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**THE RIGHT TO BE FORGOTTEN IN INDIA: CONSTITUTIONAL  
CONFLICTS, JUDICIAL TRENDS, AND THE ROAD AHEAD**

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**ABSTRACT**

The RTBF and many similar laws across the globe, allow individuals to request that their personal information be deleted from online platforms. The General Data Protection Regulation (GDPR) of the Europe Union explicitly acknowledged it, but India is still crawling way before starting to implement it. The current research examines the legal aspects of the RBTF in India, assessing its acknowledgement in judicial pronouncements and probable incorporation within Digital Personal Data Protection Act 2023. It then turns to the limitations to RBTF in India, specifically with respect to balancing privacy and freedom of speech, legal jurisdiction in the context of national borders, and technological issues implicated in clearing data out. This study aims at identifying possible legal reforms and policy recommendations for successful implementation by comparing India's strategy with best practices in other jurisdictions, particularly the US and EU. The study reminds us the importance of a well-balanced system protecting individual privacy on one hand, and establishing public accountability and interest on another.

**Keywords-** *Right to be Forgotten (RTBF), Digital Privacy, Data Protection laws, General Data Protection Regulation (GDPR), Freedom of Expression.*

**INTRODUCTION**

In the age of indelible data, the "right to be forgotten" (RTBF) is an opportunity for us to revisit the question of who should have control over information about themselves. Such a right forms an important intersection between emerging computational realities and

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traditional social norms of privacy, for posted (and therefore retained) information may continue to cause harm years after its relevance has waned.

India is at a unique point in the evolution of the RTBF. In contrast to the European Union, which has built comprehensive legal frameworks under the General Data Protection Regulation (GDPR), India's approach has been developed mostly through judicial decisions interpreting constitutional privacy rights in the absence of particular legislation. The legal landscape has become complex legal landscape, with the RTBF existing in theory but lacking precise implementation procedures.

The issue of how to govern personal information is becoming more pressing as India continues to undergo a rapid digital revolution, with over 800 million internet users. This study is important because it looks at how India's legal system has evolved to safeguard people's privacy in the digital era. This evolution reflects deeper cultural, legal, and constitutional ideas on how to strike a balance between privacy and other fundamental rights, such as the right to information and freedom of expression. This development consists of the underlying cultural, legal, and constitutional dimension of the equilibrium between privacy and other fundamental rights like the right to information and freedom of expression.

It will also analyse how the right to freedom of broadcasting in its full sense emerged in India from the judicial decisions and put it in the international context of privacy laws. It will also overview the practical challenges of its implementation in India's distinctive technological and societal environment and recommends measures which conform to India's constitutional philosophy in the face of challenges in its practical application.

## **ORIGIN AND EVOLUTION OF RTBF**

Predating the digital age, the RTBF's philosophical foundations originate in a variety of legal traditions that acknowledge individual's rehabilitation and "right to a second chance." The legal principle of "droit à l'oubli (right to oblivion)" evolved in European jurisprudence, especially French law, providing the former criminals who have already served their terms, an opportunity to oppose the disclosure of information regarding their past

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offenses.<sup>2</sup> A societal notion that people shouldn't be forever defined by their previous behaviour led to the emergence of similar ideas in other European jurisdictions.

The dynamics of personal information were drastically changed with the switch from traditional to digital information storage, leading to what has been described as a transition from "practical obscurity" to "perfect memory."<sup>3</sup> Prior to digitization, obtaining historical data required physical exertion, which naturally limited the amount of historical data that was still practically available. This dynamic was altered by the growth of the internet, especially search engines, which made historical data instantaneously accessible through simple queries.

