



THE GLOBAL
FOOD DONATION
POLICY ATLAS

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INDIA
**LEGAL
GUIDE**

FOOD DONATION
LAW AND POLICY

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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.

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.



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.



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INTRODUCTION

Purpose of this Guide

Food loss and waste has emerged as one of the greatest food system challenges that we face today. An estimated one-third of food produced globally is lost or wasted along the supply chain;¹ this amounts to approximately 1.3 billion tons of food each year that ends up in the landfill.² Food loss or waste occurs at every stage of the food system: food is lost during the initial harvest due to low market prices, high labor costs and demand for perfect-looking produce; food is wasted by grocery stores and restaurants over-estimating customer demands; and food is discarded by consumers who engage in inefficient shopping and cooking practices and lack a clear understanding about date labels.³

These behaviors have significant environmental, economic, and social consequences: food that is lost or wasted has a huge carbon footprint of 3.3 gigatons,⁴ using roughly 28% of agricultural land,⁵ and accounting for eight percent, or 70 billion tons, of total global greenhouse gas emissions.⁶ The market value of food products lost or wasted is approximately \$940 billion per year.⁷ Meanwhile, more than 820 million people are undernourished and one in nine are food insecure.⁸ The international community has sought to address this paradox and mobilize the reduction of food waste, especially within the framework of the *2030 Agenda for Sustainable Development* and Sustainable Development Goal 12.3.⁹

In many countries, food donation has emerged as a popular and logical solution to redirect safe, surplus food into the hands of those who need it most. However, there is some uncertainty surrounding the laws and regulations most relevant to food donation. To help address the most pressing questions, 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.¹⁰ This innovative partnership will map the laws and policies affecting donations in 15 countries over the course of two years. The project aims to: understand the national laws relating to food donation, compare laws across countries and regions, learn about food donation barriers, and share best practices and recommendations.

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.

This Legal Guide focuses on India, where 40% of the food produced in the country is wasted and widespread food insecurity undermines the health and safety of the population.¹¹ FLPC and GFN, in collaboration with partners in India,¹² have developed this resource to help food donors, food banks and food recovery organizations understand the relevant legal frameworks that impact food waste and donation efforts.¹³ It is also intended to serve as a resource for those in other countries who are looking to inform their own food donation laws and policies.

After providing initial commentary on food loss and recovery in India, this guide provides an overview of the legal frameworks most relevant to food donation at the national and local level. The subsequent sections take a closer look at the laws generally applicable to food donation: food safety laws and regulations, food date labeling laws, “Good Samaritan” or liability protection laws, tax incentives for food donation and tax policy disincentives, and waste diversion laws that penalize food waste or require food donation or recovery. The extent to which a particular country has developed and subsequently implemented these authorities may vary.

State of Food Insecurity, Food Loss, Waste, and Recovery in India

Policies to prevent food loss and waste and to promote food donation gain new importance when a country's socio-economic conditions perpetuate food insecurity, especially among the most vulnerable. This is the case in India, which, despite having recently become a net food exporter, struggles with issues of food waste and hunger.

Food loss and waste represent a major social challenge in India. As previously mentioned, 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 2014-15.¹⁴ Despite these agricultural expansions, 40% of all the food produced in India is wasted,¹⁵ costing about \$14 billion annually.¹⁶ An estimated 21 million tons of wheat rots or is eaten by rodents in storage.¹⁷ Furthermore, food waste contributes to the problematic amount of refuse that has accumulated in India's landfills, with recent reports describing how overflow from the landfills has caused deaths and illnesses.¹⁸

FORTY PERCENT OF ALL FOOD PRODUCED IN INDIA IS WASTED, COSTING ABOUT \$14 BILLION ANNUALLY.

The Constitution of India declares that “[t]he State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties . . .”¹⁹ This commitment was affirmed by the Supreme Court of India, which stated that Indian citizens are guaranteed the right to life by the Constitution, and that the right to life implies the right to food and water.²⁰ Parliament aligned with these sentiments, passing the Food Safety and Standards Act in 2006 to consolidate existing food laws and provide clarity in the context of food safety and access.²¹

Despite these legal advances in the courts and legislature, India continues to struggle with hunger. Close to 40% of the Indian population is under-nourished,²² defined by the Food and Agriculture Organization of the United Nations as those unable to acquire enough food to meet the daily minimum dietary energy requirements over a period of one year.²³ India is home to nearly 195 million undernourished people—about a quarter of the world's undernourished population.²⁴ Thirty-nine percent of Indian children under the age of five are stunted, 15% are wasted, and 29% are underweight.²⁵ Global Hunger Index, a tool designed to comprehensively measure and track hunger,²⁶ ranked India 102 out of 117 among countries with multidimensional presence of hunger on a scale from least to most.²⁷

India by the Numbers

Population 1,311,559,000	Global Hunger Index 31.1	World Bank Classification Lower-middle income
Median Age 28.4 years	Global Food Security Index 58.9	Human Development Index 0.647
GDP \$2.7 trillion	GINI Index 35.7	FLW Estimated Costs \$14 billion
Poverty Rate 13.4%	Food Sustainability Index 66.4	

Source: The Global FoodBanking Network, Feb. 2020

Government agencies appear eager to combat this problem, and have worked to develop strategies for food waste diversion as a mitigating solution for food access issues. The Food Safety and Standards Authority of India (FSSAI) is the government authority created to enforce the Food Safety and Standards Act of 2006.²⁸ FSSAI published the Food Safety and Standards (Recovery and Distribution of Surplus Food) Regulations in 2019;²⁹ these regulations outline safety parameters for food donation.

Scaling up current agency operations to divert food waste and investing in new solutions to hunger and food waste requires recognizing and understanding the laws that apply to food donation. The remaining sections of the Guide will provide an overview of India's food donation legal framework and address the issues most likely to arise for food donors, food recovery organizations, policymakers, and other interested stakeholders.

