



## Freedom of Expression and the Harmful Effects of *Fake News* Within the Limits of the Constitution

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### SUMMARY

The topic of freedom of expression has received increasing attention worldwide, becoming the subject of controversial debates that have reached the Supreme Courts. The relevance of this fundamental right lies in its potential to promote the circulation of ideas and social dialogue, essential for democratic coexistence. This article discusses different situations that highlight the limits of freedom of expression. In the view of the legal philosopher Ronald Dworkin, it is legitimate to ridicule ideas, but protection ends when ridicule reaches the personal sphere, constituting a violation of the rights of others. Karl Popper, in formulating the Paradox of Tolerance, questions "to what extent should we tolerate the intolerant?", highlighting the need to contain discourses that threaten tolerance itself. The Covid-19 pandemic, in addition to its health impact, revealed a scenario of massive dissemination of *fake news*, which caused misinformation and aggravated social tensions. Finally, Habeas Corpus No. [number missing in original text] is analyzed. 82.424, in which the Supreme Federal Court debated whether anti-Semitic publications constituted the crime of racism, with the rapporteur, Minister Moreira Alves, concluding that the legal concept of racism transcends biological aspects, encompassing a social and political reality.

**Keywords:** Freedom of Expression; Paradox of Tolerance; Fake News; Racism

### ABSTRACT

The topic of freedom of expression has received increasing attention worldwide, being the subject of controversial debates that have reached the Supreme Courts. The relevance of this fundamental right lies in the possibility of promoting the circulation of ideas and social dialogue, essential for democratic coexistence. This article discusses different situations that highlight the limits of freedom of expression. In the view of the legal philosopher Ronald Dworkin, it is legitimate to ridicule ideas, but protection ends when ridicule reaches the personal sphere, constituting a violation of the rights of third parties. Karl Popper, in formulating the Paradox of Tolerance, questions "to what extent should we tolerate the intolerant?", highlighting the need to contain discourses that threaten tolerance itself.

The Covid-19 pandemic, in addition to its health impact, revealed a scenario of massive dissemination of fake news, which caused misinformation and aggravated social tensions. Finally, Habeas Corpus No. 1 is analyzed. 82,424, in which the Supreme Federal Court debated whether antisemitic publications would constitute the crime of racism, with the rapporteur, Minister Moreira Alves, concluding that the legal concept of racism transcends biological aspects, encompassing a social and political reality.

**Keywords:** Freedom of Expression; Paradox of Tolerance; Fake News; Racism

### 1. INTRODUCTION

Freedom of expression has been widely debated in contemporary times, especially regarding its limits. This is a fundamental right for the functioning of the system, democratic, as it guarantees all citizens the right to express opinions through speeches,



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texts, literary works, or public debates. However, this right is not absolute and may come into play.

conflict with other fundamental rights, such as human dignity, equality, and protection against

Discrimination. In this context, it becomes essential to reflect on the extent to which the exercise of freedom...

Freedom of expression can be protected without compromising fundamental social values (CAVALCANTI, 2018).

Historically, the defense of freedom of expression was consolidated by John Stuart Mill, who

He argues that truth tends to emerge when there is a "marketplace" of freely debated ideas.

According to Mill (1859), the confrontation of divergent opinions allows individuals to make more informed decisions.

conscious and well-founded, avoiding the imposition of a single point of view. In this way, free

The circulation of ideas strengthens democracy and contributes to the intellectual and moral development of society.

society.

In recent years, the spread of *fake news* has brought new challenges related to

Freedom of expression. Deliberately false or distorted information has been circulating.

widely, especially in digital environments, affecting sensitive areas such as public health and politics.

During the Covid-19 pandemic, misleading news about treatments, vaccines, and measures...

Preventive measures have had significant repercussions in society, jeopardizing security.

collective (SILVA; OLIVEIRA, 2021). In the political sphere, the spread of rumors and information

Manipulated information influences public opinion and trust in democratic institutions, generating debates.

intense discussions about the limits of the right to expression in relation to social responsibility (PEREIRA, 2020).

The discussion also has relevant legal implications. In Brazil, the Supreme Court

The Federal Court, in judging Habeas Corpus No. 82.424/RS, recognized racism as a crime.

publication and sale of books with antisemitic content, as per article 20 of Law No.

7.716/1989, with the consequences of non-bailability and imprescriptibility foreseen in article 5,

Article XLII of the Federal Constitution (BRAZIL, 1988; BRAZIL, 1989). This decision demonstrates that the

Freedom of expression cannot serve as a shield for discriminatory practices and must be limited.

when it threatens the fundamental rights of others.

