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Digital security as a fundamental right.

Digital security as a sphere of fundamental rights

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SUMMARY

This paper addresses the fundamental nature of the right to digital security, aiming to discuss the right to digital security as a sphere of fundamental rights. To this end, through bibliographic analysis and qualitative analysis, it seeks to question how the categorization of fundamental rights occurs. As a premise, this work deals with diffuse rights, therefore applicable and enforceable against all, with the preliminary result being the possibility of applying the idea and concept of fundamentality, given that, for this to be the case, it is necessary to fulfill objective requirements, which are verified, in a preliminary analysis, in the concept and possible practice of the right to digital security. This right should not be understood only within the scope of security for banking or business transactions, but within a broader range of interpretations. Thus, for didactic purposes, the requirements are understood as: formal fundamentality and material fundamentality, which are seen in the idea and scope of the right to digital security, considering the breadth and possibilities arising from the current context of life in society and social praxis. Therefore, the idea of security, in a broad sense that includes aspects such as avoiding manipulation by *fake news*, is part of this vision.

and others.

Keywords: Law. Digital. Security. Digital Security.

ABSTRACT

This study addresses the fundamentality of the right to digital security, aiming to discuss the right to digital security as part of the sphere of fundamental rights. To this end, it draws on bibliographic research, employing a qualitative approach, to examine how the categorization of fundamental rights occurs. As an underlying premise, the present work treats this right as a diffuse right, and therefore applicable and enforceable erga omnes. Its preliminary findings indicate the possibility of applying the notion and concept of fundamentality, given that such classification requires the fulfillment of objective criteria. These criteria are preliminarily identified in the concept and potential implementation of the right to digital security, which should not be understood solely within the scope of security for banking or contractual transactions, but rather within a broader interpretive framework.

For didactic purposes, the requirements are understood as: formal fundamentality and material



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fundamentality, both of which are identifiable within the idea and scope of the right to digital security. This is assessed considering the breadth and possibilities arising from contemporary societal life and social praxis. Therefore, within this perspective, the notion of security encompasses a wide range of dimensions, including aspects related to preventing manipulation through false information (fake news) and other similar phenomena.

Keywords: Law. Digital. Security. Cybersecurity.

1. Introduction

This paper aims, in short, to discuss the fundamental nature of the right to digital security, by understanding and comprehending digital security from the perspective of fundamental rights. in a global context of life, encompassing aspects of real and digital life within the sphere of protection of Constitutional protection, aimed at guaranteeing the right to digital security, life, liberty, and equality. The problems experienced in the context of digital life promote the need for the idea of Digital security is paramount, given the rapid spread of scams, fraud, and the proliferation of *fake news*. frighteningly large.

This paper, therefore, aims to discuss digital security as a sphere of fundamental rights, having as a premise, and therefore, as specific objectives, to understand what These are fundamental rights; understanding their fundamental nature and verifying their framework... Digital security within the scope of fundamental rights. To that end, as a methodological resource, the This work falls under bibliographic research, reviewing legal doctrine. constitutional, combining it with contemporary views on existing needs, through books, Documents and documentaries on the subject matter, using qualitative parameters.

2. On the fundamental nature of fundamental rights

Before any further consideration, it is necessary to understand what rights are. fundamentals and their fundamentality. From this premise, it is possible to understand the core of discussion of the present work.

Sarlet, Marinoni and Mitidiero (2025, p. 247) argue that the Brazilian Federal Constitution It is the first to include the expression "Fundamental Rights and Guarantees" in its dogmatic body, being an important recognition of basic rights and guarantees to which the Brazilian State is bound in an attempt to fulfill the maxim of promoting the dignity of the human person. After all, it brings with it... enshrined rights, classifying them and, in the current constitutional order, "adhering to what is "It can be recognized as the dominant trend in the field of comparative law," in the author's words. Sarlet also points out that internationalist doctrine enshrines such rights as classified in within the framework of human rights, given their inherent importance and relevance. However, he emphasizes that The terminology adopted by the Federal Constitution becomes more "refined," in line with the The will of the original constituent.



