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## **The legal challenges of limiting freedom of expression on social media in the face of the spread of fake news in Brazil.**

*The legal challenges of limiting free speech on social media amidst the spread of fake news in Brazil*

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### **SUMMARY**

This work analyzes the legal challenges related to limiting freedom of expression on social media in the face of the dissemination of fake news in Brazil, a relevant and current topic in the context of digital expansion and the debate on internet regulation. The study aims to understand how it is possible to reconcile the protection of the essential core of freedom of expression with the need to combat disinformation in the digital environment, in light of the jurisprudence of the Supreme Federal Court and Bill No. 2,630/2020. To this end, a qualitative, deductive approach was adopted, based on bibliographic and documentary research, drawing on doctrine, scientific articles, the 1988 Federal Constitution, Bill No. 2,630/2020, and the jurisprudence of the Supreme Federal Court, with the purpose of constructing a critical and well-founded reflection on the legal challenges involved. It was found that freedom of expression, although broadly guaranteed by the Constitution, is not absolute, allowing restrictions when necessary to protect other fundamental rights and democratic values. These restrictions are essential to reduce the threat to social stability.

It is concluded that the fight against fake news must occur through mechanisms of subsequent accountability, capable of ensuring the free debate of ideas, avoiding prior censorship, and strengthening democracy.

**Keywords:** Freedom of expression. Fake news. Social media. Supreme Federal Court. Bill No. 2,630/2020.

### **ABSTRACT**

This work analyzes the legal challenges related to limiting freedom of expression on social media in the face of the dissemination of fake news in Brazil, a relevant and current topic in the context of digital expansion and the debate on internet regulation. The study aims to understand how it is possible to reconcile the protection of the essential core of freedom of expression with the need to combat disinformation in the digital environment, in light of the jurisprudence of the Supreme Federal Court and Bill No. 2,630/2020. To this end, a qualitative, deductive approach was adopted, based on bibliographic and documentary research, drawing on doctrine, scientific articles, the 1988 Federal Constitution, Bill No. 2,630/2020, and the jurisprudence of the Supreme Federal Court, with the purpose of constructing a critical and well-founded reflection on the legal challenges involved. It was found that freedom of expression, although largely guaranteed by the Constitution, is not absolute, allowing restrictions when necessary to protect other fundamental rights and democratic values.

These restrictions are fundamental to reducing the danger to social stability. It is concluded that the fight against fake news must occur through mechanisms of subsequent accountability, capable of ensuring the free debate of ideas, avoiding prior censorship, and strengthening democracy.

**Keywords:** Freedom of expression. Fake news. Social media. Federal Supreme Court. Bill No. 2,630/2020.



## 1. Introduction

Freedom of expression is a fundamental right and constitutes an essential pillar for... Consolidation of the Democratic Rule of Law. This guarantee is expressly provided for in... The 1988 Federal Constitution guarantees freedom of expression, whether in the public sphere or in the public sphere. intellectual, artistic, scientific or communicational use, without the need for prior licensing or censorship. However, its nature is not absolute, being subject to limitations that have become a legal challenge. even greater with the advent of social media and the spread of *fake news*.

In this sense, the exercise of freedom of expression has expanded significantly. giving it new dimensions and immediate reach on unprecedented levels. However, this This expansion has brought with it dilemmas regarding the limits of this fundamental right, especially Given the proliferation of false information, so-called *fake news*, capable of generating repercussions social, legal and institutional factors in society.

These consequences unfold in different dimensions. On a social level, one observes... compromising the formation of public opinion, fostering intolerance, and weakening the Democratic dialogue, resulting in instability and ideological conflicts. In the legal field, This highlights the need for clear legislation to combat *fake news*, capable of protecting the... society is protected from the harmful effects of misinformation, without violating the essential core of freedom of expression. expression.

Furthermore, the proliferation of harmful information, coupled with the absence of a legal basis... Adequate for addressing this, it contributes to the weakening of the legitimacy of the Democratic Rule of Law. It is in the face of these multifaceted repercussions that the legal challenge arises. to be investigated.

Given this scenario, the following research problem arises: what are the legal limits? The role of freedom of expression on social media in combating the spread of *fake news*, and how. It is possible to legally reconcile this limitation with the protection of this fundamental right in light of jurisprudence of the Supreme Federal Court and the *Fake News* Bill (PL 2630/2020), without Would this constitute prior censorship?

In this context, the overall objective of this work is to understand how it is possible to reconcile Legally, the protection of the right to freedom of expression in the fight against the spread of *fake news*. *news* on social media, in light of the jurisprudence of the Supreme Federal Court and Bill No. 2.630/2020.

In order to achieve the proposed objective, this study is guided by the following objectives. specific: (i) analyze the concept and historical factors of the right to freedom of expression and its legal limits in the Constitution of the Federative Republic of Brazil; (ii) examine the phenomenon of *fake news* on social media and its social, political, and legal repercussions; (iii) investigate the



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jurisprudence of the Supreme Federal Court and Bill No. 2,630/2020 as instruments of combating the spread of *fake news*; and (iv) verifying how it is possible to reconcile protection Freedom of expression is crucial in the fight against *fake news*, without constituting prior censorship.

This research is justified by the social, legal, and academic relevance of the topic.

In the social sphere, the widespread dissemination of *fake news* has compromised the formation of public opinion.

