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Law and hate speech on social media: limits to freedom of expression.

Law and hate speech on social media: limits to freedom of expression

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SUMMARY

This study examines the legal and constitutional limits of freedom of expression in the face of the spread of hate speech on social media, in light of the 1988 Federal Constitution and the actions of the Supreme Federal Court. Although freedom of expression is recognized as one of the fundamental pillars of the democratic order, its application is not absolute, encountering legitimate restrictions when it conflicts with other rights of equal importance, such as the dignity of the human person, equality, and the protection of vulnerable groups. Hate speech—understood as expression that disqualifies, belittles, or incites discrimination against individuals based on identity characteristics—represents a concrete threat to Democracy and Human Rights.

The digital environment, favored by the decentralized structure of networks and the algorithmic logic of amplification, has consolidated itself as a privileged space for the dissemination of extremist and discriminatory content. Therefore, addressing this problem requires a legal approach that, in accordance with constitutional principles and the jurisprudence of the Brazilian Supreme Court (STF), harmonizes the right to free expression with the protection of the fundamental rights of victims, guaranteeing the accountability of perpetrators and the preservation of a pluralistic, inclusive, and respectful public space.

Keywords: Freedom of expression; Hate speech; 1988 Federal Constitution; Supreme Federal Court; Fundamental rights; Democracy; Social networks.

ABSTRACT

This study examines the legal and constitutional limits of freedom of expression in the face of the spread of hate speech on social media, in light of the 1988 Federal Constitution and the actions of the Supreme Federal Court. Although freedom of expression is recognized as one of the fundamental pillars of the democratic order, its application is not absolute, encountering legitimate restrictions when it conflicts with other rights of equal relevance, such as the dignity of the human person, equality, and the protection of vulnerable groups. Hate speech—understood as the expression that disqualifies, belittles, or incites discrimination against individuals based on identity characteristics—
represents a concrete threat to Democracy and Human Rights. The digital environment, favored by the decentralized structure of networks and the algorithmic logic of amplification, has consolidated itself as a privileged space for the dissemination of extremist and discriminatory content. Given this, addressing this problem requires a legal approach that, in accordance with constitutional principles and the jurisprudence of the Supreme Federal Court, harmonizes the right to free expression with the protection of the fundamental rights of victims, guaranteeing the accountability of the perpetrators and the preservation of a plural, inclusive, and respectful public space.

Keywords: Freedom of expression; Hate speech; 1988 Federal Constitution; Supreme Federal Court; fundamental rights; Democracy; Social networks.

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Introduction

The consolidation of Information and Communication Technologies (ICTs), in particular the social media has reshaped the landscape of the public sphere, offering a space of vast reach and Unprecedented speed for the expression of thought. This digital transformation, Celebrated as a breakthrough for freedom of expression and democratic participation, it brought with it A paradox of a legal and social nature: the accelerated spread of hate speech . This scientific article contributes to the analysis of this delicate balance, examining its limits. constitutional and legal safeguards that must be imposed on freedom of expression in the face of demonstrations that They violate the dignity of the human person.

Freedom of expression is recognized as a fundamental right (Article 5, paragraphs IV and IX of the Federal Constitution of 1988) and an indispensable pillar for the maintenance of a society. democratic and pluralistic (GENNARINI, 2022). However, as highlighted by SILVA (2025), The application of this right cannot be considered absolute. It encounters its limitations when... When confronted with other rights of equal or greater importance, such as the dignity of the human person, honor, privacy (Article 5, item X, of the Federal Constitution of 1988) and the prohibition of racism (Article 5, item XLII, of the Federal Constitution). CF/88). The limit of expression, in the words of MOTA and MENDONÇA (2024), is given by respect. and observance of other fundamental rights, especially personality rights.

In this context, hate speech emerges as a latent threat. SANTOS and SANTOS (2023) classify it as a violation of Human Rights that manifests itself on a symbolic level. social media, causing harm to democracy and undermining the guarantee of fundamental rights. of the victims. The digital environment has become a privileged *locus* for dissemination on a global scale. of offensive and discriminatory messages, requiring a reassessment of legal instruments and the The role of regulatory agencies.

