

# **Prisoners' Citizenship Status and the Franchise**

*By*

**Dr. Saif Al-Rawahi**

*Assistant Professor, Department  
of Public Law,  
College of Law, Sultan Qaboos  
University, Muscat.*

**Dr. Juma'a Musallam**

**Al'azri**  
*Lecturer at Police College, Sultan  
Qaboos Academy for Police  
Sciences*

---

**Abstract**

*This article explores and analyses the voting rights for sentenced prisoners in the Sultanate of Oman however, examples of UK, USA, Canada and South Africa are also analyzed. Various approaches are discussed to know the validity and legality of a blanket ban and prohibition on prisoners voting right. Therefore, the Sultanate may review the existing policy to deny prisoners' voting right whether it is a breach an individual's right to contribute to free elections as guaranteed by Basic law of the Sultanate. The debate may be organized for policy makers either to retain prisoner disenfranchisement or enfranchise to lead any future enactment. Historic denial of prisoners' right to vote as called 'civic death' leads a status quo that may cause loss of a moral authority and transparency to engage in the electoral process. This research clearly indicates that facilitation of prisoners to vote is not only mater of electoral reform but also embraces ministerial accountability, offenders' rehabilitation and proportional representation in the electoral process.*

**Key words:** Prisoners; voting rights; election; disenfranchisement; convicted person

## Introduction

Under the civic virtue/competence ground, criminals (because of their criminal actions) have lower moral status than other citizens and thus they are disqualified from the right to vote.<sup>(1)</sup> The denial of the right to vote upon conviction is the means to remind prisoners that citizenship is a privilege and must be earned by civic virtue.<sup>(2)</sup> Correspondingly, relying on the theory of social contract, it has been claimed that those who do not obey the laws of the land are barred from receiving the benefits of society including the right to vote.<sup>(3)</sup> Therefore, prisoners have been always treated as an enemy of society, undeserving people, second-class citizen or the least popular members of society.<sup>(4)</sup> Some supporters of prisoners' disenfranchisement, however, challenge the argument that denying

---

(1) John Kleinig and Kevin Murtagh, 'Disenfranchising Felons' (2005) 22 (3) *Journal of Applied Philosophy* 217, 223-224.

(2) Cormac Behan, 'Punishment, Prisoners and the Franchise' (2015) 20 *Howard League for Penal Reform* 1, 3; Peter Ramsay, 'Voters Should not be in Prison! The Rights of Prisoners in a Democracy' (2013) 16 (3) *Critical Review of International Social and Political Philosophy* 421, 434.

(3) Daniel Guttman, 'Before the High Court: Roach v Commonwealth: Is the Blanket Disenfranchisement of Convicted Prisoners Unconstitutional?' (2007) 29 (297) *Sydney Law Review* 297, 314.

(4) Elizabeth Wicks and others, 'The UK and European Human Rights: Some Reflection' in Katja S Ziegler and Others (eds), *The UK and European Human Rights : A Strained Relationship* (Hart 2015) 515.

convicted prisoners the right to vote would breach their right of citizenship.<sup>(1)</sup>

The right to vote is a basic element of what it means to be a citizen of a democratic State.<sup>(2)</sup> The United Nations Commission on Human Rights (UNCHR)<sup>(3)</sup> has considered the link between the political rights that are protected by art 25<sup>(4)</sup> of the International

---

(1) Andrew Altman, 'Democratic Self-Determination and the Disenfranchisement of Felons' (2005) 22 (3) Journal of Applied Philosophy 263, 267.

(2) Susan Easton, *Prisoners' Rights: Principles and Practice* (1st edn, Routledge 2011) 211; Nicholas Munn, 'The Limits of Criminal Disenfranchisement' (December 2011) 30 (3) Criminal Justice Ethics 223, 230; Eli L Levine, 'Does the Social Contract Justify Felony Disenfranchisement?' (2009) 1 (1) Washington University Jurisprudence Review 193; Jason Schall, 'The Consistency of Felon Disenfranchisement with Citizenship Theory' (2006) 22 Harvard BlackLetter Law Journal 53, 69; Heather Lardy, 'Citizenship and the Right to Vote' (1997) 17 (1) Oxford Journal of Legal Studies 75; R. A. DUFF, 'Introduction: Crime and Citizenship' (2005) 22 (3) Journal of Applied Philosophy 211, 213; Salim Al'alwi, 'Citizenship: the Rights and the Duties under the Basic Statute' (2012) 23 Trust Journal 32, 38.