The Federal Constitution also guarantees freedom of expression and freedom of...

intellectual, artistic, scientific and communicative expression, prohibiting anonymity and guaranteeing the

Confidentiality of sources when necessary for professional practice (BRAZIL, 1988, art. 5, IV, IX and XIV).

These devices reinforce the essential nature of freedom of expression in a society.

democratic, while establishing clear limits against abuses or practices that

violate fundamental rights.

Given this, the central question arises: can freedom of expression be considered

absolute, or should it be understood as a relative right, conditional upon the protection of others?

Are there values that are equally essential to social coexistence? This reflection guides the present study, which seeks to...

to analyze the complex intersection between freedom of expression, *fake news*, and the protection of rights.



fundamental in the contemporary Brazilian context.

## 2. Freedom of Expression in the Eyes of Ronald Dworkin

According to legal philosopher Ronald Dworkin, freedom of expression is not limited to mere expressing opinions, but it includes the right to criticize, question, and even ridicule ideas without this constituting a violation of fundamental rights. Dworkin emphasizes that, although religions are protected as a fundamental right, they cannot restrict democratic freedoms. It is essential to differentiate between personal attacks and criticism of ideas or values: mocking beliefs or opinions. This should not be confused with attacking people, as it is possible to defend equality without violating the law. freedom (ROSA, 2021).

The author distinguishes between "flat" and "dynamic" definitions of values. From that perspective, in a "flat" approach, values are understood in a rigid way, which can generate inevitable conflicts, as in a classic example is the conflict between freedom and equality. On the other hand, the "dynamic" approach considers the context and interpretation of values, allowing for the reconciliation of rights and principles that are seemingly opposites, in order to minimize conflicts and preserve social justice (ROSA, 2021). Dworkin exemplifies the conflict between freedom and equality in a concrete way:

"Of course, we can define the various political virtues in such a way that conflict is in fact inevitable. Suppose we define equality in such a way that certain Socialists defined it as follows: equality means everyone having the same wealth, regardless of the choices they make about work or leisure or consumption or investment. We can define freedom in the way that John Stuart Mill and Isaiah Berlin defined it as follows: a person's freedom is their freedom to do what they want, that you want to do free from interference from third parties. Then we will certainly have one. A conflict between freedom and equality. To protect the equal distribution of wealth, we have to prohibit theft, which is a denial of freedom. If we allow... People who produce and trade goods, then inequality will appear, because some will be more talented in production than others, regardless of how often we pool resources for redistribution. So if we want to guarantee equality, we will have to prohibit trade, which is a big... interference with liberty. The first of these concessions of liberty would seem justified; we should prohibit theft. The second does not seem justified: we should not prohibit trade. But the two cases are similar, since in both we have to choose between protecting equality and protecting freedom: we cannot protect the "Two at the same time" (DWORKIN, apud ROSA, 2021, p. xx).

Based on this reflection, Dworkin proposes that justice cannot be understood solely as the distribution of resources or formal equality is not the norm, but it must integrate ethics, morality, and individual rights.



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A fair distribution of resources is a parameter of a good life, so the violation of freedoms

Individual violence affects not only the victim of the violation, but also the perpetrator, compromising the...  
social life and the very perception of justice (ROSA, 2014).

Furthermore, Dworkin suggests that freedom of expression plays a central role in shaping  
A democratic and pluralistic society. By protecting open debate, criticism, and even satire of ideas,  
This allows critical thinking to flourish and enables society to question traditions, dogmas, and  
Power structures. This perspective is highly relevant in contemporary debates.

especially in the context of *fake news* and social media, where the circulation of information —  
Right or wrong — it constantly challenges the balance between freedom and social responsibility.  
(ROSA, 2021).

Therefore, Dworkin's conception of freedom of expression highlights the need for a  
A careful balance: protecting the freedom to express ideas and criticize opinions, without allowing...  
These demonstrations violate fundamental rights or promote discrimination. The approach  
Dworkin's "dynamics" offers a theoretical framework for analyzing conflicts between rights, showing  
That reconciling freedom and equality is possible, but requires ethical reflection and interpretation.  
contextualized.

### 3. The Paradox of Tolerance (Karl Popper)

Karl Raimund Popper (1902-1994), born in Vienna, Austria, was one of the most important philosophers.  
influential figures of the 20th century, having contributed significantly to the philosophy of science and to the  
political theory. Among his main ideas, the Paradox of Tolerance stands out, presented in his  
The book *The Open Society and Its Enemies* (1945) addresses this concept, raising the question: to what extent...  
Should a society tolerate intolerance? Popper warns that unlimited tolerance is harmful because  
Intolerant groups can grow and eliminate the space for pluralistic coexistence, threatening its very existence.  
existence of a tolerant society (POPPER, 1945).