Given this, the central objective of this study is to analyze the legal limits established by Brazilian legal framework for freedom of expression in the social media environment, seeking To harmonize the right to free expression with the necessary protection against hate speech. The central problem lies in the difficulty of defining the boundary between the legitimate exercise of freedom and the abuse that deserves criminal (GENNARINI, 2022) and civil protection. It is proposed, as a possible The solution lies in adopting the principle of practical concordance in constitutional interpretation and its evolution. mechanisms for holding platforms accountable, aiming to build a public space. A more inclusive and respectful digital world. The work is developed in three stages: the review of parameters. Conceptual frameworks of freedom of expression and hate speech; analysis of the conflict of rights and...

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algorithmic problems in networks; and the proposal of legal pathways to overcome them.
deadlock.

2. Theoretical Framework

The debate about the limits of freedom of expression is a central issue in legal doctrine.
Brazilian legal system, intensified by the digital environment. The consensus is that, although indispensable for
In a democracy, freedom of expression is not an absolute right, finding its limits in...
protection of other fundamental rights.

From this perspective, hate speech is analyzed by SANTOS and SANTOS (2023) as
A threat to democracy and human rights, manifested in the symbolic sphere of social media.
MOTA and MENDONÇA (2024) and SILVA (2025) reinforce that the limit of free expression is given
out of respect for human dignity and personality rights, it is imperative to guarantee
that the discourse does not exceed such boundaries. SILVA (2025) also highlights that the problem is
This is exacerbated by the algorithmic logic of the platforms, which favors the amplification of messages.
extremists.

Defining this boundary is crucial for law enforcement. GENNARINI (2022) addresses
The possibility of criminal protection for those offended by abuses of freedom of opinion, analyzing the issue in light of...
In light of constitutional provisions (Article 5, items IV, V, IX and X of the Federal Constitution of 1988). Finally, they conclude that,
In conflicts between fundamental rights, the principle of coordination or agreement should be used.
In practical terms, this requires reasonable interpretation to optimize rights without generating controversy.
or moral damages.

2.1. Freedom of expression

Freedom of expression in Brazil has played a central role since the process of
redemocratization, reflecting a significant historical turning point after a long period of repression.
of the military regime (1964–1985). The promulgation of the 1988 Federal Constitution represented a
An institutional break with the practice of censorship and state intervention in communication, by enshrining,
especially in articles 5, sections IV, IX and X, and in article 220, the prohibition of prior censorship and the
Recognition of the freedom of expression of thought.

During the authoritarian regime, the institutional acts, especially the Institutional Act
Number 5 (AI-5) of 1968, allowed the suspension of constitutional guarantees, the censorship of newspapers,
Books, music, theater and cinema, and the repression of journalists, artists and intellectuals. In this context

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In this dark period, resistance initiatives emerged, such as the alternative press — for example, the newspaper O Pasquim — which adopted strategies of subverting censorship through humor, metaphors, and forms Indirect criticism (cake recipes instead of news, cartoons, among others) to circumvent control. state. Thus, alongside the right to free expression is the imperative that this right be exercised. in a democratic, pluralistic and respectful environment, given that it constitutes an essential element for the The functioning of citizenship—it enables participation, public debate, and oversight of... powers.

Freedom of expression, therefore, is not only an individual right, but an instrument. structural for building a democratic, inclusive society committed to rights. humans. In this sense, the 1988 Constitution marked not only the official end of state censorship, but the beginning of an era in which the diversity of ideas and political antagonism became protected as a condition of Brazilian democracy itself.

However, technological advancements and the popularization of social networks from the 2000s onwards... They have reconfigured the way freedom of expression manifests itself. As analyzed by Mota and According to Mendonça (2024), digital platforms have become the main space for public debate. allowing for the widespread dissemination of ideas, but also paving the way for the growth of discourses. extremists and discriminators. The apparent democratization of access to speech has brought with it new... legal and ethical challenges, especially in the face of the spread of hate speech, understood as Silva (2025) defines it as a manifestation that seeks to belittle or dehumanize individuals and groups with based on identity characteristics, such as race, gender, religion, or sexual orientation.

