

Freedom of expression and its limits in the face of misinformation on social media

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Beatriz Hail Carvalho Santos¹

Glauco Mazetto Tavares Moreira²

SUMMARY

With the advancement of information and communication technologies, freedom of expression has taken on a central role in contemporary social interactions, especially in digital environments such as social networks. The ease of producing and disseminating content in these spaces, although it increases access to public debate, also poses challenges related to the spread of misinformation and the limits of this right. This article proposes a legal analysis of the regulatory parameters of freedom of expression in the information society, focusing on the tensions between this right and other fundamental constitutional principles. Based on the interpretation of current legislation and the analysis of relevant judicial precedents, the study seeks to promote a critical reflection on the ethical and responsible use of freedom of expression in the digital environment. The study initially addresses the historical and conceptual foundations of this right, followed by a discussion of the challenges posed by current communication dynamics.

A legal approach is adopted, focusing on the normative interpretation of communicative freedom in cyberspace. Finally, considerations are presented on the legitimate limits to the expression of thought online, highlighting the need to reconcile freedom of expression, social responsibility and the protection of human rights and democracy.

Keywords: Freedom of Expression, Information Society, Legal Regulation

ABSTRACT

With the advancement of information and communication technologies, freedom of expression has assumed a central role in contemporary social interactions, particularly within digital environments such as social media platforms. While the ease of content production and dissemination in these spaces enhances access to public debate, it also presents significant challenges related to the spread of misinformation and the boundaries of this fundamental right.

This article offers a legal analysis of the regulatory parameters governing freedom of expression in the information society, focusing on the tensions between this right and other core constitutional principles. Through the interpretation of current legislation and the examination of relevant judicial precedents, the study aims to foster a critical reflection on the ethical and responsible exercise of freedom of expression in digital contexts. The research initially explores the historical and conceptual foundations of this right, followed by a discussion of the challenges posed by contemporary communication dynamics. A legal approach is adopted, with emphasis on the normative interpretation of communicative freedom

¹ Master's student in Constitutional Law at PUC/SP. Email: biagranizo@hotmail.com ² Master's student in Criminal Law at PUC/SP. Email: glauco12@yahoo.com

in cyberspace. Finally, the article presents considerations on the legitimate limits to online expression, highlighting the need to reconcile freedom of expression with social responsibility and the protection of human rights and democratic values.

Keywords: Freedom of Expression, Information Society, Legal Regulation

1. INTRODUCTION

With the continuous advancement of information and communication technologies, the the right to free expression of thought began to play a more prominent role and recurrent in social interactions. Digital environments, especially social networks, have provided effective means for individuals to express opinions and world views to broad audiences, quickly and with a high degree of accessibility. However, this same ease of production and dissemination of digital content raises crucial questions about the limits of this right in the contemporary communication scenario due to misinformation disseminated.

In this context, this paper proposes a legal analysis of the parameters regulatory frameworks that outline freedom of expression in the information society. They will be examined the main tensions existing in this field, such as the need to protect fundamental rights and the search for mechanisms that balance free expression with defense of other constitutional principles essential to life in society under a regime democratic.

Through the analysis of significant judicial precedents and the interpretation of current legislation, this research aims to promote a critical and qualified reflection on the uses and restrictions of freedom of expression in the digital environment, with a view to ensuring a ethical, responsible exercise that is compatible with other legal values.

Initially, the key concepts that underpin the right to freedom of expression, covering its historical development and its primary function in democratic systems. Subsequently, the set of challenges imposed by the contemporary digital dynamics to this guarantee, such as the dissemination of misinformation.

The approach adopted will favor a legal investigation, focusing on interpretation of the current regulatory framework regarding freedom of communication in



cyberspace, paying special attention to the legal provisions and constitutional principles that regulate the conduct of users in virtual environments.

Finally, conclusive reflections will be drawn up on the legitimate boundaries of freedom of expression in the digital environment, highlighting the importance of its harmonization with the protection of other fundamental rights and values, highlighting social responsibility, always preserving the centrality of human rights and democratic pillars in the legal order current.

