



THE GLOBAL  
**FOOD DONATION**  
POLICY ATLAS

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**RECOMMENDATIONS**  
FOOD DONATION  
LAW AND POLICY

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## Authors

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## About The Global Food Donation Policy Atlas

The Global Food Donation Policy Atlas is a first-of-its-kind initiative to promote better laws around food donation in order to help address both food loss and food insecurity. This project maps the laws affecting food donation in countries across the globe, in order to: help practitioners understand national laws relating to food donation; compare laws across countries and regions; analyze legal questions and barriers to donation; and share best practices and recommendations for overcoming these barriers. The project is a partnership between Harvard Law School Food Law and Policy Clinic and The Global FoodBanking Network. To learn about and compare the food donation laws and policies for the countries FLPC has researched to date, visit [www.atlas.foodbanking.org](http://www.atlas.foodbanking.org).

## About the Harvard Law School Food Law and Policy Clinic

The Harvard Law School Food Law and Policy Clinic (FLPC) serves partner organizations and communities by providing guidance on cutting-edge food system legal and policy issues, while engaging law students in the practice of food law and policy. Our focus is on increasing access to healthy foods, supporting sustainable food production and food systems, and reducing waste of healthy, wholesome food. For more information, visit [www.chlpi.org/FLPC](http://www.chlpi.org/FLPC).



## About The Global FoodBanking Network

The Global FoodBanking Network is an international non-profit organization that nourishes the world's hungry through uniting and advancing food banks in more than 40 countries. GFN focuses on combating hunger and preventing food waste by providing expertise, directing resources, sharing knowledge and developing connections that increase efficiency, ensure food safety, and help food banks reach more people facing hunger. For more information visit [www.foodbanking.org](http://www.foodbanking.org).



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# ABOUT THESE RECOMMENDATIONS

This document is a product of The Global Food Donation Policy Atlas, a partnership between the Harvard Law School Food Law and Policy Clinic (FLPC) and the Global FoodBanking Network (GFN).<sup>1</sup> The Atlas project is an innovative partnership designed to map the laws and policies affecting food donation in 15 countries over the course of two years and to provide a comparative legal analysis based on these findings. For each of these countries, the Global Food Donation Atlas project will produce a legal guide to identify the laws relevant to food donation in that country. While the landscape differs across geopolitical borders, the legal guides recognize universal issues that impact efforts to reduce food loss and waste and increase food recovery. These issues include food safety, date labeling, liability, taxes and government grants or funding programs.

In-country interviews with relevant stakeholders, including food banks and other food recovery organizations, food donors, government officials, and legal experts, further informed the content of the legal guide and revealed priority actions for law and policy change. Based on these findings, FLPC has developed specific recommendations for each country. These recommendations are intended to serve as a companion to the legal guides, though both documents may stand alone. The purpose of these recommendations is to highlight select actions for improving upon laws, policies and programs relevant to food loss, waste, and donation.

The present document sets forth recommendations focused on India, where 40% of all the food produced is wasted,<sup>2</sup> despite the country being home to approximately a quarter of the world's hungry people.<sup>3</sup> The discussion below provides a brief overview of the legal issues most pertinent to food donation, which are explained in more detail in the India legal guide. The recommendations included in this report are not exhaustive, but offer select best practices and policy solutions to reduce food loss and waste and combat food insecurity through stronger food donation laws and policies in India.



# SUMMARY OF RECOMMENDATIONS

The recommendations contained in this document aim to provide a starting point for stakeholders in India to strengthen the legal and policy framework relevant to food donation. Food banks and other organizations whose mission is to reduce food waste and increase food donation (collectively referred to as “food recovery organizations”), donors, and policymakers should consider additional opportunities to advance food donation and reduce food waste. In summary, the recommendations are as follows:

To ensure that food is donated safely and does not pose risks to recipients, as well as provide clarity to encourage food donors, the federal government should:

- Amend India’s Food Safety and Standards Act to feature a donation-specific section.
- Produce and disseminate clarifying guidance on food safety requirements relevant to donation.
- Require surplus food agencies to complete a food safety training course.

To ensure that quality-based date labels do not result in the disposal of food that is otherwise safe for consumption or donation, the federal government should:

- Amend the Food Safety and Standards Act to distinguish between quality-based and safety-based date labels.
- Amend the Surplus Food Regulations to permit the donation of food after the “best before” date.
- Promote consumer education and awareness on the meaning of date labels.

To ensure concern for liability arising out of donating food does not deter potential donors, the federal government should:

- Enact a federal Good Samaritan law applicable to food donation.
- Issue regulations clarifying that liability follows possession.

To ensure businesses (both donors and distributors) receive proper tax incentives and sufficient information to participate in food donation, the federal government should:

- Offer tax incentives for food donations made to food recovery organizations.
- Develop guidance on GST requirements applicable to food donation.

To ensure that food donors and food recovery organizations are sufficiently incentivized and have the requisite knowledge to engage in food donation, the federal government should:

- Create government grant opportunities for food donation infrastructure.
- Publicly encourage corporations to participate in food donation programs.
- Create a national study to better quantify food waste.

