



Public Comment Appendix for

2021-003-FB-UA

Case number

Case description

In November 2020, a user shared a post from Punjabi-language online media platform Global Punjab TV with accompanying text, claiming that the Hindu nationalist organisation Rashtriya Swayamsevak Sangh (RSS) and Prime Minister Narendra Modi were threatening the Sikhs with genocide.

The Global Punjab TV post that the user shared is a 17-minute interview with Professor Manjit Singh. In the video post, Global Punjab TV included the caption "RSS is the new threat. Ram Naam Satya Hai. The BJP moved towards extremism" [RSS ਦੀ ਨਵੀਂ ਧਮਕੀ, ਰਾਮ ਨਾਮ ਸੱਤ ਹੈ! ਕੱਟੜਤਾ ਵੱਲ ਹੋਰ ਵਧੀ ਬੀਜੇਪੀ]. The media company also included an accompanying text "New Threat. Ram Naam Satya Hai! The BJP [India's ruling party Bharatiya Janata Party] has moved towards extremism. Scholars directly challenge Modi!"

In the accompanying text, the user stated that the CIA designated the RSS a "fanatic Hindu terrorist organisation" and that Indian Prime Minister Narendra Modi was once its president. The user writes that the RSS is threatening to kill Sikhs and repeat the "deadly saga" of 1984 when Hindu mobs massacred and burned Sikh men, women and children. They go on to state that "The RSS used the Death Phrase 'Ram naam sat hai'." The user then says that Prime Minister Modi himself is formulating the threat of "Genocide of the Sikhs" on advice of the RSS President, Mohan Bhagwat. The accompanying text ends with a claim that Sikhs in India should be on high alert and that Sikh regiments in the army have warned Prime Minister Modi of their willingness to die to protect the Sikh farmers and their land in Punjab.

The post was viewed fewer than 500 times and taken down after a single report. Facebook removed the content for violating its Community Standard on dangerous individuals and organisations. After the user submitted their appeal to the Board, Facebook identified the removal of this post as an enforcement error and restored the content.

As part of their appeal, the user indicated to the Board that the post was not threatening or criminal. The user alleged that the comment simply repeated the video's substance and reflected its tone. The user wondered why the video still remained on Facebook if there was an issue with the content. The user also complained about Facebook restricting their ability to post. The user noted that thousands of people engage with their content and called on the account to be restored immediately. The user suggested that Facebook should take down content that violates Facebook's Community Standards and only restrict accounts when users engage in threatening, criminal or misleading activities.



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The Oversight Board is committed to bringing diverse perspectives from third parties into the case review process. To that end, the Oversight Board has established a public comment process.

Public comments respond to case descriptions based on the information provided to the Board by users and Facebook as part of the appeals process. These case descriptions are posted before panels begin deliberation to provide time for public comment. As such, case descriptions reflect neither the Board's assessment of a case, nor the full array of policy issues that a panel might consider to be implicated by each case.

To protect the privacy and security of commenters, comments are only viewed by the Oversight Board and as detailed in the [Operational Privacy Notice](#). All commenters included in this appendix gave consent to the Oversight Board to publish their comments. For commenters who did not consent to attribute their comments publicly, names have been redacted. To withdraw your comment, please email contact@osbadmin.com.

To reflect the wide range of views on cases, the Oversight Board has included all comments received except those clearly irrelevant, abusive or disrespectful of the human and fundamental rights of any person or group of persons and therefore violating the [Terms for Public Comment](#). Inclusion of a comment in this appendix is not an endorsement by the Oversight Board of the views expressed in the comment. The Oversight Board is committed to transparency and this appendix is meant to accurately reflect the input we received.

2021-003-FB-UA

Case number

PC-09038

Public comment number

United States and Canada

Region

Withheld

Commenter's first name

Withheld

Commenter's last name

English

Commenter's preferred language

Withheld

Organization

No

Response on behalf of organization

Short summary provided by the commenter

Posting narratives without verification of authenticity implies support of the narrative.

Full Comment

This narrative Is fake and incites unrest, Chaos and violence. The poster is therefore complicit in the intent of the narrative. The poster cannot claim distance from the narrative. The post must be taken down again.