The 2014 ruling in '*Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González*',<sup>4</sup> by the Court of Justice of the European Union (CJEU) highlighted a significant turning point for the RTBF. In the case, a Spanish national requested that links to newspaper stories from 1998 about a real estate auction related to his debt recovery procedures be taken down. According to the ruling of CJEU, "people have the right to request search engines to take down links to personal data that are inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes of the processing."<sup>5</sup> This ruling recognized a qualified RTBF against search engines that complied with EU data protection regulations. The RTBF is based on European privacy law, which was formally established in 2016 under Article 17 of the General Data Protection Regulation (GDPR).<sup>6</sup>

The RTBF gained prominence in India when the right to privacy was acknowledged as a fundamental right in the landmark decision in *Justice K.S. Puttaswamy v. Union of India*<sup>7</sup>. Due to its implicit acceptance of an individual's right to control their personal data, the RTBF is included in this recognition. The development of RTBF in India dates back to the early 2000s, when concerns about data security and privacy started to rise. However, the Puttaswamy ruling was the first to give RTBF legal traction. Although the right to be forgotten is part of the right to privacy, the Supreme Court pointed out that this right is not

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<sup>2</sup>Jeffrey Rosen, The Right to Be Forgotten, 64 STAN. L. REV. ONLINE 88, 88-92 (2012), <https://www.stanfordlawreview.org/online/privacy-paradox-the-right-to-be-forgotten/>

<sup>3</sup>Woodrow Hartzog, Privacy's Blueprint: The Battle to Control the Design of New Technologies p .10-15 (2018).

<sup>4</sup>*Google Spain SL v. Agencia Española de Protección de Datos*, Case C-131/12, 2014 E.C.R. 317

<sup>5</sup> See Id at 3

<sup>6</sup> Regulation 2016/679, art. 17, 2016 O.J. (L 119) 1 (EU).

<sup>7</sup>*Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

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absolute and must be balanced with the public interest, health, archiving, research, and legal rights.<sup>8</sup>

## **CONSTITUTIONAL DILEMMA – INTERSECTION OF RTBF AND FUNDAMENTAL RIGHTS**

In India, the Right to Be Forgotten (RTBF) presents a constitutional conundrum as it falls in conflict with other freedoms. In essence, the source of the conundrum arises due to the conflict between freedom of speech and expression (Article 19(1)(a)) and the right to privacy (Article 21), and the tacit right to information under Article 19 of the Indian Constitution. Article 21's right to privacy covers the RTBF. In 'Justice K.S. Puttaswamy v. Union of India'<sup>9</sup>, the Supreme Court recognized that privacy inheres in liberty and that it covers the right to informational self-control. Where personal data ceases to have any legitimate purpose or intrudes upon an individual's privacy, the foregoing that individuals have a right to have it deleted.

But the right to freedom of speech and expression under Article 19(1)(a) of the Indian Constitution might clash with the RTBF.<sup>10</sup> This right allows individuals to have freedom to make themselves heard and to share and access information. Freedom of speech and expression might be hampered by the RTBF by placing restrictions on access to all types of data that might be in the public interest in order to erase it. This right that comes with implied article 19 of the Indian Constitution allows individuals to access information that is in the public interest. Whenever individuals attempt to erase data that might be considered relevant to record history or public debate, this right might clash with RTBF.

To better understand the conflicting nature of RTBF with RTI, we can take a hypothetical example with Freedom of speech and expression. You can imagine a case where an ex-con wants his criminal past to be dropped from Google search results using RTBF. In the case of criminal matters, where information is fundamental for accountability and public protection, there is a potential to violate the public's right to know. In addition, news organizations can argue that providing coverage of these types of incidents is a valid exercise of its freedom-of-speech privilege. In these cases, the screen of the judiciary between protection on the one side and information to the public, as well as freedom of expression on the other hand is

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<sup>8</sup> See Id at 6

<sup>9</sup> See Id at 5

<sup>10</sup> INDIA CONST. art. 19, cl. (1)(a)

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questionable: transparency and accountability must be balanced with privacy, so that RTBF enforces protection without being out of reach.

