



# THE GLOBAL FOOD DONATION POLICY ATLAS

## Executive Summary: India

*More than enough food is produced to feed every person, yet one-third of all food is wasted. Redirecting safe, surplus food is an effective and compassionate solution, but it can be complicated because food is a heavily-regulated product.*

To help address the most pressing and universal legal and policy questions surrounding food recovery and donation, the **Harvard Law School Food Law and Policy Clinic (FLPC)** and **The Global FoodBanking Network (GFN)** have partnered to create The Global Food Donation Policy Atlas. This innovative partnership will map the laws and policies affecting donations in 15 countries over the course of two years. The project aims to: identify and explain national laws relating to food donation, analyze the most common legal barriers to promoting greater food donation and share best practices and recommendations for overcoming these barriers.

### INDIA FOOD LOSS AND WASTE

Food loss and waste represent a major social challenge in India. India has recently become a net food exporter, increasing food grain production from 50 million tons in 1950-51 to about 250 million tons in 2014-15. Despite these agricultural expansions, 40% of all the food produced in India is wasted. At the same time, India continues to struggle with hunger—close to 40% of the Indian population is under-nourished. While the Supreme Court of India has recognized that Indian citizens are guaranteed the right to food and water, and government agencies have worked to develop strategies for food waste diversion as a mitigating solution for food access issues, studies still show that \$14 billion is spent annually to grow, process, transport and dispose of food that is never eaten.

#### India: By the Numbers

- Population: 1,311,559,000
- GDP: \$9.474 trillion
- Poverty Rate: 13.4%
- Prevalence of Severe Food Insecurity: 14.5%
- Global Food Security Index: 58.9
- Food Sustainability Index: 66.4
- FLW Cost Estimates: \$14 billion

### INDIA FOOD DONATION POLICY HIGHLIGHTS

**FOOD SAFETY FOR DONATIONS:** In many countries, lack of knowledge or readily available guidance regarding safety procedures for donated food leads to food going to waste instead of being donated. Implemented in 2019, India’s Surplus Food Regulations set standards for leftover and unused portions of safe food that may be donated. The regulations help facilitate food donation by providing clarity that food donation is legal and encouraged. The regulations apply to any person or food business that donates any surplus food, meaning any leftover unused portions of safe food that have not been sold and served to customers. They explicitly state that such food may be donated and set safety, handling,

and distribution requirements for donating food.

**ACTION OPPORTUNITY:** However, the regulations contain a high level of generality and do not make clear which provisions of the Food Safety and Standards Act (FSSA) apply to food donations. 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. 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. To strengthen its laws related to food safety for food donation, the India government could amend the FSSA to **feature a donation-specific food safety section; produce and disseminate clarifying guidance on food safety requirements relevant to donation; and require surplus food agencies to complete a food safety training course.**

**DATE LABELING:** 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. India has taken a step toward clarifying date labels by creating a standard date labeling scheme that distinguishes between a quality date and a safety date. In India, date labels for all packaged foods are standardized according to the requirements set forth in the FSSAI’s Packaging and Labelling Regulations, which 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.

**ACTION OPPORTUNITY:** While the Packaging and Labelling Regulations appear straightforward because they distinguish between a quality versus a safety date, the Surplus Food Regulations do not offer clear guidance for food donors and food banks regarding donation past “best before” dates. This 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. While India has taken an important step toward creating an effective national date labeling scheme, its system still results in more food being wasted than donated. 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 could **amend the FSSA in order to distinguish between safety-based and quality-based date labels; amend the Surplus Food Regulations to permit the donation of food after the “best before” quality date; and promote consumer education and awareness** on the meaning of date labels.

## **INDIA FOOD DONATION POLICY OPPORTUNITIES**

**LIABILITY PROTECTION FOR FOOD DONATIONS:** India does not currently offer any federal liability protection for food donors or food recovery organizations. Without such protections, food donors and intermediaries may refrain from food donation and recovery, fearing potential liability should a final beneficiary claim they were harmed after consuming the 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. Global corporations, in particular, are wary of exposing themselves to potential litigation.

**ACTION OPPORTUNITY:** To dispel concerns of food donors and food recovery organizations regarding potential liability for food donations, the federal government should adopt legislation that **establishes clear liability protection for donated food** that is in compliance with all applicable laws and regulations and is donated to non-profit organizations in good faith. In order to balance the interests of donors and food recovery organizations with those of the ultimate recipients, any liability protection law enacted in India should require donated food to meet all relevant food safety laws, and

liability protection should be available when harm to the recipient is the result of intent, recklessness, or gross negligence of the donor or food recovery organization.