Link to Attachment

No Attachment

2021-003-FB-UA

Case number

PC-09143

Public comment number

United States and Canada

Region

Kevin

Commenter's first name

Simmons

Commenter's last name

English

Commenter's preferred language

GBS, LLC

Organization

Yes

Response on behalf of organization

Short summary provided by the commenter

I wholeheartedly support the CIA designation of RSS a “fanatic Hindu terrorist organization”. RSS, Prime Minister Narendra Modi, all groups, members and supporters thereof should be blocked and banned indefinitely from any and all use of Facebook. Facebook simply cannot allow its platform to be misused to communicate and coordinate genocide. Such instance, is a gross and flagrant misuse of Facebook social media platform.

Full Comment

I wholeheartedly support the CIA designation of RSS a “fanatic Hindu terrorist organization”. RSS, Prime Minister Narendra Modi, all groups, members and supporters thereof should be blocked and banned indefinitely from any and all use of Facebook. Facebook simply cannot allow its platform to be misused to communicate and coordinate genocide. Such instance, is a gross and flagrant misuse of Facebook social media platform.

Link to Attachment

No Attachment

2021-003-FB-UA

Case number

PC-09985

Public comment number

Europe

Region

GIOVANNI

Commenter's first name

PANSINI

Commenter's last name

English

Commenter's preferred language

GIOVANNI PANSINI

Organization

No

Response on behalf of organization

Short summary provided by the commenter

In order to answer the first of the two questions posed by the Oversight Board in case 2021-003-FB-UA, it is essential to first answer the following questions: a) whether Facebook can only delete the posts of its users by order of a Judge, or whether it can or must carry out a type of proactive intervention on the content posted by users; b) what is the relationship that binds Facebook to its users and what are the obligations of Facebook users; c) what is the legal basis that would allow a proactive intervention by Facebook and what should be the guarantees to protect Facebook users.

Full Comment

INTRODUCTION There is no unanimity on whether Facebook should provide proactive oversight of user content. Disputes, in fact, can be submitted to a court that can decide, for example, to force Facebook to remove content (the Court of Justice of the European Union, in its Judgment of 3 October 2019, in Case C-18/18, said that: "EU law does not preclude Facebook from being ordered to remove comments identical and equivalent to a comment previously declared unlawful"). However, some Judges have stated, on some occasions, that Facebook should intervene. Facebook has adopted a policy of proactive intervention, blocking content or profiles of people or organisations that carry out activities on the platform that are deemed not to comply with 'community standards'. **THE PRECEDENT IN ITALY** In Italy, where Facebook has blocked some social accounts of extreme right-wing political organisations, a precedent has been set. This case was brought to the attention of the Court of Rome, which decided, as a precautionary and provisional measure, to oblige Facebook to put the obscured profiles back in the clear (the decision is not final). The decision is based, in particular, on this consideration: the relationship between the platform and the user can no longer be considered of a merely private nature and, in its relationship

with users, the platform must strictly adhere to the respect of constitutional and legal principles until it is demonstrated (with an assessment to be made through a full cognition phase) that they have been violated by the user; In practice, according to the Court of Rome, Facebook should wait for a judge's ruling before removing content or profiles from the social network.

COMMENT ON THE DECISION

Facebook is made up of communities of people and, for this reason, there is a public relevance of certain behaviours or activities that take place within it. In other words, it is not possible to confine the relationship between Facebook and the user in a merely private and contractual perspective, since a comment in a social network can become 'viral' and provoke reactions that go far beyond the intention of the person who expressed it (as happened, for example, on the occasion of the Constitutional Referendum in 2016 in Italy, when rumours of electoral fraud, which later turned out to be unfounded, spread on the social network during the voting operations). A legal basis that could justify a 'proactive' activity of removal of Facebook content could be found in what happens to those who offer an editorial space (the editor), who is also responsible for the content they host. At the same time, users could also be assimilated to those who write content to be hosted by a publisher (i.e. Journalists) and be subject to the same rules (of the Journalists), where certain ethical and deontological rules exist and where, who fails to respect these rules, is subject to sanctions. A POSSIBLE SOLUTION This scheme, (that of ethical rules), could be used to manage the Facebook community, and also has the merit of having already been the subject of many studies (the Deontology of journalists has been codified for many years). If this scheme were to be applied, then, the rules would be the following: 1) Facebook (editor) should intervene, also in a pro-active way, to remove improper content 2) the author of the content, if he/she has violated ethical rules (for example, by not checking the sources, or by publishing content that is offensive to other people) in addition to having the content removed can be subject to a sanction, but the authority that commits the sanction should be provided with some form of impartiality 3) the rules, infringements and sanctions (which must be proportionate to the infringement and to the intention to engage in improper conduct) must be knowable and codified before any improper conduct is committed 4) there ought to be a form of discussion with the person concerned before a sanction is imposed 5) there should always be a form of judicial protection against the sanction imposed.