OVERVIEW OF INDIA'S FOOD DONATION LEGAL FRAMEWORK

India is a union of 28 states and 8 union territories.³⁰ India's Constitution came into effect in 1950 and established a federal system of government, under which powers are distributed between the federal government (Central Government) and state governments.³¹ The Central Government directly governs most of the union territories; however, certain territories—Delhi, Puducherry, Jammu, and Kashmir—have partial statehood status and their own legislative assemblies.³²

The Central Government is composed of the executive branch (including the President, Vice President, Prime Minister, and Cabinet), the judicial branch (with the Supreme Court of India as the highest court followed by the High Courts and District Courts), and the legislative branch (Parliament).³³ While the President is the head of the Union of India, most executive power is vested in the Prime Minister and Council of Ministers; the President is required to act upon their "aid and advice."³⁴ At the legislative level, Parliament consists of the President, acting as head of the legislature, and two houses: the Rajya Sabha and the Lok Sabha.³⁵ The Rajya Sabha consists of 245 members, of which 12 are appointed by the president and 233 are elected by state and territorial legislatures.³⁶ The Lok Sabha is considered the house of the people and is allotted 552 seats, all elected directly by the people of India. The Lok Sabha has exclusive jurisdiction to propose money bills.³⁷

Power is distributed among the central and state governments via schedules. The jurisdiction of the states is contained in an enumerated list in the Constitution in List II of the Seventh Schedule.³⁸ The jurisdiction of the central government is contained in an enumerated list in the Constitution in List I of the Seventh Schedule.³⁹ The central government also retains residual power to govern issues outside of the list not prohibited to it by the exclusive state powers.⁴⁰ Both states and the central government have concurrent jurisdiction to regulate items found in the Concurrent list, laid out in List III of the Seventh Schedule.⁴¹

At a basic level, the central government retains jurisdiction over issues of national significance – these include national defense, citizenship, railways, highways, and national waterways, interstate and foreign trade and commerce, intellectual property law, income tax other than agricultural income, corporate taxes, and other such issues of national importance.⁴² States retain power over regional issues such as prisons, public health, agriculture, agricultural income tax, fisheries, intra-state trade and commerce, sales tax, and other local issues.⁴³ Criminal law, contracts, civil procedure, adulteration of food, drugs, charities, and food-related trade and commerce, among other items, are found on the concurrent list.⁴⁴ Thus, food law is a concurrent power between central and state authorities. According to the constitution, any national legislation will generally preempt repugnant state legislation.⁴⁵

At the national level, the Federal Constitution is the primary and preeminent source of law, followed by statutes (e.g. the Indian Penal Code, Food Safety and Standards Act, the Income Tax Act), and then by administrative rules and regulations. The federal system in India involves a number of governmental ministries that oversee

distinct subject areas. Under the Ministry of Finance, the Department of Revenue (DRA) regulates most central taxes, while the Central Board of Indirect Taxes and Customs administers the Central Goods and Services Tax (CGST) and the Integrated Goods and Services Tax (IGST).⁴⁶ Under the Ministry of Health & Family Welfare, the FSSAI regulates food safety.⁴⁷

The law itself is divided into two categories, public law and private law.⁴⁸ Public law involves relationships between the government (the “public”) and individuals. For example, a criminal lawsuit would be brought by the government against an individual and is considered public law. Private law, on the other hand, involves disputes between two private individuals regarding issues such as a breach of contract or an injury. Private law in India follows the common law system.⁴⁹ Common law is law based on legal precedents established by courts that define certain important legal concepts (e.g. negligence). While some issues surrounding food donation involve private law, such as injury due to donated food, issues involving food safety, criminal liability, or tax benefits invoke public law.⁵⁰

India also has a public interest litigation system whereby someone can bring a petition before the Supreme Court or one of the High Courts on behalf of the public regarding an issue of public interest.⁵¹ Typically, such issues will regard fundamental rights. For example, as discussed above, one such lawsuit is largely responsible for securing the public’s right to food as part of the fundamental right to life.⁵²

Federal Food Laws

Food Safety and Standards Act

The Food Safety and Standards Act (FSSA) was enacted in 2006.⁵³ This Act is the primary food legislation in India, governing national food safety, manufacturing, processing, distribution, sale, importation, and the certification of food businesses.⁵⁴ The Act also establishes FSSAI, an independent statutory authority housed under the Ministry of Health and Family Welfare.⁵⁵ FSSAI is responsible for promulgating and enforcing regulations and standards in accordance with the FSSA. These include regulations prohibiting the use of food additives or processing aids not in accordance with the act or regulations issued under it; establishing restrictions on the manufacture, distribution, sale, or import of genetically modified foods, organic foods, and other special categories of foods; prohibiting misleading or deceptive advertising and unfair trade practices; and prohibiting the import of food that is substandard, unsafe or misbranded.⁵⁶ FSSAI is also responsible for promoting education and awareness of its food safety standards as well as providing training programs for food businesses.⁵⁷

THE FOOD SAFETY AND STANDARDS ACT IS THE PRIMARY FOOD LEGISLATION IN INDIA, GOVERNING NATIONAL FOOD SAFETY, MANUFACTURING, PROCESSING, DISTRIBUTION, SALE, IMPORTATION, AND THE CERTIFICATION OF FOOD BUSINESSES.

The FSSA applies to anyone operating a “food business,” including nonprofit entities.⁵⁸ The FSSA requires that all food businesses (also known as food business operators or FBOs) obtain valid licenses or registrations, with exceptions for certain types of businesses.⁵⁹ The Act prohibits food businesses from manufacturing, storing, selling, or distributing food that is deemed substandard, unsafe or adulterated. It further prohibits distribution of food past the date of expiry and handling or keeping food in “unhygienic conditions.”⁶⁰ The FSSA also includes requirements that are not strictly related to food safety, such as restrictions on labeling and prohibitions on the distribution of food deemed misbranded.⁶¹ Violation of the provisions of the FSSA may lead to monetary penalties or imprisonment.⁶² 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.