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Thus, according to Sarlet, Marinoni and Mitidiero (2025, p. 248), it is observed that all rights Fundamental rights are a human right and, therefore, are established within an important framework. However, the authors note a relevant aspect: not every human right is a fundamental right. But every fundamental right is a human right. This dichotomous perspective is not ambivalent in its entirety, since it requires that the constitutional legislator, whether through constituent power whether original or derived, recognize the existence of certain fundamental rights within the scope of constitutional fundamentality. Similarly, Martins (2025, p. 568) understands such distinction.

Having understood this distinction, in order to avoid misunderstandings, we arrive at a question about What are fundamental rights in our constitutional system?

Now, knowing that there is a derivation of fundamental rights (because they originate from human rights), it is understood that its connection to identity and the perspective of personhood are latent. This is because, considering that human rights, as Martins (2025) points out, p. 568) are rights inherent to the person, it is inherent to the condition of fundamental rights, by a As a matter of logic, these rights are also linked to the promotion of human dignity. And, in Upon reading the constitutional text itself, this premise is confirmed, as it establishes inherent rights to people and the public, even going so far as to limit the power of the State.

It is interesting to consider that limiting the State and its actions also promotes the idea of the fundamental nature of fundamental rights. After all, the premise of the dignity of the human person. As a vector for response, it is a necessary historical consideration in the face of abuses committed against the The use of the State and its bureaucratic machinery by various regimes at different points in history.

From a historical perspective, the legal primacy of the value of human dignity is a response to the profound crisis suffered by legal positivism, associated with the defeat of fascism in Italy and Nazism in Germany. These political and military movements rose to power within the framework of legality and promoted barbarity in the name of the law, as Luís Roberto Barroso teaches. It suffices to recall that the main defendants in Nuremberg invoked compliance with the law and obedience to orders issued by competent authority as justification for the crimes committed. In this regard, the trial of Eichmann in Jerusalem stands out, in relation to which Hannah Arendt develops the idea of the "banality of evil," seeing in Eichmann a being devoid of thought and incapable of attributing ethical judgments to his actions. (PIOVESAN, 2025, p. 28)

The idea of respecting life, among other fundamental rights, permeates the idea of dignity for each person as an ultimate value, in itself, as a basis for understanding the barbarities experienced. In the past, as Piovesan narrated in the passage above, the aim was to prevent history from repeating itself, and Therefore, we see scenes like those experienced in those historical moments of the past.

And, considering the historical progression of humanity, human rights and the Social rights have been expanded, from the perspective of a latent need, as a bias of historical and social confirmation, as Piovesan listed in the excerpt referenced above.



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It is important to consider the point made by Martins (2025, p. 573), in which he understands the eminent
The professor explained that fundamental rights may or may not be explicitly stated in the text of the Constitution.
Federal, given the very recognition of this condition conferred by the constitutional text itself, doing so through §2 of article
5 of the CRFB/88 (Brazil, 1988)¹, becoming
implicit.

Thus, whether explicitly stated or implied by the constitutional text, the central question is
in understanding how the fundamental nature of a right or fundamental rights is established,
whose emerging response is dignity as the paramount premise in Brazilian constitutional expression,
This precept serves as a benchmark for the fundamental nature of fundamental rights.

In this sense, Sarlet, Marinoni and Mitidiero (2025, p. 263) point to the existence of a criterion.
of paramount importance to the conference or to the idea of existence and conformity to the fundamentality of a
Fundamental right: the filter of dual fundamentality. This dual fundamentality can be summarized as follows:
two aspects, the formal and the material.

From this perspective, in order for a right to be considered within the necessary criteria...
Fundamentally, it is necessary to verify this dual fundamentality simultaneously.
In such a way that one cannot be dissociated from the other, as they are inseparable from one another.

Formal fundamentality is verified, basically, in the process of positivation or
Standardization of the norm, whether implicit or explicit, is composed of two
elements: insertion into the constitutional framework, as a norm of constitutional status (and,
therefore, subject to formal and substantive constitutional review, in addition to aspects of
immutability because it is or can be considered an entrenched legal norm); the other aspect is the
Binding nature to public and private entities (the aspect of fundamental horizontal or vertical duty).