(3) This Committee was established by art 28 of the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

(4) This Article states that '*Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and*

=

Covenant on Civil and Political Rights (ICCPR) 1966, such as the right to vote, and the status of being a citizen as a main feature, which distinguishes these rights from other rights and freedoms enshrined in this Covenant.<sup>(1)</sup> Other rights and freedoms set forth in this treaty must be guaranteed for all individuals within the territory and subject to the jurisdiction of the State although non-citizens might enjoy political rights (guaranteed by art 25) on a limited basis. For instance, permanent residents might enjoy the right to vote in local elections or to hold particular public service positions.<sup>(2)</sup>

### **Omani Perspective of Prisoners' Voting Right**

Opponents of prisoners' voting rights mislead when they claim that prisoners' citizenship must be suspended because they lack the right of civil liberty, which is in a democracy regarded an essential component of citizenship. According to this thought, civil death (the total loss of citizenship rights) is a logical and an inevitable

---

*equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;.....'.*

(1) The United Nations Commission on Human Rights (UNCHR) 'General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25)' (1996) CCPR/C/21/Rev.1/Add.7 (General Comment No. 25) para 3.

(2) Ibid.

result of imprisonment.<sup>(1)</sup> In the past, conviction resulted in many serious consequences for the prisoner's rights, involving extensive loss of civil rights. Convicted prisoners would incur civil death, losing the right to hold or transfer property, to vote, to sue in the courts, or even to make public statements or to visit certain places.<sup>(2)</sup> In present criminal justice systems, however, the majority of such unjust deprivations have been eliminated. For instance, at least in theory, in the Omani criminal justice system prisoners have the right to bring their legal claims before the prison authority or any other official institutions such as the court, public prosecutor<sup>(3)</sup> or the Omani National Human Rights Commission.<sup>(4)</sup> Omani prisoners enjoy the right to health care,<sup>(5)</sup> the right to property,<sup>(6)</sup> the right to social care for their families during their imprisonment

---

(1) Ramsay (n 2) 431.

(2) Andrew Von Hirsch and Martin Wasik, 'Civil Disqualifications Attending Conviction: A Suggested Conceptual Framework' (1997) 56 (3) CLJ 599, 599-600; Susan Easton, 'Electing the Electorate: The Problem of Prisoner Disenfranchisement' (2006) 69 Modern Law Review 443.

(3) Art 62 of the 1999 Penal Procedure Act, promulgated on 1 December 1999, Official Gazette (OG) 66.

(4) Art 7 of the Royal Decree No. 124/2008 Establishing the Human Rights Commission.

(5) Arts 28-33 of the 1998 Prison Act, promulgated on 26 July 1998, OG 628.

(6) Arts 5 and 6 of the 1998 Prison Act, the 1980 Lands Act (promulgated on 4 February 1980, OG 188), and the Governmental Land Entitlement System, promulgated on 24 October 1984, OG 299.

period<sup>(1)</sup> and, to some extent, the right to education.<sup>(2)</sup> Yet the practice of prisoners' disenfranchisement, as a form of ancient civil death status, in the majority of modern sentencing regimes is continued. In the Omani legal system, the Minister of Diwan of the Royal Court promulgated the Implementing Regulations for Municipal Councils 15/2012<sup>(3)</sup> (hereafter the 2012 Municipal Councils Regulation). This Regulation is a blanket ban on prisoners' voting rights in the Municipal Councils elections. Art 34 (B) of this Regulation denies all prisoners whether convicted or not and regardless of their crimes and sentences of the right to vote at the Municipal Councils election. The Members of the Shura Council Election Act 58/2013<sup>(4)</sup> (hereafter the 2013 Shura Election Act) came into force. Art 46 (2) of this Act disenfranchises all convicted prisoners irrespectively for criminal or non-criminal convictions, and regardless of their crimes or the length of their sentences. Art 58 (C) and art 61 of the Penal Act 7/2018<sup>(5)</sup> (hereafter the 2018 Penal Act) disenfranchise prisoners who are convicted for felonies or misdemeanours. The disenfranchisement

---

(1) Art 35 of the 1998 Prison Act, art 112 of the 2004 Civil Service Act (promulgated on 28 December 2004, OG 782), and art 2 of the 1984 Social Security Act, promulgated on 3 November 1984, OG 300.