In addition to undermining trust in democratic institutions, it becomes essential in the legal sphere.

to understand how it is possible to establish limits to freedom of expression, considering the

existing legislative gaps and controversies surrounding Bill No. 2,630/2020 and the

jurisprudence of the Supreme Federal Court. In this way, the study contributes to the debate.

academic in exploring ways to reconcile the protection of this fundamental right with the fight to *fake news*.

Regarding the methodology, a deductive approach of a qualitative nature was adopted.

with the objective of analyzing the limits imposed on freedom of expression in the face of the dissemination of

*fake news* on social media in Brazil. To this end, a bibliographic research was carried out through

from the analysis of books, doctrines and scientific articles, in addition to documentary research,

specifically the 1988 Federal Constitution, Bill No. 2,630/2020 and decisions

jurisprudential precedents of the Supreme Federal Court, in order to construct a critical and well-founded reflection.

Regarding the legal challenges involved.

## **2. Freedom of expression as a fundamental right: conceptual aspects and historical evolution in Brazil**

Freedom of expression is a fundamental right and constitutes one of the essential pillars of...

A democratic state governed by the rule of law, ensuring all citizens the possibility of expressing their views.

freely express your ideas, opinions, and thoughts on various societal issues, without suffering prior censorship.

In this sense, the right to freedom of expression, as taught by Moraes (2025), is intrinsically related to political participation and the realization of the democratic principle, a since its protection is not limited to the expression of ideas and thoughts, but also encompasses opinions, beliefs, value judgments and criticisms directed at public officials, elements that are indispensable for citizens' participation in collective life.

Thus, it can be observed that Moraes, in expanding the concept of freedom of expression to Beyond the expression of thoughts, it is understood that this right is a fundamental tool. for the strengthening of democracy, insofar as it guarantees individuals the possibility of To actively participate in public debate and to oversee state officials.

However, it is important to point out that this right is not absolute, as in certain cases...



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In such situations, careful consideration is necessary to avoid infringing on other fundamental rights. guaranteed by the Federal Constitution as the protection of honor, image, and dignity of the person. human.

This broad protection, which includes the right to criticize and express controversial opinions, is the basis for... The constitutional prohibition of prior censorship. Thus, the legal restriction on the exercise of this right is... in the subsequent accountability for possible excesses committed, such as offensive statements, discriminatory or offensive to the honor of others.

The need to protect freedom of expression stems from the fact that it is not a... unilateral right. According to doctrine, the Federal Constitution recognizes freedom of expression. It has a dual dimension: the individual one, which ensures the right to express oneself freely without undue interference, such as the expression of their dignity and autonomy and the collective, which guarantees to society has the right to be informed and to have access to the opinions of others, an essential aspect for the exercise of citizenship and for the strengthening of public debate (BARROSO, 2024).

The importance of protecting the collective aspect of freedom of expression is essential for to ensure that society receives accurate information, forming the basis for enforcement Legal action against misinformation.

To understand the robustness of this structure, it is crucial to examine the relationship between freedom. and subsequent responsibility was defined throughout the evolution of Brazilian constitutions. Therefore, To understand the scope of this right, it is relevant to briefly present the historical milestones. which contributed to its consolidation in the Federal Constitution of 1988.

In this trajectory, the framework for freedom of expression was consolidated based on two... Fundamental political documents, among which the Declaration of the Rights of Man and of the Citizen stands out. Citizen of 1789. This historical milestone was ensured in its article 11. " the free communication of ideas And the right to express opinions is one of the most precious rights of man. Every citizen may therefore speak, to write and print freely, but being responsible for abuses of this freedom under the terms provided for by law" (FRANCE, 1789).

Later, another essential milestone was the Universal Declaration of Human Rights. proclaimed in 1948 by the General Assembly of the United Nations. In its article 19, the document reaffirms and expands the scope of freedom of expression by stating that "every individual has the right to Freedom of opinion and expression; this right includes the freedom to hold opinions without interference. and to seek, receive and transmit information and ideas by any means and regardless of "borders" (UN, 1948).

Thus, it can be observed that these two international normative documents They represented the starting point for what is now understood as freedom of expression, in addition to to serve as a basis for the formulation of international treaties and national legislation.



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In Brazil, freedom of expression has been present since the Constitution of the Empire.

However, it was limited and merely symbolic in nature, restricted to certain groups and reflecting...

the authoritarianism of the monarchy. As highlighted by Marinoni, Mitidiero and Sarlet (2025, p. 444):

[...] it is necessary to note that such freedoms have been present in the Brazilian constitutional trajectory since the Imperial Charter of 1824. Indeed, according to Article 179, IV, of that Constitution, "everyone may communicate their thoughts, by words, writings, and publish them through the press, without dependence on censorship; provided that they shall be held accountable for the abuses they commit in the exercise of this right, in the cases and in the manner that the law shall determine."

This device demonstrates the formal provision of law since the Empire, even though its effectiveness would be restricted by a political regime distinct from the current democratic model. From this This milestone marked the beginning of the journey towards freedom of expression in Brazil, which, throughout history, has progressed... through phases of expansion and restriction according to the political context of each era.

In 1891, the first republican Constitution was promulgated after the fall of the monarchy and of absolutism. The new constitutional text, however, maintained the same provision already existing in The 1824 Charter regarding freedom of thought, one of its main innovations being the prohibition to anonymity.

