



Fake News in times of COVID-19 and its legal treatment in Brazilian law

Fake News em tempos de COVID-19 e seu tratamento jurídico no ordenamento brasileiro

Fake News en tiempos de COVID-19 y su tratamiento legal en la legislación brasileña

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ABSTRACT

Objective: to reflect on the legal treatment given to the *Fake News* cases related to COVID-19 in the field of Brazilian law. **Method:** Reflection study based on the consequences of applying the Brazilian legal framework to the *Fake News* cases on COVID-19. The sources come from another study with gaps left in the sense of applications by the legal system. For discussion, the framing of false news to the legal system was marked out. **Results:** They come from a previous study that identified and grouped as False News found in the Ministry of Health database by themes, a saber: speeches by health authorities, therapeutics, preventive measures, prognosis of the disease and vaccination. **Final considerations and conclusion for practice:** It was possible to conclude that the practice of sharing messages, images, audios and / or videos performed by several members of social networks, without the concern of verifying whether they are true, is an act that can be configured as a crime.

Keywords: Coronavirus Infections; News; Crime; Legislation; Health.

RESUMO

Objetivo: refletir sobre o tratamento jurídico dispensado aos casos das *Fake News* relacionados à COVID-19 no campo do Direito brasileiro. **Método:** estudo de reflexão tendo como referencial as consequências da aplicação do arcabouço jurídico brasileiro aos casos de *Fake News* sobre COVID-19. As fontes são oriundas de outro estudo com lacunas deixadas no sentido das aplicações pelo ordenamento jurídico. Para discussão, balizou-se o enquadramento das *Fake News* ao ordenamento jurídico. **Resultados:** são oriundos de estudo anterior que identificou e agrupou as *Fake News* encontradas no banco de dados do Ministério da Saúde por temas, a saber: discursos de autoridades na saúde, terapêutica, medidas de prevenção, prognósticos da doença e vacinação. **Considerações finais e implicações para prática:** foi possível depreender que a prática de compartilhamento de mensagens, imagens, áudios e/ou vídeos realizadas por diversos indivíduos nas redes sociais, sem a preocupação de se verificar se são verdadeiras, é um ato que pode ser configurado como crime.

Palavras-chave: Infecções por Coronavírus; Notícias; Crime; Legislação; Saúde.

RESUMEN

Objetivo: reflexionar sobre el tratamiento legal dado a los casos de *Fake News* relacionados con COVID-19 en el ámbito del derecho brasileño. **Método:** Estudio de reflexión basado en las consecuencias de la aplicación del marco legal brasileño a los casos de *Fake News* sobre COVID-19. Las fuentes provienen de otro estudio con lagunas dejadas en el sentido de aplicaciones por parte del sistema legal. Para la discusión, se marcó el encuadre de noticias falsas al sistema judicial. **Resultados:** Proviene de un estudio previo que identificó y agruparon como Noticias Falsas encontradas en la base de datos del Ministerio de Salud por temas, un saber: discursos de las autoridades sanitarias, terapéuticas, medidas preventivas, pronóstico de la enfermedad y vacunación. **Consideraciones finales y conclusión para la práctica:** Se pudo concluir que la práctica de compartir mensajes, imágenes, audios y / o videos realizada por varios miembros de las redes sociales, sin la preocupación de verificar si son verdaderos, es un acto que puede ser configurado como delito.

Palabra clave: Infecciones por Coronavírus; Crimen; Noticias; Legislación; Salud.

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INTRODUCTION

The Fake News, internationally known as Fake News, circulates in all social media and every day a new one appears and people receive it almost in time of its creation, a historical phenomenon that occurs since the Roman Empire, aggravated nowadays by the Internet.

The Ministry of Health, in 2018, created an electronic site with the objective of fighting Fake News and proposing clarifications of facts based on scientific evidence and its sources. The need for this measure occurred due to messages posted on internet apps and similar sites that spread misinformation to the population about yellow fever, influenza, and measles¹.

From this perspective, some researches²⁻⁴ have focused on several aspects in order to intellectually combat the Fake News. In this logic, they developed studies that pointed the pseudo-information of health problems with dialogue between the present and the past and their occurrences and interferences in the social, political and health fields. That said, it confuses the population, mixing immaterial images of the past, as if they had occurred in the present, out of context, and assertions without the necessary scientific evidence to take care conducts, for example.