These core rights need to be weighed in an effort to resolve this constitutional conundrum. The courts have to cautiously weigh the public's right to know and freedom of expression with the personal interests of individuals. This balance is needed to ensure that RTBF upholds individual privacy while still avoiding inhibiting accountability and transparency.

### JUDICIAL INTERPRETATION ON RTBF

The RTBF was explicitly recognized as an element of informational privacy in the Puttaswamy ruling, which said: "The right of an individual to exercise control over his personal data and to be able to control his/her own life would also encompass his right to control his existence on the internet.". The specific limits and means of the implementation of this right, however, were not covered in the ruling; instead, these aspects were left to be dealt in future legislation and court decisions.<sup>11</sup>

Indian Courts have taken the initiative in identifying and defining the RTBF through case-by-case adjudication in the absence of comprehensive data protection legislation. The following important rulings have influenced the development of this emerging right:

In a major ruling in '*Sri Vasunathan v. The Registrar General*'<sup>12</sup>, the Karnataka High Court specifically acknowledged the RTBF in India. The case was a petition to have a woman's identity removed from a court order that was available to the public, on a compromising matrimonial dispute with her husband. The court ordered that, while the physical court documents would not be altered, the woman's identity be taken out from the title and content of the digital court records that are available through online search engines. The court's ruling was based on the case's "sensitive nature" and possible "intrusion into privacy."

In '*Zulfiqar Ahman Khan Vs. Quintillion Business Media Pvt. Ltd.*'<sup>13</sup> Delhi High Court granted an interim injunction for removal of articles related to sexual harassment allegation against petitioner. The court held that the "right to be forgotten" and the "right to be let alone" are integral aspects of the right of privacy, which could certainly be enforced where the information published served its purpose or was later no longer necessary.

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<sup>11</sup> See Supra at 5.

<sup>12</sup> *Sri Vasunathan v. The Registrar General*, WP No. 62038/2016 (Karnataka H.C. Jan. 23, 2017) (India).

<sup>13</sup> *Zulfiqar Ahman Khan v. Quintillion Business Media Pvt. Ltd.*, 2019 SCC OnLine Del 8494 (India)

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In *Jorawer Singh Mundy v. Union of India*<sup>14</sup>, the Delhi High Court passed an interim order and got a judgment regarding acquittal in a drug case of the petitioner removed out of free to access online media. The court said the petitioner's rights and freedoms would pass a negative bearing if the conviction continued to be accessible on the internet. But the court emphasized that the RTBF has to be weighed against other rights including access by the public to court records and freedom of expression.

The Gujarat High Court had taken a harsher view in '*Dharamraj Bhanushankar Dave v. State of Gujarat*'<sup>15</sup> and declined the prayer for expunction of a judgement available as public record. The judgment made apparent limitations to the recognition by courts of RTBF without legislative aid, as it concluded that a legal provision was lacking for deleting a judgement from High Court's website having no statutory backing.

These decisions indicate that the rule of right to be forgotten is being interpreted differently by different courts and "each court ...it's own way of balancing" the other interests against privacy, yet it remains unclear how they actually apply. The paradox underscores the difficulty of generating a new right through judicial fiat in the absence of legislative guidance.

## LEGISLATIVE APPROACH FOR RTBF

An important legislative attempt to control digital data privacy in India is the Digital Personal Data Protection Act, 2023 (DPDP Act)<sup>16</sup>. The Act includes measures that permit people to request the erasure of their personal data under certain circumstances, even if it does not specifically reference the Right to Be Forgotten. "*An individual has the right to request that their personal data be updated, corrected, completed, or erased*" under Section 12 of the DPDP Act. However, data fiduciaries, who are in charge of processing personal data, still have a final authority over how this right is implemented. Although this strategy is in line with the GDPR's guiding principles, but it lacks thorough procedural clarity.

