection of rights and liberties in the Basic Law of governance.

Chapter Two: The competent authority concerned with the protection of rights and liberties in accordance with the provisions of Article 41 of the Basic Law of governance.

This study was concluded by a set of results and recommendations, hopefully to be addressed by the legislator.

Chapter One

Constitutional protection of rights and liberties in the Basic Law of governance

Attention to the subject of constitutional protection in general for rights and liberties stems from a wide spectrum in accordance with well-established constitutional rules in the Basic Law of the Sultanate of Oman, in terms of its objectives and effects that deal with it and the parties subject to this protection. Thus, it makes it different and distinct in its internal and external scope. This type of protection is defined by a constitutional legislative view and is viewed from a unique and stand-alone angle. Thus, it is a matter of interest to the Omani constitutional legislator, which is attributed to him, according to our estimate, to the Omani legislative and constitutional confidence in the organization of this protection, its seriousness, fairness and absolute integrity. The provisions of the Basic Law of the State came to specify this protection and made it applicable to its parties without any attitude or role in underestimating it or even waiving it.

The new and old issues of constitutional protection of rights and liberties addressed by the constitutional legislator in particular, came due to its importance as a mean to solve any legislative or applied judicial and legal problems and obstacles that may affect them. Either by expressly stipulating it, or as a real effective alternative to resorting to the judiciary, whether it is – regulatory, administrative, or even constitutional – and the consequent leftover of these rights or even prejudice to them, in order to achieve economic development.¹

Based on this fact, the authors believe -; That delving into the depths of this subject will take careful and sensitive effort in dealing with its aspects that are attributed to the lawman, and whatever the matter is, dealing with the doors of constitutional protection of rights and liberties shall be an open issue for researchers from the jurists of the constitution, and it is a bright attempt in dealing with it to raise facts, constructive opinions, jurisprudence and solutions in advocating the legislative and administrative bodies in the state are in compliance with the constitutional text that protects these rights in order to reach a legal scientific fact that puts brief outlines in the text and enforce those constitutional texts that enshrine this protection.

In the light of the foregoing, and through this simple and modest introduction, the authors devote the first section herein to identify public rights and liberties, and the second section to clarifying the nature of this protection.

Section one

Concept of public rights and liberties

The term public rights and liberties – according to our estimation - deviates from the broad meaning of its implications, as it includes the images and forms of these rights on the one hand and covers the multiple areas of its application in individual disputes that detract from these rights on the other hand. However, whatever the matter, the authors suggested the exclusion of the linguistic meaning herein and remained its legal technical meaning.

Public rights and liberties² are related to both citizens and foreigners. They are viewed from their natural side regardless of their political aspect, which is prescribed to citizens only, without foreigners. They are privileges granted by the state to those who deserve it, while the administrative authority is prohibited from subjecting them to liability, given the human need for them, and inability to dispense with them, most notably personal rights.³

In this regard, the authors found that one aspect of jurisprudence has defined public liberties as; "The prestige that distinguishes man in terms of his existence, and that his actions express his will not others' will."⁴⁵

Based on the above, it is clear that public rights and liberties are a natural, fixed and well-established approach in every country, which it guarantees to its individuals and groups, which achieves stability and security, thus

¹ Consider: - The texts of Articles (20, 21, 22, 23, 24, 25) of Part three of the Basic Law of the State, which embodied in its provisions the most prominent public rights.

² The Almighty says: **“And We have certainly honored the children of Adam and carried them on land and sea and provided for them of the good things and preferred them over many of those who deviated”** Al-Israa:70

³ In this regard, it should be noted that; The Declaration of Independence of the United States of America, issued in 1776 AD, following the Philadelphia Conference, and the French Declaration of Human Rights, issued in 1789 AD, emphasized these rights in preserving and defending them.

⁴ See: Al-Hilalat, Muhammad, *Human rights, their guarantees and justifications for their restrictions in the Jordanian constitution and comparative legislation* (2019), International Scientific House for Publishing and Distribution, Jordan, p. 27.

⁵ "Several constitutional Provisions define the rights and duties of the Jordanian citizen, e.g., The right to hold meetings, the right to establish societies and political parties, the right of education, the right of work, etc.," Al-Aqilah, Zaid. *Terminology of Law* (Amman: house of cutter: 2022): p.80.

paving the way for organizing their relations with each other on the one hand, and with others on the other hand, according to principles and values that are appropriate to serve as the basis for a just regime.¹

Section Two

The nature of legislative protection of the individuals' rights and liberties

The constitutional founders were concerned with allocating a space for public rights and liberties, as the constitution is a sublime founding document for the state, specifying within it public rights and freedoms, and the overall constitutional updates in states of law aimed at highlighting human rights, and adding new rights such as the right to development and peace².