Regarding material fundamentality, this premise is verified within the prism of
The content of the right being questioned regarding its fundamental nature. This is because it "implies analysis
of the content of rights, that is, of whether or not they contain fundamental decisions about the
structure of the State and society, especially, however, with regard to the position occupied within them.
by the human person" (SARLET, MARINONI and MITIDIERO, 2025, p. 264).

Furthermore, Bulos (2024, p. 363) clarifies the existence of fundamental rights.
lacking regulation, emphatically stating the existence of fundamental rights and guarantees.
subject to state regulation, as they are incomplete in the 1988 Constitution.

In light of what has been presented in this topic, it is clear that the list of fundamental rights
It is broad and its fundamentality is justified both in the social (material) aspect of human experience,

¹ Article 5, §2. The rights and guarantees expressed in this Constitution do not exclude others arising from the regime and the principles adopted by it, or international treaties to which the Federative Republic of Brazil is a party.



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as in the realm of legal codification, whether it mentions it directly or leaves its idea implicit.

And, when considering aspects of life today, it becomes clear that social relationships and interactions

Things are no longer the same, given the digitalization of social life, the use of social networks, and other factors.

aspects that lead us to a social life in cyber environments. And this is clearly demonstrated by

if you examine the most recent positions of the Courts in Brazil, especially the STF (Supreme Federal Court), which, through the

Topic 5332², It established the interpretation to be given by Brazilian courts regarding Article 19 of the Marco Civil da Internet (Brazilian Internet Bill of Rights).

Civil Code of the Internet (Law No. 12.965/2014).

3. The digitalization of social life and the use of networks in contemporary society.

Understanding digital security as a fundamental right also requires an analysis of

The socio-technical context in which this right emerges. Contemporary society finds itself

profoundly marked by the digitalization of daily life, in which basic social practices —

Communication, work, consumption, education, leisure, and even affective relationships—all begin to occur

mediated by digital platforms. As Doneda (2020, p. 41) observes, “informational life

"It has become a structuring element of human life," so data protection and security

Digital issues have ceased to be merely technological topics and have taken center stage in the very...

democratic organization.

This phenomenon was also pointed out by Shoshana Zuboff (2019, p. 96), who stated that:

The 21st century is witnessing the consolidation of a new logic of power — surveillance capitalism — in which every gesture, movement, interaction, and preference of the individual is recorded, analyzed, and potentially used for commercial and behavioral purposes.
(ZUBOFF, 2019, p. 96)

This observation demonstrates how algorithmic logic has come to shape social practices.

influencing everything from consumption patterns to political decisions. This reality has taken hold, according to

Bruno Bioni (2021, p. 58), a state of “structural informational asymmetry” between users and

Large platforms, increasing risks, discrimination, and human rights violations.

Furthermore, the increased access to social media has also generated parallel consequences.

relevant to digital security, especially with regard to the actions of children and

teenagers. According to UNICEF data (2022), more than 80% of Brazilian teenagers between the ages of 12

Children aged 17 and under use social media daily, often without proper supervision. This

Massive participation exposes children and adolescents to risks such as grooming, child pornography,

Deepfakes, high-risk viral challenges, extortion, and behavioral manipulation.

² Brazilian Supreme Court (STF): Social media networks are liable for posts even without a court order; see the legal argument, available at: <https://www.migalhas.com.br/quentes/433462/stf-redes-respondem-por-posts-mesmo-sem-ordem-judicial-veja-tese>, accessed 11/17/2025.



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According to CNN Brazil, in 2025, a case involving the "Deodorant Challenge"

It went viral, leading to the death of an 8-year-old child after reproducing content seen on TikTok.

That same year, the Federal Police carried out operations against groups involved in the recruitment of minors in

Platforms like Instagram and Discord demonstrate the scale of the risks faced by young people.

in the digital sphere.

The specialized literature recognizes this scenario as an "accelerated digitization and

"disordered," an expression used by Raquel Recuero (2020, p. 27) to explain that:

Social networks have not only broadened the reach of human interactions, but have also destabilized the boundary between public and private, making individuals vulnerable to practices of surveillance, manipulation, and symbolic violence. (RECUERO, 2020, p. 27)

This situation reinforces the need to understand digital security as a right that

It goes beyond the technical dimension, becoming part of a project for the comprehensive protection of the human person in Life online.