In addition to the DPDP Act, RTBF has been indirectly addressed by others statutory frameworks. The Information Technology (Intermediary Guidelines and Digital Media Ethics

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<sup>14</sup>*Jorawer Singh Mundy v. Union of India*, 2021 SCC OnLine Del 2306 (India).

<sup>15</sup>*Dharamraj Bhanushankar Dave v. State of Gujarat*, R/Special Civil Application No. 1854 of 2015 (Gujarat H.C. Jan. 19, 2017) (India).

<sup>16</sup>Digital Personal Data Protection Act, 2023 (DPDP Act) No. 22, Acts of Parliament, 2023 (India)

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Code) Rules, 2021<sup>17</sup>, promote RTBF enforcement by requiring digital intermediaries to control content and remove illegal material.<sup>18</sup> Furthermore, in the interest of public order, security, or sovereignty, the government may restrict access to online information under Section 69A of the Information Technology Act of 2000. This authority may also be extended to requests for the removal of personal data. However, rather than protecting personal data, these regulations mainly address issues of national security.

In India, there is still no independent and well-defined legislation that expressly acknowledges RTBF as a fundamental right, notwithstanding these legislative efforts. The application of RTBF is inconsistent due to the dependence on court interpretations and fragmented legal provisions. A strong legal foundation is required to guarantee consistency and efficient implementation of digital privacy rights.

### **GLOBAL PERSPECTIVE ON RTBF**

In the European Union and the United States, the Right to Be Forgotten (RTBF) has generated significant debate and judicial evolution. However, through intrinsic dissimilarity in both areas' collections of laws and societal approaches to freedom of expression and privacy, the United States has failed to adopt an analogue to the energetic RTBF framework that was established by the European Union.

There also exist important distinctions between the European model and the Indian approach to the RTBF in both intellectual basis and modes of implementation. India has largely set up this right via constitutional jurisprudence on privacy and judicial decision-making, while the EU regards the RTBF as an aspect of the right to personal data protection under general data protection law. There also exist important distinctions in procedures of implementation. In the EU's GDPR regime, individuals may ask for removal directly from data storers, and the regulator will intervene only where such requests are refused. This provides a direct connection between individuals and data controllers. In contrast, the Indian DPDP Act 2023 would be more careful in relation to potential incompatibilities with other entitlements by insisting on adjudicatory process prior to any removal.<sup>19</sup>

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<sup>17</sup>Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Gazette of India, pt. II, sec. 3(i) (Feb. 25, 2021).

<sup>18</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Gazette of India, pt. II, sec. 3(i) (Feb. 25, 2021).

<sup>19</sup> See ID at 12

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Whereas, there are intriguing similarities and differences between the Indian and United State approaches to the RTBF. Similar to the US, India places a high constitutional importance on the right to free speech and access to information. However, Indian courts have recognized space for this right within constitutional privacy provisions, in contrast to the United States, where First Amendment concerns have essentially barred recognition of a general RTBF. The Indian judiciary's balancing approach, which requires careful consideration of conflicting interests rather than establishing absolute rights, is somewhat similar to the American "intermediate scrutiny" requirement for certain constitutional rights. But in general, Indian courts have been more inclined to acknowledge that, in some circumstances, privacy interests may take precedence over information access. The evolution of privacy rights has been fragmented in both countries due to the absence of comprehensive federal privacy legislation. However, India has adopted a more constitutionally-driven approach, with the Supreme Court setting broad privacy principles that lower courts subsequently apply to particular contexts, whereas US privacy law has mostly grown through sectoral legislation and common law torts.