It is important to point out that Fake News is understood as information/news/postings produced in an untruthful and unverifiable manner, i.e., pseudo-information^{4,5}.

The repercussion of Fake News in social networks is fast and, sometimes, due to (un)awareness, it is transmitted as truth. This implies that they can cause irreversible damage due to the lack of scientific proof. Following this line of thought requires prudence in the conduct to be taken, since there is the risk of making wrong and even criminal decisions.

However, identifying Fake News, fighting them through the media and keeping an eye on them in the virtual field are salutary attitudes. However, it is necessary to think about the field of law, i.e., the use of legal devices as a tool to combat pseudo-information.

Nowadays, the virtual world, the Internet or cyberspace configures a new technological environment, potentiated in pandemic times, that allows various forms of expression of ideas, information and economic transactions⁶.

In the field of information technology, criminal offenses can be divided into two categories. The first refers to acts directed against the computer system, against the computer and data or programs, and; the second is those committed through the computer system, namely, against property, individual freedom and immaterial property⁷.

Today, the world is in the midst of the COVID-19 pandemic, so called by the World Health Organization on March 11, 2020⁴. This occurred after the emergence of a new viral subtype of Severe Acute Respiratory Syndrome Coronavirus (SARS-Cov), better known to the public as coronavirus, which was identified in China, classified and named as SARS-Cov2.

It is noteworthy that the numbers of confirmed cases with coronavirus infections - COVID-19 - in the world, until the first week of April 2020, were 1,210,956 with 67,594 deaths, which represents a case fatality rate of 5.6%. Delimited geographically,

in Brazil the data pointed to 12,056 confirmed cases, 553 deaths, and a lethality rate of 4.6%⁸.

Thus, in the period from January 29 to March 31, 2020, 70 records were identified in the database of the Ministry of Health, which were classified as 40 about therapy, 17 about preventive measures, nine related to prognosis of the disease and two about vaccination⁴. These collected news, by the delimitation of time, are an example of criminal mechanisms, in the midst of the beginning of the COVID-19 pandemic, of attack to the assistance and risk prevention conducts that were being modulated and applied, which reflects in the nursing field on the care to be provided.

Given the above, it was defined as a guiding question: how can Fake News be framed in the legal provisions of the Brazilian legal system? Therefore, it was established as an objective to reflect on the legal treatment given to cases of Fake News related to COVID-19 in the field of Brazilian law.

The presentation of the reflections was outlined in two thematic axes, namely: the application of argumentation techniques in the construction of Fake News and in the light of the Brazilian legal system. It is noteworthy that these thematic axes emerged from the researched literature and from the experience lived by the authors in relation to the consequences of Fake News in the fight against the pandemic of COVID-19.

The study is justified by reading the article Fake News in the setting of the COVID-19 pandemic⁴ because the data found drew attention by the amount of Fake News recorded by the Ministry of Health. Therefore, it is believed that this study is relevant due to the health risk to the population caused by the dissemination of Fake News, especially in the midst of the pandemic caused by coronavirus infections, the COVID-19. Besides allowing a reflection on the possible legal implications for those who create and/or disseminate on social networks and similar pseudo information, considering the presumable damage that can cause to society, by confusing the population's decision to do or not, by means of the arguments published.

METHOD

This is a reflection study that had as a reference the consequences of the application of the Brazilian legal framework to cases of Fake News about COVID-19. For this, we used the classification of the Ministry of Health database, namely: speeches by health authorities (40), therapeutics (17), prevention measures (9), disease prognoses (2) and vaccination (2)⁴.

The sources come from another study⁴ due to its relevance, but with a gap left in the sense of the applications by the legal system. In this way, the same framework demonstrated in that study will be replicated in its entirety in the results of this research.

The procedure adopted for discussion was to frame the data found to the legal system in force as assumptions of the consequences of the dissemination of Fake News on COVID-19. In this perspective, it was used as legal parameters the Articles 5, I and 46 (*in totum*) of Law No. 9,610 of February 19, 1998, the Copyright Law and Resolution No. 510/2016 of the National Health Council. In summary, the methodology of the study refers

to the unfolding of an article already published, which in no way detracts from the results, quite the contrary; it is the continuation of a previous study.