THE ANSWER TO THE QUESTION

For the reasons stated above: a. Facebook, due to its importance, can no longer be considered a simple "hosting platform", but a real editor; b. The Community's policies and standards can be considered adequate to constitute a true code of conduct, as the conduct censured and the corresponding sanctions are sufficiently detailed. c. However, it would be essential for Facebook to take steps (e.g. by means of MOOCs) to make its policies more accessible by educating and training users on their ethical obligations; d. Users are obliged to comply with the policy and cannot complain or justify themselves by saying that they are unaware of the existence of a rule, but this rule should be made more accessible (e.g. through MOOCs); This contribution follows the previous contribution on case 2021-001-FB-FBR. In no way can my opinion refer to the institutions in which I work or with which I collaborate. I am pleased to have been able to offer this non-scientific

commentary and am available for any further discussion or links to academic, case law or news citations related to the comments.

Link to Attachment

No Attachment

2021-003-FB-UA

Case number

PC-09987

Public comment number

Europe

Region

GIOVANNI

Commenter's first name

PANSINI

Commenter's last name

English

Commenter's preferred language

GIOVANNI PANSINI

Organization

No

Response on behalf of organization

Short summary provided by the commenter

To answer the questions of the public consultation on case 2021-003-FB-UA, it is essential to find the legal basis that could allow Facebook's intervention in the moderation of user content. Indeed, this legal basis could be identified in ethical/deontological rules that users should follow. These rules, if breached persistently, may authorise the application of sanctions. The application of ethical rules to the members of a social platform is not a new idea, but, considered in this perspective, provides a well-tested legal basis for the moderation of content and removal of user accounts.

Full Comment

See annexes

Link to Attachment

[PC-09987](#)

2021-003-FB-UA

Case number

PC-09989

Public comment number

United States and Canada

Region

Withheld

Commenter's first name

Withheld

Commenter's last name

English

Commenter's preferred language

Withheld

Organization

No

Response on behalf of organization

Short summary provided by the commenter

We ask the Board to exhort Facebook to take into account political context- such as the increased risk of mass killings or genocide that scholars and other experts agree exists in India- when making content moderation decisions. We ask the Board to direct Facebook to institute policies that address extremely high-risk situations in order to both protect political speech and prevent violence. We also ask the Board to direct Facebook to increase transparency around its use of automation. Finally, we ask the Board to direct Facebook to provide more granular notices to users about other actions it may take, such as limiting the reach of an account.

Full Comment

Without looking at the actual content that spurred this case, the profile of the user who posted it, and where it was posted, it's difficult to determine details about the content or the intent of the user in posting it. What is clear is that the post in question was critical of India's ruling Bharatiya Janata Party (BJP). BJP is currently in the process of trying to strongarm social media companies into doing their bidding. The government threatened to arrest Twitter employees after the company resisted mass takedown orders. At the same time, the Indian government has arrested activists for simply editing Google documents and attending a Zoom meeting for activists coordinating non-violent protests. We ask the Board to exhort Facebook to take into account political context- such as the increased risk of mass killings or genocide that scholars and other experts agree exists in India- when making content moderation decisions. We ask the Board to direct Facebook to institute policies that address extremely high-risk situations in order to both protect political speech and prevent violence. We also ask the Board to direct Facebook to increase transparency around its use of automation. Finally, we ask the Board to direct Facebook to provide more granular notices to users about other actions it may take, such as limiting the reach of an account. Content linked to offline harm