Although the statute and regulations are created at the national level, the FSSA and the regulations issued by

FSSAI under the FSSA require implementation and enforcement at the state and local levels. Food import laws pose an exception, and are implemented and enforced by central level agencies.⁶³ Each state is required to appoint a Commissioner of Food Safety, who is generally responsible for the implementation of food safety standards and other requirements set by FSSAI, as well as for appointing local food safety officers and other positions required to enforce the provisions of the FSSA.⁶⁴

Food Safety and Standards (Recovery and Distribution of Surplus Food) Regulations

In 2019, FSSAI promulgated the Food Safety and Standards (Recovery and Distribution of Surplus Food) Regulations (hereinafter “Surplus Food Regulations”), which specifically pertain to excess food and food donation.⁶⁵ The regulations explicitly state that food may be donated and set specific safety, handling, and distribution requirements for donating food.⁶⁶ In addition to setting forth specific requirements pertaining to food donation, the regulations require each state Commissioner to establish monitoring committees to further monitor and make recommendations for improving the food donation framework in their state and to conduct training programs specific to food handling for donated food.⁶⁷

The Surplus Food 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.⁶⁸ The regulations require that all donated food be safe and fit for human consumption.⁶⁹ The regulations permit food donation to food distribution organizations, defined as “any person or any organization that collects surplus food from food donor[s] and distributes directly to any person free of cost without any profit.”⁷⁰ Distributing organizations are required to maintain proper transportation, storage, and reheating facilities for transporting, distributing, and serving the food.⁷¹ Further, the regulations prohibit distribution of food past its “expiry” date or past when the food would be fit for human consumption.⁷² Distribution past the “best before” date, however, is not expressly prohibited.⁷³

The regulations specifically require that surplus food be separated by perishable and nonperishable food items, and that all items be packed properly to avoid contamination.⁷⁴ In addition, all food must be properly stored, kept segregated from any waste materials, and be marked as “food for disposal” when the food is no longer fit for consumption.⁷⁵

Food donors are required to give advance notice to food distribution organizations that they intend to make a donation, so as to ensure timely distribution and consumption within the shelf life of the food. However, the format and timeframe for such notice is not specified.⁷⁶ The regulations further require that food donors maintain records of donated surplus food and contain a number of other provisions regarding proper refrigeration practices, storage practices, and sanitation and handling practices.⁷⁷

Finally, in addition to its safety requirements, the regulations require state food safety Commissioners to establish state monitoring committees. These committees are asked to monitor and make recommendations for improving the food donation system within each state. The committees may also conduct training programs in health and hygiene specific to food donation and make recommendations on issues arising from implementation of the provisions of the Surplus Food Regulations.⁷⁸ These committees must consist of two members from the state enforcement agency, one member from the state Department of Consumer Affairs, one member from a non-governmental organization, one member from a food donation organization, one industry member, and may include “other relevant stakeholders.”⁷⁹

THE SURPLUS FOOD REGULATIONS EXPLICITLY STATE THAT FOOD MAY BE DONATED AND SET SPECIFIC SAFETY, HANDLING, AND DISTRIBUTION REQUIREMENTS FOR DONATED FOOD.

National Food Security Act

In 2013, India passed the National Food Security Act,⁸⁰ which provides food security allowances for certain households, subsidized school meals, subsidized meals for certain pregnant women and mothers, and entitles 75% of the rural population and 50% of the urban population of India to receive subsidized food grains.⁸¹ The Act consolidates India's food security programs and converts them into legal entitlements. The Act requires implementation at the state level and requires state governments to ensure the provisions of the Act are effectively carried out.⁸²

Other Relevant Federal Law

Other important federal legislation includes the Indian Penal Code, which houses India's substantive criminal law,⁸³ the Consumer Protection Act, which provides protection to consumers who purchase defective goods including defective food products,⁸⁴ and the Income Tax Act, which sets out the structure for income taxes in India.⁸⁵

State and Municipal Law

As noted above, states are required to implement the safety regulations and standards set out in the FSSA and by the FSSAI. States generally do not create additional regulations in areas over which FSSAI has jurisdiction.⁸⁶ There appears to be little legislation or regulation at the state or municipal level that is directly relevant to food donation. However, there may be variation in interpretation of these regulations among states, as well as variation in their enforcement efficacy.

Cities have adopted a number of initiatives aimed at waste reduction, which could indirectly encourage food donation. Most of these efforts are concentrated on increasing composting. For example, power-driven composting units have been installed in larger cities, such as Indore City, Bengaluru, and Mumbai.⁸⁷ Mumbai has gone further than most cities by requiring facilities to segregate and compost their wet waste onsite if they generate more than 100 kg (220 lbs) of waste daily or have an area greater than 20,000 sq. meters (215,277 sq. ft.).⁸⁸ Other cities employ a wide array of composting methods, including vermi-composting and anaerobic digestion.⁸⁹ Some cities, such as Delhi and Bengaluru, have considered using anaerobic digestion as a response to waste generated from vegetable markets and yard waste.⁹⁰

LEGAL ISSUES RELEVANT TO FOOD DONATION

Food Safety for Donations

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.

As discussed previously, in India, the FSSA is the statute that lays out national food safety standards. FSSAI is responsible for setting additional rules and standards under the Act as well as for enforcing the Act.⁹¹ Under the Act, FSSAI issued the Surplus Food Regulations, which set specific standards for leftover and unused portions of safe food that may be donated,⁹² and 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.⁹³ The regulations explicitly state that such food may be donated and sets specific safety, handling, and distribution requirements for donating food.⁹⁴

However, the Surplus Food Regulations do not make clear which FSSA provisions apply to food donations. As mentioned above, the FSSA includes requirements that are not strictly related to food safety, such as restrictions on labeling. The FSSA also 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.

Thus, organizations should monitor for future modifications and guidance, as development of this area of the law is ongoing. As discussed later in this guide, understanding which FSSA provisions apply to food donation is relevant to the implementation of the Surplus Food Regulations, particularly given that a violation of FSSA provisions could subject donors or food recovery organizations to liability.

Administrative Liability under the Food Safety and Standards Act: The Food Safety and Standards Act provides a potential avenue for liability for donating food. As discussed above, the FSSA requires that most food businesses obtain valid licenses and otherwise comply with the Act.⁹⁵ Under the Act, food businesses could face administrative penalties for manufacturing, storing, selling, or distributing food that is deemed substandard, unsafe, misbranded, or adulterated. Penalties could also result from distribution of food past the date of expiry, handling or keeping food in “unhygienic conditions,” or engaging in false or deceptive advertising. Administrative penalties for violation of the provisions of the FSSA could include monetary fines, loss of license, or imprisonment.⁹⁶ Under Section 27 of the Act, a manufacturer or packer is the party ultimately liable for food that does not comply with the provisions of the Act, although distributors and sellers can also be held liable for certain actions related to storing, handling, and selling food.⁹⁷ Thus, if donated food is found not to comply with provisions of the FSSA, a food business operator may be held liable. Given that it is not clear exactly which provisions of the FSSA apply to food donation, businesses may be particularly fearful of incurring liability under the Act.