RESULTS

Picture 1 shows the classification of Fake News in the database of the Ministry of Health into: speeches by health authorities (40), therapeutics (17), prevention measures (9), disease prognosis (2) and vaccination (2)⁴.

The authors⁴ published examples that show the Fake News, according to them the selection occurred randomly, being one of each category, totaling five. Of these, three were transmitted by WhatsApp and two by the Internet (Chart 1). These are pseudo-information about safety precautions; studies not conducted in the scientific environment; vitamins, foods, among others, without scientific evidence for the prevention of COVID-19; inconclusive prognoses caused by the new coronavirus and; announcement of vaccine against the circulating virus⁴.

In relation to picture 1, it is observed that the Fake News that circulated in social networks and similar sites could have harmful consequences for an unsuspecting reader, should they choose some inappropriate conduct. It can be seen that the use of arguments that confuse and sow discreditability in the scientific

field. Instead of raising awareness on the subject and also social distancing, as prevention measures, they cause fear and feelings that can lead to emotional imbalance, thus, the individual's mental health, in the eyes of society, would be compromised.

DISCUSSION

The application of argumentation techniques in the construction of Fake News

The discussion on this topic will be based on the work The Intelligence Trap, because it presents to the readers, that some people may think, that if there is some truth in the information, it will be useful for some friend or follower, and if it is not true, it will end up being something harmless. So the impetus will be to share, without realizing the damage it may cause⁹.

This thoughtless act is present in the daily lives of millions of people who access the social networks. The individuals who read them, either for fear of showing their lack of knowledge on a certain subject and/or to prove that they have knowledge on various subjects, decide to share indiscriminately everything they see and have access to on the social networks.

In this logic, Fake News presents certain descriptive language or personal stories that seem realistic. The strategy is to put in

Chart 1. Examples of Fake News, according to the Database of the Ministry of Health (BR), Brazil, 2020⁴.

Category	News title	Information medium	Counter-argument
Information related to speeches by health authorities	The Coronavirus-SUS application from the Brazilian Government is not safe	WhatsApp	The Coronavirus-SUS-COVID-19 application was developed by the Ministry of Health, with security precautions in its construction and in the dissemination of information.
Therapeutic	Drinking hot drinks to kill coronavirus	WhatsApp	The message has characteristics of Fake News, because the data and information are vague, with orthographic errors and asks for it to be shared. Furthermore, the scientific community and the WHO do not recognize any substance or medicine to cure COVID-19.
Prevention measure	Drinking lots of water and gargling with warm water, salt, and vinegar prevents coronavirus	WhatsApp	To date, there is no evidence of any drug, substance, vitamin, food, much less drinking lots of water and gargling with these substances to prevent coronavirus infection (COVID-19).
Disease prognosis	Research published by Chinese scientists says coronavirus had made most male patients infertile	Internet	The cited article is in pre-publication phase and has not been peer-reviewed, so it has little scientific value at this time. This article provides preliminary data on the possibility of coronavirus (COVID-19) infection of testicular cells, but mentions that there is not enough data to establish a risk of male sterility.
Vaccination	China announces vaccine for coronavirus	Internet	There is no vaccine against coronavirus to date, although research is ongoing.

Source: Neto et al.⁴.

the content of the message, facts, figures, names of authorities in the health field, sound convincing and thus convince the reader, based on the arguments⁹.

The mentioned strategy is well articulated within a framework proceeding from the concept of communication theory. Observing the production of Fake News, it is necessary to understand the construction of some arguments applicable in pseudo-information. The first argument is one of authority, which occurs with the use of authority quotes from the field, as well as renowned authors or similar as guarantors of veracity. The second argument originates on the basis of consensus, bringing self-evident or universally accepted propositions for argumentative purposes. The third argument is based on concrete evidence, when they are cited, namely: figures, statistics, historical data, lived experience, among others, in this line of thought. The fourth argument is based on logical reasoning, which represents citations of cause and effect. The fifth and last argument refers to linguistic competence, when technical terms are applied¹⁰.

