CULTURE, MEDIA & FILM | RESEARCH ARTICLE

The new constitution freezing the press: Freedom of expression and statutory limitations in Libya
Miral Sabry Alashry

Abstract: This study examined the Libyan conflict which started in 2011 until now. In the same way, the study also focused on how Libyan journalists are fighting for media freedom, particularly in the context of the media laws in the new Constitution of 2017. Through focus group discussions were done with 40 Libyan journalists. The findings of the study indicated that some media laws did not conform to the international laws and UN treaties, which the Libyan Parliament Committee approved. Another finding of the study was that the journalists advocated for a change in the media laws so that they subscribe to the international law. In addition, the journalists also noted that the Constitution should guarantee press freedom. The journalists indicated that they receive threats if they publish stories critical of the governments or ISIS. They also suggested that their actions as journalists have not been sufficiently factored into the political science framework of the safety valve which may be playing the same role with the new democratisation process in 2021. In the context of these findings, the following recommendations were made: the new government should change Articles 35, 37, 38, 42, 43, 46 and 132 to conform to the international laws and UN treaties.

Subjects: African Studies; Politics & the Media; Media Communication

Keywords: Libyan Constitution; media freedom; conflict; freedom of expression; journalism

1. Introduction and background of the study
Libya has a long history of curtailing freedom of speech and the circulation of information to oppression on the freedom of ordinary journalists to voice their opinion and dissent under Muammar Gaddafi. After the Arab Spring in 2011, free speech in Libya was transformed in a relatively short period. The initial boom of diverse independent media outlets was hailed by...
many observers as one of the major achievements of the Libyan uprising, bringing a lot of optimism which was reflected in the media and in what was being discussed (Index on Censorship, 2017).

However, the initial euphoria led to frustration. It became apparent that developing media regulations that achieve the balance between conflict and freedom of speech would not be an easy task (Musa, 2018). Newly drawn restrictions from the two governments: the first government with the National Transitional Council, formed in Benghazi on 27 February 2011, issued a statement on 5 March 2011, declaring to be the “only legitimate body representing the people of Libya and the Libyan state”. In his second government of March 2015, Khalifa Haftar was appointed as the leader of the “Libyan National Army (LNA)” and he became loyal to the elected legislative body, “the Libyan House of Representatives” (Mohamed, 2019).

The Libyan journalists’ conflict started when Muammar Gaddafi came to power. It was difficult for the journalists to work and publish outside the state-owned media outlets. Journalists and public figures were threatened, attacked and kidnapped, if not killed. For example, The Abu Salim prison massacre that took place on June 29 in 1996 was considered as the largest violation of human rights committed by Gaddafi’s regime, where about 1269 detainees, most of whom were prisoners of conscience and journalists, were killed (Al Warshafani, 2019).

After that Muammar Gaddafi attempted to improve its image, through his son Saif-Islam, in what was dubbed the “Libya Tomorrow” project, to encourage the journalists and give them limits of freedom of expression where they could criticise some corrupt state officials (AlAshry, 2021).

The media were mainly focused on enforcing the regime’s ideologies without a privately-owned press and no media laws of legalisation, except the Green Book which contained an article about the press: “The press is a means of expression for society: it is not a means of expression for private individuals or corporate bodies. Therefore, logically and democratically, it should not belong to either one of them.” In the second stage of the uprising, media outlets became mostly synonymous with “resistance journalism” which focused mainly on rallying the journalists against the regime and documenting many violations committed by the two governments (Singh, 2017).

For the first time in 2013, the National Transitional Council protected the rights of journalists to express their opinions peacefully and freely, issued Law 37 to criminalise any “insult to the Libyan people and its institutions”. According to that law, journalists dared investigate claims of corruption and human rights violations, committed mostly by fundamentalist armed groups (AlAshry, 2021).

The major challenge is enshrining freedom of expression in the Constitution and protecting the rights of media laws, as well as respecting the rights of the journalists. This could only begin by abolishing media laws enshrined in the new Libyan Constitution of 2017, together with the Gaddafi era laws that infringed on the freedom of speech.

2. Problem statement

This study analysed journalists perspectives of legislative pieces (Articles 35, 37, 38, 42, 43, 46 and 132) of media and rights in the new Libyan Constitution 2017 which will change it by the lawyers who works in new House of Representatives to extent which the new media laws guarantee and protect the journalists, as well as how these laws can be implemented in the context of the conflict. In this view, the study aims to answer the following research questions:

• How do Libyan journalists perceive their level of press freedom and/or relationship with the new elected government?
What characterises the Constitutional Articles on media and press freedom and which part they will change it and why?

What is the future of press freedom in Libya?