# INTRODUCTION

Food loss and waste represents a major environmental, economic, and social challenge in India. While India has recently made significant progress in poverty reduction, the country still accounts for a quarter of the world's hungry people.<sup>4</sup> Some 39% of Indian children under the age of five are stunted, 15% are wasted and 29% are underweight.<sup>5</sup>

While food insecurity remains a pressing issue, 40% of all the food produced in India is wasted.<sup>6</sup> An estimated 21 million tons of wheat—equivalent to Australia's entire annual crop—rots or is eaten by rodents in storage.<sup>7</sup> One of the world's largest food producers, India wastes about \$14 billion of food each year.<sup>8</sup> This organic matter contributes to the problematic amount of waste that has accumulated in India's landfills, with recent reports describing how overflow from the landfills has caused deaths and illnesses.<sup>9</sup>

The Government of India has recognized that food donation is a sustainable solution for redirecting safe, surplus food that would otherwise be discarded to those that need it most. In 2019, the Government of India promulgated its Food Safety and Standards (Recovery and Distribution of Surplus Food) Regulations.<sup>10</sup> These regulations specifically pertain to excess food and food donation and are administered by the Food Safety and Standards Authority of India (FSSAI).<sup>11</sup>

WHILE FOOD INSECURITY REMAINS A PRESSING ISSUE, 40% OF ALL THE FOOD PRODUCED IN INDIA IS WASTED.

Meanwhile, private and non-governmental actors have actively engaged in food donation efforts around the country. Food recovery initiatives led by organizations such as Zomato Feeding India and India Foodbanking Network are taking root and helping to ensure that millions of meals do not go to waste while people go hungry.<sup>12</sup> Expanding upon these efforts requires a clear understanding of the legal issues that are most likely to arise when donating food, both among food donors and food banks. It also requires identifying how the law could be strengthened to increase food donation or to remove perceived or actual barriers to donating food.

The following sections briefly summarize some of the most common legal issues relevant to food donation, as identified and described in more detail in the Legal Guide, and offer policy recommendations to address these challenges.

## LEGAL CHALLENGES & POLICY RECOMMENDATIONS

### Food Safety for Donations

#### Issue Overview

In many countries, a key barrier to the donation of surplus food is the lack of knowledge or readily available guidance regarding safety procedures for food donation. Potential donors are often uncertain as to which food safety regulations apply to donated food, as opposed to purchased food, as well as the steps necessary to safely donate food in compliance with applicable regulations. As a result, safe, surplus food that could have been redirected to populations in need is instead destined for landfills.

India's federal food safety laws are largely contained in the Food Safety and Standards Act (FSSA).<sup>13</sup> However,

the FSSA contains some provisions that are not strictly related to safety, such as restrictions on labeling and prohibiting the distribution of food deemed misbranded,<sup>14</sup> among others.<sup>15</sup> The FSSA does not explicitly distinguish between these safety and non-safety provisions. The FSSA does not explicitly discuss whether its provisions are relevant only to food that is sold, but not donated, nor does it include separate procedures for food donation. The Food Safety and Standards Authority of India (FSSAI) is responsible for setting additional rules and standards under the Act as well as for enforcing the Act.<sup>16</sup>

To help address these questions, in 2019, the FSSAI promulgated the Surplus Food Regulations, which set specific standards for leftover and unused portions of safe food that may be donated.<sup>17</sup> The regulations apply to any person or food business that donates surplus food, meaning leftover, unused portions of safe food that have not been sold and served to customers.<sup>18</sup> The regulations explicitly state that such food may be donated and set specific safety, handling, and distribution requirements for donating food.<sup>19</sup>

However, the regulations contain a high level of generality and do not make clear which FSSA provisions apply to food donations. For example, the regulations do not expressly define when food is “safe for consumption” or point to best practices.<sup>20</sup> As a result, food donors and food recovery organizations do not know which rules in the FSSA relate to food safety, and which of these food safety rules apply to donated food. Attempting to discern which food safety rules apply to food donation is a burdensome and challenging task. Food donors may therefore avoid donating surplus food, and food recovery organizations may refuse to accept certain donations that are otherwise safe. Understanding which food safety requirements apply to donated food is important for minimizing potential harm to beneficiaries, and instilling confidence in food donors.

## Recommended Policy Actions

### **1. AMEND INDIA’S FOOD SAFETY AND STANDARDS ACT TO FEATURE A DONATION-SPECIFIC SECTION.**

In order to eliminate the uncertainty regarding which FSSA provisions apply to the safety of donated food, the FSSA should be updated to feature a donation-specific chapter. This section could clarify what provisions are necessary to ensure the safety of donated food and which provisions (such as certain labeling provisions) are not related to safety and do not apply to food donations. Such clarification in the FSSA would significantly ease the burden on food donors and food recovery organizations seeking to ensure compliance with relevant food safety provisions and may increase food donation.