(2) Arts 22-27 of the 1998 Prison Act.

(3) Promulgated on 25 March 2012, OG 967.

(4) Promulgated by RD 58/2013, OG 1032.

(5) Promulgated on 11 January 2018 by RD 7/2018, OG 1226.

policy provided by this Act applies to all public elections in the State.

It is claimed that while voting rights should be limited to citizens, convicted prisoners cannot be regarded as citizens entitled to political rights. Prisoners have often been regarded as not being good citizens. The words citizen and prisoner have been seen as two contradictory terms. While the first refers to inclusion, the other indicates exclusion from society.<sup>(1)</sup> For the opponents of prisoners' enfranchisement, the right to vote requires to individuals to show respect for the rule of law. Thus, those who failed to meet this requirement should not be considered as citizens qualified for voting rights.<sup>(2)</sup>

Denying prisoners the rights of citizenship and accordingly their political rights, such as the right to vote, because of their imprisonment status is a questionable policy. Firstly, if prisoners are not considered citizens of the community or at least their citizenships are temporarily suspended, then the question is why they are still required to be subjected to the community's laws. In the Omani legal system, as shown above, prisoners retain many

---

(1) Jennifer Turner, 'Criminals with Community Spirit': Practicing Citizenship in the Hidden World of the Prison' (2012) 16 (3) Space and Polity 321, 322.

(2) Behan (n 2) 12; Christopher P. Manfredi, 'In Defense of Prisoner Disenfranchisement' in Alec Ewald (ed), *Criminal Disenfranchisement in an International Perspective* (CUP 2009) 277.

public duties and they enjoy many public rights, which are limited to Omani citizens. For instance according to art 2 of the 1984 Social Security Act, and art 112 of the 2004 Civil Service Act, their families have the right to be provided with all necessary social and financial aids during their imprisonment. This benefit is continued until 3 months after the prisoner is released. Art 2 of the 1984 Social Security Act is clear that the benefits provided by the law are limited to Omani citizens and their families.

Secondly, if prisoners' citizenship is stripped away or suspended, then why are they provided with facilities which aim to rehabilitate and reintegrate them into society as a good citizen? In Omani prison policy, rehabilitation and reintegration of prisoners are the main goals of imprisonment as clearly stated by art 10 of the 1998 Prison Act. The Minister of Information in Oman has stated that even those who committed the most serious crimes, which threaten national security and State unity such as rebellion and the attempt to overthrow the regime, must be treated as fully citizens and in a way that does not stigmatize them within their communities.<sup>(1)</sup>

---

(1) Cited from Jeremy Jones and Nicholas Ridout, 'Democratic Development in Oman' (Summer 2005) 59 (3) the Middle East Journal 376, 382. It is worthy to cite the statement of the Minister of Information when he was asked why names and photos of those who were arrested have not been disclosed so far as they are accused of committing the above offences in 2005 ' *we are not accustomed to defaming our citizens by publishing their*

=

Thirdly and most importantly, the right of citizenship in the Oman Constitution is considered a fundamental right, which prevents denaturalization or revocation except within the limits of the law.<sup>(1)</sup> Indeed, unlike many other Arab Gulf Countries, the right to vote<sup>(2)</sup> is guaranteed to all Omani citizens regardless of whether their citizenship is by birth or is an acquired citizenship (referring to native Omanis and naturalized Omanis respectively).<sup>(3)</sup> Although there is no explicit text (whether in the Constitution 101/1996<sup>(4)</sup> and

---

=

*photos in the media and justifying the procedures taken by the government... Omani society is socially and tribally linked, thus we don't want those detained to be ostracized, particularly when the crime is against public security'.*

- (1) Art 15 of the Oman Constitution 101/1996. For instance, according to art 20 of the Omani Nationality Act 3/1983 (promulgated on 12 January 1983, OG 256) (hereafter the 1983 Nationality Act) as amended by RD 38 /2014 (promulgated on 12 August 2014, OG 1066), citizens joining groups considered potentially harmful to national interests could be subjected to revocation of citizenship.
- (2) Although the right to stand as a candidate for the Shura Council elections is limited to Omani citizens by birth as explicitly stated by art 58 (10) of the Oman Constitution 101/1996, for the Municipal Councils elections this right is opened to all Omanis regardless the type of their citizenship according to art 8 of the 2011 Municipal Councils Act.
- (3) As stated by art 9 of the 1983 Nationality Act, a person who acquired the Omani nationality has the right to enjoy all civil rights (including the right to vote) immediately after acquiring the nationality. For more information regarding the two types of the Omani nationality see art 11 (the original nationality) and art 15 (the acquired nationality) of the this Act.
- (4) Promulgated on 6 November 1996, OG 587.

