

# MP-IDSA

## *Issue Brief*

# The 'X' Episode in Brazil: Between Sovereignty and Freedom of Speech

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## **S***ummary*

The Brazilian Court has asserted itself vis-à-vis 'X' (formerly Twitter) to protect its perceived domesticity from an unwanted foreign transgression in the name of a perceivably absolute norm like freedom of speech. For corporations, violating legal authority of sovereign Courts is not an option.

The recent ‘X’ episode with the Brazilian Supreme Court has renewed concerns and debate over sovereignty of nation-states and freedom of speech in the international domain. The social media platform, formerly known as Twitter, showed defiance by not complying with the *diktats* of the highest court in Brazil as it had asked the platform to take out certain posts and twitter accounts that were found spreading misinformation, hate and undermining democracy in the country.<sup>1</sup> Rather, the episode appeared to have become a personal quarrel between the Brazilian Supreme Court judge Alexandre de Moraes and Elon Musk, the owner of the behemoth social media platform.

The episode reminds us of the anxiety stirred by Raymond Vernon’s book titled *Sovereignty at Bay: The Multinational Spread of US Enterprises* published in the pre-globalism era. Vernon had sensed even at the height of the Cold War that the logic of economics was leading the global geopolitics in a different era on a different plane where sovereignty of the states was waning. Although the fear of states about waning sovereignty did not come true entirely as they found different ways to reassert it, influence of the multinational enterprises and their interests have been normalised in international and domestic politics as a factor with the rise of the neoliberal order post the end of the Cold War. Therefore, the quarrel between Elon Musk and Justice Moraes should be seen in the larger context of the conditions that enable an order in multinational business operations in relation to sovereignty of nation-states and freedom of speech as universal principles.

## The Ban in Brazil

The feud between ‘X’ and the Supreme Court was highlighted in the background of the Brazilian presidential elections which concluded with the victory of Luiz Inácio Lula da Silva in October 2022. He took the reins of governing Brazil as President after defeating Jair Bolsonaro the outgoing president with a thin margin on 1 January 2023.<sup>2</sup> This had been the most disputed and divisive election of Brazilian history in a highly polarised environment between the political left and conservatives. There is intense political polarisation between the poor and the rich as well as the northern and southern parts of the country. The wealthier south largely supported conservative Bolsonaro, who contested the result of Lula’s election and did not participate in the traditional handover of presidential sash. Instead, it was delivered by selected citizens in Bolsonaro’s absence.<sup>3</sup>

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<sup>1</sup> Anthony Boadle, [“Brazil Judge Opens Inquiry into Musk After Refusal to Block Accounts on X”](#), *Reuters*, 8 April 2024; Salma Ben Souissi, [“Brazil Supreme Court Orders X to Block Certain Undisclosed Popular Accounts”](#), *Jurist News*, 7 April 2024.

<sup>2</sup> David Gormezano, [“Brazil Holds Its Breath Over Bolsonaro Reaction as Lula Claims Razor-thin Win”](#), *France 24*, 31 October 2022.

<sup>3</sup> Carrie Kahn and Emma Bowman, [“Leftist Lula da Silva is Sworn In as President to Lead a Divided Brazil”](#), *NPR*, 1 January 2023.

In an act of defiance and non-acceptance of da Silva’s victory, Bolsonaro supporters stormed the Brazilian Congress, Supreme Court and the Presidential Office on 8 January 2023.<sup>4</sup> They claimed that the electronics system to feed the vote counts was tampered.<sup>5</sup> The protestors turned violent, causing roadblocks and clashes with police force, together with camping and demanding intervention by armed forces to depose elected Lula da Silva.<sup>6</sup>

The intense political competition reflected on the country’s social media, so much so that ‘X’, a popular platform in the country, was also instrumentalised to mobilise people for the presidential campaigns. It was observed in a report by Reporters Without Borders (RSF) that “more than 3.3 million offensive and intimidating” posts against media and journalists were registered within a short span of three months towards the end of the year.<sup>7</sup> Social media in Brazil, especially during election campaigns, were inundated with fake information, hate messaging and anti-democratic hooliganism. There were reports of sustained divisive online campaigns biased against the northern regions of Brazil. Instances of racist, xenophobic and supremacist posts had been staggeringly high in Brazilian social media since the election of Jair Bolsonaro as President.<sup>8</sup>

Such campaigns and related hate speeches are illegal in the country, and there are statutes providing for punitive actions for such activities.<sup>9</sup> The Twitter episode, post Bolsonaro defeat, instigated strict actions against it, but the Brazilian Supreme Federal Court inquiry had begun long back in March 2019 as there was an uptick in the insults hurled at the Supreme Court and its members pertaining to its actions and comments over abuse of social media platforms.<sup>10</sup> The situation was such that there were death and rape threats to the members and relatives of judiciary on social media platforms.