3. Literature review

3.1. Libya’s media conflict

After the Arab uprising of 2011, Libya had a call to change media houses and, as a consequence, the country descended into civil war under two governments in the (East and West) (Ziani et al., 2017). AlAsfar (2013) noted that during the civil war, the agenda of the media houses depended on the regime recruiting journalists. AlAshry (2021) examined media houses and noted that they were often associated with political and ideological factions, while an unprecedented number of press and media platforms sprung across Libya, as more than 177 media outlets emerged, both private and governmental. Yet, most of these organisations had to shut down after the second war and did not receive any funds from the armed and radical groups (Zaptia, 2018).

The political climate has negatively affected the media environment, as the country became unstable, plagued with violence, which has been reflected on the safety of journalists who are increasingly facing threats, kidnaps, physical attacks, while some of them were killed in war coverage. The media became more polarised and entrenched in radicalised factions, and they also became divided among regional, ideological and even ethnically based alliances and rivalries, with two competing governments, each of them controlling national and international broadcasters (AlQatar, 2017).

Hamada et al. (2020) noted that the situation might change in 2021, due to many political issues with Turkey and Qatar allies. On the other side, in Egypt, Saudi Arabia, Emirates, which are enemies to Turkey, the political situation has turned into an attempt to lodge war in Libya. On the other hand, the United Nations intervenes in the presence of the House of Representatives elections to stabilise the region.

Meneshian (2021) noted that during election time, journalists covered news about House of Representatives elections and current affairs. In particular, there was heavy political programming in the pre-election period. Moreover, there were different agendas and ownerships, journalists and media houses also faced major obstacles from the government due to the political interests, which resulted in some channels ceasing broadcasting and many journalists getting arrested. This situation brought about the current general unrest and lack of security within the country.

Despite the new government’s attempt to find a new path for the media, unfortunately the Libyan media have not yet been free from state control. For example, the Freedom House (2021) ranked media freedom 9 out of 100, reporting a deteriorating security situation for journalists who have suffered a spate of threats, kidnappings and attacks since the start of civil war. As a result, Libyan media houses have become the focus for factional violence. Many journalists have been threatened by opposing fighting groups and militias that have targeted several TV channels in Benghazi and Tripoli, resulting in the journalists becoming frustrated by the media houses that have become involved in local conflicts by supporting one group or one militia over another (AlAshry, 2019).

4. Media freedom and new constitution

Libya’s media legal framework is inconsistent and at times contradictory, that is before and after the revolution. In the first stage, Libya’s legal and governmental structure was based on two constitutional documents: the first period under the rule of King Idrises who implemented the first “Constitutional Proclamation” established in December 1969 and the “Declaration of the Establishment of the People’s Authority”, enacted in March 1977 (Habib, 2008).
Wasserman (2010) argues that through that stage, the authority established the Libyan Penal Code 1953 which criminalises several forms of expression and freedom. This is largely inconsistent with the international human rights obligations and the Constitutional Declaration. For example, the aim to overthrow the political, social or economic system of the State and initiate a civil war in the country, fragment national unity or cause discord and other forms. The Libyan Penal Code also imposes severe penalties, including Article 439 about “attacks against anyone’s reputation by defamation”. This means that if journalists if they write a story about the regimes, journalists are subjected to six months in prison.

Naser (2019) points out that imposing the death penalty with Article 203 means “aiming to initiate a civil war in the country”, and Article 207 for promoting “any views or principles” that aim to overthrow the political, social or economic order of the state. After Muammar Gaddafi ceased power from King Idrees, he implemented the “Green Book” which comprised his ideas about politics under the civil code, the principles of Islamic law, customs and beliefs of natural law and equity (AlAshry, 2021). The legislation was previously governed by the Law 76 of 1972, the Publications Act which restricted expression and control over publication. After the 2011 uprising, the National Transitional Council as the legitimate government of Libya restricted the Publications Act under the Constitutional Declaration to control freedom of expression (Limaa, 2014).

Al Asfar (2013) claims that law 20 (1991) have many contradictions: first, the law focuses on “the Promotion of Freedom Act”. This law was established to give more freedom to journalists and to be under the international law and Article 8 concerned, codifies the right of Libyan citizens to express opinions and ideas through the media. This means that the law limited recognition of a right to expression. On the other hand, the Act has ambiguous limitations on the Libyan State’s guarantee of free expression, for example, “detracting from the people’s authority”. This means the Act prohibits specific forms of expression, including secretly advocating ideas, transfer information and secrecy of correspondence.

Naser (2019) points out that the Constitutional Declaration of 2011 approved that freedom of expression will be guaranteed, but the law restricts the expression to pursue a legitimate aim. On the other hand, Article 14 offers protection for various freedoms, for example, “Press, printing, publication and mass media, freedom of opinion for individuals and groups, freedom of scientific research, freedom of communication” but the Constitution ignores the rights of secrecy of correspondence for journalists.

Ahdash (2018) noted that the National Transitional Council established Act 15 of 2012 to ban media discussion of religious opinions (fatwas) which is announced by the National Council of Islamic Jurisprudence (Dar Al-Iftaa). They did that for any controversial debate between the journalists, for example, a thousand journalists were arrested when they spoke about the next government that would be Muslim Brotherhood. On the other hand, the governments from Muslim Brotherhood wanted to control the journalists.