the Amended Constitution 99/2011,<sup>(1)</sup> or in the Election Laws, namely the 2013 Shura Election Act and the 2011 Municipal Councils Act)<sup>(2)</sup> which guarantees the right to vote to all Omanis, the Ministerial Regulations of the elections of the Shura Council and the Municipal Councils are clear that every Omani citizen has the right to elect the members of these councils (art 2 of the 2003 Shura Council Regulation and art 33 of the 2012 Municipal Councils Regulation respectively). In contrast, for instance, in the State of Kuwait, the right to vote and to stand for election as a candidate are limited to original Kuwaiti citizens and to those citizens who have completed 20 years since acquiring the Kuwaiti nationality.<sup>(3)</sup> In Qatar, although all Qatari citizens have the right to elect the members of the Shura Council,<sup>(4)</sup> when it comes to elect the members of the Municipal Councils this right is limited to original Qataris and to those who have completed 15 years since acquiring the Qatari nationality.<sup>(5)</sup> This policy of the Omani legislature can be seen as a clear indication of protecting the right of equality (particularly the right of political equality) for all

---

(1) Promulgated on 19 October 2011, OG 948. This Amendment modified art 58 regarding the Council of Oman.

(2) Promulgated on 26 October 2011, OG 949.

(3) Art 1 of the Kuwaiti Election Act (1962) as amended by Law No. 17/2005.

(4) Art 1 of the Law No.9/1970 regarding the Regulation of the General Election of the Qatari Shura Council.

(5) Art 1 of the Election of the Central Municipal Council No.17/1998.

Omanis against any discrimination on the ground of the type of their citizenship.<sup>(1)</sup> Yet, Omani prisoners are denied one of the basic components of their citizenship- the voting rights merely because of their imprisonment status.

It seems therefore that the practice of prisoners' disenfranchisement policy in Oman is a contradictory policy. On the one hand, the idea of active citizenship during the imprisonment sentence is regarded as a substantial component of prisoners' resettlement and reintegration into social life. On the other hand, they are deprived of the most fundamental right of citizenship – the right to vote.

Denying prisoners the right to vote on the basis of suspending their citizenships is a contradiction in itself. According to some supporters of this theory, convicted prisoners retain the right to run

---

(1) Nonetheless some call for certain fixed period after acquiring the Omani nationality to be eligible to vote. This call is justified to verify the loyalty of this person to the Sultanate of Oman. See, Salim Al'shkili, *the Mediator to Explain the Basic Statute* (Al'agyal 2006) 153. This suggestion can be questioned since this person has proved his loyalty to Oman as a condition to acquiring the Omani nationality in the first place (Arts 14-18 of the 1983 Nationality Act). Most recently the Minister of Interior requires those who are accepted to get the Omani nationality to take an oath before the President of the Court of First Instance in their *wilayat* that they will be loyal to Oman and respect its Basic Statute, laws and customs and will be a good citizen (Ministerial Decree No. 45/2018, promulgated on 29 March 2018, OG 1237).

for parliamentary membership and prisoners on remand should have the right to vote.<sup>(1)</sup> Art 58 (10) of the Oman Constitution 101/1996 states that a candidate of *Majlis Al-Shura* is required to have not been sentenced for a major crime such as a felony or crime involving moral turpitude or trust, even if he is rehabilitated. Art 34 of the 2013 Shura Election Act reaffirms this policy regarding the membership of the Shura Council election.<sup>(2)</sup> Concerning the membership of the Municipal Councils, art 8 (G) of the 2011 Municipal Councils Act denies this right those who have been convicted for a felony or disgracing crimes unless they are rehabilitated. This means that other convicted prisoners (sentenced for contraventions (minor crimes) or for misdemeanours, which do not involve dishonesty) and unconvicted prisoners (on remand or

---

(1) Ramsay (n 2) 431.