According to Gennarini (2022), the internet has intensified the conflicts between freedom and responsibility, creating a "grey area" between the right to free expression and the need for protection of human dignity. The digital environment, decentralized and guided by algorithms of Engagement amplifies offensive and polarizing messages, transforming the space. The virtual world is fertile ground for misinformation and extremism. Santos and Santos (2023) observe that, in Brazil, the expansion of hate speech on social media reflects not only political tensions, but also the persistence of structural inequalities and historical prejudices. In this scenario, the The Supreme Federal Court has assumed a decisive role, reaffirming that freedom of expression It is not absolute and must yield when used to violate other fundamental rights, as in the case... Ellwanger, which established the understanding that antisemitic demonstrations are not protected. For freedom of expression.

Thus, the contemporary debate on freedom of expression shifts from the field of... political landscape for the digital field, requiring a constitutional reinterpretation that considers the impact of New technologies in public life. The protection of this right must go hand in hand with...

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Accountability for abusive practices, digital education, and the strengthening of public policies.
combating disinformation and symbolic violence. Just as the 1988 Constitution freed the
In a Brazil with institutionalized censorship, the current challenge is to ensure that the virtual space remains pluralistic.
democratic and committed to the dignity of the human person, an inalienable pillar of the State.
Democratic Rule of Law.

2.2. Hate speech

Hate speech can be defined as any form of verbal, written, or negative expression.
symbolic or digital content that promotes, incites, or legitimizes discrimination, hostility, or violence.
against individuals or social groups based on identity characteristics such as race, ethnicity, religion,
gender, sexual orientation, nationality, or social status. Unlike criticism or
While legitimate disagreement persists, hate speech seeks to dehumanize the other, denying them dignity.
social recognition and belonging. According to Mota and Mendonça (2024), it is constituted as
a communication practice that goes beyond the realm of opinion and directly threatens pluralism and
democratic coexistence.

From a legal standpoint, hate speech has clear constitutional limits.
Although freedom of expression is guaranteed by the Federal Constitution of 1988 (article 5, items
IV, IX and X; and art. 220), this right is not absolute. It must be exercised in
in accordance with other fundamental rights, such as the dignity of the human person (Article 1, III) and
equality (article 5, caput). Thus, demonstrations that go beyond the debate of ideas and move on to
Offending, discriminating, or inciting violence are not protected by freedom of expression, but
These actions constitute an abuse of rights and may give rise to civil, administrative, and criminal liability.

The Supreme Federal Court has repeatedly affirmed that freedom of expression yields
in the face of speeches that undermine essential constitutional values. In the Ellwanger case (HC
82.424/RS), the Court consolidated the understanding that Holocaust denial and the propagation of
Antisemitic ideas constitute the crime of racism and, therefore, are not protected by freedom of expression.
expression. This precedent established an important interpretative landmark by recognizing that discourse
Hate speech not only violates individual rights, but threatens the very structure of democracy and peace.
social.

Thus, the limits on hate speech in Brazil stem from the constitutional duty to
To reconcile freedom with responsibility. The right to express oneself freely cannot
to serve as a shield for violating the dignity of others or for perpetuating prejudices and
historical violence. Addressing this phenomenon requires an active stance from the State and the

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society in promoting ethical, pluralistic and inclusive communication, capable of ensuring that the space public life — whether physical or digital — should be guided by respect, tolerance, and the protection of rights. humans.

2.3. The Ellwanger Case and its importance for the limitations of "freedom of expression"

The Brazilian Supreme Federal Court (STF) has consolidated a paradigmatic understanding regarding The boundaries between freedom of expression and hate speech in the Ellwanger case, judged in 2003. Siegfried Ellwanger, a publisher and writer from Rio Grande do Sul, was convicted of racism for publishing works. antisemitic in nature, denying the Holocaust and propagating stereotypes against the community. Jewish. In the judgment of Habeas Corpus No. 82.424/RS, the Supreme Federal Court upheld the conviction, recognizing that antisemitism constitutes a form of racism and, therefore, is not protected by freedom of speech. expression. As reported by BBC News Brazil (2022), the Court understood that “freedom Freedom of expression cannot be invoked as a protective shield for the practice of hate crimes,” since human dignity occupies a central position in the constitutional system. The Minister's vote. Maurício Corrêa, the case's rapporteur, highlighted that hate speech denies the very humanity of the other. and, therefore, it represents an affront to the essence of the Democratic Rule of Law.