The argumentation techniques in the case of Fake News direct our look to another technical aspect called AIDA, which stands for Attention, Interest, Desire and Action, having as expected effect the attitude of consumption¹¹. This is in line with the argumentation strategy, which exploits resources to make the reader believe the truth, in words, in the text constructions.

To understand the construction of Fake News messages is to realize that they are elaborated in a random way, but with a certain structure, serving adverse interests, whether in the social, cultural, political, economic field and among many others that aim at their own interests.

The question to think about is: what would be the legal consequences to the damage caused by Fake News to the individual?

Fake News in light of the Brazilian legal system

Starting from the assumption that Fake News are considered pseudo-information about health problems and that their occurrences interfere in the social, political and health fields, confusing the population, making it difficult to make decisions about health-related care, especially in relation to the pandemic of COVID-19, it is necessary to discuss, through the Brazilian legal framework, the legal existence that can be used to combat Fake News, especially those related to COVID-19.

To begin the proposed discussion, it is important to clarify that the Brazilian laws punish not only the author of a Fake News, but also the people who share such information indiscriminately.

Fake News disseminated on social media can cause disasters or non-existent dangers, cause fear, panic, among other emotions and feelings. For these reasons, the propagator agent may be punished based on Article 41 of Decree Law No. 3688 of October 3, 1941, i.e., the Law of Criminal Misdemeanors¹² and a simple prison sentence of 15 days to six months or a fine will be applied. As an example of this act, a photograph that circulated in social networks is cited, where supposed bodies were seen on the ground in a city and falsely related to the image of the bodies of victims of COVID 19 in Italy, among others¹³.

Decree-Law No. 2.848, of December 7, 1940, which is the Brazilian Penal Code (PC),¹⁴ which presents several ways to punish both the author of Fake News and the one who disseminates it, as can be seen in the following paragraphs.

Currently, it is common to see news stories about supposed drugs and care practices to combat COVID-19, such as a story that pointed to sun exposure to prevent COVID-19 contamination.¹⁵ However, in the case of exposing people's lives or health to direct and imminent danger, article 132 of the PC¹⁴ provides for detention, from three months to one year, if the fact does not constitute a more serious crime.

Article 171 of the Criminal Code,¹⁴ it punishes fraud, and aims to protect the assets of people and provides punishment for those who deceive people in good faith, inducing them into error in order to obtain advantage, with the penalty of imprisonment for one to five years and a fine. Unfortunately, this type of crime is what most occurs today on social networks, when the agent seeks to take monetary values from the victim.

As an example, here are some cases of Internet fraud committed in times of COVID-19: the e-mail or a fake webpage, pretending to be a person in need or a reputable company, asking for donations of money for supposed people or organizations to help the victims of COVID-19.

It is well known that one of the pillars to prevent the increase of COVID-19 cases is social distancing. Thus, the person who, even after being ordered by the government to isolate himself under the slogan "stay at home", disseminates news and incites circumvention of this determination, also commits a crime under article 268 of the Penal Code¹⁴ and may be punished with detention from one month to one year if it violates the determination of the public authorities aimed at preventing the introduction or spread of a contagious disease.

The illegal exercise of the profession is classified as a crime under art. 282 of the Penal Code. With the pandemic of COVID-19, there have been several news and audios in the media of supposed health professionals, usually in an alarming tone about the pandemic or even prescribing some medicine, performing consultations or prescribing medicines through social networks. These cases can be framed in this crime and will be punished with imprisonment from 6 months to 2 years¹⁴.

The PC also punishes health and non-health professionals who disseminate cures or medicines that are supposed to be infallible in combating and eradicating COVID-19 without scientific proof or regulation by the competent health agency. This is a crime called charlatanism, provided for in article 283 of the PC,¹⁴ which carries a penalty of detention from three months to one year, and a fine.

Article 284 of the PC¹⁴ is intended to punish the practice of witchcraft. The Brazilian Penal Code dates back to 1940, and to better interpret Article 284, we must take it into consideration. Today, the practices adopted in collective health and the religious freedom that society has conquered, started at that time. Thus, what could be an art or a technique, affirming the power of healing, through mysterious forces, such as the help of gods,

spirits, the dead, among others, was something pretentious to interpret this article.

In fact, the argument supporting the crime of faith healing was intended to protect the population from false beliefs and professional fallacies, repressing the counterfeiters¹⁶.