Obaid (2016) maintains that the National Transitional Council banned the Higher Media Council because of the lack of independence and failure to establish and protect the Ministry of Media. However, the ministry did not succeed in forming committees due to the war and the interference of armed groups and militia, after that the National Transitional Council supervised the media.

AIAshry (2015) confirmed that law No 3 of 2014 about “terrorist acts” endanger the peace of Libya from ISIS or the two governments, as many were being criminalised for disclosing information directly or indirectly, if the journalists work with a terrorist organisation or have ties with terrorist organisations. In addition, the law criminalises anyone who promotes or misleads a terrorist act. This means restriction of freedom of expression by participating in peaceful protests and bypasses penalties by it to reach the death penalty if the journalists write or publish a story in broadcasting, print, letters or websites.
Obaid (2016) concludes that this law affirms that it does not respect the Constitutional Declaration and Libya’s international obligations in the field of human rights. Whereas Resolution No. 5 of 2014 prevents all satellite broadcasts from broadcasting, if they express counter-revolutionary views that work to destabilise the security and stability of the country or sow discord.

Finally, the Parliament approved the Constitution of 2017, but this Constitution contains many contradictions. First, the Constitution indicates freedom of expression and freedom of publication by journalists, but under “necessary measures” to protect private life and prohibit incitement to hatred and violence. Second, the Constitution provides for the right to information and transparency shall ensure the freedom of receiving, sending, exchanging and examining information from multiple sources (Mohamed, 2019).

Omar (2019) showed that Libya has a continued trend against rights and freedoms, notwithstanding the provision of the Constitution to the right of expression and publication. However, the authority restricted this right and put Act about “incitement to hatred” without a clear definition. This is a loose term in light of the absence of clear and agreed-upon boundaries that separate freedom of expression and hate speech. Hence, the door will be open for journalists for the executive authority to suppress freedom of expression.

5. Theoretical framework
In this study, we seek to understand whether the safety valve theory applies in Libya. The theory is a philosophical justification of the utility of protest that happens in the country since 2011. The theory is a framework used in political science to discuss political demonstrations and elections under authoritarian regimes (Buehler, 2013):

“Under the safety valve rationale, citizens and journalists are free to make statements concerning controversial social issues to express their displeasure against the two government and their policies. In assuming the right, citizens will be deterred from undertaking violent means to draw attention to their causes” (Omachonu, n.d., p. 2).

Buehler (2013) argues that elections serve in authoritarian states. This shows how this safety-valve process played out in real politics, like what happened now in the election of 2021. The Libyan regime undertook activities in an effort to weaken the Democratic Party and the press, while at the same time showing the strength of the Justice and Development Party (PJD), an Islamist opposition party.

Little research has highlighted the safety valve in the context of mass communication, especially in the Middle East. Cohen and McIntyre (2020) suggested that blogging in China can act as a safety valve “by providing sufficient space for freedom of information and data and for a wide range of topics that journalists can vent with about government corruption.”

Hence, the theory highlights press freedoms through protests, because Libya does not have a system of laws to which journalists can be subjected. Basically, authorities can give just enough freedom for journalists so that they feel as if they are able to air their grievances and persecution by armed groups and militias, but the political reality does not allow any real arena to make changes that give journalists the freedom because the current system is not based on democracy, which ultimately preserves what is called anarchy in the media.

6. Methodology
The study sought to investigate how Libyan journalists perceive Law Regulating the Press, Media in the new Libya’s Constitution. The study was conducted during 2017–2021 after the Constitution was approved and through the new elections in 2021. In order to answer the research questions underpinning the study, focus group discussions were done with 40 Libyan journalists.
The discussions were conducted in Arabic and then translated into English. Purposive sampling was done to select 17 journalists who voted on the Constitution and 23 journalists who covered the issue of the Constitution. The journalists belonged to different age groups and experience levels (junior, middle-ranking, senior-level), who also held various positions at their media outlets (Editor-in-Chief, editor, reporter, freelance, and sub-editor). As for the type of media, 22 journalists working in Birniq newspapers in Bengazi and Fabriar newspapers in Tripoli, 10 journalists working in Libya Television, while 6 journalists working in Al-Tadamun News Agency and Libyan News Agency), and 2 journalists workings in Al-Bayan magazine in Benghazi.

All of the journalists asked to remain anonymous fearing retaliation against themselves most of them were tortured and imprisoned by the regime. Gender-wise, the sample included (10) women who suffered from the regime torture and sexual harassment due to the political situation in Libya and 30 men.

Most of the journalists were specialised in investigative reporting and war covering, working on endemic issues in Bengazi and Sirte. They varied in their work experience (14) of them had experience before the 2011 revolution, (16) had 10-years of experience, while (10) started working five years after the revolution.