Later, with the 1934 Constitution, Brazil made progress in comparison. In contrast to previous constitutions, by recognizing social rights and reaffirming, in article 113, item IX, the Freedom of thought as a fundamental right.

This right, however, remained subject to limitations, such as prior censorship. public shows and entertainment, the prohibition of anonymity, and the guarantee of the right of reply. Furthermore, the publication of books and periodicals did not depend on authorization from the public authorities, being Propaganda promoting war or violent processes that could compromise public order is prohibited. political or social (FERNANDES, 2023).

It can be observed, therefore, that the 1934 constitution, in comparison to previous constitutions, the right to freedom of expression was not yet fully effective, remaining conditional on restrictions, such as prior censorship imposed by the State itself, demonstrating that, although While its exercise was guaranteed, it was controlled with the aim of preserving political and moral stability. of society.

However, the scenario changed with the 1937 Constitution, established within the context of the State. New during the Getúlio Vargas government, which drastically reduced the guarantees. fundamental, especially with regard to freedom of expression.

During this period, the Department of Press and Propaganda was created in December 1939. (DIP), the body responsible for exercising censorship over theater, film, radio broadcasting, and literature. social , Politics and the press, consolidating state control over freedom of expression. (BARROSO, 2024).



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In contrast to the restrictions imposed in the previous Constitution (1937), the  
The redemocratization that followed the Estado Novo culminated in the promulgation of the 1946 Constitution.  
which brought back the guarantee of freedom of expression, giving it greater effectiveness through  
as provided for in Article 141, § 5. The original wording of the provision stated:

§ 5 - Freedom of expression is guaranteed, without censorship, except for public shows and entertainment, each person being responsible, in the cases and manner prescribed by law, for any abuses committed. Anonymity is not permitted. The right of reply is guaranteed. The publication of books and periodicals will not depend on authorization from the Public Authorities. However, propaganda of war, of violent processes to subvert the political and social order, or of racial or class prejudice will not be tolerated. (BRAZIL, 1946).

Although the content was substantially similar to that of the 1934 Constitution,  
It represented progress by adding a prohibition against prejudice based on race or class, reinforcing the character  
democratic and inclusive of the new constitutional order.

However, this stability did not last, because in 1964, Brazil suffered a coup d'état.  
State. From that moment on, an authoritarian regime was established, characterized by severe  
Restrictions on fundamental rights. According to Rogério and Lins (2017), this period was marked by  
the enactment of Institutional Acts (AI) that suppressed constitutional guarantees, established  
Mechanisms of censorship, political persecution, and repression of all those who opposed the regime.  
military.

In this context of curtailed freedoms, the 1967 Constitution was promulgated, which  
This legally consolidated the military regime. Article 150, § 8 of this Charter maintained the guarantee of...  
Freedom of thought, in a manner almost identical to that provided for in the 1946 Constitution.  
However, in 1968, still under the military regime, Institutional Act No. 5 (AI-5) was issued, considered...  
The most authoritarian of the institutional acts, this one suspended several constitutional guarantees.  
and institutionalized prior censorship, which directly affected newspapers, magazines, music, and plays.  
theatrical and audiovisual productions.

And in 1969, the repression was intensified with Constitutional Amendment No. 1/1969, which  
It modified Article 153, § 8, of the 1967 Constitution, stipulating that "publications and  
"Expressions contrary to morality and customs" (BRAZIL, 1969). With this, the country experienced more  
a historical landmark of censorship, characterized by severe persecution of opponents who...

They were demonstrating against the government.

The break with the military regime and the promulgation of the 1988 Federal Constitution (CF/88),  
A new paradigm for freedom of expression was established, prohibiting any form of censorship.  
prior authorization, as established by article 220, § 2. However, the Constitution itself relativizes this right.  
clarifying that it is not absolute and that, in case of abuse, the agent may be  
held liable both civilly and criminally.

It is precisely in this delicate balance between prohibiting censorship and holding people accountable.





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The further challenge lies in reconciling the protection of this fundamental right with the fight against...

Misinformation on social media.

## **2.1 Freedom of expression in the 1988 Constitution and its legal limits**

With the process of redemocratization, the 1988 Federal Constitution ended the period.

An authoritarian system characterized by the curtailment of freedoms and the suspension of individual rights.

In the new legal framework, freedom of expression was broadly guaranteed, encompassing not only

not only the expression of thought, but also other related guarantees, such as freedom of speech.

Information, freedom of communication, and freedom of the press.

This right is inherent to the consolidation of the Democratic Rule of Law, as it stems from...

essential foundations of the Republic, such as the dignity of the human person and political pluralism,

provided for in Article 1 of the Federal Constitution. This link reaffirms that the possibility of

The expression should be understood as a fundamental right, protected both in the individual sphere.

both in the collective sphere. And the safeguarding of this guarantee is expressly outlined in

Article 5, item IV, of the Federal Constitution, which states that "the expression of thought is free,

"Anonymity is prohibited" (BRAZIL, 1988).

In addition to this provision, other constitutional provisions reinforce the protection of freedom of

expression, such as article 5, item IX, and article 220, which prohibits any type of censorship of a certain nature.

political, ideological or artistic. On this point, Barroso (2024, p. 540) highlights:

[...] in the chapter dedicated to social communication, article 220 prohibits any restriction on the manifestation of thought, creation, expression and information, in any form, process or medium. Along these lines, it establishes that no law may constitute an impediment to journalistic freedom (§ 1), prohibits any censorship of a political, ideological or artistic nature (§ 2) and dispenses with any type of license from the authority for the publication of printed media (§ 6).