As well, the study of public rights and liberties occupies a high rank in the field of political and legal studies, as the individual is committed to some duties in exchange for some rights and liberties guaranteed by the state through some assurances.

There are many types of public liberties, and they differ among themselves, as they are united by one unit represented in the freedom of individuals to practice them within the legal systems established by the state.

Public liberties are distinguished by its relativity, as they are not absolute or constant in terms of time and place. For example, the concept of liberties in the nineteenth century differs from its concept in the twenty-first century. There is no doubt that liberties and democracy are linked together. There is no democracy without freedom, and vice versa.³

In view of the multiplicity of types of liberties, legal jurisprudence has adopted many jurisprudential maneuvers in order to classify them and clarify their content, and among the most important of these classifications are those that depend on the extent of their connection with the human being, as they are divided into rights related to the human person and social and economic rights. However the human related rights are those based on his being and nature, such as the right to security, the sanctity of personal life, freedom of thought, the right to property, and the right to assembly and the performance of religious rites, while social and economic rights are those that guarantee individuals living standards within reasonable limits.

Hence, the state has obligations and duties to guarantee such rights, such as the right to join trade unions, the right to get a job...etc.⁴

There is another classification of rights that focuses on distinguishing between negative and positive rights. The first one inhibits the state to intervene in order to be able to exercise them fully. As for the second, the state must proceed positively to implement these rights and ensure their practice.⁵

¹ In this regard, see: Al-Khatib, Noman. *Al-Waseet in Political Systems and Constitutional Law* (2021), Dar Al Thaqafa for Publishing and Distribution, Jordan, p. 129.

² In this regard, see: Ramadani, Fatima. *The role of the constitutional founder in making constitutional rules related to the rights and liberties of individuals: a comparative study* (2021), published research, No. 1, Year 10, Journal of the International College of Law, Kuwait, p.401.

³ Dr. Hassan Al-Bahri, *Constitutional Law and Political Systems*, Syrian Virtual University Publications, 2018, p. 66

⁴ Abdul Hamid Rajab, *Contemporary Political Systems*, 2015, University Book House, Al Ain, second edition, p. 204

⁵ Idem, p.205

There is a third classification of rights based on the interest achieved by freedom, where a distinction is made between personal freedom, the right of the individual to join political coalitions, freedom of thought, and economic and social rights.

As for the fourth classification of rights and liberties, it sheds light on the activities of the government. There are freedoms that work to set limits on the activity of the ruler and others that enable individuals to oppose the government. Personal freedoms, economic freedoms, intellectual freedoms fall under the first type. While Press freedom, freedom of assembly, freedom of demonstration, freedom of association, and freedom of forming political parties falls under the second type.¹

As for the last classification, it divides liberties into traditional freedoms and new economic and social freedoms. Traditional freedoms include the following:

A - Personal freedoms, which include the right to security, freedom of movement, and freedom of ownership.

B- Freedom of thought, which includes freedom of education, freedom of belief, freedom of the press, freedom of opinion, and freedom of theatre, cinema and radio.

C- Freedom of Assembly: It includes freedom of assembly and freedom of association.

D- Economic Freedoms: It includes individual freedoms of an economic nature, such as freedom of trade, freedom of industry, and freedom of ownership.

As for the new economic and social freedoms, they include the right to form trade unions, the right to work, the right to enjoy leisure time, and social insurance in cases of disability and old age.

Based on the foregoing review of jurisprudential opinions regarding the division and classification of public rights and liberties, the authors tend to the opinion that divides public liberties into traditional rights and freedoms such as personal freedoms, thought and assembly, social rights and freedoms, and economic freedoms.

Personal freedoms

Feeling safe and secure from attacking a human person is one of the most important and noblest rights. However, attacking a person may come from two sources, the state or individuals.

Personal freedoms take precedence with regard to public and individual freedoms, and perhaps this is due to the fact that it is a goal for which the state was established, which requires providing security and safety for its members, and then protecting their personal freedom.

Personal freedom is divided into several rights, namely:

1- **A person's right to his body:** A person has the right to respect others for his body, and this requires guaranteeing two other rights, which are the right to life, and the right to the integrity of the body and organs.