Consequently, Chief Justice Dias Toffoli had set up an inquiry and appointed Alexandre de Moraes to oversee the investigation initiated against online hate, fake information and criminal intimidation. Justice Moraes, since then, has been seen as a crusader against online hooliganism, fake news and hate messages. The special

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<sup>4</sup> [“Supporters of Brazil’s Bolsonaro Engage in Post-Election Unrest”](#), *Reuters*, 9 January 2023.

<sup>5</sup> Ricardo Brito and Maria Carolina Marcello, [“Bolsonaro Challenge to Brazil Election Result Seen Stoking Protests”](#), *Reuters*, 24 November 2024; Juliana Gagnani and Jake Horton, [“Brazil Election: Do Voting Machines Lead to Fraud?”](#), *BBC*, 3 October 2022.

<sup>6</sup> Carrie Kahn and Emma Bowman, [“Leftist Lula da Silva is Sworn In as President to Lead a Divided Brazil”](#), no. 3; Ciara Nugent, [“Lula Narrowly Wins Brazil’s High-Stakes Election, Ending Bolsonaro’s Far-Right Presidency”](#), *Time*, 31 October 2022.

<sup>7</sup> [“A Journalist was Harassed Online Every Three Seconds During Brazil’s Election Campaign”](#), *Reporters Without Frontiers*, 28 April 2023; Julie Posetti and Nabeelah Shabbeer (eds), *The Chilling: A Global Study of Online Violence against Women Journalists*, International Centre for Journalists (Washington) with Support of UNESCO, 2022.

<sup>8</sup> [“Brazil Sees Increase in Neo-Nazi Groups Amid More Conservatism”](#), *NBC News*, 13 June 2023.

<sup>9</sup> Tabata Viapiana, [“Online Hate Speech Increased During Brazil’s Elections, New Study Finds”](#), *Brazil Reports*, 20 December 2020.

<sup>10</sup> [“The Case of the Brazil Fake News Inquiry”](#), *Global Freedom of Expression*, 26 May 2020.

master of the investigation under Justice Moraes concluded that there were systematic and organised efforts for production, replication and dissemination of fake news, hate messaging and polarisation with an intention to discredit and threaten the Supreme Court, its members and their relatives. The investigative agencies also foiled plans to assassinate a judge while tracking chatrooms on the dark web.<sup>11</sup>

The Supreme Court did order the social media platforms, including Twitter (which later became ‘X’) to remove certain messages and accounts, and to provide details of the account holders for an investigation into their criminal actions. The *suo motu* inquiry however was challenged by a recusal petition on constitutional grounds which was rejected by the Supreme Court with a vote of ten against one. The Court held that the online threats were detrimental to the “independence of the judiciary”, “against rule of law” and “against democracy”.<sup>12</sup> As part of its actions against the so-called “digital militia”, the Court issued an order on 18 June 2020 directing the removal of posts and accounts from Twitter. The court later found that Twitter had not complied with it citing lack of information for execution, which the court provided in a second order along with a fine and ultimatum to comply within 24 hrs. The accounts were blocked by Twitter but were available through VPN gateways within Brazil and abroad. Therefore, Justice Moraes, in a review on 28 July 2020, further ordered Twitter to block the listed content and accounts “irrespective of the means used to access the posts, or the IP [address] used, be it from Brazil or elsewhere”.<sup>13</sup>

Amid the tussle between the Brazilian Supreme Court and international social media platforms, Twitter became ‘X’ after a takeover by Elon Musk, currently world’s richest man and a self-proclaimed protector of the freedom of speech. Musk is known for his uninhibited opinions about governments and many people in power worldwide. His ideas and political inclinations have been labelled as conservative and far right.<sup>14</sup>

This context has led to the recent ‘X’ episode with the Brazilian Court. Along with the still open investigation that began in 2019, Justice Moraes is also in charge of the investigation of post-election violence, arson and attempt to topple the elected government in January 2023 where he sees a big role played by “digital militia” in online polarisation and mobilisation using fake news and hate messaging. After his enquiry Justice Moraes ordered ‘X’ to delete identified posts and accounts responsible for spreading fake news, hate and anti-democratic sentiments. Elon Musk’s ‘X’ initially complied with the orders although with concerns, but refused the same later in April 2023. He termed the orders of Justice Moraes violating Brazilian,

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<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Muhammet Nazim Tasci, “[Elon Musk's Use of X for Global Political Influence Draws Criticism](#)”, AA, 7 September 2024; Kate Conger, “[Elon Musk is Using X to Push His Views, and Donald Trump](#)”, *The New York Times*, 12 August 2024.