The treatment of the subject matter, as can be seen, was exhaustive.

Thus, it is clear that the 1988 Constitution, in exhaustively addressing the matter,

It sought to eliminate any possibility of censorship, ensuring full freedom of communication.

social.

However, the Constitution itself establishes that this right is not absolute, by prohibiting...

anonymity as expressly provided for in Article 5, IV of the Federal Constitution allowing restrictions

when necessary to protect other fundamental rights, such as honor, image, and privacy.

and security.

The prohibition of anonymity aims to guarantee the possibility of identification and eventual...

Accountability for abuses or excesses in the exercise of freedom of expression. These limits.

Constitutional rights manifest themselves through redress mechanisms, which aim to safeguard them.

from third parties without compromising the essence of freedom of expression.

When this freedom is exercised abusively, infringing on the rights of others, it applies-

if the reparation mechanism foreseen in item V of article 5 of the Federal Constitution of 1988, guaranteeing the right to



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A proportional response to the offense, as well as corresponding compensation. Thus, it is observed... that the Brazilian legal system adopts the principle of subsequent (a posteriori) liability, allowing sanctions to be applied after the complaint, according to the nature of the damage caused.

In this sense, Moraes (2024) highlights that freedom of expression, although it ensures the right to demonstrate allows for subsequent liability, both civil and criminal, for those responsible. content disseminated, including the exercise of the right of reply. However, there is no provision. constitutional provision that allows for the preventive restriction of the content of public debate based on assumptions about the effects that certain demonstrations may have on society.

Therefore, the effectiveness of subsequent accountability is tied to rigorous control. For that subsequent responsibility does not become an instrument of intimidation or restriction. In the veiled defense of freedom of expression, the Judiciary must act with caution and rigor, applying the principle of proportionality.

This rigor required in judicial action is fundamental. (Second, Mendes and Cavalcante Filho) (2025), define proportionality in a negative sense, to ensure that the limitations of a Fundamental rights should be minimal, restricting them only to the extent strictly necessary. Therefore, the Judiciary performs the triple proportionality test, which involves analyzing the suitability of the measure to the objective, the necessity of the chosen means as the least burdensome, and the Proportionality in the strict sense, that is, the balance between the costs and benefits of the restriction.

Therefore, it is observed that freedom of expression must be exercised in a way that... balanced, so as not to violate other fundamental rights. To ensure this balance, the Power The judiciary weighs the conflicting rights, verifying whether any restrictions are... proportionate and necessary, in order to guarantee the essential core of freedom of expression. be preserved.

However, the application of the principle of proportionality proves to be even more complex in The digital environment, due to the speed of information dissemination, especially on networks. social issues, which creates challenges for subsequent accountability.

In this context, it becomes essential to analyze the dissemination of fake news in order to To understand the legal limits of freedom of expression in the face of the new dynamics of the internet.

### **3. The phenomenon of fake news on social media and its impact on society.**

The guarantee of freedom of expression ensured by the 1988 federal constitution, under the The logic of subsequent responsibility and the prohibition of prior censorship has faced new challenges in In the digital environment, especially on social media, the misuse of this right is reaching unprecedented dimensions. It is in this context that the intentional dissemination of information emerges. false, known as *fake news*.





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Fake news is understood as the deliberate dissemination of false content or deceptive, designed with the aim of manipulating public opinion and obtaining advantages of a certain nature. In this sense, according to Souza (2021, p. 76), *fake news* can be defined as "the dissemination of information, rumors, gossip, and false information presented in A form of news, with the purpose of deceiving recipients to misinform or achieve an objective. political, economic, social, electoral or legal."

It is observed that the author highlights the intentionality present in the publication of content. false, demonstrating that *fake news* is not merely a matter of misinformation, but a A cunning practice, orchestrated with the purpose of manipulating social perception. Its effects They manifest themselves in the collective and institutional sphere, as they promote misinformation and amplify... Polarization leads to political, economic, and social harm, as well as compromising the... to undermine the credibility of the press and to erode trust in institutions.

When analyzing the phenomenon of *fake news*, it is crucial to understand that not all information... Incorrect information constitutes manipulation. The intention of whoever creates or shares fake news constitutes The central element that differentiates manipulative information from merely erroneous information.

In this sense, it is important to emphasize that freedom of expression does not protect *fake news*. That is, fake news produced and shared with the aim of deceiving or manipulating. On the other hand, when it comes to unintentional error, committed in good faith, by someone acting in a way... Diligent in the pursuit of the truth, the demonstration remains protected and supported by... right (BRANCO; MENDES, 2024).

From this distinction, it is noted that the central element lies in the bad faith of the author of the A deliberate publication, whereas in a misunderstanding, on the other hand, the communicator believes it to be true. Information without the intent to deceive. This understanding is fundamental for analyzing the repercussions of Misinformation in the digital environment.

Currently, the digital environment, especially social media, has established itself as one of the primary sources of information for the population, often surpassing traditional media outlets. communication. This change reinforces the role of these platforms as spaces for public debate, by At the same time, it intensifies the spread of false information. The phenomenon of *fake news*. This therefore constitutes a significant challenge for society and the legal system, due to... ease of sharing and the speed at which information spreads.