### **2. PRODUCE AND DISSEMINATE CLARIFYING GUIDANCE ON FOOD SAFETY REQUIREMENTS RELEVANT TO DONATION.**

In addition to or in lieu of a food-donation section in the FSSA, clear guidance from FSSAI on what FSSA provisions or other requirements apply to donated food would ease concerns of food donors and food banks, and likely lead to increased donation. Under the FSSA, the FSSAI is authorized to enforce the provisions of the Act. The FSSAI could coordinate with food donation organizations that are members of the Indian Food Sharing Alliance to produce this clarifying guidance. Guidance could be accomplished by amending the Surplus Food Regulations to clarify which provisions of the FSSA apply to food donations or via some other form of guidance document. The benefit of guidance is that it can generally be more informal and detailed than legislation, which often makes it more useful to a broader audience.. However, ideally donors and food recovery organizations would be able to look to both the FSSA and guidance from FSSAI in order to understand their food safety obligations with respect to donated food.

## 3. REQUIRE SURPLUS FOOD AGENCIES TO COMPLETE A FOOD SAFETY TRAINING COURSE.

FSSAI's 2019 Surplus Food Regulations require that surplus food distribution organizations acquire a food business license in accordance with the provisions of the Food Safety and Standards (Licensing and Registration of Food Business) Regulations.<sup>21</sup> In practice, this barrier to entry is fairly low, as food distribution organizations may acquire a license via registration and payment of a nominal fee. However, it may result in poor food safety handling of donated food. In order to ensure adequate food safety practices by food distribution organizations, the FSSAI should require surplus food agencies to complete a food safety training course to receive state or federal licensure. This will help ensure that distributors are equipped with the necessary knowledge for distributing food safely, while also promoting confidence in food donation by potential donors.

## Date Labeling

### Issue Overview

A major driver of food waste and obstacle to food donation is the general misconception about the date labels such as “sell by,” “use by,” or “best by,” affixed to food products. Many donors and consumers interpret these date labels as indicators of the safety of food. Despite this interpretation, for the vast majority of foods, date labels indicate freshness or quality rather than food safety, and few foods become more likely to carry foodborne illnesses over time. Donors and food recovery organizations, however, being cautious about food safety, may discard food once the date has passed even if the food is perfectly safe to donate and consume.

In other countries that have measured the impact of date labels, research has found that consumers generally confuse date labels as indicators of safety rather than quality. In the United Kingdom, for example, researchers found that consumers discarded about 22% of food that they could have eaten due to confusion over date labeling.<sup>22</sup> Similarly, 84% of Americans report that they throw away food after the expiration date passes due to safety concerns, even if there is minimal risk of a foodborne illness at that time.<sup>23</sup> This confusion occurs in the home but also impacts food businesses' willingness to donate as well as stigma against past-date food among food donation recipients.

This cycle of confusion and waste occurs in India under the current date labeling regime. Date labels for all packaged foods are standardized according to the requirements set forth in the FSSAI's Packaging and Labelling Regulations.<sup>24</sup> These regulations require that all prepackaged foods contain a label consisting of the date of manufacture or packing and a date label indicating when the food should be used by or discarded.<sup>25</sup> In most cases, the regulations require food items to bear a “best before” date,<sup>26</sup> related to the quality of the food and meant to signify the end of the period during which the food retains any specific qualities for which tacit or express claims have been made.<sup>27</sup> Beyond this date, the food may still be perfectly safe to consume, though its quality may have diminished.<sup>28</sup> For certain foods (artificial sweetener aspartame, infant milk substitute, and infant foods), the regulations require a different label relating to food safety.<sup>29</sup> The language on these labels must be “use by date,” “recommended last consumption date,” or “expiry date.” These safety-related date labels signify the end of the estimated period of normally expected quality and safety attributes.<sup>30</sup> After this date, the food may not be sold.<sup>31</sup>

While these date regulations may appear straightforward, the recently passed Surplus Food Regulations do not appear to follow the two-category distinction created under the current Packaging and Labelling Regulations. The Surplus Food Regulations require that donated pre-packed food bear its original date label, including the date of expiry.<sup>32</sup> Additionally, the regulations require that donated prepared food contain the date of preparation and “last date of consumption.”<sup>33</sup> However, these regulations do not offer clear guidance for food donors and food banks regarding donation past “best before” dates.<sup>34</sup> While donating food items past the date of expiry is

clearly prohibited,<sup>35</sup> the regulations are silent regarding donation past an item’s “best before” date, seemingly permitting donation as long as the food is still deemed fit for human consumption.<sup>36</sup>

In addition, the current Packaging and Labelling Regulations may not be in effect much longer. FSSAI recently released for comment new date labeling regulations, currently expected to take effect on January 1, 2021.<sup>37</sup> The draft Food Safety and Standards (Packaging and Labelling) Regulations, 2019 still define “best before” dates as quality-related, while “use by” and “expiry” dates are still recognized as safety-related.<sup>38</sup> However, the draft regulations would require that all prepackaged foods—barring a few exceptions<sup>39</sup>—bear a “use by” or “expiry date”<sup>40</sup> and stipulate that food past its “expiry” or “use by” date not be sold or *distributed* for human consumption.<sup>41</sup> The effect of these changes would be to prohibit the donation of any prepackaged foods past their expiry date.