2. THE PRINCIPLE OF FREEDOM OF EXPRESSION IN THE FEDERAL CONSTITUTION

It is important to note, from the outset, that Fundamental Rights represent achievements legal entities arising from a continuous historical process, characterized by the gradual incorporation of social demands and the development of interactions between the State and the individual. The consolidation of these rights reveals the need to establish normative devices aimed at protecting human dignity.

From this perspective, it is possible to identify initial manifestations of these guarantees in ancient civilizations, such as Egypt and Mesopotamia, and were later organized into the Code of Hammurabi. However, it was with the promulgation of the Law of the Twelve Tables, in Ancient Rome, that there was a normative and written systematization of essential rights, such as relating to life, liberty and property.

Regarding freedom of expression, its consolidation occurred gradually and restricted, initially limited to privileged social groups. An example of this selectivity is the *Bill of Rights*, drawn up during the Glorious Revolution in England, which, although recognized such freedom, it restricted its applicability to the bourgeois elite.

The French Revolution played a fundamental role in the affirmation of human rights fundamental, based on the Enlightenment ideals of “Liberty, Equality and Fraternity”. These principles became theoretical frameworks for the development of several generations of rights, driving their expansion and universalization.

The so-called generations of Fundamental Rights are not mutually exclusive, but coexist in a cumulative logic, expressing an evolutionary trajectory built over throughout history (Novelino, 2014). Due to this characteristic, such rights were raised

to the condition of stone clauses in contemporary constitutions, which gives them a irreversible nature, allowing its expansion but prohibiting its suppression.

Based on this understanding, fundamental rights began to be systematized in different dimensions. The first refers to civil and political rights, such as freedoms of thought, expression and belief, the realization of which requires non-state intervention. The second covers social, economic and cultural rights, based on the search for equality substantial and that demand affirmative actions from the State. The third dimension comprises collective and diffuse rights, such as the right to an ecologically balanced environment, reflecting the value of solidarity. The fourth is linked to the context of globalization, highlighting the rights related to information and communication. Finally, the fifth dimension, most recently recognized, corresponds to the right to peace, understood as an expression of collective desire for security and stability on the international level (Tavares, 2012).

When examining the Brazilian constitutional path, it is noted that several national constitutions have reserved specific chapters for the protection of Fundamental Rights. The proclamation of independence in 1822 represented a relevant milestone for the consolidation of the right to freedom of expression (Moraes, 2023). The Constitution of 1824, substantially influenced by the British constitutional model, established the non-state intervention on the free expression of thought, recognizing such prerogative as a fundamental right of the citizen.

This normative protection was maintained in subsequent constitutional charters, even that suffered serious restrictions during the Estado Novo, established by Getúlio Vargas in 1937. During this period, censorship was institutionalized and publications were severely restricted. civil liberties, representing a significant setback in guaranteeing rights fundamental. The Vargas government imposed strict control over the media and cultural manifestations, even prohibiting artistic representations that contradicted the interests of the authoritarian regime.

With the end of the Estado Novo, subsequent constitutions sought to restore the rights previously suppressed. However, with the establishment of the military regime in 1964, the imposition of severe restrictions on public freedoms was again observed and institutional, perpetuating practices of repression and censorship.

In this historical context, the promulgation of the Federal Constitution of 1988 represented a landmark break with authoritarianism and a decisive step towards the institutionalization of Democratic State of Law. The new constitutional order granted status to clauses stone to an extensive set of fundamental rights and guarantees (Moraes, 2023), oriented to the protection of human dignity and the full promotion of civil, political and social, consolidating a legal framework committed to democratic principles and social justice.

The current Constitution of the Federative Republic of Brazil was drafted in the context of democratic transition after the military regime, a period historically marked by serious violations of fundamental rights, especially with regard to the limitation of freedom of expression. In this scenario, an official censorship system was instituted, intensified by enactment of the Press Act of 1967, which imposed strict sanctions on media outlets communication and media professionals who diverged from the interests or ideological guidelines of the regime in force at the time.

In response to the repressive context previously experienced, rights fundamental principles began to occupy a central position in the new Brazilian constitutional order, which elected the dignity of the human person as the founding principle of the Democratic State of Law (Sarlet, 2012). The 1988 Constitution incorporated, in an integrated manner, the concepts of the Rule of Law and the Democratic State. The first, originating from the liberal tradition, ensures the separation of powers, the protection of individual rights and the subjection of public power to legality. The second, structured on the basis of popular sovereignty, aims to implement the fundamental rights of the human person (Sarlet, 2012).