In this digital context, several factors contribute to the expansion of the circulation of information, making verification of its accuracy increasingly challenging. With decentralization of the media, which have ceased to focus solely on traditional media outlets, such as radio and television, in order to expand to any user connected to the internet, the dissemination of Information became widespread and continuous. In this scenario, verifying what is published becomes essential.



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even more complex, especially given the advancement of artificial intelligence, whose misuse can to enhance manipulation strategies (ALEVI; MARQUES; FERRACINI, 2025).

Therefore, the challenge is not limited to the published content, but also to the mechanisms. technological factors that enhance its diffusion, playing a decisive role in the spread of information.

In addition to the speed and reach of information in the digital environment, it is necessary to observe that... The very functioning of the platforms directly influences how *fake news* spreads. They propagate. The recommendation systems of digital platforms are not neutral, as they are programmed by humans with a focus on economic interests and gains. Therefore, the logic The algorithm prioritizes content that generates the most attention and profit, at the expense of relevance or reliability, resulting in a more intense circulation of low-quality information or false compared to serious journalism (SANTINI, 2025).

From this perspective, the spread of *fake news* fueled by becomes evident. The algorithms and the lack of efficient filters put the democratic rule of law to the test. This occurs because it increases the challenge of balancing the right to free speech with the responsibility of... To prevent practices that could harm the integrity of public debate.

Thus, even when the intent to manipulate is clear, the very algorithmic logic of the networks Social media contributes to amplifying the spread of false content, making the phenomenon of... *Fake news* is an even greater challenge for society and the legal system. In the political arena, the The spread of *fake news* has demonstrated direct repercussions in shaping public opinion and in... The stability of democratic institutions. In this context, the speed with which the "lie about The dissemination of "facts" on social media, a phenomenon that is part of so-called "democracy," can be distorted. The election result, by preventing the free formation of the popular will and stifling serious debate of ideas, (BRAZIL, 2024).

In the legal field, the phenomenon of *fake news* presents specific challenges, requiring Measures that curb abuses without constituting prior censorship. Bill 2.630/2020, for example. They propose measures for transparency and accountability of digital platforms to combat... *fake news*. While the Supreme Federal Court, through Inquiry 4.782/DF (the *fake news inquiry*), has adopted Measures to curb the misuse of the right to freedom of expression in the dissemination of news. falsehoods, including the suspension of social media accounts, highlighting the need to balance the protecting democracy while respecting fundamental rights (MARTINS, 2024).

Therefore, judicial action and the regulation of platforms must observe the principle of subsequent responsibility, ensuring that punishments occur after the fact and that the essential core of Freedom of expression must be preserved. Considering the social, political, and legal repercussions of The presentation of *fake news* highlights that the phenomenon requires a detailed analysis of its legal boundaries.



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freedom of expression in Brazil, especially in light of the jurisprudence of the Supreme Federal Court and the measures  
The proposals outlined in Bill No. 2,630/2020 will be explored in greater detail in the following chapter.

#### **4. The jurisprudence of the Supreme Federal Court (STF) and Bill No. 2,630/2020: the search for a balance between freedom of expression and the fight against fake news.**

An analysis of the actions of the Supreme Federal Court (STF) and Bill No. 2,630/2020

This shows that the Brazilian legal system faces an unavoidable dilemma: the need to

To combat criminal disinformation in response to the constitutional prohibition of prior censorship.

Thus, the search for a legal balance between protecting the essential core of freedom.

Expression of power and the fight against *fake news* require the recovery and application of essential principles of...

Constitutional theory within the Brazilian legal system, such as the principles of  
proportionality, reasonableness, and subsequent liability.

Freedom of expression, while essential, is not absolute under Brazilian law.

According to the doctrine of Mendes and Cavalcante Filho (2025), the relativity of fundamental rights

This stems from two main factors: the conflict with other rights (such as honor and privacy) and the

The fact that no right can be used as a shield for the practice of illegal acts.

This premise immediately eliminates the interpretation that the right to free expression

It guarantees complete immunity in the digital environment. Furthermore, it demonstrates that the exercise of this right must...

should be accompanied by responsibility, especially when it comes to demonstrations that may

causing harm to third parties. In this sense, the discussion of the legal debate focuses on the analysis of

Limits to freedom of expression in a democratic state governed by the rule of law.

Following this line of reasoning, the authors further emphasize that the solution for reconciliation lies...

in establishing a clear distinction between protected content (such as opinion, criticism or information) and

unlawful conduct (such as abuse of rights). The exercise of freedom of expression is only protected when

The individual operates within the realm of lawful acts, making it a contradiction in terms to define conduct.

simultaneously as right and wrong (MENDES; CAVALCANTE FILHO, 2025)

Based on this premise, it becomes clear that exercising this right requires a certain stance.

responsible on the part of the agent who expresses himself, since his protection does not cover conduct

illicit. This distinction is crucial to avoid trivializing the law, ensuring that it is not used

to legitimize inappropriate behaviors, such as spreading misleading information or

offensive.

Furthermore, the Supreme Federal Court (STF) has reaffirmed its understanding that it is not valid to claim freedom of speech.

expression of thought to disseminate ideas that constitute crimes, such as offenses or...