Date Labeling

Date labels affixed to food products are a major driver of food waste and obstacle to food donation. As explained in the previous section, most food donors and food recovery organizations are appropriately cautious about donating food that meets safety standards, but it is not always clear which standards relate to food safety. And, while fresh products like fruits and vegetables will appear visibly spoiled when they are no longer safe to consume, it can be more difficult to gauge when this is the case for packaged foods. Many donors interpret date labels affixed to such food products as indicators of safety and will therefore throw away food once the date has passed; intermediaries may refuse to accept donated food after this date, deeming the food product unfit for human consumption.

Despite this interpretation, for the vast majority of foods, date labels indicate freshness or quality rather than food safety. Manufacturers use a variety of quality-based methods to determine the timeframe for label dates, all of which are intended to reflect when the food will be at its “peak quality.”⁹⁸ Nevertheless, global trends indicate 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.⁹⁹ 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.¹⁰⁰

In India, date labeling regulations are standardized under the FSSAI’s Food Safety and Standards (Packaging and Labelling) Regulations (hereinafter “Packaging and Labelling Regulations”).¹⁰¹ The regulations apply to all “prepackaged” or “pre-packed” foods, meaning any food placed in a package or packed in such a way that the product is ready to be sold and the contents within the packaging cannot be tampered with or accessed.¹⁰²

The 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.¹⁰³ The regulations require most prepackaged food items to bear a “best before” date.¹⁰⁴ This date is meant to signify the end of the period during which the food remains “fully marketable” and retains “any specific qualities for which tacit or express claims have been made.”¹⁰⁵ The regulations note that the food may still be perfectly safe to consume beyond this date, though its quality may have diminished.¹⁰⁶ For certain foods (artificial sweetener aspartame, infant milk substitute, and infant foods), the regulations require a different date label relating to food safety.¹⁰⁷ The language on these labels must be “use by date,” “recommended last consumption date,” or “expiry date.” These dates are defined as “the date...after which the food probably will not have the quality and safety attributes normally expected by...consumers.”¹⁰⁸ After this date, the food “shall not be sold.”¹⁰⁹

Some prepackaged foods are exempt from date labeling requirements altogether. Wine and alcoholic beverages as well as packages of carbonated water packed in returnable glass bottles are exempt from date labeling.¹¹⁰ Additionally, items with packages of a surface area less than 30 square centimeters are not required to have a date label, but date labeling information is required on the wholesale packages for these items.¹¹¹

The food labeling regulations appear to distinguish between food quality and food safety concerns for prepackaged food through the use of “best before” versus “use by,” “expiry,” and “recommended last consumption” dates. As discussed previously, the terms “use by,” “recommended last consumption date,” and “expiry date,” are defined as indicating that “food probably will not have the . . . *safety* attributes normally expected by the consumers,” and the regulations expressly prohibit the sale of food after such dates,¹¹² whereas, the term “best before” is defined by FSSAI as the date at which food will *remain marketable* and will retain qualities for which claims have been made about the food.¹¹³ Because FSSAI makes this distinction between the two types of labels and because the agency did not expressly prohibit the sale of prepackaged foods with “best before” dates past their label date, the implication is that these foods may be sold or donated past this date; however, the regulations do not expressly clarify. As noted in the previous section, donation of foods past their “expiry” date is expressly prohibited under the Surplus Food Regulations, but the regulations do not state whether donation of foods past their “best before” date is permitted.

It is important to note that 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, 2021.¹¹⁴ The draft Food Safety and Standards (Packaging and Labelling) Regulations, 2019 (hereinafter, “Draft Packaging and Labelling Regulations”) still define “best before” dates as quality-related, while “use by” and “expiry” dates are still recognized as safety-related.¹¹⁵ However, the draft regulations would require that all prepackaged foods—barring a few exceptions¹¹⁶—must bear a “use by” or “expiry date.”¹¹⁷ “Best before” dates would be considered optional labeling, which may be included in addition to the “use by” or “expiry” date.¹¹⁸ These draft regulations additionally clarify that after the expiry date has passed, food “shall not be sold or *distributed* for human consumption.”¹¹⁹ The effect of these changes would be to prohibit the donation of any prepackaged foods past their expiry date.

Further complicating the current date labeling regime, the Surplus Food Regulations do not appear to follow the two-category distinction between food quality and food safety concerns 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.¹²⁰ However, these regulations do not offer clear guidance for food donors and food banks regarding the use of “best before” dates. The Surplus Food Regulations only mention “best before” dates in a list of information to be noted for record-keeping of each donation.¹²¹ While donating food items past the date of expiry is clearly prohibited,¹²² 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.¹²³ Enforcement of the date labeling regulations is conducted at the state level, thus ambiguity in the FSSAI regulations may result in varying interpretation and implementation from state to state.

In order to reduce food waste and promote donation, other countries have introduced standard labeling schemes to clearly indicate safety versus quality.¹²⁴ This scheme can support increased food donations by

clarifying that those foods with a quality-based date label are still safe past the date and allowed to be donated. While India's current date labeling regime follows this basic structure, it is not clear whether foods past their "best before" date may actually be donated. Further, if India changes its date labeling laws to those proposed under the Draft Packaging and Labelling Regulations, pre-packed foods will be treated the same in terms of sale and donation regardless of whether there is a safety concern, and, as a result, donation of past-date prepackaged foods will be prohibited entirely.

Liability Protection for Food Donations

A significant barrier to food donation is the fear among donors that they will be found liable if someone becomes sick after consuming the donated food. Unlike other countries, India does not have any type of Good Samaritan law protecting food donors or distributors from civil or criminal liability resulting from food donation, though the country does have Good Samaritan laws in other areas where liability protection can support beneficial public interest activities. For example, India recently passed a Good Samaritan Law regarding road accidents, to protect people those who help from liability.¹²⁵

As a result of this lack of protection, donors could face civil, criminal, or administrative consequences. Civil liability could result from food-related injuries under either tort or contract law; however, there have not been many, if any, civil suits related to food donation in India.¹²⁶ Criminal liability could result from food donation, but such liability is likely to be rare given the high standard required for liability to be found.¹²⁷

Civil Liability - Tort

There have been very few, if any, cases in which a plaintiff brought a civil claim against a donor or distributor for food they received for free. Tort cases in general are scarce in India despite widespread belief of litigiousness.¹²⁸ The lack of civil cases is likely a result of delay and cost, among other potential barriers that may discourage potential litigants from bringing suit.¹²⁹ Other factors that may dissuade litigation for food-related injuries resulting from food donation could include barriers to the courthouse faced by recipients of food donations and community pressures not to jeopardize a source of donated food through legal action. However, given that there is no formal immunity for food donation, it is still important to understand the requirements a plaintiff would have to meet in order for a court to find a donor or distributor liable, so that donors can ensure they are limiting their potential liability.