In this sense, the constitutional text shows a clear concern with the guarantee of individual, collective, social and political rights, considered essential pillars of configuration of a truly democratic State. Freedom of expression, in this context, emerges as a structuring component of this regime, by enabling the affirmation of human dignity, through the free exercise of political, philosophical and ideological on the part of the individual.

At this point, the classical conception of democracy as a system of government in which the people exercise their sovereignty. For this democratic participation to be effective, it becomes essential to ensure freedom of expression, since its absence —



together with the limitation of the right to information — makes social control of acts unfeasible state-owned by the population, political minorities and civil society organizations (Sarlet, 2012).

In a didactic way, freedom of expression is part of the list of rights and guarantees individual rights enshrined in Article 5 of the Federal Constitution. In particular, section IV ensures the free expression of thought, prohibiting anonymity, while section IX protects the free expression of intellectual, artistic, scientific and communicational activities, regardless censorship or prior authorization (Brazil, 1988).

At this point, it is worth noting that there is no antagonism between section IV of article 5th of the Federal Constitution, which prohibits anonymity, and section XIV of the same article, which ensures the confidentiality of the source when necessary for the professional exercise of the information activity (Capanema, 2012). Protecting the source's identity does not imply anonymity on the part of the communications professional. Thus, the journalist, when disclosing certain information, does so under his own responsibility, identifying himself as the author of the publication and assuming the risks arising from any damage caused. In this way, the possibility of civil, criminal or administrative liability of the agent who conveys the information, this being precisely the objective of the constitutional prohibition of anonymity (Paulo; Alexandrino, 2007).

Here, it is worth noting the confluence between what was decided by the STF when declaring not the Press Law was accepted in ADPF No. 130 and the thesis established in the judgment of theme 995. In that case, the STF stated that *“full freedom of the press is an intangible asset that corresponds to the most eloquent attestation of the political-cultural evolution of an entire people”*, recognizing that *“excessive compensation is, in itself, a powerful inhibiting factor freedom of the press, in violation of the constitutional principle of proportionality”*. However, he acknowledged that subsequent liability is possible, which is in line with item 1 of the last thesis: *“In the event of publication of an interview, by any means, in which the interviewee falsely accuses a third party of committing a crime, the news company only may be held civilly liable if proven to have characterized bad faith.”*

In addition to individual rights, these guarantees find collective support in articles 220 to 224 of the Federal Constitution, which regulate social communication (Brazil, 1988). Such normative devices regulate the production and dissemination of content through the media

mass communication, such as written press, radio, television, cinema and digital platforms, ensuring free expression through multiple formats and aimed at different audiences.

In this context, freedom of expression is understood as the right to active participation in communication processes, both as an issuer and as an author, expositor or interlocutor, as well as receiver as a listener, reader or spectator (Tavares, 2012). This right encompasses the dissemination of information, ideas, emotions and positions, which can be expressed through verbal, visual, gestural language or even by silence (Simão, 2017).

Freedom of expression, therefore, should not be conceived as an isolated right, but as an articulated set of prerogatives linked to the various forms of communication. According to article 5, paragraph IV, of the 1988 Constitution, it is a "right matrix" (Sarlet, 2012), from which multiple dimensions derive, such as: freedom of opinion and of expression of thought; artistic freedom; freedom of teaching and production scientific freedom; freedom of the press and access to information; and religious freedom (Sarlet, 2012).

From a conceptual point of view, it is important to distinguish freedom of expression in strict sense, aimed at the externalization of thoughts and opinions, freedom of information, whose parameter is the veracity of the transmitted content, taking into account its purpose of inform the community about real facts. However, when considering truth as a limit of freedom of expression, it is necessary to recognize its relative nature, as it is a concept that cannot be fully defined objectively or absolutely (Moraes, 2023).

Another relevant aspect refers to the dual nature of freedom of expression: on the one hand, hand, it has a positive dimension, which guarantees the individual the right to express himself freely; on the other hand, it presents a negative dimension, which protects it against interference undue actions by the State, such as prior censorship (Moraes, 2023).