Food donors and food banks generally agree that date labels indicate the safety of food and understand that the donation of food is expressly prohibited after the “expiry” date. However, the lack of guidance surrounding “best before” dates in the context of food donation leads safe packaged food that should be donated to be instead sent to the landfill.

## Recommended Policy Actions

### 1. AMEND THE FOOD SAFETY AND STANDARDS ACT TO DISTINGUISH BETWEEN SAFETY-BASED AND QUALITY-BASED DATE LABELS.

India’s existing date-labeling regime under the FSSAI’s Packaging and Labelling Regulations allows manufacturers to select from several labels and, while it appears to distinguish between quality and safety, does not clearly do so. Further, the FSSAI is currently poised to change the date labeling regime to require “expiry dates” on all prepackaged products, regardless of whether or not there is a safety concern for post-date consumption. In order to provide clarity as to the meaning of the date label on food products, the Indian national government should amend the FSSA to introduce a dual-labeling system with one standard date label to be used for foods that are labeled as a quality indicator, and one standard label for foods that are labeled in order to indicate that the product may decline in safety after the date.

Many other countries, and the food industry itself, are moving towards this system of dual date labels. For example, the EU requires that the date label on any food products use only one of two standard labels: “best before” is required for those foods where the label is an indicator of quality, while “use by” is required for those foods that may increase in food safety risk after the date.<sup>42</sup> Several EU Member States have issued guidance clarifying the impact of these dates on food donation and others have introduced legislation that explicitly allows for donation after the “best before” date (but not after the “use by” date).<sup>43</sup> The Consumer Goods Forum, a global network of 400 consumer goods companies across 70 countries has also called for the standardization and adoption of a dual date labeling system that distinguishes between quality and safety by establishing one term for each category and prohibits the use of any other term.<sup>44</sup>

India could adopt the EU’s recommended language of “best before” and “use by” to distinguish between quality and safety. This labeling scheme, while not significantly different from India’s current scheme under the Packaging and Labelling Regulations, would establish a single term for each category and prevent the use of any other date labels, thereby providing greater certainty to consumers, as well as to food donors and food recovery organizations, as to the meaning of these dates. Such a scheme may reduce the amount of food that is thrown away.

## 2. AMEND THE SURPLUS FOOD REGULATIONS TO PERMIT THE DONATION OF FOOD AFTER THE “BEST BEFORE” DATE.

The FSSAI should amend the Surplus Food Regulations to clarify that packaged foods subject to the FSSAI’s date labeling requirements may be donated after the “best before” date. The FSSAI does not explicitly state that food may not be donated after the best before date has passed; yet cautious food donors and food recovery organizations likely interpret the date label requirement as a safety provision and generally believe that food may not be donated after the date. As this date relates to quality rather than safety, the food is likely still wholesome once the affixed date has passed.

Thus, unless or until the government introduces a dual date-labeling scheme, the FSSAI should amend the Surplus Food Regulations to explicitly permit the donation of certain foods after the affixed date. This exemption should apply only to foods for which the date label indicates quality, and not safety.

Implementing this amendment may be bolstered by administering technical support to retailers, manufacturers, and other potential donors. These actors have become accustomed to discarding food once the date is past-due. Food recovery organizations and the FSSAI could support the transition through trainings for retail staff and guidance on how to safely and systematically transport past-date goods to food recovery organizations.

In addition, if the government chooses to permit the sale of goods after a “best by” date, FSSAI could provide accompanying guidance explaining the general palatability of certain products past their “best before” date. This could be done by promulgating charts that specify how long a certain type of food may be donated past its “best before” date.

## 3. PROMOTE CONSUMER EDUCATION AND AWARENESS ON THE MEANING OF DATE LABELS.

Given that most Indian citizens erroneously perceive “best before” dates as indicators of safety, increasing the sale, consumption or donation of food after this date will require a change in behavior. National consumer education will be critical to inform donors, food recovery organizations, and consumers that these dates are not regulated to convey safety, but are more likely indicators of quality and to educate the public about the difference between quality and safety labels. Joint public and private sector initiatives may help to ensure that stakeholders understand that date labels should not stand as a barrier to donation. Any clarification or standardization to this regime will also require campaigns to educate and increase awareness among donors, food recovery organizations, and consumers about the new interpretations.

# Liability Protection for Food Donations

## Issue Overview

A significant barrier to food donation is the fear among donors that they will be found liable if someone becomes sick after consuming donated food. Although there have been very few, if any, lawsuits in India related to the consumption of donated food, businesses are reticent to donate food. Despite the absence of previous lawsuits related to food donation, corporations, in particular, are wary of exposing themselves to potential litigation. This wariness appears to stem in part from the lack of control business have over the handling of the food once they transfer it to an intermediary organization or directly to a beneficiary for distribution. While the country does have Good Samaritan laws in other areas,<sup>45</sup> India does not currently have any type of Good Samaritan law protecting food donors or food recovery organizations from civil or criminal liability resulting from food donation. Businesses are particularly wary of donating pre-packaged foods because of the increased visibility

and traceability of branded products. The lack of a Good Samaritan law offering a legal shield from liability could contribute to increased public relations fears and ultimately discourage food donation.