7. Presentation and analysis of findings

7.1. Journalists’ perceptions of the level of press freedom and/or relationship with the newly elected government

As for the media and press freedom, the findings indicate that all of the journalists disagreed with the Libyan media. In response to this, the following responses emerged:

Journalist #3: Press and the media are suffering from war; the conditions of journalists have not changed much. Rather, the negative transformations occurred in several places in which journalists lived in dangerous conditions under the influence of aggression or threat, especially in light of the burning fire. This had a direct impact on the press and media sectors.

Journalist #30: Journalism is a tool for disseminating policies to the two governments, but the newly elected government has policies which they want to implement the agenda of the Muslim Brotherhood.

Journalist #5: There are many reasons that affect journalistic work, the general security, cultural, social and legal conditions, or for reasons that may affect negatively. It relates to the journalist or media person himself who may be influenced by his convictions, ideas and affiliations.

Journalist #6: On the professional and ethical rules of his profession as a journalist, which constitutes a dangerous trend that must be monitored and paid attention to.

Journalist #31: Libya differs from other countries in that journalists are subjected to threats and murder. In addition to the other serious violations, such as enforced disappearance, arbitrary detention and beatings, abuse, arbitrary expulsion, prevention from work, attacks and escalation against the media, leading to legal and judicial prosecution.

Journalist #22: Journalists are exposed to incidents of direct targeting, enforced disappearance and torture that are called war crimes according to international reports, which are not seen by anyone, and a lack of respect for human rights and the rules of international law and international humanitarian law, and for the robbing and systematic incidents of journalists, freedom of expression.

Journalist #36: Certainly, the increased violence since April 2019, which increased in intensity with the date of the announcement by General Khalifa Haftar, the leader of Operation Dignity, the aggression on Tripoli, which worked to empty the Libyan square of any independent
media, capable of independent and capable media. The Libyan society surrenders to the calls for hatred, mobilization, violence and war that have destroyed society.

Journalist #37: I was threatened and they accused me of terrorism because I dealt with a government Al-Wefaq by Salafi Militias in Ajdabiya on 1 June 2020, against a background of previous work. A correspondent for Al-Jazeera TV, explaining that the same militias have been subjected to him more than once since 2014 and arbitrary arrest. Verbally assaulting me physically.

The journalists explained that the level of press freedom depends on the topic on which they are reporting.

Journalist #38: [Press freedom] depends on the conflict of the story, what include, how big the story is did I put information about ISIS or Militias. If you're covering, let's say, the government-related piece, you cannot be guaranteed 100% access around these public … The Ministers … the two governments … you cannot be guaranteed full freedom when you're covering such [ISIS, Muslim Brotherhood and jihadists].

Journalist #39: Libya has turned into an international arena for proxy fighting between regional and international countries, making Libya one of the most dangerous countries in the world for the work of field correspondents and journalists working in news agencies and independent media. There is always a ban on information, however, dozens of journalists are still risking their lives to take pictures or document an event.

Journalist #8: Internal security forces all journalists to fill out a form containing the necessity to disclose and sign extensive personal information, and forcing you not to conduct any interviews, reports, or photograph any journalistic thing except with their knowledge.

Journalist #40: still we do not have press freedom with the new elected government which wants to prove itself that it is stronger than the two governments of Al-Sarraj and Haftar, but since January 2021, oversight from the internal security has reached a ban on any activities carried out by media organizations, and many fellow cameramen have been arrested. Journalists or field correspondents, and forcing journalists to add them through your personal account on the “ECAF KOOB” website to monitor your writings and opinions.

These results are consistent with El ssawi (2014); Al Asfar (2013) who argue that rulers of authoritarian regimes, such as Khalifa Haftar and Fayez al-Sarraj only implement the reforms necessary to appear democratic to international countries. On the other hand, they believe that the government restrictions on the press are helping the nation to prepare for new elections. In fact, many journalists spoke about assaults, killings, and torture, as a result of censorship.

Thus, these findings are consistent with Buehler’s (2013) safety valve theory, which argues that media freedom needs to be controlled to help the country progress.

Given that, Libya further faces many political issues, since the 2011 uprising which brought Gaddafi four decades of authoritarian rule to an end. In the post-Gaddafi administration, competing factions and alliances—organised along local, regional, ideological, tribal and personal lines have jockeyed for influence and power, with the backing of rival foreign governments. Based on this, it is possible that media development no longer applies in the country.

8. Constitutional articles on the media and press freedom
As for the Constitutional Articles on the Media and Press Freedom, the findings indicate all of the journalists disagreed with the Constitutional articles understudy, specifically articles 37 and 132. Upon asking the journalists about the legislative pieces that they want to change, the following responses emerged:
Journalist #1: “We believe the new Constitution is a cornerstone in the construction of a civilian and democratic state, respectful of human rights, fundamental freedoms and pluralism, but this Constitution does not conform with international standards, nor show any respect for human rights. Its legal articles only serve the regime in power.”