must be removed, but limiting the ability of users to post, or taking down specific content, can also cause significant harm. In this case, farmers in India have been engaged in widespread, largely peaceful protests. Farmers and those who support them have been using Facebook to get their message out to the world, in the midst of a draconian crackdown. Facebook must take into account such realities. This content was posted in the midst of an incredibly turbulent time in India. As noted above, the BJP is engaged in an unprecedented crackdown on activists. That's on top of the fact that for several years now BJP and its associated organizations such as the Rashtriya Swayamsevak Sangh (RSS) have been spreading misinformation directly linked to communal violence, using Facebook and other social media platforms. Although this case is about a false positive in Facebook's content moderation, the Board's decision should in no way justify leaving up content that is genuinely linked to offline violence and dangerous organizations such as Bajrang Dal and VHP. A report from the Wall Street Journal indicated that these groups have been flagged internally at Facebook India but not taken down due to threats against staff and internal political biases. Many months after that report, content that targets India's minorities abounds on the platform, such as memes equating Sikh protestors to terrorists, references to the deadly 1984 anti-Sikh riots, and hashtags calling for violent action against protesting farmers. Numerous pages that openly propagate hate against India's minorities and post content everyday continue to prosper and gain new followers and likes. Facebook must create a comprehensive genocide and violence mitigation plan for at-risk countries such as India. India won't be the last market that requires a specific plan of action, but it is currently in crisis. This plan should address how to handle mass killings and increased violence, particularly in the event of a pogrom. It should trigger particularly close review of misinformation, provide expedited verification and review of content from minority handles, and require preservation of deleted content for accountability and judicial purposes. Similarly, Facebook should create transparent policies for how it intends to address data requests targeting vulnerable human rights defenders, journalists, and activists. One single report was enough to remove a post which questioned the ideology of a right wing organization. This isn't surprising, but it is concerning because simply put, algorithms aren't very good at assessing political speech. Right now we don't even know at which point in the content moderation process algorithms intervene. We don't have information such as what data they are trained on. What words are fed into natural language processing models as slurs, and what videos are fed into video recognition systems as linked to dangerous organizations? Without knowing any of these details it's hard to recommend improvements to Facebook. It seems likely this was an automation issue, but we don't know that- because no one knows exactly how Facebook uses automation. However, Facebook's moderation at scale does appear to disproportionately affect minority voices and groups and counterspeech appears very likely to get removed. Facebook should increase transparency by submitting to an audit of its automation practices. It should at a minimum allow third parties to examine its training data. It should increase information about automation in its transparency report- beyond simply noting how much content was found before users see it. Facebook should indicate how often content was taken down with hashing technology as opposed to more

complex machine-learning. It could also indicate the error rate of its automation as determined by successful appeals, as well as spot-checks. There are a variety of ways Facebook could be more transparent about automation. Finally, Facebook must provide clearer notices about its variety of enforcement options. It should be clearer about why it chooses certain options, and notices themselves should be clearer. For example, while many users on the platform joke about being “put in Facebook jail,” it’s not always apparent to users if they’ve had the reach of their content limited. As the Board makes its recommendations, we urge it to keep this in mind: the BJP is openly weaponizing social media posts by activists. Facebook should not be complicit in BJP’s censorship, nor in BJP’s campaign of violence and disenfranchisement of minorities.

Link to Attachment

[PC-09989](#)

2021-003-FB-UA

Case number

PC-09990

Public comment number

Europe

Region

Jacob

Commenter's first name

Mchangama

Commenter's last name

English

Commenter's preferred language

Justitia and Future of Free Speech Project

Organization

Yes

Response on behalf of organization

Short summary provided by the commenter

We do not believe that this post violates Facebook's Dangerous Individuals and Organisations Standards. By removing this post, Facebook has narrowed the scope of permitted political speech and conflated speech that alludes to religious violence as incitement to violence. The Board must decide in favour of the user as the removal leads to a precedent of censorship where communities who faced historical violence are silenced from expressing their thoughts or anxieties about it in the future.