Argentinian, American and International Laws without going into the specifications and details.

At the Brazilian Court’s expression of intent to arrest its legal representative in the country for continued non-compliance, Elon Musk fired her and closed the office in the country. ‘X’ also chose to put the letter of the Supreme Court in public with an intention to inform the people about the orders they were receiving without their knowledge. They also underlined that neither the users whose posts and accounts had been deleted were informed by the Court, nor were they given a chance to explain. The post by Global Government Affairs (@GlobalAffairs) on 17 August made a personal attack on Justice Alexandre de Moraes and held him “solely” responsible for “actions” that are “incompatible with democratic government”. The post further appealed that the Brazilian people had a “choice to make” between democracy and Alexandre de Moraes.

As per the Brazilian Law, any social media company has to appoint a legal representative in the country so that he/she could be held responsible for the legal dimensions of the company’s actions. The Court issued a deadline to appoint a legal representative again which was missed by ‘X’ ultimately inviting a ban from operating in the country from 31 August 2024 till further orders. Anatel, the telecommunications regulator in Brazil, enforced the service through all service providers in the country. Starlink, Musk’s company providing internet services, accounts were also frozen by the Court to arm-twist him to comply with the ban and related court orders.<sup>15</sup> In response, Elon Musk called Judge Moraes “the dictator of Brazil” with supreme “judicial and legislative power”. The ban however was later endorsed unanimously by all judges of the First Chamber of the Supreme Federal Court of Brazil. Musk also instigated the people in Brazil to use Virtual Private Network (VPN) to access ‘X’ in their country. Irritated by Musk’s instigation to the Brazilian public to defy and circumvent the ban, Justice Moraes ordered for imposition of fine up to Reais 50000 (US\$ 9000 approximately) on whosoever uses ‘X’ in Brazil through VPN.<sup>16</sup>

The tension and the personal nature of the spat was revealed again as ‘X’, despite the ban, returned for many users in Brazil. While the company termed it as an inadvertent incident for technical reasons, Judge Moraes took it as an attempt to trick the Court and fined it for violating the ban at the rate of Reais 5 million per day.<sup>17</sup> The services however were discontinued after a few hours on the day of the incident.

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<sup>15</sup> Isabela Cruz, [“Brazilian Government Gets Starlink and X Frozen Money”](#), *The Brazilian Report*, 13 September 2024.

<sup>16</sup> [“Brazilians Can Be Fined For Using VPN to Access X”](#), *Reuters*, 6 September 2024.

<sup>17</sup> Ben Derico and Lily Jamali, [“Brazil Fines Musk's X for Site's Return After Ban”](#), *BBC*, 20 September 2024; [“Judge in Brazil Orders Musk's X to Obey Ban or Face Daily Fine”](#), *Al Jazeera*, 19 September 2024.

The world, along with experts were both intrigued and anxious about how the spat between Elon Musk and Justice Moraes unfolded. However, the neoliberal logic of business seems to have taken hold of Musk, leading him to de-escalate his stance. The company with re-appointment of the fired legal representative in the country requested the Brazilian Supreme Court for revoking the ban, promising compliance with its orders. The Court ordered the company to deposit a total accumulated fine of approximately US\$ 5.2 million before ‘X’ services were to be restored in the country.<sup>18</sup> As ‘X’ paid the fine, Justice Moraes restored its services in the country. The whole episode has, however, reignited debate over issues of sovereignty, freedom of speech, social media, and influence and behaviour of multinational corporations not only in Brazil but also on the global stage.

## After the Ban

Around 40 million people in Brazil who use ‘X’ at least once a month lost access to the platform and had to seek alternatives to maintain their established social networks. Shifting to a new social media platform, along with the network and visibility built over time is a difficult and uncertain process, as one may not be able to reconnect with everyone, especially the ones who are not in the personal circle but are relevant audiences to the user’s post. One also has to acknowledge and keep in mind while analysing the impact of a popular social media platform or its sudden absence that there are not only individuals seeking to connect and maintain a network of personal friends and acquaintances but also business organisations, agencies, companies with products, marketing entrepreneurs, institutions of almost all kind and scientists seeking to interact with others in their communities worldwide. There are legitimate dependencies on social media platforms that might face actual and real term losses due to sudden discontinuation of their connections and reach.