The decision in the Ellwanger case has become a benchmark in contemporary constitutional doctrine. by establishing that hate speech, because it violates fundamental values of the Republic, such as equality Political pluralism does not fall within the scope of freedom of expression, but rather within the sphere of... criminal and civil liability. As Silva (2025) observes, the precedent reaffirms the principle of proportionality and the need for balancing conflicting fundamental rights, guaranteeing that freedom of expression does not become an instrument of oppression. From this point onwards Based on case law, the Brazilian Supreme Court (STF) has consolidated the understanding that the right to freely express oneself does not It can be used as a means to legitimize speeches that incite hatred, intolerance, or discrimination.

In contemporary times, the digital environment and social networks have enhanced the reach and... repercussions of hate speech. Authors such as Santos and Santos (2023) observe that the logic The algorithmic nature of platforms, aimed at maximizing engagement, tends to favor content. polarizing and emotionally charged, amplifying the social impact of these demonstrations. In this way, reflection on hate speech shifts from the strictly penal sphere to a debate. interdisciplinary, which also involves technological, communicational, and ethical aspects. Thus, the The current challenge for law is to maintain a balance between protecting freedom of expression and... preserving human dignity, ensuring that public space — including digital space —

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continue to be an environment of pluralistic, democratic and respectful dialogue, in accordance with the principles of the 1988 Constitution.

2.4. Current context

In the contemporary internet age, the phenomenon of Hate Speech Studies takes on... New outline: digital platforms have expanded both the reach and speed of demonstrations that violate the dignity of the human person. As Ferrante points out, Gomes and Oliveira (2025) in the study “Hate speech on social media and the limits of freedom of The expression, and the expansion of hate speech on social media, has become a matter of order. public, being driven — among other factors — by anonymity, by the logic of algorithms that They prioritize engagement and unlimited user reach.

In this digital context, the limits to freedom of expression—a right guaranteed by The 1988 Federal Constitution—is constantly put to the test. While the Constitution It protects the freedom of expression (article 5, items IV and IX) and freedom of communication (article 220). She also includes these rights among those that must coexist with human dignity. human (article 1, III) and with equality (article 5, caput). As highlighted in studies in the area, the The great challenge lies in differentiating legitimate criticism or active political debate from hate speech. that which disqualifies, belittles, or incites violence against vulnerable groups.

Among contemporary ways of testing these limits, the network environment stands out. social networks, in which offensive or discriminatory content circulates easily, are amplified and They can cause real harm—psychological, social, and legal—to the victims. In this sense, the study of Ferrante draws attention to the fact that hate speech, because it is not yet regulated by Specific legislation in Brazil is frequently defended under the guise of freedom of expression.

To mitigate this problem, some possible solutions are suggested: adoption of policies Specific public digital education initiatives; transparent content moderation on platforms; and holding authors of hate speech accountable through civil, criminal, or administrative channels. But It should be noted that such measures are only part of a larger and emerging scenario: this is a field new, in which the legislation is not yet specific or adequately updated, which requires of Legislators need to act proactively to create clear rules that define what it is and who is responsible. Practice and establish effective means of oversight in the digital environment.

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2.5. Mechanisms for sanctioning and suppressing the abuse of expression in the digital environment.

The abuse of freedom of expression in the digital environment, which manifests itself in the discourse of Hate finds no protection under Brazilian law and, consequently, entails... legal accountability of the offender, guaranteeing the protection of the victim's fundamental rights. According to the constitutional framework, which guarantees freedom of expression (Article 5, IV and IX), The Constitution, in turn, demands the right to reply and compensation for material or moral damages. (Art. 5, X), establishing the limit of expression in observance of other fundamental rights and of personality (MOTA and MENDONÇA, 2024). This repression manifests itself in two spheres main legal aspects.