This disparity in the approach, with the US placing more emphasis on open access to information and the EU prioritizing individual privacy, emphasizes the conflict between freedom of expression and privacy rights.<sup>20</sup>

## CHALLENGES IN IMPLEMENTATION

Before discussing the challenges, let's take a hypothetical example to understand the whole scenario of RTBF. Let's imagine, in 2015, Delhi-based software engineer Ajay Sharma was falsely charged with financial crime. Despite his 2017 acquittal, there are still a number of news stories and social media posts regarding his arrest that can be seen online. Even now that he's been found not guilty, friends and potential employers continue to associate him with the crime, damaging his reputation and job prospects. Acting under the guidance of Right To Be Forgotten, Ajay applies for them to delete links about incorrect and old information from search engines and news websites. However, he is frustrated by competing interests--some in the media insist that the information remains relevant to the public at large. After long legal battle, the court rules in Ajay's favor as the old information continuing to be uploaded online

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<sup>20</sup>*Samuel W. Royston*, The Right to Be Forgotten: Comparing U.S. and European Approaches, 48 St. Mary's L.J., available at <https://commons.stmarytx.edu/cgi/viewcontent.cgi?article=1088&context=thestmaryslawjournal> (Last visited Feb 26<sup>th</sup>, 2025)

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did cause harm and pointed to his basic right to privacy under Article 21 of the Indian Constitution. So this is how we can justify the RTBF and also consider limitations and opposing interest of other rights as mentioned above with respect to implementation.

Absence of an overarching legislating framework and the inherent contradictions with other significant rights are some of the major roadblocks for implementing the Right to Be Forgotten (RTBF) in India. While RTBF is upheld by courts as an element of the right to privacy under Article 21 of the Indian Constitution, the application remains patchy and uncertain.

- **Legislative Ambiguity**

Inadequate and transparently defined laws that govern the Right to be Forgotten (RTBF) in India also act as a barrier. While the European Union uses the General Data Protection Regulation (GDPR) to establish a systematic framework to follow for RTBF, judicial pronouncements act as the framework in the case of India. Lack of codified laws makes it very problematic to assert RTBF in individuals since they have to depend on judicial pronouncements in the event of non-existence of clear guidelines.<sup>21</sup> It is highlighted that effective laws are imperative to establish RTBF procedures and standards to ensure consistent applicability in jurisdictions that vary.

- **Contradictory Judicial Approaches**

Indian courts have provided mixed judgments on RTBF, and this has led to inconsistent knowledge of law and confusion. Exercising RTBF becomes inconsistent since courts have presented differing understandings. Certain courts have upheld public access to information while others have ordered removal of personal data from search engines in attempts to ensure protection of privacy. What makes this legal landscape even more confusing is such inconsistency, and it also leads to confusion among individuals and web platforms. Despite the very important role that the judiciary has to establish stable precedents on RTBF, courts struggle to balance RTBF

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<sup>21</sup>LJRF Voice, The Right to Privacy and the Right to be Forgotten in India: Legal Developments and Challenges, available at <https://ljrvoice.com/the-right-to-privacy-and-the-right-to-be-forgotten-in-india-legal-developments-and-challenges/> (last visited Feb 26th 2025).

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with public interest, freedom of expression, and individual freedoms where clear rules in legislation have failed to exist.<sup>22</sup>

- **Balancing Privacy with Public Interest and Freedom of Speech**

A significant barrier to the implementation of RTBF in India is striking a balance between the rights of individuals privacy and the ideals of open justice and public access to information. The freedom of speech and expression guaranteed by Article 19(1)(a) of the Indian Constitution may be in conflict with RTBF. The courts have to figure out how to preserve individual privacy without compromising the legitimacy and accessibility of court records that are available to the public.

- **Technical Difficulties**

There are also a lot of technical difficulties with RTBF implementation. It is a difficult challenge to define "personal data" and identify it over the wide expanse of the internet. Digital platforms find it challenging to comply with RTBF requests because India lacks the same level of clarity on personal data regulations as compare to the EU's GDPR.<sup>23</sup> Furthermore, data can be mirrored or cached in many locations, making total erasure difficult. This makes the removal procedure more difficult when data is replicated across multiple platforms and countries.