(2) Art 58 (10) of the Oman Constitution 101/1996 and art 34 of the 2013 Shura Election Act both state '*A candidate of Majlis Al Shura shall be: An Omani national by origin. Aged not less than thirty years of the Gregorian calendar on the commencement date of candidature. With a level of education that is not less than the General Education Diploma. Never sentenced to a felony or crime involving moral turpitude or trust, even if he was rehabilitated. Enrolled in the election register. Not affiliated to a security or military authority. Not interdicted by a judicial judgment. Not suffering from a mental illness. It is permissible for whoever completes his membership term to run again as a candidate to Majlis Al Shura*'. Yet, the 2018 Penal Act (particularly art 58 (C) and art 61) contradicts these constitutional and electoral provisions by denying the right to stand for election as candidates to all felons' and possibly all misdemeanants' convicted prisoners.

awaiting trial) have the right to stand in election as candidates for both councils (The Shura and the Municipal Councils). Although these Acts require that this person must be registered in the election list of registered voters in order to be eligible to run for these Memberships, there is no explicit provision preventing prisoners being registered. Indeed, citizens (including prisoners) in the Omani electoral system are allowed to authorize someone to register their names in the preliminary list of candidates.<sup>(1)</sup> In this sense, it is reasonable to conclude that, at least in theory, prisoners have the right to register. It is also reasonable to assume that there are some prisoners who have been registered before being imprisoned. There is no question that these prisoners have the right to be elected in the Omani legal system. Returning to the above allegation regarding the disenfranchisement of convicted prisoners because they are not worthy or morally suitable to be citizens due to their imprisonment status, there is no explanation for how they can be deemed sufficiently virtuous to exercise the right to be elected? Why cannot this be applied to the right to vote?

Supporters of prisoners' disenfranchisement challenge the view that this ban violates the right of political equality. They claim that the imprisonment itself (not the ban) contradicts the right to

---

(1) Art 36 of the 2013 Shura Election Act and art 39 of the 2012 Municipal Councils Regulation.

political equality of prisoners.<sup>(1)</sup> Many contemporary political regimes which give all convicted prisoners the right to vote (regardless of their crime or sentence) such as South Africa, Canada and Ireland illustrate the invalidity of this allegation. In fact, with policies that disenfranchise some prisoners on the ground of their crime or the length of their sentence such as in Germany, the imprisonment status of the prisoners so enfranchised does not prevent them from enjoying their right of political equality by exercising the right to vote.

It is argued that the right to vote is the basis of a democracy and necessary to active citizenship.<sup>(2)</sup> Participation in the democratic process would promote the sense of being a citizen in a society by reminding the prisoner that his/ her citizenship consists of obligations and benefits. Involving prisoners in public affairs through allowing them voting rights is a way of promoting their social responsibility.

Defenders of prisoners' disenfranchisement, on the other hand, allege that although prisoners' citizenship has been suspended (and therefore their voting rights) due to their imprisonment status, they should be given all other rights.<sup>(3)</sup> This allegation can be challenged

---

(1) Ramsay (n 2) 429.

(2) Kleinig and Murtagh (n 1) 222; Levine (n 6) 193; Schall (n 6) 69.

(3) Ramsay (n 2) 431-433.

from different views. First, it is established that the right to vote is the right of rights.<sup>(1)</sup> This notable statement is two-fold: the right to vote is the way to achieve other rights, and at the same time, it guarantees the other rights to be protected and enjoyed. The denial of the right to vote of prisoners affirms the political and social viewing of prisoners as non-citizens. Therefore, their interests and the violations of their basic rights take no priority by both the parliament and the public. Second, this allegation contradicts the fact that many social rights are limited to State's citizenship. For example, as indicated earlier, art 2 of the 1984 Social Security Act and art 35 (6) of the 1998 Prison Act regarding the right of prisoner's family to social care and the right to ensure the opportunity of employment after release from prison.<sup>(2)</sup> In practice, however, these rights have been restricted. We argue that one of the main reasons for this contradiction between the policy and the practice of the treatment of prisoners is the absence of their voice in decision making process in the State's parliament. Thus, we assert that denying prisoners the right to vote is a fundamental reason for denying them many of their citizenship rights such as those mentioned above.

---

(1) Jeremy Waldron, 'Participation: the Right of Rights' (1998) 98 Proceedings of the Aristotelian Society 307.

(2) Art 35 (5) of the 1998 Prison Act.