Facing the ban of ‘X’, Brazilian users flocked to other platforms in millions within a short period. Bluesky was the prime beneficiary which registered over a million new accounts within three days of the ban.<sup>19</sup> Other alternatives like Threads and Mastodon also received attention from those seeking to switch. An article on the prestigious *Nature* website analysed how scientists are coping up with the ban on ‘X’ in Brazil, highlighting that the platform had been extremely useful for “staying abreast of scientific advances” and “communicating with collaborators”. Although the ban has given a temporary shock to the networked scientists, they also see that a platform like ‘X’ may not be all powerful as there are alternatives available and in

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<sup>18</sup> Shane Galvin, “[Brazil Levies New \\$1.8M Fine on ‘X’ as Ban End Looms](#)”, *New York Post*, 29 September 2024.

<sup>19</sup> “[Social Media Platform Bluesky Sees 1 Million Users in Three Days After Brazil Bans X: Report](#)”, *Outlook Business*, 2 September 2024.

cases of any ban or shut down “people adapt and look for ways to reconstruct their networks” on other platforms in different ways.<sup>20</sup> ‘X’ as a company also appears to understand the limitations of its leverage and tolerance to losses and damage to its image, which has likely prompted it to comply after experiencing the ban.

## Freedom of Speech on Platforms like ‘X’

‘X’ relies on its reach, security and privacy of its users’ personal data and messages to keep them enrolled and active. Given the platform’s user-friendliness, reach and popularity, criminal and anti-social elements are also inclined to use it for their illicit activities in manners disguised or otherwise. The sheer scale of the platform’s reach has made different political parties, ideological groups and companies to use it for propagation of their products and worldviews. However, ‘X’ has engaged into conflicts with many host governments due to directives and orders issued by their agencies, especially from security, intelligence and law enforcement, to delete posts and share with them the personal details of account holders. The platform has been banned in several countries and has a rickety record in many.<sup>21</sup>

Politically motivated use of the provided information by surveillance and authoritarian states cannot be overruled altogether. ‘X’ has often cited privacy for denying information about its user accounts, but now countries have legislated and devised rules and regulations, or are in process to legislate to access such personal details.<sup>22</sup> Illegal activity, incendiary messaging unsettling social harmony, threat to national security, criminal intimidation and posts destabilising law and order through any platform including ‘X’ are among the most stated reasons based on which freedom of expression can be curbed and identity of the perpetrator must be disclosed for criminal investigation. It is also a reality that authoritarian governments use these necessary provisions to stifle political opposition citing laws related to curbing such activities.

Another dimension with a company like ‘X’ owned, based and controlled in the United States is the subtle support and promotion of US social, cultural and political values in the host countries. This may not be a problem for most of the time but issues arise when the platform’s general policy of non-interference with the ongoing discourses on the platform are politicised by the competing parties in the host country. Any stand taken by the platform read as a favour to a domestic political disposition may lead to allegations of either being complicit with an oppressive state or a foreign

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<sup>20</sup> Meghie Rodrigues, [“Brazil’s Ban on X: How Scientists are Coping With the Cut-off”](#), *Nature*, 6 September 2024.

<sup>21</sup> Deeksha Somani, [“Countries Where X, TikTok and Facebook are Banned”](#), *The Times of India*, 8 September 2024; Yash Bajaj, [“X Banned in Brazil: Which Other Countries Have Suspended the Elon Musk-Led Platform?”](#), *Times Now*, 31 August 2024.

<sup>22</sup> Brazilian Data Protection Law provides for such access.

agency interfering in internal politics of the country. This precisely is the case in Brazil, as Elon Musk, known for his political dispositions, criticised and derided the Brazilian Supreme Federal Court judge for his official orders.

The expression of any political ideology and position, for or against, is a matter of the freedom of expression and technically ‘X’ is only a medium of communication irrespective of what is posted on the platform. This is the widely accepted norm for the freedom of the internet and equality (net neutrality) on the World Wide Web system on which ‘X’ runs.<sup>23</sup> Therefore, any expression must be acceptable to parties internal or external so long as they are based on concrete and real facts, not fake information and lies. The Universal Declaration of Human Rights (UDHR) through Article 19 provides for ‘freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers’. However, Article 29 permits ‘limitations as are determined by law’ for the ‘purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society’.

Therefore, states have legislated to limit such freedom of holding opinion and information flows that are based on fake facts, lies and hate. The evidence of anti-democratic activities, hate messaging and intimidation give validity to the Brazilian Supreme Court’s ban on ‘X’ under UDHR Article 29(2). This must be noted that the case in Brazilian Court inquiry has been built around countering fake news, hate messages, criminal intimidation and anti-democratic activities under Brazilian statutes and constitutional values.