In India, the tort of negligence is derived from the English common law and allows plaintiffs to recover if they can prove that the defendant (a) had a legal duty to exercise care; (b) breached that duty of care by acting in a way that fell below the required standard; and (c) caused the plaintiff injury.¹³⁰ Ordinarily, a defendant will owe a duty of care to a plaintiff if it is reasonably foreseeable that their action could cause harm to another.¹³¹ Food donors or distributors would likely be deemed to have such a duty because it is reasonably foreseeable that mishandling food could cause harm to the end consumer of the food. The standard of care that must be followed is "ordinary prudence," or how a reasonable person would act in similar circumstances.¹³² If the donor or distributor's behavior is found to fall below how a reasonable person would have behaved, a court may find that the donor or distributor breached their duty.¹³³ However, the plaintiff would still have to prove there was a sufficient nexus between the donor or distributor's action and the plaintiff's injury.¹³⁴

In one case decided by the Delhi High Court, the court held that the level of care and service offered by a defendant should meet the price paid for that service.¹³⁵ In that case, the court specifically gave the example that someone who purchases a glass of water from the street for a lower price is entitled to safe drinking water, but if a person were to purchase a bottle of mineral bottle for a higher price, then that person would be entitled to a higher degree of purity and care on the part of the person selling the water.¹³⁶ Thus, in cases where food donors or distributors are donating food for little to no cost, courts may find that recipients are entitled only to the minimal degree of care required under tort law.¹³⁷ However, given that food donation is conducted under the veil of charitable purposes, it is possible that a court might impose a higher standard, as the recipient may expect the donation to help rather than harm them.¹³⁸

Civil Liability - Contract

Contract law could also form a potential basis for liability. Contract law would be relevant in cases where a consumer or intermediary pays for donated food. Contract law in India is dictated by the Indian Contract Act.¹³⁹ Additionally, the Sale of Goods Act¹⁴⁰ or Consumer Protection Act (CPA)¹⁴¹ may apply. Contract formation requires that there be an offer, acceptance, and consideration, or the exchange of something of value.¹⁴² Thus, payment for the food is likely necessary for contract law to apply, otherwise there would be no “consideration” involved in the transaction. Similarly, while the CPA provides for an express cause of action under product liability for harm caused by defective products, it appears that a prerequisite for such cases is the sale of a product, as complaints can only be brought by paying customers;¹⁴³ thus, the CPA is unlikely to apply to the donation of food. Where there is consideration, liability under contract law could arise for food-related illness or injury because there is an implied warranty that the food will be of “merchantable quality,” meaning that the food is of the quality normally expected given the terms of the contract.¹⁴⁴ Thus, if the food falls below the quality that a reasonable person would accept, then a court may find that there was a breach of this implied warranty.¹⁴⁵

Criminal Liability under the Indian Penal Code

Criminal law in India is contained within the Indian Penal Code. Chapter XVI of the Code contains offenses “against the body.”¹⁴⁶ Intentionally causing or knowing one’s actions will likely cause someone hurt, defined as “bodily pain, disease or infirmity,”¹⁴⁷ or causing grievous hurt, such as endangering someone’s life or causing a person to suffer “severe bodily pain” or inability to “follow his ordinary pursuits” during a span of twenty days,¹⁴⁸ is a crime under chapter XVI of the Indian Penal Code and may result in imprisonment and/or a fine.

Further, Chapter XVI of the penal code also criminalizes any act committed “so rashly or negligently,” that the person endangers the life or safety of others.¹⁴⁹ The punishment for such an act is imprisonment of up to three months and/or a fine of up to 250 rupees. Additionally, if such an act actually causes hurt or grievous hurt, imprisonment for longer terms as well as higher fines may be imposed.¹⁵⁰

In the context of food donation, these provisions of the penal code could apply if someone were harmed by consuming unsafe donated food from a donor who knew that it would likely cause the recipient harm, intended the food to cause harm, or who acted so rashly and negligently that they failed to recognize a clear risk that the food could cause harm. However, the burden of proof required to convict someone of such crimes is extremely high according to the Indian Evidence Act¹⁵¹ and it is the prosecution’s burden to prove each element of the crime beyond a reasonable doubt.¹⁵² Thus, except in the most egregious cases, it is unlikely that a food donor or distributor would be held criminally liable.

Taxes

Reducing food loss and waste results in sizable economic benefits to society, as it minimizes the costs associated with producing, and ultimately discarding, food that is never consumed. Food donation also helps mitigate the costs of hunger and stimulates the economy: food banks and intermediaries provide jobs or sponsor community development and recipients of donated food are able spend limited financial resources on other basic goods and services. Yet food donation can also 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. As a result, it is often less expensive and easier for farmers, businesses, and private individuals to throw away, rather than donate, food. Some countries have sought to address this issue by offering tax incentives and removing financial barriers to food donation.

Incentives

Tax incentives can provide significant support for food donation efforts and for the reduction of food loss and waste. For example, corporate donors may be more likely to donate surplus food to food recovery organizations

if they receive a charitable deduction to offset the cost of transportation and logistics. These tax incentives could help to offset the costs of donation and reduce the burden of the federal income tax.

India does not provide a tax incentive specific to food donation. However, India does offer an income tax deduction for making a *monetary* donation to registered non-profit organizations if the donation is unrelated to, or in excess of, any mandatory corporate social responsibility contribution required by the Companies Act, 2013 (described later in the guide). Donors are able to claim 50% of the value of the donation; however, the deduction may not exceed ten percent of the donor's total income.¹⁵³ So, for example, if a donor made a \$100 donation to a food bank, they could reduce their taxable income by \$50 so long as their income exceeded \$500. While this deduction may encourage individuals and entities to donate cash to charities like food banks, since it does not apply to goods such as food items,¹⁵⁴ it does not act to monetarily incentivize donations of food goods.