For the above reasons, if we accept that the right of citizenship is fundamental in the Omani legal system according to the Oman Constitution, then there is no reasonable justification to suspend or strip away the voting rights of all convicted prisoners unless suspend or strip away their citizenship. The basis of this conclusion is that the right to vote in Oman is tied to the right of citizenship,<sup>(1)</sup> which according to the Oman Constitution 101/1996 cannot be suspended or revoked except in limited circumstances.<sup>(2)</sup>

The recognition of prisoners as citizens who deserve all public rights and freedoms, except those suspended by the legal prison conditions, is a vital factor in moving them from the status of civil death toward their rehabilitation and reintegration into society.<sup>(3)</sup> The international approach to the treatment of prisoners asserts the importance of safeguarding prisoners' rights as explicitly stated in

---

(1) Al'alwi, 'Citizenship: the Rights and the Duties' (n 6) 54. It should be noted that in some other political regimes such as the UK the right to vote in some local and regional election is not limited to British citizens. For more discussion regarding the relationship between the citizenship and the right to vote in the UK, see Lardy 'Citizenship and the Right to Vote' (n 6) 77-80.

(2) Art 15 of the Oman Constitution 101/1996.

(3) Easton, *Prisoners' Rights* (n 6) 1; Guttman (n 3) 306; Vaughne Miller, 'European Court of Human Rights rulings: are there options for governments?' (18 April 2011) House of Commons Library (International Affairs and Defence Section, Standard Note SN/IA/5941) 5, 6. In addition, the European Court of Human Rights has confirmed this conclusion, see for example the case of *Hirst v UK* No.2, App no 74025/01 (ECtHR, 6 October 2005) [69] (Third-party interveners: The Prison Reform Trust).

the Basic Principles for the Treatment of Prisoners (BPTP) 1990, art 5.<sup>(1)</sup> This also can be seen from the perspective of the protection of prisoners' dignity and the prohibition of any cruel or humiliating treatments against them provided by the International Covenant on Civil and Political Rights (ICCPR) 1966, art 10.

The UN Human Rights Committee has commented on this Article stating that '*....Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment*'.<sup>(2)</sup> Nevertheless in its comments on art 25 of the same Covenant, this committee does accept limitations on the voting rights of convicted prisoners.<sup>(3)</sup> It is unclear how prisoners' disenfranchisement is an unavoidable restriction due to their imprisonment status. Prisoners can exercise their voting rights by several means. Additionally, the international

---

(1) Basic Principles for the Treatment of Prisoners, UNGA Res 45/111 (adopted 14 December 1990) (BPTP). This art reads as follows '*Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants*'.

(2) UNCHR 'General Comment No. 21: Human treatment of persons deprived of their liberty (Art. 10)' (1992) HRI/GEN/1/Rev.9 (Vol. I) (General Comment No. 21) para 3.

(3) UNCHR 'General Comment No. 25' (n 9) para 14.

approach creates an obligation on the States Parties to undertake necessary measures to ensure that all of its citizens (including prisoners) have an equal opportunity to enjoy their protected rights and freedoms such as the right to vote.<sup>(1)</sup> Similarly, the European Court of Human Rights has established that prisoners in general must be allowed all rights and freedoms secured by the Convention,<sup>(2)</sup> except for the right to liberty where lawful detention falls expressly within the scope of art 5 of the European Convention on Human Rights.<sup>(3)</sup>

So, I can conclude that the relevant provisions of the prisoners' disenfranchisement Acts, whether as provided by the electoral Acts (art 46 (2) of the 2013 Shura Election Act and art 34 (B) of the 2012 Municipal Councils Regulation) or as established by the penal Acts (art 58 (C) and art 61 of the 2018 Penal Act), are unconstitutional because the disenfranchisement is inconsistent with the understanding of citizenship evident in the Oman Constitution (as we have discussed above). The Omani ban on prisoners' voting rights conflicts with values implicit in the constitution's treatment of citizenship. Disallowing prisoners the

---

(1) For instance, ICCPR (n 7) art 2.

(2) Referring to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) 213 UNTS 222 (ECHR) .