Journalist #3: “Article 37 is vague and did not support freedom of expression and publishing, this article is inconsistent with international standards in several respects: first, Article 19 of the ICCPR provides ‘everyone shall have the right to hold opinions without interference and shall have the right to freedom of expression’, according to freedom to seek, receive and impart information and ideas of all kinds. We need to change this article to keep up with international law”.

Journalist #5: “In the second part of Article 37, about “journalists carrying a special responsibility,”

Journalist #6: “freedom may be subject to certain restrictions from the two governments and that this content needs clarification about the stated limitations from that”.

Journalist #7: " the article should be consistent with international standards law" and shall be changed according to Article 19 from international law”.

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Journalist #35: " the article should be consistent with international standards law and shall be changed according to Article 19 from international law”.

Asking journalists about Article 132 which omits the explicit recognition of the right to freedom of opinion, as affirmed by Article 19 of the ICCPR, they noted the following:

Journalist #20: “The affirmation that freedom of expression is related to ‘honesty’ risks being interpreted as limiting the scope of freedom of expression. While some forms of untrue expression may be subject to limitation, which are not clearly declared.”

Journalist #22: “these two articles focus on how the state will take the necessary measures to protect the privacy of the individual and to combat hate speech. Without providing a clear definition of these two terms, this article contains restrictions on freedom of expression and on the other side; it is vague about the limits of these rights”.

9. Journalists' perspectives on articles 38 & 46 about press and media freedom

Asking the journalists whether they agreed with Articles 38 and 46, the following responses emerged:

Journalist #35: “Article 38 “guarantees the right to freedom, pluralism and independence of the press and media, and citizens shall have the right to ownership of the press and media outlets. Also, it gives a space to prohibiting this right and suspending it by judicial order, these rights shall be suspended and barred by a court ruling.”

Journalist #3: “after the war we do not have media freedom.”

Journalist #12: “the Constitution must clearly define the means available to the state for limiting concentration of media ownership and guaranteeing pluralism in the expression of opinions”.

Journalist #2: “The prohibition of provisional detention in ‘media cases’ is not clear, but journalists interpreted it as implying that other types of detention are necessarily acceptable in media cases, the government is kidnapping us when we write, or cover issues related to the right to freedom of expression to give our country freedom”.
Journalist #5: I oppose Article 46 about “Transparency and the Right to Information,” because “there is no hope to write news or analyse the political articles during the conflict situation. With an internationally recognised government in Tripoli, led by Fayez Sarraj and the other by Khalifa Haftar, each of them is controlling only a small part of Libya.” On the other side, Haftar and his militias are increasingly putting the government under military pressure, as he controls most of the country, including much of the oil fields”.

Journalist #6: “the restrictions on freedom of expression and put their own agenda to become owned by the two governments serving only their personal purposes.

Journalist #7: “The law on media represents legal discipline which is closely associated with the development of the media. To develop media relations, we must implement articles addressing freedom of expression and media freedom as a precondition to developing a democratic society. This includes the right to privacy and protection of personal data and the regulation of defamation and protection of journalistic sources”.

In relation to the Constitution and journalists about the international standards that the Libyan Constitution should follow, journalists had different opinions:

Journalist #11: “We should depend on the “United Nations (1985)” to develop freedom of information as a human right, where the media should operate under the “Universal Declaration of Human Rights”, “International Covenant on Civil and Political Rights, and Resolution 59 (1) on freedom of information”.

Journalist #13: “We should depend on the Universal Declaration of Human Rights and have an article stipulating that everyone has the right to freedom of opinion and expression; including the freedom to hold opinions without interference and seek, receive and impart information and ideas through any media and regardless of frontiers. In this article, we can use the new Libyan Constitution, since freedom of expression constitutes one of the basic pillars of democracy.”

Journalist #15: “Freedom protects the right of individuals to shape and express their opinion to establish new media platforms. If the expression of opinion and publication of facts was limited in the past, this means democracy does not exist.”

Journalist #19: noted the need to change Articles 37 and 38, and link it with “International Covenant on Civil and Political Rights (1976)”, with Article 18 stipulating that “everyone shall have the right to freedom of thought, conscience, and religion,” while Article 19 confirmed that “no one may be harassed because of their opinions and every person has the right to freedom of expression”.

Journalist #23: “Article 10 from the “European Convention on Human Rights. Treaty Office (1950)” highlights that “everyone has the right to freedom of expression.”

Journalist #26: “we should have freedom of expression along with three components, namely freedom of opinion; freedom to receive information and the freedom to impart information and ideas without interference by public authority.” This article will support future media to build democracy.

Journalist #2: “we do not have articles about promoting regional or minority languages in the media to open an international radio station and television channel in regional languages,” as granted in the “European Charter for Regional or Minority Languages (1992)”.

Journalist #12: “he mentioned that tribal societies governed by tribal customs follow the “Framework Convention for the Protection of National Minorities (1995)”, and add an article stating, “Minorities should be ensured access to the media with the promotion of tolerance and cultural pluralism in the media.”