Intentional dissemination of misinformation. The central landmark of this position was the trial.

from Habeas Corpus No. 82.424/RS (Siegfried Ellwanger case), in which the court affirmed that freedom



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Freedom of expression does not constitute a safeguard against illegal conduct.

Furthermore, this understanding has been reiterated in contemporary case law, such as For example, Inquiry 4.781/DF (the *fake news inquiry*), in which the Supreme Federal Court highlighted that freedom of This expression cannot be used as an instrument to attack and destroy democracy. Thus, the principle of subsequent responsibility delimits the scope of this freedom by establishing limits to its exercise.

In addressing the problem of *fake news* in the digital environment, the Supreme Federal Court reinforced The idea that freedom of expression does not encompass abuses or practices contrary to the law. The point. The culmination of this intervention occurred in Inquiry 4.781/DF, in which the Court decided that... Suspension of accounts on social media. As cited by Martins (2024), the Minister's vote Alexandre de Moraes explained the justification for the Court's intervention:

Initial investigations [...] indicate the possible existence of organized use of computer tools [...] to create, disseminate, and spread false information or information capable of harming the institutions of the Rule of Law, notably the Supreme Federal Court (STF). For this reason, the Court decided on the "exceptional suspension of individual guarantees, which cannot be used as a true protective shield for the practice of illicit activities" (MORAES, 2025 *apud* MARTINS, 2024, p. 731).

Inquiry No. 4.781/DF, better known as the *fake news inquiry*, despite its Its relevance in the fight against disinformation in Brazil has raised questions about the legality of its establishment and the compatibility of certain acts with the constitutional prerogatives of Public Prosecutor's Office. This is because part of the legal community questioned the legitimacy of... The Supreme Federal Court (STF) is not responsible for initiating and conducting the investigation, as this task belongs to the Public Prosecutor's Office. as provided for in article 129, item I, of the CRFB/88.

Although these discussions persist, they do not negate the relevance of the inquiry in The fight against *fake news* only highlights the challenge of reconciling state intervention with... constitutional guarantees of freedom of expression. This scenario highlights the urgency of measures... Restrictive measures in the digital environment must strictly adhere to the principles of legality and proportionality. and the protection of basic citizen rights.

This case law demonstrates that the Court's intervention is not equivalent to prior censorship, but with subsequent application of liability after proof of illicit use of Freedom of expression. In addition to inquiry no. 4.781/DF, other Supreme Federal Court rulings such as ADPF no. 572 and ADI No. 7,261 followed the same understanding that freedom of expression, even While it is an essential right for a democratic state governed by the rule of law and public debate, it is not absolute.

Regarding the ruling in ADPF No. 572, in which the Supreme Federal Court analyzed the constitutionality of... In the *fake news* inquiry (Ordinance GP No. 69/2019), the Court reaffirmed the possibility of limitation. Freedom of expression is restricted when it poses a risk to democratic institutions, as can be inferred:



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Claim of non-compliance with a fundamental precept. ADPF. GP Ordinance No. 69 of 2019.  
Preliminary matters resolved. Judgment on precautionary measure converted to judgment on the merits. Case sufficiently educated. Incitement to close the Supreme Court. Death threat and imprisonment of its members. Disobedience. Request dismissed in specific and proper terms.  
Factual circumstances exclusively related to the challenged ordinance. Limits. Document.  
Informative. Monitoring by the Public Prosecutor's Office. Binding Precedent No. 14. Subject. limited to demonstrations that indicate a real risk to the independence of the judiciary.  
Protection of freedom of expression and of the press.

Initially, it is a political party with representation in the National Congress and, therefore, universally legitimized and competent to the jurisdiction of abstract constitutional review, and The power of attorney meets the "minimum description of the object worthy of hostility." The allegation of inappropriateness The issue of indirect offense is intertwined with the merits of the case, since the author argues that the act The challenged decision directly violated the Constitution. And, following the jurisprudence of this Court, it is the responsibility of the court to decide whether to... The Supreme Federal Court is responsible for determining what should be understood within the constitutional system. Brazilian, as a fundamental precept and, given the vocation of the 1988 Constitution to reinstate the A democratic state governed by the rule of law, founded on the "dignity of the human person" (Constitution, art. 1, III), personal liberty and the guarantee of due process of law, and its corollaries, as well as the principle of natural judge, these are fundamental precepts. Finally, the subsidiarity required for the applicability of ADPF resigns itself to the ineffectiveness of other means and, here, no other means seems, in fact, to solve all problems. the alleged violations arising from the initiation and subsequent decisions. 2. Within the limits of this legal proceedings, in the face of incitement to close the Supreme Federal Court, death threats, or threats of imprisonment of its members. members, of proclaimed disobedience to judicial decisions, allegation of non-compliance with precept The fundamental claim was deemed entirely unfounded, in accordance with the express terms in which the request was formulated. at the end of the initial petition, to declare the constitutionality of Ordinance GP No. 69/2019 while Article 43 of the RISTF is constitutional, under the specific and particular factual circumstances of this act. exclusively involved. 3. The proper meaning of the aforementioned act is thus established so that the procedure, within the scope of an informative piece: (a) be accompanied by the Public Prosecutor's Office; (b) (c) limit the scope of the inquiry to demonstrations that, denoting a real risk to the independence of the Judiciary (CRFB, art. 2), by Through threats against members of the Supreme Federal Court and their families, they are attacking the... Established powers, against the rule of law and against democracy; and (d) observe the protection of Freedom of expression and of the press, as guaranteed by the Constitution, is excluded from the scope of the inquiry. journalistic articles and posts, shares or other expressions (including personal ones) on the internet, whether anonymous or not, as long as they are not part of financing schemes and Mass dissemination on social media. (STF - ADPF: 572 DF, Rapporteur: EDSON FACHIN, Date of Judgment: June 18, 2020, Full Court, Publication Date: May 7, 2021.