The abuse of freedom of expression in the digital environment, which manifests itself in the discourse of Hate finds no protection under Brazilian law and, consequently, entails... legal accountability of the offender, guaranteeing the protection of the victim's fundamental rights. According to the constitutional framework, which guarantees freedom of expression (Article 5, IV and IX), The Constitution, in turn, demands the right to reply and compensation for material or moral damages. (Art. 5, X), establishing the limit of expression in observance of other fundamental rights and of personality (MOTA and MENDONÇA, 2024). This repression manifests itself in two spheres main legal aspects.

In criminal law, exceeding the limit subjects the offender to a more severe penalty. GENNARINI (2022) points to the possibility of criminal protection for honor and personality rights, based in accordance with the provisions of Article 5 of the Federal Constitution. Publications that convey discriminatory attacks or offenses Direct insults can constitute crimes against honor (insult, slander, defamation), as defined in the Code. Criminal offenses, or, more seriously, crimes of racism (Law 7.716/89), a conduct constitutionally... non-bailable and imprescriptible offense that falls outside the scope of freedom of expression. For example, the Dissemination of content that incites discrimination or uses derogatory terms against a group. Specific social or racial factors may result in the imposition of custodial sentences.

In civil matters, the sanction has a compensatory character. The exercise of the right to express oneself without Due reasonableness and common sense, as warned, generates controversy and moral damages. The victim has the right to claim compensation for moral damages to compensate for the harm to honor and reputation. dignity, in addition to demanding the immediate removal of aggressive content from digital platforms, with or without judicial intervention, depending on the case (GENNARINI, 2022). The complexity of the environment digital, which, according to SILVA (2025), uses algorithmic logic to amplify hate speech, This has intensified the debate about the need to hold the platforms themselves accountable. moving beyond the individual offender and demanding algorithmic transparency to mitigate the

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The problem is structural, ensuring the protection of democracy and human rights.

(SANTOS and SANTOS 2023).

3. Conclusion

The advancement of Information and Communication Technologies and the popularization of social networks. They have profoundly transformed the way freedom of expression is exercised and perceived in contemporary society. Although this progress has democratized access to speech and broadened the Spaces for participation also revealed a dark side: the rampant dissemination of discourse. of hatred, which affronts the dignity of the human person and threatens democratic coexistence.

As observed throughout this study, freedom of expression — guaranteed by Articles 5, paragraphs IV and IX, and 220 of the 1988 Federal Constitution — do not have an absolute character. and should coexist harmoniously with other fundamental rights, such as equality, honor, and... dignity (article 1, III, and article 5, caput and X). The Ellwanger case consolidated this understanding within the scope jurisprudence affirms that a demonstration that promotes hatred, discrimination, or intolerance does not It is protected by the constitutional mantle of freedom of expression.

In the digital context, however, this boundary becomes increasingly blurred. The logic The algorithmic nature of the platforms and anonymity enhance the spread of offensive speech. challenging traditional legal instruments and demanding firmer action from the State, legislators and the technology companies themselves. The absence of specific legislation that defines and regulating hate speech on social media reveals the urgency of creating effective mechanisms to Prevention, accountability, and digital education, in order to guarantee the protection of human dignity. in the virtual environment.

Therefore, the contemporary challenge is not in restricting freedom of expression, but in to ensure that it is exercised in an ethical and responsible manner. The application of the principle of concordance. This practice proves essential for harmonizing conflicting fundamental rights, avoiding both Censorship regarding impunity. Thus, the construction of a truly digital public space. A democratic system depends on the combination of adequate legislation and public awareness policies. and transparency on digital platforms.

In short, confronting hate speech is protecting democracy itself. Ensuring that... Freedom of expression should not become an instrument of exclusion or symbolic violence; this is to reaffirm the constitutional commitment to the dignity of the human person — a supreme and non-negotiable value of Democratic Rule of Law.

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