In short, the right to expression constitutes an essential element of the subject's existence in scope of the Democratic State of Law, to the extent that it allows the affirmation of its identity as autonomous and participatory. The absence of this freedom compromises the very democratic structure. However, it is imperative to recognize that such freedom does not have a absolute, and must be exercised responsibly and within the limits established by legal system.

3. THE LIMITS OF THE PRINCIPLE OF FREEDOM OF EXPRESSION

In view of its relevance for the consolidation of the Democratic Rule of Law and because it is a direct expression of the dignity of the human person, freedom of expression is recognized as a right of high constitutional stature. In certain circumstances, including, may prevail in situations of conflict with other rights fundamental. However, this importance does not imply the attribution of an absolute character to this right, nor does it authorize the definition of a fixed hierarchy between constitutional norms (Sarlet, 2012). This is because, like any other fundamental right, freedom of expression is subject to the principle of legality, as outlined by the legal system current legal framework (Tavares, 2012).

From this perspective, article 5, paragraph II, of the Federal Constitution establishes that no one shall be obliged to do or refrain from doing something except by virtue of law (Brazil, 1988). Thus, although freedom of expression is protected by the Constitution, its exercise must fully respect the legal order, which involves not only compliance with the constitutional provisions, but also compatibility with other fundamental values, as human dignity. Furthermore, compliance with the legislation is essential infraconstitutional that defines illegal acts, such as the Penal Code and specific norms (Freitas; Castro, 2013).

Among the limits imposed on freedom of expression, the prohibition of anonymity, provided for in article 5, paragraph IV, of the Constitution, the purpose of which is to allow holding the authors liable for any damages resulting from their public statements, through their proper identification (Brazil, 1988). Thus, although the right to free expression is ensured, the right of those affected to know the authorship of the statements.

Another relevant limit is the right of reply, provided for in article 5, paragraph V, of the Constitution, which ensures not only the possibility of retraction proportional to the offense, but also compensation for any damages of a moral, material or image nature (Brazil, 1988). This mechanism aims to reestablish communicational balance in situations of offence to fundamental rights, allowing the injured individual to publicly present your version of the facts and recover your dignity and reputation (Sarlet, 2012).

There is consensus that the imposition of restrictions on individual rights is supported legal whenever oriented towards the protection of the public interest and the promotion of social well-being. Outside of this context, such limitations may constitute arbitrary violations of human rights. fundamental (Silva, 2016).

In light of this understanding, the right of reply proves to be an indispensable instrument for promotion of contradiction in the public communication space, contributing decisively for the strengthening of democratic institutions. Although it has a subjective dimension, This right also carries an objective and collective dimension, related to the public functionality of freedom of expression (Sarlet, 2012). It is, therefore, a guarantee aimed at promoting equality in the conditions of demonstration, especially for those who have suffered violations of their personality rights by the media communication. As the STF rightly highlighted in the aforementioned ADPF, the right of reply and the responsibilities, *“even acting a posteriori, influence the causes to inhibit abuses in the enjoyment of the full freedom of the press”*.

Likewise, civil liability must be considered for demonstrations that violate personality rights. Article 5, item X, of the Constitution recognizes as inviolable the intimacy, private life, honor and image of people, attributing to such attributes the status of fundamental rights and ensuring compensation for any damages material or moral damages resulting from its violation (Brazil, 1988).

In scenarios of legitimate restrictions on freedom of expression, a concept stands out whose definition is still the subject of debate: hate speech. Currently, this phenomenon has occupied a central position in the public debate and among civil society organizations. However, it is essential not to confuse freedom of expression with illegal practices such as speech hate speech, misinformation or the spread of fake news.

Hate speech includes manifestations that incite hatred, encourage violence or promote the exclusion of specific social groups (Meyer-Pflug, 2009). Such discourse implies the symbolic construction of a group as an enemy, through strategies rhetoric that aims to legitimize hostile and violent attitudes directed against populations vulnerable.

Although the terms “misinformation” and “fake news” are often used as synonyms, it is necessary to distinguish their meanings.