## Recommended Policy Actions

### 1. ENACT A FEDERAL GOOD SAMARITAN LAW APPLICABLE TO FOOD DONATION.

Donors and intermediary food recovery organizations should be exempted from civil, administrative, and criminal liability for food that is in compliance with all applicable laws and regulations and is donated to non-profits in good faith. India has enacted Good Samaritan protections for certain types of activities that could attract litigation where it has found those activities to be beneficial to society, such as protection to those offering assistance after a traffic accident.<sup>46</sup> Similar liability protection for food donation could ease potential donors' fears of liability and help to ensure that surplus food reaches those in need rather than go to the landfill.

In order to balance the interests of donors and food recovery organizations with those of the ultimate recipients, any Good Samaritan law enacted in India should require donated food to meet all relevant food safety laws, and liability should remain when harm to the recipient is the result of intent, recklessness, or gross negligence.

Additionally, while Good Samaritan protections for food donation would ideally apply to both donors and food recovery organizations, most countries that have enacted liability protections laws for food donations only provide protections for donors. If the Indian government pursues the enactment of a Good Samaritan law for food donation, it should consider India's unique food donation context when determining the scope of the protections.

### 2. ISSUE REGULATIONS CLARIFYING THAT LIABILITY FOLLOWS POSSESSION.

In the absence of a Good Samaritan law protecting all well-intentioned parties involved in food donation, regulations that clearly state that liability for donated food follows the possession of the food itself could encourage businesses to donate food. Such regulations should specify that once an entity or individual hands off wholesome food to another group, their liability transfers to the receiving party. Regulations of this type would likely help businesses to feel more confident in donating safe food to an intermediary food recovery organization where control over the handling and distribution of the food leaves the donor's hands. Some businesses that regularly donate food through intermediary food recovery organizations have reached contractual agreements regarding liability with the intermediaries that state that the intermediary assumes liability for food once it is in their possession; however, it is not clear whether such contractual arrangements would be enforced in court. A regulation clarifying liability for all donors would provide clarity around the issue of liability and would likely encourage more widespread food donation.

## Tax Incentives and Barriers

### Issue Overview

Food donation helps to mitigate the costs of hunger and stimulate the economy, but it can also be expensive, as food donors must allocate time and money to recover, package, store, and transport surplus food that otherwise would be discarded, usually at no cost. Taxes can either help to offset these expenses and create an incentive to donate, or they can create an additional barrier to donation, one which contributes to greater food loss and

waste. With respect to tax incentives, corporate donors may be more likely to donate surplus food to food banks if they receive a charitable deduction to offset the cost of transportation and logistics. In India, there are currently no specific tax incentives or specific tax barriers related to the donation of food. Offering a tax or other financial incentive could encourage businesses to participate in food donation more readily. Further, there is confusion among donors regarding the Goods and Services Tax (GST) enacted in 2017<sup>47</sup> and its applicability to food donated and distributed for free.

## Recommended Policy Actions

### 1. OFFER TAX INCENTIVES FOR FOOD DONATIONS MADE TO FOOD RECOVERY ORGANIZATIONS.

The process of donating food can incur costs to a business related to transportation, logistics, and staff time. Providing a tax credit or deduction could help to offset these costs and increase food donation.

A number of countries have implemented tax incentives in order to encourage food donation. For example, in the United States, taxpayers who donate property that could have otherwise provided them income, including food products, are eligible for a tax deduction. U.S. taxpayers who donate food are eligible for two deductions: one is the general deduction that applies to all charitable contributions and the other is an enhanced tax deduction that offers a higher benefit specifically for qualified food donations.<sup>48</sup>

Such a tax incentive program in India could be tailored in design. For example, the federal government may elect to limit the total credit or deduction that a business could claim in a given tax year by setting a percentage of the value of donated food that can be claimed or by setting a cap on the total dollar amount of percentage of income of the credit that can be claimed by a business. Before adopting such limits, the government should balance the benefit with the potential deterrent effect that they may have on food donation. However, in order to ensure donor accountability as well as the food's safety, the tax incentive should only be made available to food recovery organizations approved by the government.

It should be noted that offering a tax credit for food donations is more likely to encourage donation among smaller donors who may not generate a lot of income during the year. Compared with a tax deduction, which reduces a taxpayer's taxable income and is then used to determine the amount of taxes that must be paid, a tax credit is a direct dollar-for-dollar subtraction from the taxes owed.<sup>49</sup> Tax credits are also applied evenly across tax brackets and would therefore have a greater impact for small, low-income businesses than a tax deduction.

### 2. DEVELOP GUIDANCE TO ASSIST DONORS AND FOOD RECOVERY ORGANIZATIONS IN UNDERSTANDING GST IMPLICATIONS RELATED TO FOOD DONATION.

The GST system in India is new and donors are still working to understand its applicability to food donations. Applicability of GST is unclear when food is donated for free to charities without any consideration. In such a case, the donated food may not be taxable if the value of the food is \$0. However, if the food is donated for even a nominal fee or if the food retains value as a "business asset," the donation may be considered taxable if the business claimed input tax credits for it.<sup>50</sup> If the donation is taxable, it may be cheaper for businesses to discard the food rather than donate it, incentivizing food waste.