2- **The right to personal security:** This right is defined as the guarantees a person enjoys against arrest or imprisonment, except in cases stipulated by law. Except cases of flagrante delicto, no one may be arrested, searched, imprisoned, or his freedom restricted or prevented from moving except by order of the competent judge and in accordance with the provisions of the law.

3- **Freedom of movement:** Freedom of movement means the freedom to move from one place to another within or outside the borders of the state without restrictions except as required by the supreme interest of the country, and that the restrictions on movement are for a temporary period and within the limits drawn by the law.

4- **The right to dignity:** It is one of the highest individual rights or personal freedoms of the individual, and what is meant by this right is not to attack a person's body or his feelings by insulting or degrading in any way

¹ Idem, p.206

or means, including forcing him to confess and extracting statements from him, right or wrong, and by all means that make him lose control on his will, and perhaps the most prominent form of contemporary protection of the right to dignity is the prohibition of torture.

5- **The right to a private life:** jurisprudence did not agree on setting a specific definition for private life due to its flexibility and its influence on contemporary ways of life.

- The sanctity of the residence: it is the one to which a person takes shelter in search of calm, comfort and tranquility, and therefore it is not permissible to break into the dwelling of another person and disturb his peace.

- Confidentiality of written correspondence and telephone calls, so that it is not permissible to view the exchanged correspondence, or to wiretap or record telephone conversations, except in cases stipulated by law.¹

Intellectual freedoms

This group of freedoms includes the following:

1- **Religious freedom:** the individual may embrace any religious belief, and the state has no right to interfere in the practice of religious rites, just as the state may not impose a particular belief on individuals.

2- **Freedom of opinion and expression:** it is the mother of intellectual freedoms and political freedoms, and therefore commentators differed in classifying it between freedom related to thought and political freedom related to the right to participate in the affairs of government, but in reality it is both intellectual and political freedom at the same time.

3- **The right to education:** Individuals have the right to receive science and knowledge from whomever they wish, and the state must guarantee the right to knowledge and the right to transfer his experiences and knowledge to others. The right to knowledge and its transmission satisfies two human needs: the instinct of curiosity and the instinct of self-affirmation and respect.

4- **The right of the citizen to the media:** The citizen has the right to obtain a high and equal amount of news and information so that he can participate in the political process effectively and with understanding. There is no doubt that the right to the media cannot perfectly practiced except by determining the freedom of the audio, print and visual media.²

Freedom of assembly

This freedom has two main manifestations: the freedom of temporary or emergency assembly and the freedom of forming associations. Individuals have the right to meet in order to discuss issues that concern them and exchange views, whether through speeches, seminars or dialogue. Individuals also have the freedom to form scientific, cultural, political or artistic associations, provided that the purpose of the association does not involve violating public order or morals.

Economic freedoms

These freedoms aim at providing individuals with the opportunity to practice economic activities, which requires the establishment and management of economic projects and the freedom of ownership so that they are safeguarded and cannot be taken away except in the public interest and in exchange for fair compensation. The most important types of economic freedoms are as follows:

¹ Idem, p.210.

² Idem, p.212.

- Freedom of trade and industry: Individuals have the right to engage in industrial and commercial activities as long as they meet the conditions required by law.

Ownership right: The right of ownership means the ability of the individual legally to become an owner, which is what is known as individual ownership, to distinguish it from collective ownership, through which the owner is not an individual. Branching out from ownership is the individual's right to dispose of, use, and utilize his own property (real estate or movables), as well as other forms of industrial and commercial property such as trade names, trademarks, patents, and intellectual property rights.

In the past centuries, the right of ownership was a sacred right surrounded by the individual doctrine with an aura of protection and sanctity, and it was imposed on the state not to interfere in economic activity so that private projects would have the opportunity to compete with each other.¹

Social rights

The right to work is one of the most important social rights. Here, the state must provide suitable work opportunities, and regulate the conditions of work and the worker's relationship with the employer or the establishment in which he works, so that the worker has the right to rest from work (paid rest), determine working hours, as well as health and social insurance, in cases of sickness, old age and disability. The appropriate wage for the worker is what satisfies his ordinary physical needs and does not impede the fulfillment of more spiritual needs of man.

Political participation rights

These rights are three:

- 1- The right to vote and the right to poll for every citizen who fulfills the conditions stipulated by law (not restricted by wealth or competence).
- 2- The right to run without restrictions for the membership of local councils and parliament.
- 3- The right to assume public office.