In Brazil, cases of abuse involving minors have fueled legislative debates.

and judicial decisions. Courts have increasingly recognized the responsibility

The objective of platforms in cases of child exposure. In 2022, the STJ (Superior Court of Justice) ruled that providers...

They must be held accountable for the delay in removing content that violates the rights of children and adolescents.

even when generated by third parties (STJ, REsp 1.960.195/SP).

All these elements reinforce the argument that digital security cannot be...

Understood in a restricted sense, as merely preventing fraud or cyberattacks. This refers to

a structuring landmark of contemporary citizenship, requiring public policies and mechanisms

regulatory issues, digital education, and protection of vulnerable groups.

Thus, the digitalization of life and the centrality of social networks reveal that the right to

Digital security is fundamentally formal (by virtue of Constitutional Amendment No. 115/2022), as well as

of fundamental material importance, insofar as it proves indispensable for human dignity,

Psychosocial integrity and democratic participation itself in today's information society.

4. Digital security and its framing as a fundamental right.

Based on a theoretical understanding of fundamental rights, one can move on to analysis.

digital security as an autonomous and protective legal category.

The first major milestone in Brazilian legislation regarding digital security was the law

Carolina Dieckmann (Law 12.737/2012), which came into effect after the actress's privacy was violated.

and more than 36 intimate photos leaked on the internet, also suffering an attempted extortion. This law

It ensured the classification of cybercrimes, such as the invasion of computer devices to obtain,

To tamper with or destroy data without authorization.



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Subsequently, in 2014, the Brazilian Internet Bill of Rights guaranteed the principles and guarantees foreseen.

in law for internet use, introducing regulations on fundamental rights, such as

Freedom of expression and some aspects of the right to privacy and data protection. He was

enacted with the aim of regulating the fundamental right to citizenship within the digital environment, the

Freedom of expression, privacy and confidentiality of communications, net neutrality and...

The inviolability of data within networks. This milestone was of such importance that it was recognized.

internationally recognized as groundbreaking legislation, it is marked as an essential step towards

The inclusion of digital security as a fundamental right emerged later.

After the consolidation of the Brazilian Internet Bill of Rights as a fundamental regulatory framework for the

guaranteeing rights in the digital environment, the enactment of the General Data Protection Law (LGPD)

It represented the most significant legislative advancement in Brazil in the field of security and governance.

informational.

Enacted in 2018 and fully implemented subsequently, the LGPD (Brazilian General Data Protection Law) inaugurated a...

legal framework designed to ensure the protection of privacy, informational self-determination and

Responsible handling of personal data in the digital (and *offline*) ecosystem, structuring principles,

Rights and duties applicable to public and private entities (with respect to fundamental duties).

Notably in line with international trends – especially the General Regulation.

The European Union General Data Protection Regulation (GDPR) – the law fostered the implementation of practices such as

Data processing aimed at preventing fraud, among other practices to ensure data protection.

(Pineiro, 2021).

In this institutional context, the creation of the National Data Protection Authority stands out.

Data Protection Authority (ANPD), incorporated into the federal public administration through Law No. 13.853/2019.

As outlined by the legislator, the ANPD (National Data Protection Authority) is initially part of the Presidency of the Republic and has...

Its central responsibility is to ensure the effectiveness and enforcement of the LGPD (Brazilian General Data Protection Law), as well as to guide agents of...

treatment and promoting a data protection culture in the country. Subsequently, with the advent of the Law

No. 14,460/2022, by its article 1 (BRAZIL, 2022), is transformed into an autonomous entity, with the status of

special nature, enjoying technical and decisional autonomy, under the terms of article 55-B, Law No.

13.709/2018 (BRAZIL, 2018).