Journalist #11: “The government shall recognize the right to freedom of expression of every person belonging to a national minority, including the freedom to hold opinions and to receive and impart information and ideas in the minority language”. 
10. The right to participate includes the right to democratic participation or legislative changes

Journalist #31: This article is contradictory because it did not explain what the right to democratic participation is, is it in elections or parties, the historical backdrop is equally relevant here and we don’t have that rights from 2011 until now Libyan state institutions engaged in serious abuses against ordinary Libyans, mainly in an effort to keep ordinary people under control, but since then large parts of the country have descended into a state of lawlessness, which has led to a new form of oppression.

Journalist #35: The new government want to change the constitution seeks to establish a fully presidential system of government, which will allow the president to fully dominate the government and policy formation processes.

Journalist #40: The article must be changed so that the right to participate on a democratic basis is a right guaranteed by law, and it exercises its activities freely, and contributes to raising the level of competence among its members, defending their rights, and protecting their interests. The state guarantees the independence of trade unions and federations, and their boards of directors may not be dissolved except by a court ruling, and none of them may be established by statutory bodies.

Asking the journalists whether they agreed with Articles 43, the right to peaceful assembly, the following responses emerged:

In relation to the Constitution about the fundamental human right of peaceful the assembly allows for collective expression and participation in the formation of their societies. This right is important because it is based on democracy and the rule of law should follow. In reality, the journalists had different opinions in this regard:

Journalist #40: This Article has some ambiguities …… this article makes no reference to the possibility of regulation through legislation or Otherwise.

Journalist #20: It does not contain any indication of the possibility of regulation through legislation or other … And with the entry into force of the Constitution, the question will arise: Should the protesters and journalists be? Peaceful people notify the authorities in advance of their intention to demonstrate or not …… To whom the request is submitted for the right to demonstrate, and does the request condition mean that the authorities must agree to a peaceful demonstration?

Journalist #39: Article 43 does not address any right to demonstrate the action of the new government. Change this article or add legislative points for peaceful protest because this article restricts freedoms.

Journalist #36: The Constitution should impose a positive obligation on Libya to respect, protect, and facilitate the right to protest, all restrictions on the right to have been formulated.

Journalist #16: Meeting, assembly and the right to protest in accordance with international law the new governments should change the article to be under African Charter Article 10 that everyone has the right to freedom of assembly “provided that he abides by the law.” Under international law, states have a positive obligation to respect and protect the right to protest.

Additionally, the results from this study revealed that journalists indicated that Article 43 highlights the right to peaceful assembly, but they face self-censorship if they make any protest against the governments, and they are not able to write critically, which negatively impacts on media development progress (Obaid, 2016).
Asking the journalists about the political limitations to media freedom, they had the following to say:

**Journalist #6:** “We don’t have any Code of Ethics, despite many attempts among media officials to draft some sort of core guidelines for journalists.

**Journalist #8:** “There is no protection for journalists even though the main Press Board has an office that monitors violations against journalists, but when they issued a report showing vague statistics, we don’t know why they did not publish the real statistics. There is no interest to pursue the perpetrators, and there are no laws to provide legal coverage and protection”.

**Journalist #10:** “The obstacles that we face from the government include “incitement to violence and physical assaults, an inspection of mobile phones and personal equipment without any legal ground”.

These findings of this study echo some sentiments found in other studies. Libya’s legislative progress has meanwhile been slow and inadequate for free speech and press freedom (Elgamaty, 2018; Mohamed, 2019). AlAshry(2021) suggests that the lack of rule of law have had a devastating effect on internet freedom in Libya, as it was difficult for journalists to send information to international media organisations.

Limaa (2014) study indicated that Libya's online journalists, bloggers and activists have increasingly practiced some degree of self-censorship due to continued instability, increasing threats, violence and enforced disappearances over the past eight years.

**11. Journalists’ perspectives about the future of press freedom in Libya**

**Journalist #30:** Media freedom can be enhanced by the establishment or growth of a powerful journalists association to protect us.

**Journalist #4:** In fact, most of the journalists’ do not belong to any journalism unions. Alternatively, responsibility should be placed on media houses and academic institutions to increase training and professionalism in the field.

**Journalist #35:** The future will be ambiguous, as long as the militias are present on the ground. The new government must provide a positive climate for thought and creativity in which creative people are allowed to unleash their creativity and provide them with sufficient space to publish them, by providing protection for them and their work and allocating part of its budget to support printing, publishing and publishing, as well as to support creative people.

**Journalist #36:** However, despite some suggestions about changes that journalists, media houses facilities can make to improve press freedom in Libya, many journalists primarily pointed to the need from new governmental leadership.

**Journalist #37:** Not to impose tight censorship on books and publications and put multiple restrictions on freedom of expression and creativity.