Guarantees prescribed for the exercise of public rights and liberties

The state guarantees the individual's exercise of his rights and freedoms without arbitrariness of the state or abuse of its powers, as it establishes several guarantees represented in the principle of equality, the principle of citizenship, constitutional protection, and the protection of ordinary legislation of rights and liberties, as well as the principle of separation of the three powers (legislative, executive, judicial) with cooperation and balance between them. Finally, guarantees are called by some of the jurisprudence (curative guarantees). Therefore, if any assault occurred on the right or freedom, those curative guarantees appeared immediately, which are as follows:

- 1- Monitoring the constitutionality of laws.
- 2- Judicial control over the work of the administration.

The authors will offer preventive and curative safeguards as follows:

Preventive guarantees: These guarantees include the following:

First: The principle of citizenship: This principle is one of the main foundations on which the democratic system is based in some countries.

¹ Idem, p.212

Second: The principle of equality: It means that citizens are equal in public rights and duties, and there is no discrimination between them on the grounds of gender, origin, language, religion or creed. This principle includes many implications:

- Equality before the law.
- Equality before the judiciary.
- Equality in assuming public office.
- Equality in public costs and burdens.
- Equality in the use of public utility services.
- Education equality.

Third: Constitutional protection of liberties: The constitution is the supreme and higher law, and therefore if rights and liberties are stipulated in the state's constitution, this is considered a great constitutional guarantee against any assault on the right or freedom because it represents a restriction on the state's powers from any abuse or exploitation of any individual.

Fourth: Legislative protection of freedoms: The constitution entrusts the ordinary legislator with regulating the details of how to exercise freedoms, as the constitution suffices to mention provisions for the right or freedom, then it refers to the ordinary legislator the regulation of the exercise of the right or freedom with the stipulation of the penalty for violating these legislations.

Fifth: Adoption of the principle of separation of powers: In view of the increasing responsibility of the ruler in the modern state, many writers and thinkers have called for an organic separation of the state's actions, and from this appeared the famous principle (separation of powers), as it is intended to distribute the functions of the state to separate bodies that are independent of each other in performing its function, while maintaining the legislative, executive, and judicial powers within the state. This principle has several justifications, represented in preventing tyranny, preserving freedom and ensuring the principle of legitimacy, i.e. the separation between the legislator and the executor. This principle achieves the advantages resulting from the principle of division of tasks. The authors add to the principle of separation of powers, despite some criticisms, that it did not mean absolute separation between the three powers, but rather the establishment of a kind of balance of power between the king as a representative of the executive authority, and parliament (the legislative authority).

Sixth: Adoption of the principle of legitimacy: According to this principle, it requires the submission of everyone before the law, whether the rulers or the ruled, and that all state authorities respect the legal texts, considering the broad meaning of the legislation. Since it is not concerned with ordinary legislation, rather it is meant with statute, ordinary legislation, regulations, custom, and general principles of law.

Seventh: Improving the educational, cultural and economic level of the people: There is no doubt that raising the aforementioned levels is a sure guarantee against attacking any right or freedom while exercising it.

Judicial guarantees

The first guarantees are the preventive to prevent the occurrence of abuse, however if it happened despite the existence of the guarantees, the role of the judicial guarantees begins. Judicial control over the actions of the administration is contested by two completely different systems, the Anglo-Saxon system that leaves control to the ordinary judiciary, while the French system that entrusts it to an independent judiciary, namely the administrative judiciary. Judicial monitoring under this system takes place in three ways: (the mandate to cancel administrative decisions that deviate from the rules of legality, and compensation for the administration's wrong actions, and finally the judiciary examining legitimacy, where the judiciary examines the legitimacy of

the administration's actions if it was raised before it by means of defense during the consideration of another case)¹.

Administrative jurisprudence defines a cancellation action as lawsuit filed by an individual to the administrative judiciary requesting the cancellation of an administrative decision that is contrary to the law, meaning that the dispute raised by the lawsuit is related to the legality of the administrative decision and its conformity with the provisions of the law. It means that the dispute raised by this lawsuit is related to the legality of the administrative decision and its conformity with the provisions of the law. Therefore, the case for annulment within the framework and concept of interest is within a range of - the in-kind or objective judiciary - and the focus of the dispute is the legality of the administrative decisions themselves. To summarize, the scope of the cancellation lawsuit is related to the rules and considerations of legality and public order. The principle of legality revolves in the orbit of the judicial oversight of the State Council, according to the order of the administrative judge, who is the judge of legality. When he rejects the illegal or unlawful decision just because it violates the rules of legality, he directs the administration and undertakes a kind of control over its actions so that it is always subject to the law.²

There are two means of judicial guarantees:

- 1- Monitoring the constitutionality of laws and regulations.
- 2- Judicial control over the work of the administration.