The existence of a specialized regulatory authority, as Doneda (2021) observes, is

an essential requirement to ensure the realization of the rights of the holders and harmonization between

Technological innovation, economic development, and safeguarding individual liberties. Thus,

The LGPD (Brazilian General Data Protection Law) and the ANPD (National Data Protection Authority) form an institutional framework that repositions data protection as...

fundamental right — recognition subsequently formalized by constitutional amendment — and

as a structuring axis of digital citizenship in Brazil.

In 2022, the enactment of Constitutional Amendment No. 115/2022 (EC 115/2022)



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It represented a paradigmatic milestone in the Brazilian legal system by elevating, in a way...

This expressly elevates the right to the protection of personal data to the category of a fundamental right, enshrined in Article 5, item LXXIX, of the 1988 Constitution of the Federative Republic of Brazil: "It is guaranteed, in the In terms of the law, the right to the protection of personal data, including in digital media." (BRAZIL, EC 115/2022, art. 5º, LXXIX).

In this way, the rule not only reinforces the data subject's control over their data, but also establishes... The Union has exclusive competence to legislate on the protection and processing of personal data, conferring greater legal certainty to the regime established by the General Law on the Protection of Personal Data for to legislate on the protection and processing of personal data (LGPD – Law No. 13.709/2018), as understood. Doneda (2021).

In this sense, according to Zanatta (2023, pp. 72-73), personal data and protection under guardianship state-owned entities begin to fall within the sphere of diffuse and collective rights, going beyond the sphere of individuality, so that it "projects itself onto the vectors of surveillance and societal domination." This This statement shows that Constitutional Amendment 115/2022 fits into a broader context of guaranteeing autonomy. Informative and human dignity, not limited only to the technical aspect of data processing.

Furthermore, Bioni (2021) emphasizes that:

The institutionalization of a national data protection authority and the constitutional enshrinement of the right to informational self-determination indicate that Brazil no longer operates under a merely contemporary regime, but one effectively aligned with international governance standards regarding personal data. (BIONI, 2021, p. 49).

This stance reinforces the importance of the National Data Protection Authority. (ANPD) as an essential regulatory body for the operationalization of both the LGPD and the EC 115/2022.

In practical terms, this means elevating the right to data protection to the status of a right. This fundamental issue has direct repercussions for public and private operators. Legal scholars warn that This elevation to the status of a fundamental right has effects on the interpretation of norms, requiring... The State must provide appropriate treatment so that the principles established by the LGPD (Brazilian General Data Protection Law) are respected. throughout, including the sphere of accountability of public and private agents when it fails. observance. And, from this perspective, it is about understanding and comprehending that the direction of a culture of Data protection is essential from the *design* of a business to the reality of data breaches, with the with respect to the necessary points established by legislation in the sphere of accountability (Souza *et al.*, 2020, p. 14).

In short, it is observed that the material and formal aspects, for the purposes of fundamentality, They are properly filled out, which, in itself, constitutes digital security as an important factor. The sphere of fundamental rights today.



5. Freedom of expression and social networks: the pseudo-neutrality of networks

Digital communication has gone from being a complementary tool for human interaction to being... to become the main space for the circulation of discourses, symbolic disputes, and the construction of identities. We live under a regime of informational sociability in which "we not only use networks, but "We have come to live in them and through them" (CASTELLS, 2016, p. 45). The internet has become the space structuring social life, and social networks, its permanent public square, altering political behaviors, forms of work, affective bonds, and the very understanding of reality.

The digitalization of daily life has radically changed the place that technology occupies in the constitution. of subjectivity. Thus, cyberculture inaugurates a dynamic of collective intelligence, in that the construction of knowledge involves new regimes of social interaction mediated technologically (LÉVY, 2014, p. 67). However, this phenomenon does not occur in a neutral way or romantic, since the governance of the platforms is guided by economic interests and mechanisms of control over information flows.

Social media operates a system of continuous surveillance, fueled by what Shoshana Zuboff calls this surveillance capitalism. In a key passage, the author states that:

Surveillance capitalism unilaterally claims human experience as free raw material for translation into data. This behavioral data is analyzed and converted into predictive products with the goal of anticipating future actions. There is no... Transparency, there is no symmetry of power, there is no possibility of authentic choice. It is an economic regime that transforms human freedom into an instrument of prediction and control. (ZUBOFF, 2020, p. 14)

In other words, every seemingly innocent interaction – a comment, a like, a search – is incorporated into behavioral prediction systems that determine the content consumed and the form how subjects are classified, segmented, and manipulated. This informational architecture, Structured using opaque algorithms, it generates relevant political effects, impacting processes. electoral dynamics, polarization dynamics, and the democratic space itself, as evidenced in the case Cambridge Analytica and its global consequences³.