**TAX INCENTIVES AND BARRIERS:** 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. In India, there are currently no tax incentives for the donation of food, nor are there specific tax barriers. However, there is confusion among donors regarding the Goods and Services Tax (GST) enacted in 2017 and its applicability to food that is donated and distributed for free.

**ACTION OPPORTUNITY:** In order to offset the costs businesses may incur when donating food, the federal government should **offer tax incentives for food donations made to food recovery organizations** approved by the government. In addition, the government should **develop guidance to assist donors and food recovery organizations in understanding GST** implications related to food donation.

**GOVERNMENT GRANTS AND INCENTIVES:** 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 assistance is particularly important in India, where a lack of infrastructure and capital frequently limits food recovery efforts. Government recognition programs can also function as a significant incentive for food donors. Nevertheless, there are currently no federal grants or public funding mechanisms specifically designed to support food donation in India, nor has the government created any recognition programs.

**ACTION OPPORTUNITY:** Providing greater government **financial support for food donation infrastructure** will enable food recovery organizations to significantly enhance their impact. The federal government should also **publicly encourage corporations to participate in food donation programs** by requiring corporations to track and report their annual wastage of food or amount of food donated. Finally, as India does not currently have much data available on the amount of food wasted in the country, the Indian government should **create a national study to better quantify food waste**.

## INDIA FOOD DONATION POLICY: HOW DOES IT COMPARE?

In terms of policy successes, India’s development of the Surplus Food Regulations and efforts to standardize date labels at the federal level demonstrate a growing commitment to food recovery. However, the existing legal framework relevant to food donation can be strengthened by enacting comprehensive liability protections at the federal level, creating tax incentives to promote food recovery, and providing greater government financial support for food donation infrastructure.

Food Safety for Donations	Date Labeling	Liability Protection for Food Donation	Tax Incentives	Tax Barriers	Donation Requirements or Food Waste Penalties	Government Grants and Incentives
Weak policy	Weak policy	No policy	No policy	No policy	No policy	No policy

For more detail on how India measures up against the other countries evaluated in The Global Food Donation Policy Atlas project, check out [www.atlas.foodbanking.org](http://www.atlas.foodbanking.org). For more information about the food donation legal framework in India and policy recommendations for strengthening

this framework, check out the India Food Donation Legal Guide and the India Food Donation Policy Recommendations.

## BACKGROUND INFORMATION: MAJOR LEGAL ISSUES IMPACTING FOOD DONATION

**Food Safety for Donations:** A key barrier to food donation is lack of knowledge regarding safety procedures for donated food. All donated food should be safe for consumption and comply with applicable food safety laws. Potential donors, however, are often uncertain which food safety regulations apply to donated food and the steps necessary to comply.

**Date Labeling:** Date labels, such as “use by,” “best before,” “sell by,” and “expires on,” are a major driver of food waste and obstacle to donation. For the majority of foods, date labels are used by manufacturers to reflect freshness or quality rather than safety, yet without standard labels delineating safety versus quality, safe food often goes to waste rather than being donated.

**Liability Protections for Food Donations:** A significant barrier to food donation is the fear among donors that they will be liable if someone becomes sick after consuming donated food. Many countries are moving to adopt liability protections to mitigate this concern. In such countries, donors and food recovery organizations may still face uncertainty as to the parameters of this protection.

**Tax Incentives and Barriers:** Donating surplus food can be expensive, as food donors must allocate time and money to glean, package, store, and transport surplus food that otherwise would be discarded, usually at no cost. Tax incentives (deductions or credits), can help offset these costs and make donation a more attractive option. In some countries, such as several countries with a Value Added Tax, tax schemes are themselves a barrier to donations.

**Donation Requirements or Food Waste Penalties:** Some countries have employed food donation requirements or impose monetary penalties for food that is sent to the landfill (often known as organic waste bans or waste taxes) in order to influence business behavior and promote more sustainable solutions such as food donation and recovery.

**Government Grants and Incentives:** Grants and incentive programs funded at the federal or local level offer another important resource for food donation initiatives. This is particularly true in countries where donors consider tax incentives to be insufficient to offset the costs of donation or where a lack of infrastructure limits food recovery efforts.

## THE GLOBAL FOOD DONATION POLICY ATLAS PROJECT SUPPORT

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