According to Serrano (2010), disinformation has historical origins linked to the war of information and espionage, and over time it was appropriated by the media, public institutions and private companies, disseminating through different discursive forms, such as historical accounts, political statements and journalistic content.

Disinformation constitutes a communication environment that is adverse to the circulation of true data. This is a complex phenomenon, which involves not only the propagation of false content, but also mechanisms of distortion of reality, manipulation of facts and induction to error (Pimenta, 2017).

In turn, the concept of "fake news" refers to the deliberate falsification of content in the form of legitimate journalism, with the aim of deceiving the public. For Bucci (2022), it is a specific form of lying, typical of the digital age and historically set in the 21st century.

In view of this, considering the constitutional contours of freedom of expression and its limits, as well as the differentiation between its legitimate exercise and illicit practices such as hate speech, misinformation and the deliberate dissemination of fake news, it becomes evident that need for a regulatory framework. This instrument should ensure greater transparency in the informational ecosystem, combat criminal behavior in the digital environment and, at the same time, preserve the full exercise of freedom of expression, which is currently characterized as the main means of civic engagement and exchange of ideas in society.

4. DISINFORMATION ON SOCIAL MEDIA

Castells (2003) defines the internet as the "fabric of our lives", because of its singular ability to form its own social structure, while at the same time articulating itself with institutions already consolidated in the cultural plan. According to the author, digital networks share a common architecture and are powered by cyber technologies (Castells, 2013). In this sense, it is observed that the economic, social, political and cultural institutions are increasingly anchored in structures operated via the Internet (Castells, 2003).

Along these lines, Lévy (2018) highlights the ambivalence of information technologies: they simultaneously promote inclusion and exclusion. On the one hand, they enable integration and exchange between subjects inserted in the digital flow; on the other hand, they can reinforce

inequalities and forms of domination over those on the margins of these systems. Such duality reconfigures social relations and reveals the capacity of technologies, as well as occurred with the invention of writing, of shaping discourses and favoring hegemonic cultures.

When considering the construction of a common cultural space, Lévy (2018) reaffirms this ambivalence when observing that, just like in the physical world, virtual communities are structured based on affinities, shared interests, cooperation and reciprocity — regardless of the geographical proximity between its members. This configuration highlights a new form of sociability mediated by digital technologies.

Fluid identity is a central element in virtual communities, whose configuration is marked by ideas and principles in constant transformation. The multiplicity of perspectives within these communities destabilizes the notion of fixed identity, allowing that individuals move between different forms of belonging. In this process, the possibility of rethinking positions and reviewing beliefs, including those previously seen as incompatible or antagonistic (Dunker, 2017).

Within this scenario, the phenomenon of disinformation becomes particularly relevant. The European Council (2017) defines disinformation as the intentional dissemination of false content with the deliberate aim of causing harm. From this perspective, practices of rejection of otherness and a culture of indifference emerge as structural components of misinformation.

In this sense, Dunker (2017) warns that the speed of interactions in the environment digital tends to intensify social fragmentation, including in the form of ethnic segregation. Such dynamics create a pressure for discursive conformity — the so-called “echo effect” — which, although it offers an immediate sense of belonging, it is often based on narratives devoid of informational precision.

For Lévy (2018), this context reveals the dark side of the use of information technologies. information and communication. Initially designed to stimulate collaboration between different peoples and foster collective social advancement, these tools began to expose serious problems, such as the radicalization of opinions, the proliferation of hate speech and the erosion of privacy. Faced with this panorama, it becomes inevitable to discuss the obstacles relating to democratic access to reliable information — a challenge that directly contributes

for the spread and indiscriminate consumption of misinformation, especially in the context Brazilian.

The growing use of mobile devices as the main access tools online services have driven the personalization and filtering of available content, phenomenon called by Pariser (2011) as "filter bubble". This concept refers to the intellectual isolation generated by algorithms that select information based on data users' personal information, such as browsing history and location, restricting their exposure to divergent perspectives and creating homogeneous information environments.

This dynamic results in the formation of virtual communities that, although based on common affinities and interests, can reinforce exclusion and domination over those who remain outside this context, as highlighted by Lévy (2018). The fluidity of identity, characterized by the multiplicity of focuses and the possibility of reevaluation and change, is fundamental in this scenario, allowing individuals to engage in debates that, in other historical moments, would be seen as contradictory or even antagonistic.