Additionally, any non-profit organization serving charitable purposes is exempt from paying income tax so long as 85% of its funds, including any donations it receives, go toward carrying out its charitable purpose.¹⁵⁵ Thus, if a food bank received \$1,000 in funds and spent \$850 of its funds toward maintaining its needed infrastructure for obtaining and distributing food, the food bank would be exempt from paying income tax.

Barriers

While certain tax schemes may encourage food donations, they may also stand as potential deterrents. In many countries, including India, a Value Added Tax or "VAT" in particular presents a financial barrier to donating food. In India, this tax is called the Goods and Services Tax or "GST", and it came into force in 2017.¹⁵⁶ In India the GST is divided into the Central Goods and Services Tax ("CGST"), the Integrated Goods and Services Tax ("IGST"), the State Goods and Services Tax ("SGST"), and the Union Territories Goods and Services Tax ("UTGST").¹⁵⁷ The Goods and Services Tax Council generally oversees the GST system,¹⁵⁸ but the Central Board of Indirect Taxes and Customs administers the CGST and the IGST.¹⁵⁹

The GST is generally levied on a good at each stage of the supply chain whenever value is added. The Indian GST applies to both goods and services, and it is levied on goods at every stage of the supply chain, from the production to the point of sale, whenever goods are transferred to another individual or entity.¹⁶⁰ Businesses liable for GST can claim input tax credits for the amount of GST attributable to the furtherance of their business that they paid to acquire a good or service if they do not recover it during sale, subject to some exceptions.¹⁶¹

Many countries adjust tax rates to accomplish policy objectives, reducing, for instance, rates on basic essentials, such as pharmaceuticals, healthcare services, food, and education.¹⁶² Similarly, in India, different GST rates apply to different types of products, including different types of food.¹⁶³ Many food products, such as fresh meat, fish, and fruits and vegetables are exempted from the CGST altogether.¹⁶⁴ Some additional foods, such as grains, are exempt from CGST in bulk or unprocessed form, but are subject to the CGST once they are labelled and packaged for individual retail or otherwise processed.¹⁶⁵

Further, while certain charitable organizations are exempted from the GST, the list is very narrow and not applicable to food donation organizations.¹⁶⁶ All other charity organizations must comply with the GST, and goods transferred to them are subject to any normally applicable GST.¹⁶⁷ Thus, when a non-exempt charity purchases an item, such as a blanket or a car, that item is subject to GST.

Applicability of GST is less clear when food is donated for free to such charities and 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.¹⁶⁸ If the donation is taxable, it may be cheaper for businesses to discard the food rather than donate it, incentivizing food waste.

Many businesses actively involved in food donation in India feel that the current tax policy does not present specific barriers unique to food donation but also does not offer any specific incentives to encourage it.¹⁶⁹ As a

result, the tax policy does not financially motivate food donor businesses in India, which receive no monetary offset for the logistical and human capital costs they incur while donating food.

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 food systems.

In India, the buildup of waste in landfills has become a significant problem, with reports of excess waste from landfills cause deaths and illnesses.¹⁷⁰ In 2018, trash broke away from a landfill in Ghazipur, Uttar Pradesh during a monsoon and killed two people.¹⁷¹ In the National Capital Territory of Delhi, an estimated 80 billion pounds of trash have accumulated at four dumping sites, creating air and water pollution.¹⁷² The landfills have been coined “some of the largest, least regulated and most hazardous in the world.”¹⁷³

It does not appear that India has any national, state, or territorial legislation requiring private or public operations to donate excess food. Similarly, India has no national or state bans on organic waste being sent to a landfill. However, as mentioned above, the city of Mumbai requires facilities of a certain size or generating above a certain amount of organic waste to compost their organic waste onsite;¹⁷⁴ the city requires facilities to segregate and compost their wet waste onsite if they generate more than 100 kg (220 lbs) of waste daily or have an area greater than 20,000 sq. meters (215,277 sq. ft.).¹⁷⁵ In addition, some states and territories, such as Delhi, have enacted by-laws that penalize dumping solid waste in vacant plots, burning waste in the open, and non-segregation of waste items.¹⁷⁶ At the national level, waste segregation is mandatory under the Solid Waste Management (SWM) Rules, which were passed in 2016 by the Union Ministry of Environment, Forests and Climate Change (MoEF&CC).¹⁷⁷ These rules require waste to be separated into three separate categories: biodegradable, non-biodegradable, and domestic hazardous waste.¹⁷⁸ Biodegradable waste must be disposed of via composting or bio-methanation “within the premises as far as possible.”¹⁷⁹

Given the recent evolution of the Surplus Food Regulations, the opportunities for implementation at the state and local level, and the willingness of some local governments to innovate in response to growing health and environmental concerns, it is possible that food donation requirements or organic waste bans may be adopted in the future.

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. 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 innovations and emerging technologies that will make food donation more efficient and sustainable. To date, India does not offer national grants for food donation; however, such investments are likely to fall within the scope of the FSSAI’s authority and may be created in the future.

Miscellaneous

In addition to the relevant laws addressed in the above sections, there may be other national, municipal, or provincial laws and policies that impact food donation efforts in India.

As one example of the acknowledgement of the challenge of food waste in India, the Supreme Court of India recently expressed concern regarding food waste at “extravagant” weddings. The Supreme Court bench

challenged the government of Delhi with proposing a solution to address food waste while also ensuring food safety.¹⁸⁰ This prompted government officials to consider introducing laws and policies to limit the number of guests or to institutionalize catering arrangements to monitor safety and waste concerns, though no new laws were ultimately passed.¹⁸¹

In addition, the FSSAI recently created the Indian Food Sharing Alliance (IFSA), which is meant to bridge the gap between food companies, surplus food distribution agencies, and beneficiaries in an effort to prevent food from being lost or wasted throughout the supply chain.¹⁸² Food collection and recovery organizations can join this network to access regulatory support, food safety training and efforts for capacity building. Membership is necessary for surplus food recovery organizations to register with the FSSAI on a food licensing portal, which can help boost confidence in partnerships with food donors.¹⁸³

India is also the first country in the world to make corporate social responsibility (CSR) mandatory. Through an amendment to the *Companies Act, 2013* in April 2014, companies with a certain net worth or annual net profit must spend two percent of their average net profits over three years on CSR.¹⁸⁴ Businesses can invest their profits in areas such as education, poverty, gender equality, and hunger in order to comply.¹⁸⁵ However, in-kind donations, such as donations of food, do not satisfy the CSR requirement as companies are required to contribute from their net profits.¹⁸⁶

CONCLUSION

This Legal Guide is intended to identify India's current laws, policies and programs that relate to food waste or food donation. While the federal government is primarily responsible for guaranteeing food security and sustainable food systems, food recovery organizations acting in a private capacity can provide an additional social safety net. In India, the government has recently implemented legal and policy changes to promote greater food donation and the reduction of food loss and waste, most notably through the Surplus Food Regulations.