In times of COVID-19, the crime of article 284 of the PC¹⁴ is committed by those who present themselves as supposed healers on social networks with the intention of prescribing, administering, or applying any substance and making diagnoses without any scientific proof. For these cases, the penalty is detention for six months to two years, in addition to a fine.

There are two other criminal actions that currently occur in our social networks related to COVID-19. For these cases, there are, for example, 70 records⁴ in the database of the Ministry of Health. The complaints made were in social networks against health professionals and managers of public and private hospitals.

Fake News are non-conformities that generate evidence of infractions, through denunciations, of any origin, whether by the alleged negligence of health professionals, public and private managers, the alleged conditions of care, alleged lack of materials, supplies, among others, always in the same line of thought.

Certainly, they must be investigated, but the person who makes the accusation or disseminates it indiscriminately on social networks must be careful, because he/she may be held criminally responsible based on article 339 of the PC¹⁴, which sets forth a penalty of imprisonment from two to eight years to anyone who causes the opening of a police investigation, judicial process, administrative investigation, civil inquiry, or administrative improbity action against someone who knows him/herself innocent. The crime of Article 339 of PC¹⁴ deals with slanderous accusation and is configured when the person who makes it knows that it is not true. Unfortunately, this practice occurs, most of the time, due to envy, feuding or an attempt to obtain a position or job by removing the person who exercises it in a legitimate and upright way.

Article 340 of the PC¹⁴ typifies the false communication of a crime, which can be, for example, information that health professionals are not performing their duties correctly or that hospitals in a certain municipality are refusing care to patients with suspected COVID-19, a crime punishable by detention from one to six months in prison or a fine.

It is worth clarifying that the Fake News about COVID-19 can be framed in two articles of the PC, namely 339 and 340, but there is a difference between them. Article 339 of the PC,¹⁴ punishes slanderous accusation and, in this case, the alleged crime is against a specific individual. The punishment provided for in Article 340 of the PC, on the other hand, is,¹⁴ a false communication of a crime, when it occurs against anyone, that is, there is no specific alleged perpetrator.

Therefore, Fake News is a cause for concern, especially in the health field, especially in the nursing field. This is due not only to the pandemic, which is considered an aggravating factor, but to the dissemination of untrue information about the care that affects the population. Therefore, when this information is spread, it brings damages in several scenarios, and especially

in the health scenario, especially in relation to care, whether at home and/or institutional, because they are at risk due to the uncertainties caused by pseudo-information, which certainly constitutes a violation against human life, as well as the ethical aspects that they infringe.

FINAL CONSIDERATIONS

At the end of this article it is possible to identify that the practice of sharing messages, images, audios and/or videos made by several individuals on social networks, without the concern to verify if they are true, consists of an act that can be configured as a crime.

Therefore, it is a criminal act to create and/or disseminate several Fake News, especially in order to obtain illicit financial advantage, which characterizes the practice of fraud and hurts the ethical aspects. With the pandemic caused by COVID-19 this practice has become routine, because many people in order to become popular, harm others as one of the ideological political strategies to disseminate large amounts of false information on the Internet, a situation flagrantly illegal under Brazilian law.

It must be emphasized that the limitations of the study blur the theme, which is still little explored in other studies, which makes the path of analysis and discussion possibly fragile due to the few publications. However, this is also a justification that ratifies its importance.

In this sense, this study brings up the problem of damages caused by Fake News and its frameworks in the Brazilian legal system, especially in the pandemic of COVID-19, as one of the concerns for nurses who aim at health care.

In this logic, emphasizing a theme little explored by health professionals, especially nurses, is salutary, and awakens new studies. Thus, it contributes to enrich the discussions on the subject, since it exposes information that can, for example, assist in the development of public policies, in order to prevent and avoid such attitudes and mark nursing as vigilant in combating Fake News.

In addition, the theme addressed allows people to better understand the risks of making and/or sharing Fake News. Finally, the aim of this article is that people get enough clarification when they receive a news, image or information on the Internet, if they do not have the possibility to make sure of the veracity or confirmation of reliable sources, do not share them indiscriminately, because they can commit criminal and ethical offenses.

AUTHORS' CONTRIBUTIONS

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