**Journalist #38:** The establishment of the General Press Corporation, which made it the only authority competent to issue and own political, economic, cultural and social newspapers and magazines.

**Journalist #39:** Issuing legislation and laws that provide protection with accurate and strict legal texts, in line with international standards.

**Journalist #40:** This symbiotic relationship between a free press and the new governance depends on economic wellness, ……. we have that in our country (land, oil and gas) so that the role of the new government to return the trust and work in the right direction (democracy) to have more freedoms of the media.
12. Discussion and conclusions

The research findings presented above showed that media freedom and freedom of expression are in a risky position and restricted in Libya. The journalists’ survey proved that accessing legal protection is still nearly impossible for them and other media people, despite the Constitutional Declaration offering theoretical protection.

These results indicate that, at least to some extent, the apparent paradox of the Libyan press freedom and media landscape can be explained by the safety valve theory (Buehler, 2013). It is possible that a safety valve is occurring in Libya, an authoritarian state, in which the appearance of a no liberalised system because it is under the conflict, through the huge numbers of media houses, can blur the line between a free press and a new government restricted press and ultimately reinforce existing power structures.

This idea is consistent with Mohamed (2019) argument that rulers of authoritarian regimes, such as Presidents in the Middle East, only implement the reforms necessary to appear and restrict the media or used the media to promote their ideas.

Journalists’ opinion on the importance of having a Constitution is also confirmed by Habib (2008) who noted that the enactment of the Libyan Constitution was an important issue in the country because it is the only piece of legislation that formally represents the rights of the Libyan citizens. Speaking of the first Constitution, before Muammar Gaddafi, Habib (2008) argued that the Constitution gave many freedoms to citizens through articles attesting that personal liberty shall be guaranteed and everyone shall be entitled to equal protection of the law. In view of the above, journalists recommended that the new constitution should conform to the international laws, and the UN guaranteed human rights, including Article 19 which guarantees freedom of expression, as well as the personal safety of journalists. Likewise, Al Warshafani (2019) sought the older Constitution to be like an instrument of applying international human rights, granting complete freedom from arrest or detention. The articles he analyses support the journalists’ plea on the right to liberty and acts as a substantive guarantee that arrest or detention will not be arbitrary or unlawful.

To protect journalists, Omar’s (2019) study noted that the protection of media freedom should move forward with a stable political situation ending with a new government.

After the approval of the Constitution, many journalists faced threats, abductions, attacks on journalism outlets and journalists were also reported to the regime (Naser, 2019). In Libya, there is no legal protection, despite the existence of a new but ineffective Libyan Constitution. In reality, the militias groups commit crimes against journalists and media institutions.

About Articles 37 and 38, the journalists did not agree with those articles because of no rights of principle in the paragraph the parliament put only Provisions for defamation and criminalization. Based on the results of Elgamaty’s (2018) study by 155 journalists, “The Libyan constitution does allow defamation to be criminalized and encourages the country to enact civil defamation laws,” so defamation laws must be abolished.

About Article 46 the journalists did not agree with that article because there is no right to access information. These findings echo the studies which revealed that Libya’s legislative progress has been slow and inadequate for free speech and press freedom. For instance, Naser (2019) and Obaid (2016) highlighted that the lack of laws has a devastating effect on press freedom in the country, as it makes it difficult for journalists to send information to international media organisations.

In addition, Articles 42 & 43 about Rights Freedom journalists affirmed that the constitution must impose a positive obligation on the state to respect, protect and facilitate the right to
participate in a protest. Any restrictions on the right to freedom of assembly must be formulated. And assembly and the right to protest in accordance with international law, this outcome is consistent with (Mohamed, 2019).

Journalists have presented suggestions about how to improve the press-freedom landscape in Libya (see, e.g., Naser, 2019; Obaid, 2016), including areas where the press houses can make improvements. Media institutions can work to break the safety valve. The first step in the democratic transformation and building an independent government, the second step, building a union that protects the rights of journalists when they are being harassed and can promote media literacy to develop/implement/strengthen policies at all levels.

Additionally, the results from this study revealed that the journalists are not able to write critically. Journalists spoke about the resulting self-censorship and negative impacts on democratic transformation, as Omar’s (2019) referred to it. Moreover, previous research in Libya has shown that “there is no clear consensus about what press freedom and responsibility because it was not the war that stopped the democratic transformation, but foreign interference as well” (AlAshry, 2015; Alzairi, 2016).

Surveyed journalists indicated that ISIS group control four local state television and two private radio after occupying Sirte and turned them to prompt their ideas. The journalists’ investigations on that issue found that ISIS received funding from foreign government organisations. The journalists showed that there is no authority or capacity to investigate or punish the abuses all the time they kidnap the journalists. The civil war has caused considerable economic instability for media outlets and the media were controlled by armed groups rather than legal ownership. This resonates with Omar’s (2019) analysis of Islamist militant groups which have increasingly used Twitter to disseminate threats and propaganda inside Libya, in order to spread fear and to prove the power of Islamic groups.