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Similarly, the Supreme Court, when considering ADI No. 7,261, expressed its opinion on the matter. constitutionality of resolution 23.714/2022 of the Superior Electoral Court (TSE), which had as The objective is to combat misinformation spread by *fake news* during elections. The thesis The winner reinforced the understanding that freedom of expression is not a license to attack... democracy or to spread lies in the electoral process, legitimizing the possibility of subsequent monitoring and accountability, including content removal, as noted:

Abstract. Constitutional and electoral law. Constitutionality of TSE Resolution No. 23.714/2022. Addressing disinformation capable of undermining the integrity of the electoral process.

The claim that the Superior Electoral Court (TSE) in exercising its regulatory authority and police power in relation to advertising. electoral law usurps the legislative competence of the Union, since the Specialized Court has been dealing with on the topic of combating disinformation through repeated case law precedents and acts regulations issued over the past few years. 2. TSE Resolution No. 23.714/2022 does not consist in the exercise of prior censorship. 3. The dissemination of fake news, in the short term of the process. Electoral politics can have the power to occupy all public space, restricting the circulation of ideas and freedom. The exercise of the right to information. 4. The phenomenon of disinformation disseminated through the internet, If not monitored by the electoral authority, it has the power to restrict free and informed political action. of the voter's will. 5. Absent elements that, at this procedural stage, would lead to the decree of Given the unconstitutionality of the challenged rule, a deferential attitude must be adopted in relation to The Superior Electoral Court has the authority to organize and conduct general elections. 6. Measure Preliminary injunction denied. (STF - ADI: 7261 DF, Rapporteur: EDSON FACHIN, Judgment Date: 10/26/2022, Full Court, Publication Date: ELECTRONIC PROCESS DJe-237 DIVULG 22- (Public 11-2022, 23-11-2022)

In this regard, the court reiterated that the State may adopt proportionate prerogatives and appropriate measures to curb the abuse of this right, especially when the demonstrations are characterized intentional disinformation undermines the democratic order and the integrity of institutions. Republicans.

However, the role of the judiciary, despite being crucial in defining the contours of freedom, remains crucial. The expression of this situation highlighted the immediate need for a comprehensive solution from the Legislative branch. It is in this context that Bill (PL) No. 2,630/2020 emerges, presenting itself as the main... initiative to establish a system of transparency, accountability and the fight against Misinformation in the digital space.

Currently, Bill No. 2,630/2020, which is being processed in Congress, has as its objective... The objective is to create the Brazilian Law of Freedom, Responsibility, and Transparency on the Internet. This The proposed law aims to create rules on the transparency of social media and, above all, the





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responsibility of providers in combating disinformation in the virtual environment (TEIXEIRA, 2024).

Thus, the purpose of the bill is to transfer some of the responsibility for moderation to content for platforms, imposing care obligations and transparency mechanisms on them, especially for sponsored content.

In line with the discussion on the legal reconciliation between combating Disinformation and the safeguarding of fundamental rights, Article 4 of Bill No. 2,630/2020 (BRAZIL, 2020), clearly defines its central objectives and establishes that:

Article 4. This Law has the following objectives: I – to strengthen the democratic process by combating inauthentic behavior and artificial content distribution networks, and by promoting access to diverse information on the internet in Brazil; II – to defend freedom of expression and prevent censorship in the online environment; III – to seek greater transparency in the moderation practices of content posted by third parties on social networks, guaranteeing the right to a fair hearing and full defense; and IV – to adopt mechanisms and tools for providing information about boosted and advertising content made available to the user.

It is clear that Article 4 of the Bill, demonstrates an attempt to balance the fight combating misinformation while protecting fundamental rights, aiming to defend freedom of expression and strengthening of transparency and informational diversity. Furthermore, the device demonstrates a concern regarding prior censorship, while also acknowledging the need of legal mechanisms that hold abusive behavior accountable, thus proposing an environment A safer and more responsible digital world.

Similarly, the aforementioned Bill, in its article 6, complements the objectives. outlined in Article 4, establishing regulatory and accountability measures for the platforms. digital tools aimed at protecting freedom of expression, access to information, and freedom. circulation of ideas on the internet, establishing obligations for social media providers and services of private message, so that providers can block accounts that are inauthentic or automated. Identified, meaning the device aims to guarantee transparency and authenticity in the digital environment.

By establishing obligations for social media providers, the concern of legislators must reconcile a necessary limitation on freedom of expression with the preservation of their essential core, in order to avoid prior censorship. It is observed that this approach aligns with the understanding of the Supreme Federal Court (STF), which recognizes that freedom of expression must be protected, but It allows for proportionate restrictions when necessary to curb abuses of rights and misinformation. in society.