Any company or corporation is supposed to abide by the law of the land even in the era of globalisation as nation-states based on their equality of sovereignty are the highest form of community agency, organisation and decision-making. The laws within the states are an expression of their socio-political and cultural realities which for any practical purposes of order and predictability must be abided by the external agencies or companies interacting with them. A missionary approach to defend freedom of speech by global social media platforms like ‘X’ may be pursued through national and international legal instruments and conventions, but not in an extra-legal and extra-judicial personal manner appearing partisan in the domestic politics of the host country by violating decrees of its constitutional bodies. Both ‘X’ and Musk may have their opinion, and criticise the Brazilian Supreme Court, but there is practically no option to complying with its orders to operate in the country. Sovereignty still is paramount in the comity of nation-states.

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<sup>23</sup> [“UN Expert Applauds US Decision Guaranteeing ‘Net Neutrality’”](#), *United Nations News*, 27 February 2015; [“UN: Human Rights Council Adopts Resolution on Human Rights on the Internet”](#), *Article 19*, 15 July 2021.



## Why the Issue of Sovereignty?

As per Article 29(3) of the UDHR, ‘freedoms may in no case be exercised contrary to the purposes and principles of the United Nations’. Therefore, sovereignty, being one of the principles protected by the UN Charter, limits any multinational corporation to act within the boundaries determined by law of the state where it operates. The Brazilian ban on ‘X’ was a consequence of blatant defiance of a foreign company acting with contempt and indifference for the orders of the highest Court of the country. The Court’s order to the social media platform to delete certain posts and accounts was an outcome of a legal inquiry based on facts and evidence. The Court’s jurisdiction to set up this inquiry was disputed by parties within Brazil interested in benefitting from the unbridled use of ‘X’ to spread fake information and hate messages challenging democracy, but the Court diffusing the challenge assumed and justified the powers to set up such an inquiry unanimously.<sup>24</sup>

‘X’ thereby had no *locus standi* to challenge the legitimacy of Inquiry. The order could only be challenged through available legal remedies rather than an extrajudicial defiance and malign campaign against the highest Court of a sovereign country. Elon Musk’s open charge against Justice Moraes had ideological and personal motivations rather than defence of any rules of business or freedom of expression as the Court was asking to block only legally identified malafide accounts engaged in spreading fake information, hate campaigns and criminal intimidation. These activities are criminal under Brazilian law, therefore ‘X’ defying the orders amounted to contempt and “willful, illicit and persistent recalcitrance”<sup>25</sup> of a foreign owned entity violating the Court’s authority on Brazilian land, duly inviting the question of sovereignty of Brazil.

## Conclusion

The ‘X’ episode in Brazil reveals the difficulties of regulating foreign companies operating in a sovereign country. The boundaries between the domestic and the international sometimes are blurred by universally recognised principles like freedom of speech. An unqualified and out of context application of the freedom of speech however is prone to be misused by fake and false information motivated with hateful and criminal intent. A supposedly moral and activist stand taken to defend free speech based on lies, fake information, hate, intimidation to citizens and violating legal-constitutional framework is ethically problematic. Freedom of speech is not absolute and there are rational-legal qualifications to its licence. If ‘X’

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<sup>24</sup> [“The Case of the Brazil Fake News Inquiry”](#), Global Freedom of Expression, 26 May 2020.

<sup>25</sup> [“Why Brazil’s Supreme Court Blocked X and What It Means for the Platform”](#), *The Economic Times*, 31 August 2024.

considers that the Court in Brazil is overstepping, and it has a ‘moral’ duty to defend the Brazilian people, it can always express its opinion, after complying with the Court’s orders.

Global trade and business order is based on a complex set of international agreements and norms, and one of them is respect to the legal and sovereign authority of the host governments. International bodies such as the UN, WTO and civil society organisations could be used to raise moral and normative concerns and criticisms, rather than challenge and destabilise the established international business order and environment. Violating the Brazilian Supreme Court orders to defend the identified fake and criminal elements amounted to interference with domestic law implementation and politics of Brazil. If businesses encounter issues with the processes and systems of a host country, they always have the option to either exit or resort to national and international legal remedies, unlike the way ‘X’ behaved.

The Brazilian Court, in its zeal to defend authority and sovereignty, also appears to have transgressed its jurisdiction by attempting to enforce its decree in jurisdiction “elsewhere” outside Brazil. During the ban, people realised that alternatives to ‘X’ existed and although it might take time and effort, they could rebuild their networks. In conclusion, we still live in an era of sovereign nation-states and the Brazilian Court has asserted itself to protect its perceived domesticity from an unwanted foreign transgression in the name of a perceivably absolute norm like freedom of speech.

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