Guidance clarifying how the GST applies to food that is donated and distributed freely could resolve this confusion and help businesses to navigate the tax system more smoothly, encouraging increased food donation.

# Government Grants and Incentives

## Issue Overview

Federal or local grant and incentive programs can be an important resource for food donation initiatives, especially as an alternative or supplement to tax incentives. Government assisted funding is particularly important in India, where a lack of infrastructure and capital frequently limits food recovery efforts. For example, government grants can help food donors and food banks acquire equipment and resources necessary for gleaning, storing, processing, and transporting food for donation. Government funding can also support new technological innovations to make food donation more efficient and sustainable. Further, government recognition programs can function as a significant incentive for food donors, recognizing that positive public relations may play a significant role in consumer behavior. To date, India does not offer national grants for food donation, nor has the government created any recognition programs.

## Recommended Policy Actions

### 1. CREATE GOVERNMENT GRANT OPPORTUNITIES FOR FOOD DONATION INFRASTRUCTURE.

Grants and incentive programs funded at the federal or state level offer an important resource for food donation initiatives, as cost is one of the main barriers preventing food businesses from donating. More specifically, transportation and storage costs are often cited as the main expenses that manufacturers, retailers, and restaurants need to overcome to donate food.<sup>51</sup> This is particularly true in countries like India where there are no tax incentives to offset the costs of donation.

A number of countries have implemented grant programs to encourage food recovery. For example, in 2019, Argentina's Ministry of Agribusiness launched a contest to grant non-reimbursable financing for innovative food waste solutions in Argentina's horticultural sector.<sup>52</sup> The grant is administered under the government's National Food Loss and Waste Reduction Program, and in partnership with the Inter-American Development Bank. Additionally, in an effort to incentivize states to implement food waste reduction plans, the United States Congress created the Compost and Food Waste Reduction Pilot program through the Agriculture Improvement Act of 2018, which authorized funding of up to \$25 million for the United States Department of Agriculture to support pilot projects in at least ten states to develop and implement municipal compost plans and food waste reductions plans.<sup>53</sup> These pilot programs will help create new infrastructure and incentives to recover food and address the harmful environmental impacts of food waste in landfills.

The FSSAI or another government ministry could create similar grant programs to help food donors and food banks acquire equipment and resources necessary for gleaning, storing, processing, and transporting food for donation. The FSSAI could also provide grants to support new innovations and emerging technologies that will make food donation more efficient and sustainable.

### 2. PUBLICLY ENCOURAGE CORPORATIONS TO PARTICIPATE IN FOOD DONATION PROGRAMS.

FSSAI could require greater transparency of the amount of food waste generated annually or the amount of food donated annually by requiring corporations to track and report their annual wastage of food or amount of food donated. Corporations that waste the largest amount of food or donate the least amount of food could be published on a website, utilizing social pressure to encourage the private sector to find innovative ways to avoid food waste. Alternatively, or in conjunction with a website tracking corporation food wastage, a recognition program could be developed to promote and reward the businesses that waste the least amount of food or

donate the most amount of food, or that make the greatest improvements in food donation each year. Along with these public relation campaigns, FSSAI could generate approved tactics for corporations to incorporate into their daily operations, such as encouraging caterers to provide food waste reminders on event planning menus.

### **3. CREATE A NATIONAL STUDY TO BETTER QUANTIFY FOOD WASTE.**

India does not currently have much data available on the amount of food wasted in the country. In order to better quantify food waste, the Indian federal government should create a national study on the topic. This study could examine the amount of food waste generated nationally, resource use associated with this waste, how much waste is generated along each stage of the food supply chain, and the financial costs associated with food waste in India, among other areas of interest. Such data would help both the government and food recovery organizations better understand the issue of food waste in the country as well as how to develop interventions targeted to meet the country's needs.

## **CONCLUSION**

While these policy recommendations are intended to help strengthen food donation in India, they are not exhaustive. Those committed to reducing food loss and waste and promoting food recovery should seek the advice of legal experts, policymakers, and other stakeholders to identify the most effective and feasible policy interventions.