This Legal Guide provides a starting point from which policymakers, private sector actors, and civil society engage may in a dialogue about food loss and waste prevention and the value of food recovery to India's food security, economic stability and environmental sustainability. A separate document produced under The Global Food Donation Policy Atlas project sets forth policy recommendations to contribute to this discussion. In the meantime, food donors and food recovery organizations should take into account the laws, policies and legal issues discussed in this Legal Guide when donating food or facilitating the distribution of donated food to those in need. To better understand the regulation of food donation in India, donors, intermediaries, and policymakers should investigate the laws identified in this guide and seek additional legal counsel, if necessary.

ENDNOTES

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97 Food Safety and Standards Act, 2006, No. 34, Acts of Parliament, 2006 (India); The Food Safety and Standards Act. 2006 (No. 34 of 2006) § 27, (“The manufacturer or packer of an article of food shall be liable for such article of food if it does not meet the requirements of this Act and the rules and regulations made thereunder.”).

98 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) (hereinafter DON’T WASTE, DONATE).

99 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>

100 DON’T WASTE, DONATE, *supra* note 98.

101 Food Safety and Standards (Packaging and Labelling) Regulations, 2011, Gazette of India, pt. III sec. 4 (Aug. 1, 2011), https://www.fssai.gov.in/upload/uploadfiles/files/Packaging_Labelling_Regulations.pdf.

102 *Id.*

103 *Id.*
104 *Id.* § 2.2.2.
105 *Id.* § 1.2.1(1).
106 *Id.* § 1.2.1(1).
107 Food Safety and Standards (Packaging and Labelling) Regulations, 2011, Gazette of India, pt. III sec. 4 (Aug. 1, 2011) § 2.2.2.10(iii), 2.2.2.10(iv).
108 *Id.* § 1.2.1(10).
109 *Id.*
110 *Id.* § 2.2.2.
111 *Id.* § 2.6.
112 *Id.* § 1.2 (emphasis added).
113 *Id.* § 1.2.
114 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.
115 See Draft Food Safety and Standards (Packaging and Labelling) Regulations, 2019, Gazette of India, pt. III sec. 4, ch. 1, § 2(1), (June 25, 2019).
116 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.
117 See Draft Food Safety and Standards (Packaging and Labelling) Regulations, 2019, Gazette of India, pt. III sec. 4, ch. 1, § 4.2(10), (June 25, 2019).
118 See *id.*
119 See *id.* § 2(1) (emphasis added).
120 Food Safety and Standards (Recovery and Distribution of Surplus Food) Regulations, 2019, Gazette of India, pt. III sec. 4 (Jul. 26, 2019).
121 *Id.*
122 See *id.* § 5(3).
123 See *id.* § 4(4).
124 EUROPEAN PARLIAMENT, BRIEFING: ‘BEST BEFORE’ DATE LABELS: PROTECTING CONSUMERS AND LIMITING FOOD (2015), [HTTP://WWW.EUROPARL.EUROPA.EU/REGDATA/ETUDES/BRIE/2015/548990/EPRS_BRI\(2015\)548990_REV1_EN.PDF](http://www.europarl.europa.eu/regdata/etudes/BRIE/2015/548990/EPRS_BRI(2015)548990_REV1_EN.PDF).
125 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>.
126 This determination was made after searching for private suits relating to food-related injuries in the online version of the All-India Reporter.
127 See the discussion below on criminal liability for further details.
128 See Marc Galanter, *India’s Tort Deficit: Sketch for a Historical Portrait*, in *FAULT LINES: TORT LAW AS CULTURAL PRACTICE* 47 (David M. Engel & Michael McCann, eds., 2009).
129 *Id.*
130 See, e.g., *Blyth v. Birmingham Waterworks Co.*, (1856) 11 Ex 781; see also Apoorv Phillips, *Essentials of Negligence (Law of Torts) With Respect to India*, 3. IMPERIAL J. INTERDISC. RES. 677, 677 (2017).
131 See, e.g., *Rural Transport Service v. Blezum Bibi*, AIR 1980 Cal 164 (India); see also Apoorv Phillips, *Essentials of Negligence (Law of Torts) With Respect to India*, 3. IMPERIAL J. INTERDISC. RES. 677, 677 (2017).
132 See *Malay Ku. Ganguly v. Sukumar Mekharjee*, 2004 (3) CHN 187; see also Apoorv Phillips, *Essentials of Negligence (Law of Torts) With Respect to India*, 3. IMPERIAL J. INTERDISC. RES. 677, 678 (2017).
133 See *Malay Ku. Ganguly v. Sukumar Mekharjee*, 2004 (3) CHN 187; see also Apoorv Phillips, *Essentials of Negligence (Law of Torts) With Respect to India*, 3. IMPERIAL J. INTERDISC. RES. 677, 678 (2017).
134 See *id.*
135 See *Klaus Mittlebachert v. East India Hotels Ltd.*, AIR 1997 Del 201.
136 See *id.*
137 See *id.*
138 Interview with PLR Chambers, Jan. 10, 2020.
139 Indian Contract Act, 1872, https://indiacode.nic.in/bitstream/123456789/2187/3/a1872_9pdf.pdf.
140 The Sale of Goods Act (India), 1930, <https://indiacode.nic.in/bitstream/123456789/2390/1/A1930-3.pdf>.
141 The Consumer Protection Act (India), 2019, <http://egazette.nic.in/WriteReadData/2019/210422.pdf>.
142 See generally Indian Contract Act, 1872, https://indiacode.nic.in/bitstream/123456789/2187/3/a1872_9pdf.pdf. This is a highly simplified version of contract formation, but an in-depth delineation of contract law is not necessary for our purposes.
143 See The Consumer Protection Act (India).
144 See, e.g., *Sorabji Hormusha Joshi And Co. v. V.M. Ismail and Anr.*, AIR 1960 Mad 520 (“[M]erchantable quality means that the goods comply with the description in the contract so that to a purchaser buying goods of that description the goods would be good tender. . . . [M]erchantability is fulfilled when the goods do not differ from the normal quality of the described goods including under the term quality the state or condition as required by the contract.”).
145 See, e.g., *Sorabji Hormusha Joshi And Co. v. V.M. Ismail and Anr.*, AIR 1960 Mad 520; Indian Contract Act, 1872, https://indiacode.nic.in/handle/123456789/2187?view_type=browse&sam_handle=123456789/1362; The Sale of Goods Act, 1930, <https://indiacode.nic.in/bitstream/123456789/2390/1/A1930-3.pdf>; Rajendra Komar Nayak, *Consumer Protection Law in India : An Eco-Legal Treatise on Consumer Justice* 129-69 (1st ed. 1991), http://14.139.60.114:8080/jspui/bitstream/123456789/686/15/Part-B%20_%20Implied%20warranty%20and%20Merchantable%20Quality.pdf.
146 PEN. CODE. ch. XVI (India).
147 PEN. CODE. § 319 (India).
148 PEN. CODE. § 320 (India).
149 PEN. CODE. § 336 (India).
150 PEN. CODE. §§ 336-338 (India).
151 See Evidence Act, 1872, §§ 101-114 (India).
152 See, e.g., *Jarnail Singh v. State of Punjab* 1996 AIR 775.
153 See Income Tax Act, 1961, § 80G (India); see also FAQ: INCOME TAX IN INDIA, ICNL, <http://www.icnl.org/research/Philanthropy/India%20FAQ%202%20-%20Income%20Tax%20Act%20final.pdf>; Donations Eligible Under Section 80G and 80GGA, ClearTax (June 12, 2019), <https://cleartax.in/s/donation-under-section-80g-and-80gga>.
154 See Income Tax Act, 1961, §§ 2(15), 11; FAQ: INCOME TAX IN INDIA, ICNL.
155 See Income Tax Act, 1961, § 80(G); FAQ: INCOME TAX IN INDIA, ICNL.