The philosopher emphasizes that tolerance does not mean absolute permissiveness. It is necessary  
distinguish between rational criticism of ideas and the promotion of practices that violate rights.  
Fundamental. Thus, freedom of expression must be preserved, but it cannot serve as a shield.  
for the spread of intolerance, discrimination or violence (ROSA, 2021). Popper observes  
that society should confront intolerance preferably with rational arguments and debate.  
public, and not through equally intolerant means. However, when the intolerant refuse to  
Dialogue is disrupted, and the principles of democratic coexistence are threatened; coercive measures may be necessary.  
justified (POPPER, 1945). In the original text, Popper states:

"Unlimited tolerance leads to the disappearance of tolerance. If we extend the..."



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Unlimited tolerance, even for the intolerant, and if we are not prepared for  
To defend a tolerant society from the onslaught of intolerance, then the tolerant will be...  
destroyed and tolerance for them. [...] We must, therefore, reserve, in the name of  
Tolerance, the right not to tolerate the intolerant. We must demand that anyone  
Any movement that preaches intolerance should be outside the law, and any incitement should be prohibited.  
intolerance and persecution should be considered criminal, in the same way as in  
cases involving incitement to homicide, child abduction, or a resurgence of trafficking.  
slaves" (POPPER, 1945, p. xx).

The Paradox of Tolerance proves particularly relevant when we analyze it.

Contemporary events on social media and in public debate. A recent example is the "Case  
"Monark," involving digital influencer Pedro Aiub, who stated:

"If the guy wanted to be anti-Jewish, I think he had the right to be."

The statement generated widespread negative repercussions, highlighting the difficulty of  
balancing freedom of expression and protection against intolerance. In light of the thinking of  
Popper, certain ideas are so harmful that they cannot be accepted under the pretext  
of unrestricted tolerance, as they represent a threat to coexistence itself.  
democratic and fundamental rights (ROSA, 2021).

Historically, Popper's concept is connected to experiences of totalitarian regimes.  
like Nazism, where society's tolerance of extremist ideologies led to  
devastating consequences, including persecution and genocide. This reinforces the need for  
to establish clear limits for tolerance, while preserving the freedom and security of all  
citizens. Thus, the Paradox of Tolerance serves as a permanent warning: society must  
We must protect pluralism, but we cannot allow intolerance to destroy it.

In summary, Popper contributes to the understanding that freedom of expression, although  
Essential, but not absolute. To guarantee an open, democratic, and just society, it is necessary  
Balancing freedom with responsibility, combating intolerant ideas with rational debate, and  
when necessary, with legal instruments. The practical application of the Paradox of Tolerance shows-  
becoming increasingly relevant in the current context, marked by the growth of extremist discourses and  
due to the spread of harmful information on digital media.

#### 4. FAKE NEWS IN THE CONTEXT OF FREEDOM OF EXPRESSION

Contemporary society is constantly evolving, and one of the most significant advancements...  
Significant developments included the creation of social networks, which allow for the massive circulation of information.  
Real-time. Currently, millions of people have immediate access to news, opinions, and content from  
various types, which broadens both the opportunities for debate and the risks associated with



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Dissemination of false or distorted information. Historically, the spread of information

Deceptive tactics have always existed, but the speed and reach provided by digital platforms have become much greater.

make the phenomenon of *fake news* especially worrying in today's society (CASTELLS, 2013).

Fake *news* generates intense discussion about the limits of freedom of expression. Although

The Federal Constitution guarantees the right to freedom of thought and expression.

intellectual, artistic and communicational (BRAZIL, 1988, art. 5, IV and IX), the question arises of how far this can be extended.

False information, deliberately produced to manipulate or misinform, can be...

protected by this right. In this context, social networks function as tools for

amplification, offering extraordinary reach and accessibility, but also enabling

Rapid spread of content without verification or commitment to the truth.

Furthermore, many digital communication channels operate with specific objectives, such as

to gain political, economic, or ideological advantage, which contributes to the proliferation of

misinformation (MOLENDÁ, 2018). This phenomenon highlights the contemporary challenge of balancing

Freedom of expression and social responsibility: while freedom of opinion is fundamental to

Democracy, however, is undermined by the intentional dissemination of false information, which compromises public debate.