In this scenario, social networks not only enable communication, they shape it. Byung-Chul Han argues that contemporary society is transforming into an environment of hyper-exposure, in which the logic of transparency acts as a form of surveillance and normalization of behaviors. According to the author:

The society of transparency does not promote freedom, but rather a regime of coercion.

³ For the purpose of expanding knowledge, it is suggested to watch the documentary The Social Dilemma, available on Netflix, at [link to Netflix]. which deals with algorithmic targeting.



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Eliminating the barriers between the public and private spheres produces surveillance and conformity. Hypercommunication does not deepen relationships; it only makes them shallower and more utilitarian, suppressing the interiority and negativity necessary for the constitution of subjectivity. (HAN, 2021, p. 22)

The pseudo-naturalness of networks consists precisely in the belief that these environments
These would be spontaneous spaces of expression, where individuals simply exercise their communication in a way...
Simple and direct. The idea that *"everyone has a voice"* is seductive, but insufficient, as it ignores the...
algorithmic mediations that guide the form and scope of discourse. It therefore circulates in a
A territory governed by invisible structures that define what goes viral and what disappears.

This lack of critical awareness regarding the materiality of digital communication gave
This leads to a significant increase in harmful practices: disinformation, hate speech,
Virtual lynchings, *deepfakes*, financial scams, emotional extortion, and cybercrimes involving children and adolescents.
According to a report by SaferNet Brasil (2024)⁴, complaints of
crimes of child pornography, enticement and sexual extortion involving children and
The number of teenagers has increased significantly in recent years, indicating a particularly challenging environment.
Vulnerability within the internet, according to data from SaferNet.

In short, the behavioral transformation linked to social networks and the digitalization of
Socialization brings with it various factors, also aiding in the discovery of levels of violence.
within social relationships, even outside the cyber environment, as understood by the Map.

Regarding violence, according to IPEA:

The digital transformation of society, while helping to reveal the high levels of violence that permeate social relations (including intra-family and school-related violence, such as cyberbullying), also brings with it new relationships that heighten the fear of crime. This is the case with fraud following the theft or robbery of cell phones, which can cause significant losses to victims, often exceeding the value of the stolen device. (CERQUEIRA; & BUENO – org., 2025)

It is important to emphasize in these contexts that the trivialization of digital violence is accompanied by...
from the mistaken belief that networks constitute a space of legal immunity. However, the
The Superior Court of Justice has already established the understanding that freedom of expression does not authorize
offense, discrimination or abusive speech and that providers can be held liable when,
Aware of the illegality, they fail to act to stop it (STJ, REsp 1.660.168/DF). This is, therefore, a
a sphere regulated by law and permeated by constitutional values, especially dignity,
Plurality and democracy.

The circulation of information on social networks has direct impacts on democratic truth. Hannah

⁴ It is important to consider that there are many possibilities for verification in these contexts of inappropriate use of networks. A website for consultation that can improve the understanding and visualization of these practices is available at the following link : <https://indicadores.safernet.org.br/> where the indicators are presented in accessible infographic form.



Arendt warns that:

"Freedom of opinion is a farce if information about the facts is not guaranteed. The manipulation of reality destroys politics and breaks the very human condition of understanding the world in common." (ARENDT, 2008, p. 57)

This understanding eliminates the false assumption of absolute spontaneity and affirms that...

Digital communication takes place under the normative domain of fundamental rights, which includes...

Protection of personality and personal data.

Thus, it is clear that technological tools are embedded in our daily lives, not

If there are any doubts or questions regarding this. However, as Toffoli clarifies for us.