Perhaps the strength of each of the two guarantees lies in entrusting its matter to the judicial authority, which is characterized by impartiality and objectivity, and its aim is to issue judicial rulings that are the epitome of truth. Regarding the first mean, the monitoring of the constitutionality of laws and regulations, the oversight is carried out by a political or judicial body, according to what is decided by the constitutional system of each country. As its mission is to abolish the laws or regulations that are contrary to the constitution, as it is the supreme law in the state, while in the case of the judiciary, to cancel this law or those regulations. Thus, the ordinary legislator is obligated to fill the legislative space that occurs as a result of the disappearance of the law or regulations that violate the constitution.

As for the second mean, which is judicial control over the work of the administration, it is one of the types of control to protect the freedoms and rights of individuals, as it is carried out by the administrative judiciary in some countries that adopt the dual judiciary system, or it is entrusted to the ordinary judiciary in other countries that adopt the unified judiciary system.

International covenants³ affirmed human rights and that they are not an exclusive domain of public authorities, such as what was stated in the Universal Declaration of Human Rights 1949, and the International Convention on Economic, Social and Cultural Rights. The state constitution is also considered the first guarantee of public rights and liberties by devoting it to protect them according to its own legal rules. Since these rules, in terms of their strength, are considered in the hierarchy of legislative hierarchy, which entails the government's submission to the law by depriving it of its right to amend or cancel those rights, realizing the public benefit in the text and steadfastness in their application, which is an important and real guarantee for them on a democratic basis to ensure their preservation and continuity. Finally, the legislative protection of public rights and liberties is embodied in its religious source, specifically the Islamic legislation that regulates these rights in a comprehensive capacity and indicates that authority is a trust and each individual is the conscience of its

¹ Idem, p.215

² - Dr. Ben Belkasem Ahmed Lectures on public freedoms given to first-grade master's students for the academic year 2015/2016, University of Muhammad al-Dabbaghin, Setif 2, Faculty of Law and Political Science, Algeria, p. 22.

³ It should be noted in this regard that it is thanks to the Charter of the United Nations that the subject of human rights entered the circle of international law, as the United Nations took the position of defending the complementarity and correlation between human rights at the level of the individual, and the rights of peoples collectively, so the United Nations Charter of 1945 came as the preliminary that laid the foundation stone for international human rights law. See: - Al-Zoubi, Farouk. Human rights between Sharia and international law, "a comparative analytical study" (2005), published research, issue 4, year 29, Law Journal, Kuwait, p. 139.

society.¹ The Almighty says in Holy Qur'an: "*And we have certainly honored the children of Adam and carried them on land and sea and provided for them of the good things and preferred them over many of those who deviated*".²

Chapter Two

The competent authority concerned with the protection of rights and liberties in accordance with the provisions of Article 41 of the Basic Law of the Sultanate of Oman

The public rights and liberties provided for by the Basic Law of the governance and entrusted its organization and care to the ordinary legislator represented by the executive authority are many. Most prominent of which are personal freedom, freedom of opinion and expression, freedom to perform religious rites and other freedoms, which came in Chapter Three under the name "Public Rights and Duties" of Section Five From the Basic Law of Governance, starting from Article (18) up to Article (40). The witness from all of that up to Article (41) which concluded these rights with a fundamental issue that states; "The right to address the public authorities by every citizen who has a right, with regard to personal matters or matters related to public affairs, according to the law". On the above, it should be indicated that the Statute did not designate explicitly a particular competent authority in terms of violations against public rights and liberties. This seems to be clear according to the provisions of Article (41), and accordingly the second chapter of this study came to deal with the issue of the entity concerned with the consecration and protection of public rights and liberties in accordance with the reading of the aforementioned Article.