It undermines individual and collective decisions and threatens fundamental rights, such as health and safety.

and the dignity of people.

Therefore, analyzing *fake news* within the context of freedom of expression requires reflection.

A critique of the legal and ethical limits of this right, highlighting the need for regulations and

mechanisms that guarantee the circulation of reliable information, without, however, restricting the

legitimate exercise of freedom of expression (REZENDE, 2020).

#### 4.1 HATE SPEECH ON SOCIAL MEDIA

The same environment that fosters the circulation of *fake news* also serves as a stage for...

Hate speech manifestations. Digital platforms enable discriminatory messages.

and inciting violence are disseminated rapidly and widely, often under the

protection of anonymity. This type of content, unlike mere unpopular opinions, has

direct potential to violate fundamental rights and generate irreparable social damage (VENTURA, 2022).

In the Brazilian legal system, freedom of expression is not absolute. The Constitution

The 1988 Federal Constitution guarantees, in its article 5, item IV, the freedom of expression of thought, but prohibits...

Anonymity is a key element in Brazilian law, and racism is classified as an imprescriptible and non-bailable crime (BRAZIL, 1988). Such

These devices serve as a guideline to curb demonstrations that go beyond the realm of criticism or...

satire can turn into attacks on human dignity, such as offenses based on race, religion, gender, or



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sexual orientation.

In addition to the risk to the safety of vulnerable groups, hate speech on social media  
It fuels the cycle of misinformation. False or distorted content is often used as  
It fuels prejudice, creating an environment conducive to intolerance and hindering dialogue.  
democratic. Thus, policies for content moderation, digital education, and rigorous enforcement of  
Current legislation becomes essential to balance the preservation of freedom of expression with  
The protection of human dignity.

Therefore, it is essential to recognize that freedom of expression, although it is one of the  
The pillars of democracy must go hand in hand with responsibility and respect for rights.  
fundamental. Combating hate speech and disinformation on digital platforms requires not  
not only state actions and regulatory policies, but also the engagement of society in promotion.  
a culture of empathy, ethics, and critical thinking. Only in this way will it be possible to guarantee a  
A truly free, pluralistic, and respectful virtual environment.

#### 4.2 Fake News in the COVID-19 Pandemic: Challenges to Freedom of EXPRESSION

During the pandemic, Brazil found itself in a situation of great...  
vulnerability, requiring action from the Federal Government and the Ministry of Health to contain it.  
spread of the virus, such as the implementation of social isolation measures, use of masks and  
vaccination campaigns (BRAZIL, 2020). In this context, the circulation of reliable information  
It has proven essential for protecting public health, but the proliferation of *fake news* has become a  
critical challenge.

In the context of *fake news*, various false claims were widely disseminated.  
including claims about early treatments and the origin of the virus. Among the rumors, the following stand out.  
News reports suggesting that Covid-19 could cause infertility in men, without any evidence to support this claim.  
There is sufficient scientific evidence to support this claim, according to official data from the Ministry.  
Health<sup>1</sup>. This misleading information generated panic and insecurity among the population, hindering the  
Adherence to preventive measures is increasing, as is distrust in healthcare institutions.

The impact of *fake news* during the pandemic was not limited to the context of physical health.  
Studies indicate that the circulation of fake news has contributed to increased anxiety.  
Depression and stress crises, especially among young people and the elderly, groups that are more vulnerable to them.  
psychological effects of social isolation and misinformation (FERREIRA; SANTOS, 2021). This  
This scenario highlights that freedom of expression is not absolute: the right to express opinions and create  
The content must be used responsibly, without jeopardizing safety, health, or rights.



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from third parties.

Thus, the analysis of the *fake news* phenomenon in the context of Covid-19 demonstrates that Freedom of expression must be conditioned by ethics and social responsibility, ensuring that Public debate should take place in a safe and harmonious manner. Thus, protecting society against Misinformation and preserving fundamental rights, such as life and health, becomes an extension necessary for freedom of expression itself, preventing the exercise of that right from becoming... collective damage (MOLEND, 2018).

## **5. FEDERAL SUPREME COURT - HABEAS CORPUS N. 82,424**

The racism case reviewed by the Supreme Federal Court (STF), already mentioned in The introduction to this work refers to Habeas Corpus No. 82.424/RS, which gained notoriety for to involve the writer and editor Siegfried Ellwanger, accused of publishing works that incited... racial discrimination and spreading hatred against the Jewish community. The main controversy The legal task was to determine whether the author's conduct was protected by freedom of expression intellectual, or it would be characterized as a crime of racism, liable to criminal prosecution (BRAZIL, 2003).