- **Personal Privacy v Public Records**

Distinguishing between private information and public records presents another difficulty. Public records are necessary to preserve accountability and transparency in governance, even while individual privacy should be respected. For instance, RTBF could conflict with the legal requirement for public access to court documents in criminal cases. The judiciary must carefully examine how to preserve private information without eradicating documents that are in the public interest.

Briefly, some challenges have to be addressed in introducing RTBF in India, such as indeterminate laws, conflicting judicial decisions, technical issues, and keeping a balance

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<sup>22</sup>Juris Centre, The Role of the Right to be Forgotten in India's Data Privacy Framework, available at <https://juriscentre.com/2024/09/10/the-role-of-the-right-to-be-forgotten-in-indias-data-privacy-framework/> (last visited Feb 26th 2025).

<sup>23</sup>NLIU Law Review, Privacy Law: Right to be Forgotten in India, at 17-33 (2022), available at <https://nliulawreview.nliu.ac.in/wp-content/uploads/2022/01/Volume-VII-17-33.pdf> (last visited Feb. 26 2025).

between freedom of expression, public interest, and privacy. Here, comprehensive laws, convergent judicial benchmarks, technical solutions, and international coordination are badly required.

### PROPOSED RECOMMENDATION

An envisaged framework should integrate a number of core suggestions to successfully apply the Right to Be Forgotten (RTBF) in India. Primarily, it is imperative that the law be clear-cut. This includes enactment of a detailed data protection act that specifically covers RTBF, with clear guidelines on data wiping, and an independent Data Protection Authority tasked with the enforcement of such requests.<sup>24</sup> Secondly, to ensure uniformity across differing courts, judicial parameters need to be established to attain a balance between privacy, public interests, and freedom of information. Furthermore, it is imperative to upswing technological capacities in facilitating efficient identification and elimination of personal data off digital media. Awareness drives among the public are also imperative in facilitating individuals to utilize their RTBF efficiently.<sup>25</sup> Finally, in light of the international nature of digital data, global coordination is imperative to ensure that requests under RTBF are recognized and adhered to on an international front.

### CONCLUSION

A cornerstone of existing privacy regulations in the digital era is the Right to Be Forgotten (RTBF), as a further support for individuals' control of their personal information. In India, it was the judicial pronouncements that set the pace for RTBF. Decided cases like Justice K.S. Puttaswamy v. Union of India and Jorawar Singh Mundy v. Union of India have received all judicial acclaim. Enforceability of RTBF, however, has remained sporadic because there are no clear statutory provisions to guide its enforcement. However, the Digital Personal Data Protection Act of 2023 is innovative in data protection law but it falls under a vacuum policy to perform protection of the RTBF entire, For which reason the enforcement regime is almost totally dependent on third-party provision.

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<sup>24</sup>Amigos IAS, The Right to Be Forgotten: A Critical Legal Development in India, available at <https://amigosias.com/explained/the-right-to-be-forgotten-a-critical-legal-development-in-india/> (last visited Feb 26, 2025)

<sup>25</sup>SCC Online, The Evolution of Right to be Forgotten in India, available at <https://www.scconline.com/blog/post/2022/01/27/the-evolution-of-right-to-be-forgotten-in-india/> (last visited Feb 26, 2025)

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There are valuable lessons to be learnt by comparing India's approach with global best practices, particularly in the US and EU. RTBF has even been codified in the EU's GDPR, Article 17 of which recognizes that people have a right to request that their data be deleted under certain circumstances, subject to the public interest. But the US values of free speech and access to information takes precedence in the American framework which means any implementation of RTBF is inherently limited. India will have to strike a balance between these models, between upholding privacy but not at the cost of undermining freedom of expression and access to information.

The primary challenges to the implementation of RTBF in India are ambiguous laws, inconsistencies in judicial interpretations, conflicts with public interest and freedom of speech, and technical limitations in enforcing digital erasure. A well-organized legislative framework that sets clear enforcement procedures, balances the RTBF with other fundamental rights, and defines its scope is necessary to address these issues.

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