In this context, and based on the above, it's obvious that democratic government appears in its true form in the monarchical regimes, especially the constitutional monarchy³ as is the case in the regime of the Sultanate of Oman⁴, the subject of this study. However, to shed light on the most important aspects of Democracy in its common and stable form in the consecration and protection of public rights and liberties, the authors divide this chapter into two sections: the first section is dealing with the competent authority concerned with the consolidation of these rights in the Sultanate of Oman, whereas the second section will discuss the potential to apply Article 41 in the protection of public rights and liberties.

Section One

The competent authority to preserve public rights and liberties in the Sultanate of Oman

In a more specific framework that mainly focuses on the subject of this study in particular, which is the competent authority to preserve public rights and freedoms, we have the Basic Law of the State itself that represents in a compulsory manner to resort to it in order to determine the framework of these rights and freedoms, by referring to the legal constitutional provisions regulating and defining it, and how to treat it properly instead of resorting to any other legal legislation or even knocking on the doors of the competent judiciary to defend them.

¹ See in this regard: - Sabarini, Ghazi. *Al-Wajeez in Human Rights and Fundamental Freedoms* (2015), Dar Al-Thaqafa for Publishing and Distribution, Jordan, p. 30.

² Al-Israa:70

³ A constitutional monarchy is described when the state is headed by a king who exercises his powers in accordance with the provisions of the constitution. Britain is considered one of the first countries to establish the concept of constitutional monarchy after the 1688 revolution. See in this regard: - Al-Khatib, Noman. *Al-Wafi in the Constitutional System* (2022), Dar Al-Thaqafa for Publishing and Distribution, Jordan, p. 83

⁴ Article 5 of the *Basic Law of Omani Governance* stipulates that: - "The regime is royal and hereditary in males from the descendants of Sultan Turki bin Said bin Sultan."

Based on the foregoing, the authors see the comprehensiveness of the constitutional texts for the subjects of the rights and liberties of individuals in terms of their supercilious goals as well as legal results and effects that fall within its scope.

Whatever the case, a careful look at the provisions of the Basic Law of Governance, the authors find that they dealt with these rights with their well-established and clear-cut aspects. They are in the place of defensive legal articles that do miracles in defending them and revealing their importance, while achieving at the same time the legal and practical benefits related to them. This result is supported by the following points:

First: Resorting to the Basic Law of Governance and the constitutional articles contained therein, that enshrine these rights, would highlight the folds of these rights on the one hand, and their legal and factual character on the other hand.

Second: Resorting to the Basic Law of Governance and the constitutional articles contained therein, it is in the place to preserve and protect the subject of these rights, by making them clear in application before the competent judiciary, and achieving absolute justice in their regard, by preserving the rights of stakeholders whose public rights and freedoms are diminished, and this matter in itself is a noble constitutional goal with a lofty aim.

Third: Resorting to the Basic Law of Governance and the constitutional articles included therein, achieves satisfaction among individuals in addition to reassurance among the supreme authorities of the state entrusted with the task of preserving and protecting these rights, which imparts good feelings and extracts feelings of hate, enmity, odium, anger and defiance, leading to an atmosphere of harmony between the different interests.

Fourth: Resorting to the Basic Law of Governance and the constitutional articles contained therein, that protect public rights and freedoms, is an easy and accessible mean.

Fifth: The Basic Law of Governance and the constitutional articles contained therein, is itself a firm and inflexible legal act in defending public rights and freedoms, which are taken into consideration to achieve the desired balance and appropriateness, as they are derived from supreme and obligatory rules of the state, in order to preserve the norms and values of society, is a motive for creating applicable legal political, social and economic values, under nullity in violating them.

Sixth: Resorting to the Basic Law of Governance and the constitutional articles contained therein, as mentioned above will enhance the idea of public rights and liberties, as it is a priory to choose it according to a constitutional approach to avoid problems might raise thereof, since it is the safety valve, taking into account realistic solutions.

This constitutional care provided in the Basic Law of Governance, in terms of public rights and liberties became the focus of all the constitutions over the world including Oman. Therefore, the authors can say, based on legal and scientific principle, that protection of these rights and liberties shall be reached through a set of constitutional provisions, most important of which are the following:

First: General framework for consolidating public rights and liberties

It is represented by the emergence of the will of the constitutional legislator to achieve justice and equality in all its forms, procedures, essence and effects, in accordance with fundamental constitutional foundations with a specific goal and content, closely related to the time and place of its validity, including what was stated in Article (13) of the Basic Law of the State, which established the basic principles of the state, specifically ensuring Justice and equality for citizens.¹ Likewise, the same is provided in Article (15) of the same system,

¹ In this regard, see: Article (13) of the Basic Law of Governance, where it stipulates... "the establishment of a sound administrative system that guarantees justice, tranquility, and equality for citizens, and guarantees respect for public order, and care for the supreme interests of the nation."

which emphasized the general framework according to its obligatory and rooted source.¹ And the same applies to Article (18).