The rapporteur for the habeas corpus petition, Minister Moreira Alves, initially expressed his opinion in favor of... granting the order, understanding that Jews do not constitute a race in a biological sense, which is why the conduct could not be classified as the crime of racism as defined in Law No. 7.716/1989. The minister based his decision on the absence of physical or constitutional elements – such as the color of skin tone, eye shape, or hair texture – that would allow one to characterize the Jewish people as a distinct race (REALE, 2010).

However, the debate was not limited to a strictly biological view. In voting Later consolidated, the Supreme Federal Court recognized the breadth of the concept of racism, considering it a social and political reality, and not just a phenomenon based on physical criteria. The Minister Maurício Corrêa, who delivered the leading opinion, quoted a passage from Professor Miguel Reale's opinion. Junior, who teaches that racism is, above all, a social and political reality, without any reference to race as a physical or biological characteristic, as, indeed, the social sciences do today. day indicate" (REALE, 2010, p. xx).

The ruling highlighted that the mere reference to race, understood as a construct... From a sociopolitical standpoint, it is sufficient to encompass antisemitism within the legal concept of racism. In another Regarding the point of his vote, the Minister stated:

"Given everything that has been said, I would like to conclude that racism, far from being based on..."

The simplistic concept of race actually reflects reprehensible behavior that

This stems from the belief that there is a hierarchy among human groups, sufficient for



to justify acts of segregation, dehumanization, and even elimination of people  
(BRAZIL, 2003, p. xx).

At the end of the trial, the Supreme Federal Court denied the habeas corpus order.

consolidating the understanding that antisemitism constitutes a crime of racism, which is not subject to a statute of limitations and non-bailable offense, according to article 5, item XLII, of the 1988 Federal Constitution. The precedent It established an important milestone for the protection of human rights in Brazil, stating that... Freedom of expression, while fundamental, is not absolute and cannot serve as a shield for... hate speech and discriminatory practices (SARMENTO, 2014).

## 6. CONCLUSION

This article sought to demonstrate that freedom of expression constitutes one of the rights. fundamental and most relevant aspects in a democratic society, as it enables the articulation of ideas, The circulation of information and public debate without the repression of censorship. However, it was found that that this right is not absolute: to guarantee peaceful coexistence and respect for rights. fundamental to all, it becomes essential to recognize ethical and legal limits to the exercise of expression of thought.

When analyzing Ronald Dworkin's (2006) concept, it was found that freedom of The expression includes the right to criticize and even ridicule ideas, including religious ones, as long as there is no... violation of the dignity of individuals or groups. For the author, it is possible to question and debate conceptions. ideological principles without violating moral values and fundamental rights of others, which reinforces the need to distinguish between criticism of thought and offense to the person.

The Paradox of Tolerance, developed by Karl Popper (1945), also reinforces the idea that Freedom must coexist with responsibility. Popper questions, "To what extent should we tolerate..." "the intolerant" and concludes that a truly democratic society cannot allow The proliferation of discourses that threaten tolerance itself. Therefore, confrontation is recommended. intolerance can be countered through rational arguments, but it is recognized that when intolerance takes hold... If the integrity of social order is at risk, legal measures may become necessary for its preservation. of fundamental rights.

In the context of the Covid-19 pandemic, the destructive power of fake news became evident . The spread of false information about early treatments, vaccines, and the effects of the virus had... direct impacts on the physical and mental health of the population, generating anxiety, depression and distrust. in relation to health authorities (FERREIRA; SANTOS, 2021). This episode highlights that the Freedom of expression should not be confused with the right to spread misinformation, as the propagation of misinformation is a misinformation exercise.



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The deliberate spread of falsehoods jeopardizes life, public health, and collective well-being.

Finally, the judgment of Habeas Corpus No. 82.424/RS by the Supreme Federal Court.

It solidified the understanding that racism is a reprehensible social and political practice, regardless of...

based on biological criteria of race. As recorded in the opinion of the Reporting Justice Moreira Alves.

(BRAZIL, 2003), racism is behavior that presupposes hierarchy between human groups and

This justifies the segregation, the belittling, and even the elimination of people. This understanding reinforces that

Freedom of expression does not protect hate speech and should be limited whenever it becomes so.

A threat to human rights and human dignity.

Therefore, it can be concluded that freedom of expression, while essential, cannot be...

exercised in an unlimited manner. It must be compatible with other fundamental rights, such as

equality, dignity, and the protection of life. Only through this balance is it possible to guarantee

a truly free, pluralistic, and democratic society.

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