(2021, p. 32), they have directly influenced life, personal relationships and even the way of being

To consume products and services. And this scenario, obviously, brings with it several benefits.

responsibilities and control needs, both personal and social, given that it is "a scenario

subject to the massive and often malicious dissemination of false and harmful information.

society as a whole, whether through human action or the action of robots.

In this context, the influence of social media (such as Facebook, Instagram, and others) is significant.

social reality in the present day. According to O'Neil (2020), the influence of Facebook goes beyond

political manipulation, even affecting aspects of personality, managing to manipulate, by

algorithms, the psychological state of people, achieving mass results. This premise is even brought up in a

documentary shown on Netflix, called "The Social Dilemma"⁵.

Thus, the need for protection of life and safety of people is evident, including in

digital environment, seeking to ensure the means necessary for the basic protection of rights to

freedom, the free development of personality and privacy, adapting norms (whether by

creation or current use) to the social realities experienced by society and at the same speed as

existing changes, as Pinheiro (2021, p. 65) clarifies. After all, net neutrality,

The principle established by the Brazilian Internet Bill of Rights presupposes aspects that have been

disregarded by algorithms and by the *Big Tech companies* themselves.

The indiscriminate use of *fake news* to obtain various advantages (including

politics), the illegal use of data by industry giants, as listed by Macedo Júnior (2021, p. 253), which

They demonstrate "a new, complex and dangerous world for democracy and freedom of expression".

They demonstrate the need for mechanisms that protect the individual and collective sphere of rights.

Personality and fundamental rights. Currently, basic protection is being provided, in light of...

⁵ The Social Dilemma, a Netflix documentary, can be viewed and accessed on the platform. Accessed on 02/17/2025.

⁶ *Big tech companies* are technology companies that work with data, such as Meta (Facebook, Instagram, WhatsApp), Google, X (formerly Twitter), among others. They are large conglomerates of companies that work with technology.



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legislative omission on the subject, due to general rules (such as the LGPD) and case law, with

Emphasis is placed on the performance of the Brazilian Supreme Federal Court, with the advent of the judgment of RE [Extraordinary Appeal].

1,037,396 (topic 987) and 1,057,258 (topic 533), which brings with it limits to freedom of expression,

with the possibility of holding networks liable, according to the interpretation given by the Court to article 19 of

Brazilian Internet Bill of Rights.

6. Fake news, (in)security and social life

The concept of *Fake News* currently transcends the simple notion of false news. It is about of a complex and intentional phenomenon of disinformation that encompasses the creation and dissemination misleading content with the aim of manipulating public opinion, generating profit, or causing harm. political and social. This idea permeates the post-truth context of an era of rapid change. production and circulation of information as outlined by Alves and Maciel (2020).

This term, as Waack (2021, pp. 245-250) states, is not new and is currently in evidence. starting in the second half of 2018, as the journalist states. However, the characteristic What distinguishes contemporary fake news is its viral nature, driven by social media algorithms. social media, which creates "filter bubbles" and echo chambers, amplifying the reach and credibility of false narratives. Moreover, given the complexity, Toffoli (2021, p. 33) states that he understands it to be The term is inadequate, given the difficulty in defining its meaning.

My criticism of the use of the expression "*fake news*" is not isolated. Others question the use of the term, especially because of the difficulty in accurately defining its content. As Diogo Rais states, "*Fake news* has taken on an increasingly diverse meaning, and this breadth tends to make its diagnosis impossible. Ultimately, if an expression means everything, how can we identify its appropriate treatment?" Given the aforementioned difficulty, the High-Level Expert Group on Fake News and Disinformation, established by the European Commission – which leads discussions on the topic within the European bloc – presented a report in 2018 with a series of recommendations for combating false content, including abandoning the use of the expression "*fake news*" and instead using "*disinformation*," for two fundamental reasons... (TOFFOLI, 2021, p. 33)

Current misinformation manifests itself in multiple forms: from completely new news... From fabricated stories to the manipulation of facts out of context, including sensationalist headlines, edited videos, and distorted images, it is an instrument of information warfare that undermines trust in... institutions and the press, with serious consequences for democracy, public health, and security. legal.