# ENDNOTES

- <sup>1</sup> The Global Food Donation Policy Atlas project would not be possible without support from the Walmart Foundation. The Walmart Foundation is not responsible for the content of this document or the views contained herein. The content of this document should not be interpreted as legal advice; those seeking legal advice should speak to an attorney licensed to practice in the applicable jurisdiction and area of law.
- <sup>2</sup> *Food Wastage in India, And What You Can Do About It*, THE CSR JOURNAL, Oct. 31 2018, <https://thecsrjournal.in/food-wastage-in-india-a-serious-concern/>.
- <sup>3</sup> FAO, INDIA COUNTRY PROGRAMMING FRAMEWORK, 2016-2017 6 <http://www.fao.org/3/a-bp575e.pdf>.
- <sup>4</sup> *Id.*
- <sup>5</sup> *Id.* at 13
- <sup>6</sup> *Food Wastage in India, And What You Can Do About It*, THE CSR JOURNAL, Oct. 31 2018, <https://thecsrjournal.in/food-wastage-in-india-a-serious-concern/>.
- <sup>7</sup> Chetan Chauhan, *India wastes more farm food than China: UN*, HINDUSTAN TIMES, Sep. 11, 2013, <https://www.hindustantimes.com/delhi/india-wastes-more-farm-food-than-china-un/story-m4QIWkxAXtTzIWMkHT4CN.html;jsessionid=DCF25BB7ACF66BF42F5BACB7035651AC>
- <sup>8</sup> Uzmi Athar, *As millions go hungry, India eyes ways to stop wasting \$14 billion of food a year*, REUTERS, Jan. 3, 2018, <https://www.reuters.com/article/us-india-food-hunger/as-millions-go-hungry-india-eyes-ways-to-stop-wasting-14-billion-of-food-a-year-idUSKBN1ET07Y>.
- <sup>9</sup> See Hari Kumar & Kai Schultz, *'The Dump Killed my Son': Mountains of Garbage Engulf India's Capital*, N.Y. TIMES, June 10, 2018, <https://www.nytimes.com/2018/06/10/world/asia/india-delhi-garbage.html>.
- <sup>10</sup> Food Safety and Standards (Recovery and Distribution of Surplus Food) Regulations, 2019, Gazette of India, pt. III sec. 4 (2019), [https://www.fssai.gov.in/upload/uploadfiles/files/Gazette\\_Notification\\_Surplus\\_Food\\_06\\_08\\_2019.pdf](https://www.fssai.gov.in/upload/uploadfiles/files/Gazette_Notification_Surplus_Food_06_08_2019.pdf).
- <sup>11</sup> *Id.*
- <sup>12</sup> FEEDING INDIA, HUNGER HEROES PROGRAM OVERVIEW, <https://www.feedingindia.org/hungerheroes> (last visited Apr. 29, 2020).
- <sup>13</sup> See Food Safety and Standards Act, 2006, No. 34, Acts of Parliament, 2006 (India).
- <sup>14</sup> Food Safety and Standards Act, 2006, No. 34, Acts of Parliament, 2006 (India).
- <sup>15</sup> The "Common Market of the South" (MERCOSUR) Agreement is a free trade agreement between the Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay, and the Eastern Republic of Uruguay. The trade bloc was established under the Treaty of Asuncion in March 1991 and expanded under the 1994 Treaty of Ouro Preto; see Mercado Comun Del Sur, Protocol de Ouro Preto, Ley 24560/1995, <https://www.argentina.gob.ar/normativa/nacional/ley-24560-28253>
- <sup>16</sup> See The Food Safety and Standards Act. 2006 (No. 34 of 2006) (India), <https://www.fssai.gov.in/upload/uploadfiles/files/FOOD-ACT.pdf>.
- <sup>17</sup> Food Safety and Standards (Recovery and Distribution of Surplus Food) Regulations, 2019, Gazette of India, pt. III sec. 4 (Jul. 26, 2019).
- <sup>18</sup> Food Safety and Standards (Recovery and Distribution of Surplus Food) Regulations, 2019, Gazette of India, pt. III sec. 4 (Jul. 26, 2019).
- <sup>19</sup> Food Safety and Standards (Recovery and Distribution of Surplus Food) Regulations, 2019, Gazette of India, pt. III sec. 4 (Jul. 26, 2019).
- <sup>20</sup> Food Safety and Standards (Recovery and Distribution of Surplus Food) Regulations, 2019, Gazette of India, pt. III sec. 4 (2019).
- <sup>21</sup> Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011, Gazette of India, pt. III sec. 4 (2011).
- <sup>22</sup> US GAO. DATE LABELS ON PACKAGED FOODS: USDA AND FDA COULD TAKE ADDITIONAL STEPS TO REDUCE CONSUMER CONFUSION, GAO-19-407 (SEPT. 2019) <https://www.gao.gov/assets/710/701238.pdf>
- <sup>23</sup> HARVARD LAW SCHOOL FOOD LAW AND POLICY CLINIC AND NATURAL RESOURCES DEFENSE COUNCIL, DON'T WASTE, DONATE: ENHANCING FOOD DONATIONS THROUGH FEDERAL POLICY 19 (2017).
- <sup>24</sup> Food Safety and Standards (Packaging and Labelling) Regulations, 2011, Gazette of India, pt. III sec. 4 (2011), available at [https://www.fssai.gov.in/upload/uploadfiles/files/Packaging\\_Labelling\\_Regulations.pdf](https://www.fssai.gov.in/upload/uploadfiles/files/Packaging_Labelling_Regulations.pdf).
- <sup>25</sup> *Id.*
- <sup>26</sup> *Id.* § 2.2.2.
- <sup>27</sup> *Id.* § 1.2.1(1).
- <sup>28</sup> *Id.*
- <sup>29</sup> *Id.* § 2.2.2.10(iii), 2.2.2.10(iv).
- <sup>30</sup> *Id.* § 1.2.1(10).
- <sup>31</sup> *Id.*
- <sup>32</sup> Food Safety and Standards (Recovery and Distribution of Surplus Food) Regulations, 2019, Gazette of India, pt. III sec. 4 (Jul. 26, 2019), [https://www.fssai.gov.in/upload/uploadfiles/files/Gazette\\_Notification\\_Surplus\\_Food\\_06\\_08\\_2019.pdf](https://www.fssai.gov.in/upload/uploadfiles/files/Gazette_Notification_Surplus_Food_06_08_2019.pdf).
- <sup>33</sup> *Id.*
- <sup>34</sup> *Id.*
- <sup>35</sup> See *id.* § 5(3).
- <sup>36</sup> See *id.* § 4(4).
- <sup>37</sup> Draft Food Safety and Standards (Packaging and Labelling) Regulations, 2019, Gazette of India, pt. III sec. 4 (2019), [https://fssai.gov.in/upload/uploadfiles/files/Draft\\_Notification\\_Display\\_Labelling\\_02\\_07\\_2019.pdf](https://fssai.gov.in/upload/uploadfiles/files/Draft_Notification_Display_Labelling_02_07_2019.pdf).
- <sup>38</sup> See *id.* § 2(1).
- <sup>39</sup> The only foods exempted from the proposed required "expiry" date labelling are: (i) fresh fruits and vegetables, (ii) wine, (iii) alcoholic beverages containing 10% or more by volume of alcohol, (iv) vinegar, (v) hard boiled confectionery, (vi) food grade salt for industrial use, (vii) solid sugars, (viii) chewing gum.
- <sup>40</sup> See Draft Food Safety and Standards (Packaging and Labelling) Regulations, 2019, Gazette of India, pt. III sec. 4, ch. 1, § 4.2(10).
- <sup>41</sup> See *id.* § 2(1).
- <sup>42</sup> Commission Regulation No. 1169/2011 (EU).
- <sup>43</sup> See MARKET STUDY ON DATE MARKING AND OTHER INFORMATION PROVIDED ON FOOD LABELS AND FOOD WASTE PREVENTION: FINAL REPORT, EUROPEAN COMMISSION (January 2018).
- <sup>44</sup> Release: *Companies Commit to Simplify Food Date Labels Worldwide by 2020, Reducing Food Waste*, WORLD RESOURCES INTERNATIONAL (Sept. 20, 2017). <https://www.wri.org/news/2017/09/release-companies-commit-simplify-food-date-labels-worldwide-2020-reducing-food-waste>.
- <sup>45</sup> See *Savelife Foundation v. Union of India*, Writ Petition (Civil) No. 235 (2012); see also Ministry of Road Transport and Highways Notification No. 25035/101/2014-RS (May 12, 2015), Gazette of India, pt. I sec. 1, <https://dghs.gov.in/WriteReadData/userfiles/file/Gazette%20notification%20regarding%20protection%20of%20Good%20Samaritans-%20MoRTH.pdf>.
- <sup>46</sup> See *Savelife Foundation v. Union of India*, Writ Petition (Civil) No. 235 (2012); see also Ministry of Road Transport and Highways Notification No. 25035/101/2014-RS (May 12, 2015), Gazette of India, pt. I sec. 1, <https://dghs.gov.in/WriteReadData/userfiles/file/Gazette%20notification%20regarding%20protection%20of%20Good%20Samaritans-%20MoRTH.pdf>.