Full Comment

Facts In November 2020, in the backdrop of the ongoing farmers' protests in India, a user captioned and shared a 17-minute-long interview in the Punjabi language posted originally by Global Punjab TV (an online media platform). The video's original caption (uploaded by Global Punjab TV) said that Rashtriya Swayamsevak Sangh ('RSS' – a prominent Hindu Nationalist organisation) is “the new threat” and that the ruling Bhartiya Janata Party ('BJP') has moved towards extremism. The user captioned his post by saying that the “CIA designated the RSS as a fanatic Hindu terrorist organisation”, that PM Narendra Modi was once its President and that the RSS is threatening to kill Sikhs and repeat the saga of 1984 when Hindu mobs massacred Sikhs. The user also claimed in the post that RSS used the threatening phrase ‘Ram naam sat hai (generally uttered at the time when a person dies), that PM Modi is formulating a “Genocide of the Sikhs” based on the RSS's advice and that Sikhs in India should be on high alert. The user also said that Sikh regiments in the army have warned the PM of their willingness to die and protect the Sikh farmers and their land in Punjab. Contextual Issues Post made in the

backdrop of the politicised farmers' protest: The post was made in the backdrop of the ongoing farmers' protests in India where farmers are calling for the repeal of three new contentious agriculture laws. The protests are highly relevant to political discourse as over 250 million farmers are said to be affected. In this regard, the OHCHR has called upon authorities and protestors to "exercise maximum restraint" and protect the right to peaceful assembly and expression both online and offline. Sikhs were largely the victims of the 1984 communal riots: Although not officially recognised as a genocide (despite petitions to the UNHRC), it is widely recognised that approximately 3,000 Sikhs were killed in the 1984 riots when the Hindu majority attacked the minority Sikh community. User's ability to post restricted after the removal: Facebook took account-level enforcement action in response to the post and allegedly restricted the user's ability to post anything from their account. Post restored after appeal: After the user submitted their appeal to the Board, Facebook identified the removal as an enforcement error and restored the post. The original post (by Global Punjab TV) was never removed. As per the Board's decision in 2020-004-IG-UA (Breast cancer case), the Board has the authority to review restored content as per its Bylaws. Relevant Rules and Analysis I. Community Standards Facebook's Community Standards on Dangerous Individuals and Organisations prohibit organisations and individuals that proclaim a violent mission or are engaged in violence including terrorist activity, organised hate, organised violence or criminal activity. This case did not violate this Community Standard as: Firstly, the post did not involve any terrorist activity as it did not "engage in, advocate or lend substantial support" to purposive and planned acts of violence. Although the post said that Sikh army regiments have warned the PM of their willingness to die and protect the Sikh farmers, they did not directly advocate or incite any violence and even after months of the post, there appears to be no evidence to suggest that there existed a planned act of violence by Sikh regiments. Secondly, the post could not belong to a hate organisation as there is no fact/evidence to suggest that the user was speaking on behalf of an association of three or more members. Further, even though the post did allude to the religious affiliation of the RSS, it did not attack the Hindu religion but cautioned against extremism. II. Best Practices on determining what amounts to hate speech warranting removal: Although this post was not removed in the ambit of Facebook's hate speech policy, a mention of hate speech is relevant as the Dangerous Individuals Policy alludes to incitement to violence, organised hate and speech targeting characteristics such as religion. To determine whether the removal complied with International Human Rights Law ('IHRL') under Article 19 and Article 20(2) of the International Covenant on Civil and Political Rights

(‘ICCPR’), we recommend that the Board follows the speech protective standard in the Rabat Plan of Action. Thus, the Board must consider factors including the Context of the speech, the Content and form of speech, and the likelihood of violence. In the present case, the post was made in the context of the ongoing political tussle between the BJP and the farmers' unions and thus contributed to democratic discourse; the content of the post was not directly provocative to violence; and even after months of the post, there was no imminent violence by Sikh regiments. Thus, we believe that the post’s removal was not in compliance with the Rabat threshold. Further, the post ought to be restored as it contributed to ongoing political discourse, even if phrased in a polemic tone. In this regard, UN HRC’s General Comment 25 notes that “The free communication of information and ideas about public and political issues ... is essential...without censorship or restraint”. We recommend the Board to consider the threshold for removal of speech that incites violence as per the Indian Supreme Court in Rangarajan v. Jagjivan Ram. The Court held that “to restrict free speech, a proximate and direct nexus must be found with any imminent danger to the community. This nexus cannot be far-fetched, remote, or conjectural”. Further, the Board may turn to Qwelane, where the South African Supreme Court of Appeal found that justifying restrictions on free speech concerning incitement requires a high threshold to be established, holding that "a person's subjective emotions and feelings in response to the actions of a third party...not equate with causing harm of incitement to harm”.

Link to Attachment

[PC-09990](#)