Second: Obligatory Framework for consolidating public rights and liberties

It is the one in which the will of the parties is absent on the one hand, and the will of the parties concerned with preserving public rights and liberties on the other hand, as the will of both parties is forced to resort to the provisions of the constitutional texts forcibly in preserving them, and preventing assault on them under penalty of responsibility, and this is what Article (21) of the Basic Law enshrines.² It should also be noted in this regard that the constitutional legislator - in our estimation - clearly stipulated the prohibition of the assault on personal freedom in its absolute form.³

Section Two

The extent to which Article 41 can be applied in protecting public rights and liberties

In this regard, it should be noted that the Omani constitutional legislator allowed individuals to resort to the public authorities for personal matters or concerns related to public affairs, in accordance with the specific conditions of the law. This constitutional legislative approach is logical and fair in protecting public rights and freedoms in a realistic and categorical manner, seeking supreme legislative wisdom in drawing attention to the fact that these rights are the subject of consideration and appreciation. Otherwise performance or limiting such form of performance in any way or mean makes the issue a matter of constitutional legislative violation, which serves as a basis for its sanctity in preserving human rights.

With all - scientific humility - the authors find the source of this constitutional legal protection emanating from the provisions of Article 41 of the Basic Law of Governance. These provisions are applied in the capital and in the rest of the states. The authors support and encourage such constitutional provisions, based on the many benefits arising forthwith. It would reflect positively and inclusively on the citizens who represent an essential pillar of the state, thus achieving progress, advancement and legislative prosperity.

At all, what confirms the aforementioned that Article 41 of the Basic Law of Governance, in its brief terms, adopted the approach of addressing the public authorities, where it states the following: "Every citizen has the right to address the public authorities regarding what he personally suffered, or In matters related to public affairs, in the manner and conditions specified by the law"⁴

Conclusion

This study evaluates the issue of the constitutional legislative role in the Sultanate of Oman in terms of protecting public rights and liberties. It is an attempt to find a constitutional legal adaptation of its own, in accordance with the provisions of Article forty-one of the Basic Law of Governance, especially since these

¹ In this regard, see: Article (15) of the Basic Law of Governance, which states: "The social principles of the state are represented in the following: - Justice, equality, equal opportunities among citizens and pillars of society, guaranteed by the state."

² In this regard, see: Article (18) of the *Basic Law of Governance*, which states: "Life and dignity are the rights of every human being, and the state is committed to respecting and protecting them in accordance with the law."

³ In this regard, see: Article (23) of the Basic Law of Governance, where it states: "Personal freedom is guaranteed according to the law, and it is not permissible to arrest, search, detain, or imprison a person or determine his residence or restrict his freedom of residence or movement except in accordance with the provisions of the law ".

⁴ In this regard, see: the text of Article (41) of the Basic Law of Governance.

rights and freedoms are stipulated by supreme constitutional rules in a legislative capacity. It has proposed a new constitutional legal regulation in order to avoid any constitutional legal effects that result when deciding on an issue related to these rights and freedoms. All this came with the aim of preventing conflicts in legislative and judicial jurisdiction on the one hand, and to give these rights a real character, and a legislative and judicial capacity on the other hand. The authors aimed to find a legal adaptation specific to this role, and the entailed defects thereof, and proposing a new regulation that governs this issue, in order to make it a constitutional legal situation that achieves absolute constitutional protection for these rights and freedoms. Therefore, with the intention to enrich the legislative aspect. This study has concludes a set of results and recommendations as follow:

First: Results

1. The legislative role in the Sultanate of Oman represented by the Basic Law of the State is an effective legal mean in disclosing the regulatory components of public rights and liberties, aimed at achieving the public interest, and this is done under the principle of legality without deviating from its scope.
2. The Basic Law of Governance in the Sultanate of Oman, provides for several legal terms that deal with issues of public rights and liberties according to their specific nature.
3. The issuance of constitutional legal provisions in the Basic Law of the State in its natural state entails a title and legal effects related to the public rights and liberties that make it one of the levels of legislation issued by a supreme legislative authority.
4. The constitutional legislative role protects public rights and liberties in accordance with the Basic Law of Governance as stated in the provisions of Article 41 therein, so that it addresses a unique issue that is affected by it. This is essential for meeting the ultimate goal of resorting to it, represented in the protection of public rights and liberties by addressing any original- competence public authority in the country.
5. The issuance of constitutional legal legislative provisions, originating from the Basic Law of Governance, aims to achieve a realistic goal in favor of the public interest, targeting preserving these rights and liberties at the internal and external scale of the state. Should this goal be violated, it means a violation of the rule of authorities upon its specified constitutional meaning.
6. Finally, there is nothing to prevent issuing regulating legal legislation that recognizes in its folds following the content of the constitutional provisions contained in the Basic Law of Governance, which include the protection of public rights and liberties by the executive authority in accordance with the correct provisions of law. Thus, it can guarantee the protection of these rights legislatively in particular, by making them in the range of internal laws that are equal to other legal legislation issued by the legislative authority in terms of constitutional status as a branch of the origin.

Second: Recommendations

It becomes clear through the treatment of this study from its constitutional aspects that the legislative role contained in the Basic Law of the State - in the Sultanate of Oman - has explicitly stipulated the consecration and protection of these rights, and not to prejudice them. Therefore, it is legally and legitimately logical to recommend and work to enact a particular legislation concerned with this type of public rights and liberties attached to the provisions of the Basic Law of the State, to clarify the method and tool for protecting public rights and liberties and the body entrusted by the law to undertake this task. Based on the above principle, the authors recommend singling out an independent law of a legislative character entitled – Public rights and liberties – and address the following:

1. The Omani legislator take the initiative to single out a special law that carries within it legal provisions regulating the issue of protecting public rights and liberties in the state, or even legal paragraphs of any law in force that regulate in its core the issue of protecting and defending these rights and the competent court to consider them.
2. The constitutional systems in the Sultanate of Oman, the subject of this study, and in various legal countries enact constitutional legal provisions that regulate public rights and freedoms, for thus, the Omani

legislator that a special law or a complementary regulation related to public rights and freedoms be relied upon to preserve these rights and freedoms explicitly and clearly.

3. The executive authority represented by the Legislation and Opinion Authority in the Sultanate of Oman single out the issue of addressing and defending public rights and freedoms within its legislative agenda and give a special legal capacity for it to elevate it from a general legislative role stipulated in the Basic Law of Governance, to become an independent special legislative role issued in a legislative capacity.

4. The Omani legislator and judiciary in the Sultanate of Oman, in the light of the above recommendations, to adopt legal provisions and judicial decisions that determine how to protect public rights and liberties, the competent court in its consideration and the penalty for violating or infringing them. Either according to specific legal legislative provisions or texts deals with it, according to its legislative approach on the one hand, or by the purposeful, explanatory, constructive judicial ruling by the competent judiciary on the other hand, as a prelude to the constitutional legislator in including it in a legal text of its own, according to its legislative and executive constitutional system alike.

References

1. Al-Hilalat, Muhammad. *Human rights, their guarantees and justifications for their restrictions in the Jordanian constitution and comparative legislation* (2019), International Scientific House for Publishing and Distribution, Jordan.
2. Al-Khatib, Noman, *Al-Waseet in Political Systems and Constitutional Law* (2021), Dar Al Thaqafa for Publishing and Distribution, Jordan.
3. Al-Khatib, Noman. *Al-Wafi in the Constitutional System* (2022), Dar Al-Thaqafa for Publishing and Distribution, Jordan,
4. Aqilah, Zaid. *Terminology of Law*, (Amman: house of cutter: 2022).
5. Ramadani, Fatima. *The role of the constitutional founder in making constitutional rules related to the rights and freedoms of individuals: a comparative study* (2021), published research, p. 1, tenth year, Kuwaiti International College of Law Journal, Kuwait.
6. Sabarini, Ghazi. *Al-Wajeez in Human Rights and Fundamental Freedoms* (2015), Dar Al-Thaqafa for Publishing and Distribution, Jordan.
7. Zoubi, Farouk. *Human rights between Sharia and international law, "a comparative analytical study"* (2005), published research, issue 4, year 29, Law Journal, Kuwait.

Laws & Regulations:

8. The Omani Criminal Procedures Law issued by Royal Decree No (79/99), issued on: December 1, 1999.
9. *The Basic Law of the State* No. 6/2021 issued on January 11, 2021.