156 See 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); GOODS AND SERVICES TAX COUNCIL, BRIEF HISTORY OF GST, <http://www.gstcouncil.gov.in/brief-history-gst> (last visited Sept. 28, 2019).

157 ABOUT GST, GOODS AND SERVICES TAX COUNCIL, <http://www.gstcouncil.gov.in/about-gst>.

158 ABOUT US, GOODS AND SERVICES TAX COUNCIL, <http://www.gstcouncil.gov.in/gst-council>.

159 WHO WE ARE, CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS, <http://www.cbic.gov.in/htdocs-cbec/whoweare/whoweare>.

160 See generally, Central Goods and Services Tax Act, 2017.

161 See Central Goods and Services Tax Act, 2017, §§ 16–17.

162 See, e.g., Patrick Gillespie, *Argentina's Macri Rolls Out More Measures as Markets Recover*, BLOOMBERG (August 15, 2019) <https://www.bloomberg.com/news/articles/2019-08-15/argentina-s-macri-rolls-out-more-measures-as-markets-recover> (explaining how Argentina eliminated the VAT on essential food products through the end of the calendar year in 2019); GENERAL INFORMATION FOR GST/HST REGISTRANTS, CANADA REVENUE AGENCY (July 26, 2019), <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/rc4022/general-information-gst-hst-registrants.html> (explaining exempt supplies from Canada's VAT include medical, dental, and legal aid services, and zero-rated items include basic groceries as well as prescription drugs, and medical devices).

163 See Central Goods and Services Tax (CGST) Rules, 2017, Part – A (Rules), Oct. 9, 2019.

164 See GOV'T OF INDIA, MINISTRY OF FINANCE, DEP'T OF REVENUE, Notification No.2/2017-Central Tax (Rate), New Delhi, June 28, 2017.

165 See *id.*

166 See Noshir Dadrawala, *How GST Affects Nonprofits*, INDIA DEVELOPMENT REV. (Oct. 17, 2018), <https://idronline.org/how-gst-affects-nonprofits/>.

167 See Noshir Dadrawala, *How GST Affects Nonprofits*, INDIA DEVELOPMENT REV. (Oct. 17, 2018), <https://idronline.org/how-gst-affects-nonprofits/>.

168 See Central Goods and Services Tax Act, 2017, Sched. I.

169 Various interviews with donor businesses, conducted Jan. 2020.

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171 See *id.*

172 See *id.*

173 See *id.*

174 See *12 per cent more solid waste segregated this year*, BMC (Sept. 18, 2019), <https://indianexpress.com/article/cities/mumbai/12-per-cent-more-solid-waste-segregated-this-year-bmc-6004677/> (requiring facilities to segregate and compost their wet waste onsite if they generate more than 100 kg (220 lbs) of waste daily or have an area greater than 20,000 sq. m. (215,277 sq. ft.)).

175 *Id.*

176 See e.g., Waste Management By-Laws 2018, Delhi Gazette: Extraordinary, pt. IV, https://ndmc.gov.in/public_notice/Delhi%20Gazette%20Notificatio%20SWM%20Rules%202016-15-1-2018.pdf.

177 Gazette of India: Extraordinary, pt. II sec. iii, <https://kspcb.gov.in/SWM-Rules-2016.pdf>.

178 *Id.*

179 *Id.*

180 Press Trust of India, *Wastage of food, water in marriages in Delhi under SC radar*, INDIA TODAY, <https://www.indiatoday.in/india/story/delhi-food-water-shortage-wastage-marriages-supreme-court-1403985-2018-12-06>.

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182 See SAVE FOOD, SHARE FOOD, FSSAI, <https://sharefood.fssai.gov.in/> (last visited Feb. 9, 2020).

183 PTI, *FSSAI frames law to promote food donation by reduce wastage and businesses*, FINANCIAL EXPRESS, Aug. 26, 2019, <https://www.financialexpress.com/india-news/fssai-frames-law-to-promote-food-donation-by-reduce-wastage-and-businesses/1686986/>.

184 See Companies Act, 2013 (India).

185 See *id.*

186 Companies Act, 2013, § 135 (“The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.”).

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