In the context of the COVID-19 pandemic, misinformation has spread in a epidemic, with false information being spread rapidly, often without any basis, which led to an "infodemic" that affected society in a significant (Silva, 2016). The media plays a crucial role in developing narratives who seek truthfulness, but can also be influenced by groups with vested interests economic and ideological, which can compromise public confidence in information disseminated (Pereira, 2023).

Given this scenario, it is worth emphasizing that the fight against disinformation should not be restrict to simplistic solutions, but requires the implementation of mechanisms that involve from technical resources to investments in education and digital literacy. In addition, it is necessary to establish legal restrictions to combat false information, respecting, however, the limits of freedom of expression.

In short, the interaction between information technologies, social dynamics and dissemination of misinformation highlights the complexity of the phenomenon of the "society of (dis)information". The construction of networked identities, the manipulation of information and the ethical challenges related to content moderation require a multifaceted approach

that considers technical, cultural, political and educational aspects to promote an environment healthier and more democratic informational.

5. CONCLUSION

Given the continuous advancement of information and communication technologies, it was found that that the right to free expression of thought has assumed an increasingly central role in contemporary social interactions. Digital environments, especially social networks, have become privileged spaces for the externalization of opinions and world views, enhancing the reach and speed at which content is shared. However, this expansion of the communication space also revealed significant challenges, especially with regard to the spread of misinformation and the need to set limits legitimate to exercise this right.

The legal analysis carried out throughout presented the principle of freedom of expression in the information society and its limits, highlighting the tensions between the protection of this law and the preservation of other equally fundamental constitutional values.

From such analysis, it is concluded that the full exercise of this right requires not only recognition of its importance in the democratic order, but also an approach that take into account its compatibility with the rights to honor, privacy, and dignity of human person and truthful information. The harmonization between freedom and responsibility is essential for the construction of an ethical, plural and respectful communicative space pillars of the Democratic Rule of Law, reaffirming the commitment to rights humans and with social coexistence based on mutual respect.

This is because it is clear that social progress played a decisive role in the reconfiguration of forms of communication, promoting the emergence of multiple instruments aimed at circulation of information. In this context, the Internet has consolidated itself as a virtual space privileged for interaction and connectivity, imposing on the legal system the challenge of ensure the protection of fundamental rights in the face of rapid technological transformation and complexity inherent in new communication dynamics. The incorporation of the internet into everyday life everyday life constituted a structural change of global scope, expanding the possibilities of communication and enabling information exchanges in near real time between individuals.

With the development of new media and the deepening of the process of globalization, the flow of information has become progressively faster and more comprehensive, which intensified both the dissemination of relevant content and the proliferation of misleading information. In this scenario, disinformation becomes central by impacting directly the formation of public opinion and by exposing citizens to manipulation by speeches promoted by large media conglomerates. Such influence can compromise the critical understanding of social reality and generate social demands for rapid and punitive, especially in the criminal sphere.

The media's performance, particularly in high-profile criminal cases, tends to encouraging hasty judgments, putting pressure on the justice system and, at times, neglecting legal principles and procedural guarantees. At the same time, interactivity promoted by digital platforms and the ease of sharing have enhanced the dissemination of fake news. Although the phenomenon of misinformation is not new, the internet provided an unprecedented reach for its propagation, highlighting weaknesses regulations and requiring a review of legal strategies.

In view of this, it is recognized that, although false information represents a serious risk to the integrity of public debate and the functioning of democratic institutions, simply creating new legal devices may not be the most effective response. Alternatively, the critical application and updating of existing standards is advocated, in articulation with public policies aimed at media education and the development of critical awareness of the population, with a view to improving the capacity for information analysis and ensure diversity of ideas in communication environments.

It is therefore concluded that the preservation of the Democratic Rule of Law demands not only the modernization of the regulatory apparatus in the face of new technological realities, but also the encouragement of the formation of a civic culture based on thought critical and valuing public debate. Only in this way will it be possible to strengthen autonomy of individuals to recognize and question manipulative content, contributing to the construction of a more informed, reflective and plural society.

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