(3) The case of *Hirst* No.2 (n 45) [69].

right to vote means limiting their rights of citizenship, which makes the duties of citizenship difficult to be observed and performed. Thus, denying someone the right to vote will not only mark him as a second-class citizen, it will also categorize him as second-class human being.<sup>(1)</sup> It will reduce his status from citizen to subject.<sup>(2)</sup>

### **Comparative Analysis of Prisoners' Voting Right**

Disfranchisement of prisoners' right to vote is a legal and constitutional issue whereas prisoners are prevented to cast vote because they commit crime in violation of citizen's duties as they have been stripped of their rights as citizens. Prison means prisoners are regulated by the prisoners' law and are cut off from civic engagement. Commission of crime deprived the prisoners to avail many fundamental freedoms available under the law of the sultanate such as free movement, freedom of speech and association including right to vote. As stated that " Voting is not a basic necessity, like being able to eat or go to the toilet. It is a democratic right that is earned with the rights of citizenship". Voting is not only casting of vote as per his/own choice but also reflects a citizen's stake in society and recognized citizen ability to exercise power. There is no doubt that prisoners' stake in society are different against freeman who has lot of responsibilities and

---

(1) Kleinig and Murtagh (n 1) 229; Levine (n 6) 195-196.

(2) Behan (n 2) 8.

rights. The question arises that is voting a basic human right or a privilege? Now this issue has been highlighted in united states presidential election whereas Democratic senator for Vermont, Bernie Sanders, said the right to vote is a 'fundamental element of our democracy' and ought to be extended to everyone, 'even very bad people'. Historically it has been distinguished between serving prisoners and those who completed their time in prison therefore, American Supreme Court held that "it was not unconstitutional to deny convicted felons the right to vote in state elections, even after they had served their sentence".

Right of Vote in democracy symbolized a right to participate as a citizen in the life of the community. Although in some countries allow the prisoners to retain the right to vote subject to the court that decides as an additional punishment by preventing the prisoners' right to vote but some countries don't allow the prisoners even restoration of voting rights after prisoner's released. For instance, In South Africa the court held that:

The vote of each and every citizen is a badge of dignity and of personhood. Quite literally, it says that everybody counts. In a country of great disparities of wealth and power it declares that whoever we are, whether rich or poor, exalted or disgraced, we all belong to the same democratic South African nation; that our destinies are intertwined in a single interactive polity.

Constitutional Court rejected that government faces financial, logistical and administrative hardships by providing prisoners' right to vote. The Government's argued that any law restricting their right to vote is not enacted yet by the parliament but disfranchising the prisoners is better to save the country's resources however, the Court instructed the Government and the Electoral Commission to make 'all reasonable arrangements' to enable prisoners to vote in the forthcoming election because the right to vote imposes 'positive obligations on the legislature and the executive'. In 2003 the Government made efforts to roll back the Constitutional Court's decision but court reiterated their earlier ruling guaranteeing prisoners' right to vote and held that "It could hardly be suggested that the government is entitled to disenfranchise prisoners in order to enhance its image; nor could it reasonably be argued that the government is entitled to deprive convicted prisoners of valuable rights that they retain in order to correct a public misconception as to its true attitude to crime and criminals".

In 2002, the Canadian Supreme Court also declared that electoral law 1993 is unconstitutional and the law which denied prisoners serving sentences over two years the vote in federal elections was repugnant to the Canadian Charter of Rights and Freedoms. The court held that 'right to vote is fundamental to our democracy and rule of law and cannot be lightly set aside' and rejected the Government's stance to deny prisoners' right to vote on

the basis of vague and symbolic objectives to enhance social responsibility and uphold rule of law. Therefore, Supreme Court held that "it could not permit elected representatives to disenfranchise a segment of the population". Canadian courts actively involved to decide unconstitutionality of law depriving any inmate in any penal institution of the right to vote and further held that "right to vote cannot be limited only to those felt to be decent and responsible. Secondly, it was no argument that prisoners were cut off from society and therefore would not be equipped to make an informed judgement. Thirdly, the courts found that denying the right to vote was a blanket punishment applying to all those sentenced to imprisonment and as such was disproportionate". Resultantly, Canadian Government amended the electoral law and prevented the prisoners from voting only those serving more than two years.