13. Suggestions for future research
This study is important because it is the first that focuses on articles of freedom of the press and their shortcomings in the Constitution of 2017. Future studies are therefore required to bring further clarity to the topic of press legislation, the legal organisation of the press and the journalists’ union. In addition, more studies on press freedoms and war, covering corruption cases in Libya and democratic transformation and rebuilding the state, can be done. It would be interesting to study the Constitution and free media in Libya all the way from 2002, when the World Press Forum Index began to rank countries’ freedom of the press, until today. With such a comprehensive study, phenomena and development articles of freedom of expression would most likely unfold gradually and therefore presents a better understanding from the perspectives of journalists.

Redrafting the Constitution Articles in the future can be summarised as follow: First, the Libyan Constitution should provide and guarantee press freedom without any censorship and include clear articles to protect journalists in conflict zones. Second, Articles 37,132 and 38, about “freedom of information and publication”, need to be redrafted to link with Article 19 of the “International Covenant on Civil and Political Rights”, to support the principles of freedom of expression and information, and the use of this right must not be subject to prior control. Third, Article 46 needs to be changed and linked to the provisions of “International law on the Right of Access to Information” to improve access and dissemination of information in the media to protect confidentiality sources.

The most important articles should be implemented (freedom of information and personal information Act) because after the Arab Spring revolutions, there was a transitional period in societies and a change in the Constitutions of Tunisia and Egypt. They developed legal articles about media freedom so that Libya resembles other Arab countries. From that point, the
journalists recommended that all information should be protected from government interference to ensure transparency, combat corruption and protect independent journalists. These articles will open the way to add more development articles to media freedom rules in the Journalists’ Syndicate.

Fourth, there are also various types of threats encountered by journalists in their work. In pursuit of their right and freedom of expression, they recommended that Libya must establish an independent self-regulatory media that are free from political and economic influence. Fifth, journalists need licenses for them to work through the syndicate. The new syndicate should play an active role to safeguard the rights of journalists, activists and media entities to carry out their work and end the self-censorship. Sixth, the Constitution should also add articles to end the impunity and change the articles in the penal code.

Overall, the journalists covering the conflict and war are encountering threats, violence and imprisonment. As a result, Libyan journalists must seek new legislation to defend independent journalism and freedom of expression in their deeply divided country. In addition, they need to have a strong central authority to defend journalists and journalism in wartime, where journalists are regularly threatened, abducted and sometimes killed. Also, the Libyan Journalists Syndicate should stress the importance of the media’s self-regulation to guarantee their rights to freedom of expression, grant their readers’ respect and minimise government’s interference. Lastly, they need to develop new laws to grant media freedom from regulations and restrictions, as well as defend and promote democracy, the citizens’ right to be informed, as well as their right to discuss and disseminate information. There is also the need to implement articles in the Constitution, articles about the protection of political speech, which would be specific enough to differentiate between what is legally permitted and what may be ethically offensive.

Future research should replicate this study in more democratic transformation after the new elections, the views of journalists after agreeing to amend the articles of the Constitution, and measuring the level of press freedom after the formation of the government. Additionally, future research should continue to empirically examine the role of journalists in Middle East safety valve theory.

14. Conclusion
To conclude, the findings from this research revealed a murky line between a free press and the Constitution that restricts the press. The findings also suggest that although the safety valve theory (Buehler, 2013) may be at play, Libya has still not yet shown any signs of progress in media development, the previous governments and the newly elected government still control the media and journalists (AlAshry, 2015).

The findings also point to the political situation in Libya, which is dangerous, since NATO intervened militarily and got rid of Gaddafi, the sole ruler of Libya for over four decades. This raised hopes in seeing a democratic transformation, socio-economic development and stability in the country. Unfortunately, since the outset, internal and external struggles for Libya took place among agents of different conflicting parties. This struggle has transformed the conflict into a protracted social conflict, with complexities and dangers beyond anyone’s control. The conflict has manifested itself, which intensified socio-political disorder and instability. State institutions also failed to cope with the spiral of tension, violence and deadly war. As a result, the whole country turned into a battleground for all types of weapons, terrorist groups, militias, mercenaries, remnants of Al Qaeda, and fled Muslim Brotherhood, as well as foreign military forces. These developments led to state failure, where Libya represents a typical case of a failed state.
Additionally, it is expected that the new parliamentary elections in 2021 might add new articles in the Constitution that would protect freedom of expression and the rights of journalists under the new government, Abdul Hamid al-Dabaiba, the head of the national unity government, on 8 March 2021, in Sirte (Congressional Research Service (CRS), 2021). This government is working to create more media freedom for journalists.

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Author details
Miral Sabry Alashry¹
E-mail: miral_sabry@yahoo.com
ORCID ID: http://orcid.org/0000-0002-2689-2168
¹ Associate Professor and Chair of Department of Political Mass Media, Future University in Egypt (Fue), Egypt.

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