Thus, the legislator's role, through the obligations imposed on the platforms... digital technology complements the role of the judiciary by explaining subsequent liability, and should... subject any intervention to the triple proportionality test. As highlighted by Martins (2024, (p. 733), the principle of legality and purpose determines that the limitation of a fundamental right



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be expressly stated in law and pursue a legitimate purpose foreseen in the legal system:

The Judiciary should be guided by four pillars to direct its activity: a) exceptionality of judicial intervention; b) proportionality of judicial intervention (least possible restriction on freedom of expression); c) subsequent intervention (as a rule); d) impossibility of acting ex officio; e) agility; f) effectiveness.

Applying these criteria carefully ensures that penalties for dissemination ensuring that fake news does not undermine the most important aspect of freedom of expression, guaranteeing that the measures are always proportionate and justified.

Thus, the legal reconciliation between the protection of the right to freedom of expression and the fight against *fake news* proves to be viable, and finds its basis in the strict application of the theory. constitutional. The solution does not require the creation of a law that imposes prior censorship, that is, a legislation that mandates review before publication on the internet, including on social media, but rather in the application of the principle of proportionality aimed at balancing freedom and responsibility.

Furthermore, it is important to highlight that the challenge is not limited to harmonizing protection of freedom of expression and the fight against the spread of fake news, but it also involves Defining who should act as mediator in this scenario. Delegating this function exclusively to The judicial system can result in a slow and ineffective model, unable to keep up with the... The speed of the dynamics inherent in social networks. On the other hand, transferring this entirely Responsibility to digital platforms, based on their internal rules, commits to democratic legitimacy of the process.

A viable alternative would be the establishment of state regulatory criteria, formulated based on broad debates between government and society, capable of guiding the actions of the platforms. In this way, they would begin to act not based on particular corporate interests, but on... collectively defined guidelines, using their technological resources to preserve the debate. public service for the benefit of society.

In summary, the reconciliation between the constitutional guarantee of freedom of expression and the Combating misinformation spread by *fake news* is possible, provided that the measures adopted... observe the criteria of proportionality and subsequent responsibility, ensuring that the fight- If *fake news* doesn't result in prior censorship.

## 5. Conclusion

The aim of this study was to understand how it is possible to reconcile the protecting the core of freedom of expression by combating *fake news* on social media. in light of the jurisprudence of the Supreme Federal Court and Bill No. 2,630/2020, known popularly known as the " *Fake News Bill*".



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To that end, the evolution of freedom of expression in Constitutions was initially analyzed.

Brazilian rights until their consolidation as a fundamental right in the 1988 Federal Constitution.

indispensable to the democratic rule of law and political pluralism, which prohibits any

forms of prior censorship. However, as analyzed throughout this study, it is a right.

which is not absolute and is subject to limitations whenever its exercise affects others.

fundamental rights of third parties.

Furthermore, with the advent of social media, this right has begun to face new challenges.

Regarding its limitations in the face of the proliferation of *fake news*, given the speed and reach...

Global disinformation threatens democratic stability and violates fundamental rights.

such as honor, image, and other constitutional guarantees. This is because, on social media,

Information and expressions of opinion have their power amplified, demanding a response.

more effective and faster legal process.

Given this scenario, an analysis of the jurisprudence of the Supreme Federal Court and the Project

Law No. 2,630/2020 demonstrated that the reconciliation between the protection of the essential core of freedom

Freedom of expression and the effective fight against misinformation is possible and feasible within the legal framework since

that harmonization strictly observes the principles of proportionality and responsibility.

further.

Thus, the jurisprudence of the STF (Supreme Federal Court) has shown that the court has sought to define the contours.

legitimate rights to freedom of expression are protected through the application of the principle of subsequent liability.

This understanding reinforces the idea that abuse of rights is not protected by freedom of expression.

allowing sanctions to be applied after the demonstration. This guideline is relevant because

ensures that the fight against disinformation takes place within constitutional limits, keeping away from

hypothesis of prior censorship.

In parallel to this, Bill No. 2,630/2020 aims to regulate the platforms.

digital technologies, establishing mechanisms for transparency and accountability to strengthen the fight against

Misinformation in Brazil. Although the text has provoked heated debates, mainly in

Chamber of Deputies and among legal experts, due to concerns about the form of governance of

Platforms and the risk of censorship, the project represents a significant regulatory advance because

Establish controls aligned with the preservation of freedom of expression.

Therefore, in response to the research, it is concluded that freedom of expression on social media should...

be supported by the principles of proportionality and subsequent liability, so that

to establish legal limits that allow for the fight against disinformation without compromising the core.

essential to freedom of expression.

It is also noted that the effectiveness of this conciliation requires cooperation between the bodies.

public and the consolidation of a regulatory framework that ensures fair accountability and



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a posteriori, in order to guarantee a balance between communicative freedom and security.

informational. Furthermore, it is necessary to build a responsible digital culture on the part of...

A collective effort based on media literacy, involving the State, digital platforms, and society.

Finally, this research shows that combating misinformation requires a

an interdisciplinary approach encompassing different areas, such as law, communication, and technology.

Its relevance lies in its potential to contribute to studies that seek to understand more thoroughly.

in-depth analysis of the legal, social, and institutional mechanisms capable of balancing the right to

Freedom of expression is strengthened through measures to combat the spread of *fake news*.

democracy in the digital environment.

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