However, in UK situation changed in 2004 when European Court of Human Rights (ECtHR) suggested the UK Government's blanket prohibition on prisoners' voting rights is a violation of their human rights. Although detained prisoners under remand have the right to vote but they are not provided opportunity to exercise said right even there is legislation to facilitate them for exercise of their right to vote as John Hirst, a convicted prisoner, assailed denial of his right to vote before ECtHR that ruled that an absolute ban or prohibition on all convicted prisoners as 'arbitrary and

disproportionate' and declared that said ban is a breach of Art. 3 of Protocol 1 of the European Convention on Human Rights (ECHR), which requires Governments 'to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature'. However, the ECtHR agreed that neither the right to vote nor election's candidature is absolute whereas some prisoners in UK had their human rights to vote but court didn't directed the Government to enfranchise all prisoners.

In United States, forty-eight states and the District of Columbia don't allow felons during prison to vote whereas in 2006, thirty-six states failed to allow parole or probationary prisoners exercise of their voting rights similarly, in eleven states, a felony conviction can impose a lifetime ban on prisoners' voting right. This a fact that US' situation for prisoners voting right is bit hard comparing to Canada and UK. However, the Supreme Court of United States decided that "prisoners cannot have their citizenship stripped as a punishment for a crime... Citizenship is not a right that expires upon misbehaviour."

**References:**

- Andrew Altman, 'Democratic Self-Determination and the Disenfranchisement of Felons' (2005) 22 (3) Journal of Applied Philosophy 263.

- 
- Andrew Von Hirsch and Martin Wasik, 'Civil Disqualifications Attending Conviction: A Suggested Conceptual Framework' (1997) 56 (3) CLJ 599.
  - Basic Principles for the Treatment of Prisoners, UNGA Res 45/111
  - Christopher P. Manfredi, 'In Defense of Prisoner Disenfranchisement' in Alec Ewald (ed), Criminal Disenfranchisement in an International Perspective (CUP 2009).
  - Cormac Behan, 'Punishment, Prisoners and the Franchise' (2015) 20 Howard League for Penal Reform 1
  - Daniel Guttman, 'Before the High Court: Roach v Commonwealth: Is the Blanket Disenfranchisement of Convicted Prisoners Unconstitutional?' (2007) 29 (297) Sydney Law Review 297
  - Eli L Levine, 'Does the Social Contract Justify Felony Disenfranchisement?' (2009) 1 (1) Washington University Jurisprudence Review 193.
  - Elizabeth Wicks and others, 'The UK and European Human Rights: Some Reflection' in Katja S Ziegler and Others (eds), The UK and European Human Rights : A Strained Relationship (Hart 2015) 515.

- 
- Heather Lardy, 'Citizenship and the Right to Vote' (1997) 17 (1) Oxford Journal of Legal Studies 75.
  - Jason Schall, 'The Consistency of Felon Disenfranchisement with Citizenship Theory' (2006) 22 Harvard BlackLetter Law Journal 53, 69.
  - Jennifer Turner, 'Criminals with Community Spirit': Practicing Citizenship in the Hidden World of the Prison' (2012) 16 (3) Space and Polity 321.
  - Jeremy Jones and Nicholas Ridout, 'Democratic Development in Oman' (Summer 2005) 59 (3) the Middle East Journal 376
  - Jeremy Waldron, 'Participation: the Right of Rights' (1998) 98 Proceedings of the Aristotelian Society 307
  - John Kleinig and Kevin Murtagh, 'Disenfranchising Felons' (2005) 22 (3) Journal of Applied Philosophy 217
  - Nicholas Munn, 'The Limits of Criminal Disenfranchisement' (December 2011) 30 (3) Criminal Justice Ethics 223.
  - Peter Ramsay, 'Voters Should not be in Prison! The Rights of Prisoners in a Democracy' (2013) 16 (3) Critical Review of International Social and Political Philosophy 421
  - R. A. DUFF, 'Introduction: Crime and Citizenship' (2005) 22 (3) Journal of Applied Philosophy 211.

- Salim Al'alwi, 'Citizenship: the Rights and the Duties under the Basic Statute' (2012) 23 Trust Journal 32.
- Susan Easton, Prisoners' Rights: Principles and Practice (1st ed, Routledge 2011) 211
- Susan Easton, 'Electing the Electorate: The Problem of Prisoner Disenfranchisement' (2006) 69 Modern Law Review 443.
- The case of Hirst v UK No.2, App no 74025/01 (ECtHR, 6 October 2005) [69] (Third-party interveners: The Prison Reform Trust).
- Vaughne Miller, 'European Court of Human Rights rulings: are there options for governments?' (18 April 2011) House of Commons Library (International Affairs and Defence Section, Standard Note SN/IA/5941).