- <sup>47</sup> Ministry of Law and Justice (Legislative Department), the Constitution (One Hundred and First Amendment) Act, 2016, Gazette of India, pt. II sec. 1 (Sept. 8, 2016); *see also* GOODS AND SERVICES TAX COUNCIL, BRIEF HISTORY OF GST, <http://www.gstcouncil.gov.in/brief-history-gst> (last visited Sept. 28, 2019).
- <sup>48</sup> *See* I.R.C. § 170.
- <sup>49</sup> HARVARD LAW SCHOOL FOOD LAW AND POL'Y CLINIC, KEEPING FOOD OUT OF THE LANDFILL: POLICY IDEAS FOR STATES AND LOCALITIES 19-20 (2016) [https://www.chlpi.org/wp-content/uploads/2013/12/Food-Waste-Toolkit\\_Oct-2016\\_smaller.pdf](https://www.chlpi.org/wp-content/uploads/2013/12/Food-Waste-Toolkit_Oct-2016_smaller.pdf)
- <sup>50</sup> *See* Central Goods and Services Tax Act, 2017, Sched. I (India).
- <sup>51</sup> FOOD WASTE REDUCTION ALL., ANALYSIS OF U.S. FOOD WASTE AMONG FOOD MANUFACTURERS, RETAILERS, AND RESTAURANTS 17 (2016), [http://www.foodwastealliance.org/wp-content/uploads/2013/05/FWRA-Food-Waste-Survey-2016-Report\\_Final.pdf](http://www.foodwastealliance.org/wp-content/uploads/2013/05/FWRA-Food-Waste-Survey-2016-Report_Final.pdf).
- <sup>52</sup> *Contest: #SinDesperdicioHorticola*, <https://sindesperdicio.net/en/challenges1/> (last visited Dec. 18, 2019)
- <sup>53</sup> Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490 (2018).

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