Brito (2017) understands *fake news* as an American expression that means "news "False." This news information does not represent reality, but it is shared on... internet sources, especially social media sources, are often presented as truthful. However, as outlined by Toffoli, the A more modern understanding exists within a broader context and, therefore, given the form, it is understood... The author (and Minister) argued that the definition would become obsolete.



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And although fake news and malicious rumors are perennial phenomena in history...

Human communication, the current socio-technical context imposes a transformation that is, fundamentally qualitative. Misinformation — a more appropriate term in legal circles and Academics at the expense of *fake news* — it's no longer an isolated event, but a phenomenon. systemic, as discussed by various authors and the European community itself, given that it is Applied phenomenology globally. The exponential advancement of technology and the popularization of Social networks have transformed the information ecosystem, allowing for the dissemination of... Misleading content occurs in a viral and widespread manner, as it is "potentiated by collection and use." "unbridled dissemination of users' personal data on the internet" (TOFFOLI, 2021, p. 33).

In the legal and social context, the impact of this *fake news* (disinformation) materializes in a blatant violation of personality rights, subjective rights that guarantee physical integrity and The moral compass of the individual, among other things, is often used under the guise of freedom of expression.

7. Final considerations

This study sought, through document analysis and literature review, to outline the aspects of the fundamental nature of digital security, whose premise is based on aspects of fundamentality. formal and material, in the face of the currents of events that occur within the social context. With the advent of the insertion or imposition, albeit for various reasons, of a digital life, in which it is The practice of diverse discourses is commonplace, among which is the practice of crimes under the guise of Freedom of expression necessitates greater rigor and increased security, and it is up to... The Brazilian state is responsible for creating mechanisms that provide a secure digital environment.

In the first part of this work, the aim was to provide an understanding of how [something] is born or How does one construct an idea of fundamentality, allowing for an understanding of what is and what is meant? This is necessary for fundamental rights, within a legal and social context, to be considered as such. In this chapter, it was understood that a fundamental right needs a dual fundamentality to to be considered a fundamental right, arising from a formal context (provision in law, still that is implied) and a material context (the core of the law, the subject matter it deals with, which may be worked on and addressed even within the context of constitutional review).

In a second phase, the issue of digital life and the use of social networks was raised, in a In an increasingly digital world, even human interactions are subject to the scrutiny of existence. on social media. After all, if you don't have social media, you don't even exist (as Marilena already pointed out). Chaúí in an interview with Rede Brasil de Comunicação, which can be seen in newspaper and radio reports: <https://jovempan.com.br/opinioao-jovem-pan/comentaristas/davis-alves/se-voce-nao-esta-nas-redes-social-you-don-t-exist.html>, by Daniel Alves).

In the third part, he spoke about digital security and its framing as a right.



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fundamental, going through legal instruments that already provide legal protection within the legal framework-
Brazilian Constitution, addressing some points regarding cybersecurity.
(*cybersecurity*).

In the final points, themes were raised that contrast with the right to security.
Digital issues at certain times, such as freedom of expression on social media, and the need for net neutrality.
of the networks and their non-existence in the face of a market that refuses to have effective security measures,
claiming harm to a digital society in the face of regulatory frameworks that may be introduced.
conceived or even implemented, as well as the phenomenon of *fake news* and the process of
misinformation that has repercussions on aspects of digital insecurity and social life outside of social networks, there is
Given the existing repercussions, both in the social and political fields.

Given this, understanding that digital security is a pressing need within the
From a legal and constitutional perspective, it is understood that it is more than a right that may arise from
Sub-constitutional norm. After all, the constitutional text itself already addresses security aspects.
digital, requiring adequate regulation, with the purpose, among other aspects, of...
to proceed with holding platforms and *big tech companies*, which hide in the shadows of civil liability, appropriately liable.
freedom of expression, net neutrality, and the premise of an attempt to impose...
governments regarding what they should or should not decide.

Finally, it is understood that the topic is not yet exhausted, as more is needed.
Considerations, especially when the topic contrasts with the dynamics of fundamental rights. However,
It is understood that the right to digital security is not a sub-branch of the social right to security, but rather...
an autonomous right, in which the premise of its existence is justified by the existence of social facts.
that justify it.

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