

Law and Corporate Social Responsibility (CSR)

A tool to address climate change in India?

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Need to Address Climate Change

- India causes 6% of global CO2 emissions.
- Population will grow by another 200 or 300 million people in the next decades.
- Average Indian is producing two tons of CO2 emissions per year.
- By 2030 our global contribution will most likely be something like 10 to 12%, and per capita emissions will be around 3.5 tons.
- Losing agricultural land and food security under threat

Commitment to Combat Climate Change

- **National Plan of Action for Climate Change (2008)**
 - National Solar Mission
 - National Mission for Enhanced Energy Efficiency
 - National Mission of Sustainable Habitats
 - National Water Mission
 - National Mission for Sustaining Himalayan Ecosystem
 - National Mission for a Green India
 - National Mission for Sustainable Agriculture
 - National Mission on Strategic Knowledge on Climate Change
- **National Green Tribunal**

Holding Corporates Accountable Environmental Laws

- Seeking restrictions on carbon emissions
- Certification for certain industries and machines (PUC)
- Environment Impact Assessments
- Reporting on Environment Sustainability
- Penal provisions, primarily fines

Using CSR as a tool to address Climate Change

- 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (NVGs)' notified by Ministry of Corporate Affairs, Government of India, in July, 2011.
- **SEBI** in August 13, 2012, mandated inclusion of **Business Responsibility Report (BRR)** as a part of the Annual Report for top 100 listed entities.
- Business Responsibility Report is a disclosure of adoption of responsible business practices to all its stakeholders
- Prior to 2012-13, many firms were voluntarily making donations and spending on community development and mitigation of environmental pollution. It is only since 2012-13 that firms have started allocating funds for CSR activities specifically.

Mandatory CSR

- On April 1, 2014, India became the first country to legally mandate corporate social responsibility (CSR)
- The new rules in Section 135 of India's Companies Act made it mandatory for companies of a certain turnover and profitability to spend **2%** of their average net profit for the past three years on CSR.

Scope and Application

- Applicable to companies having
 - an annual turnover of Rs 1,000 crore or more, (130 million)
 - or a net worth of Rs 500 crore or more (65 million)
 - or a net profit of Rs 5 crore or more.
- Applicable on Foreign Companies operating in India too (falling within the purview of Companies Act)
- CSR activities to be undertaken only in “project/programme” mode
- Categories may include hunger and poverty, education, health, gender equality and women empowerment, skills training, environment, social enterprise projects and promotion of rural and national sports....Prime Minister’s Relief Fund, etc.
- Companies can carry out these activities by collaborating either with an NGO, or through their own trusts and foundations or by pooling their resources with another company.

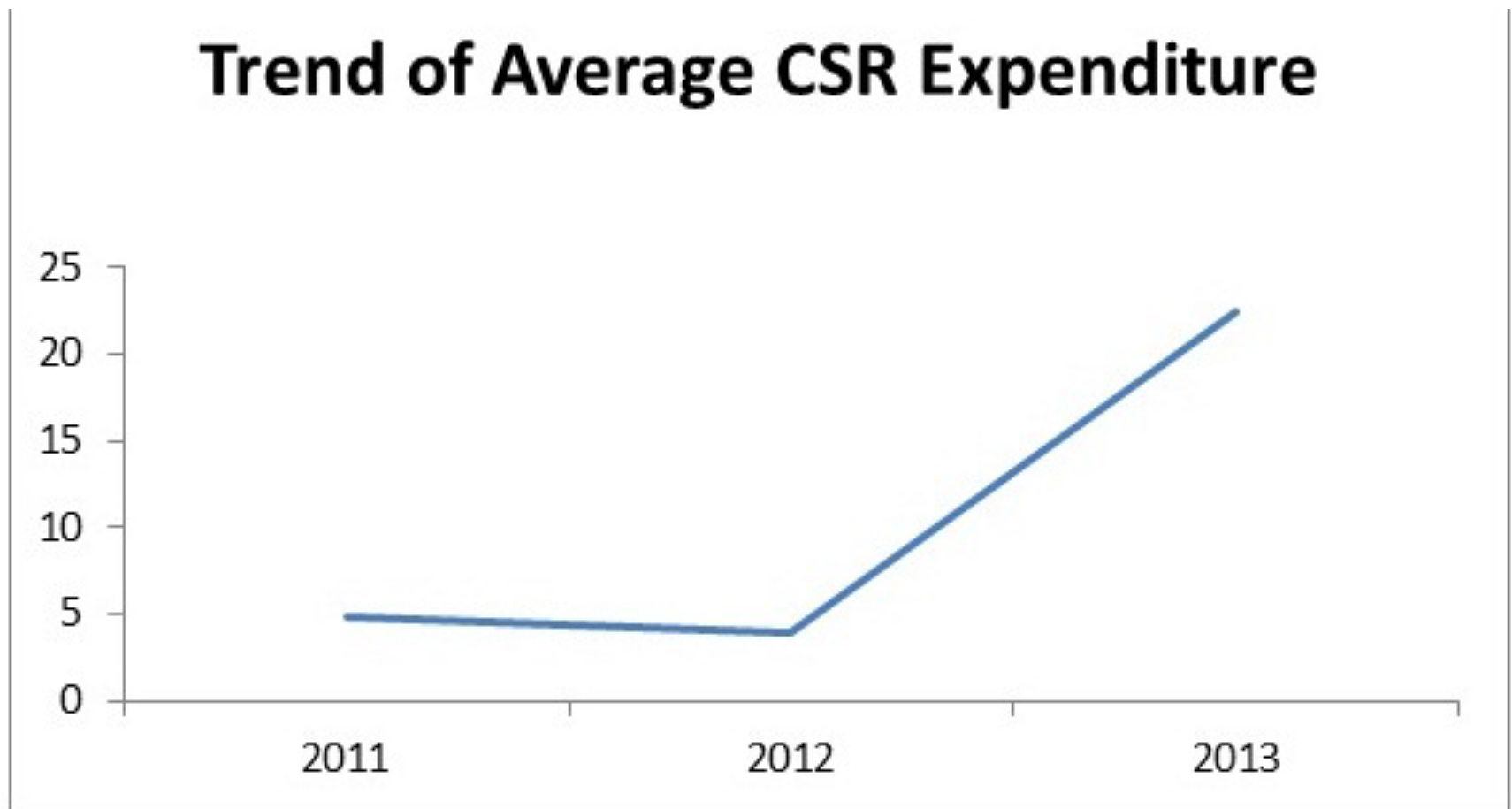
Mandate

- **CSR Policy:** Each company covered under the law need to have a CSR policy consisting of
 - List of projects or programs that the company plans to undertake,
 - modalities of execution with time frames
 - Monitoring mechanism
- **CSR Committee** to be responsible for decisions on CSR expenditure and type of activities to be undertaken. This committee shall consist of three or more directors, with at least one independent director whose presence will ensure a certain amount of democracy and diversity in the decision-making process.
- **CSR Reporting:** On activities, outreach and finances

Trends in expenditures on Environment Sustainability (2014)

Industry	Environment Expenditure
Oil and Gas	11.76%
Automobile	10%
Consumer Durables	28.75%
Iron and Steel	5.88%
Banking and Financial Services	35%
Power	35%
Infrastructure	16.66%
Cement	23.8%
Paper and Pulp	38%
Pharmaceutical	20%

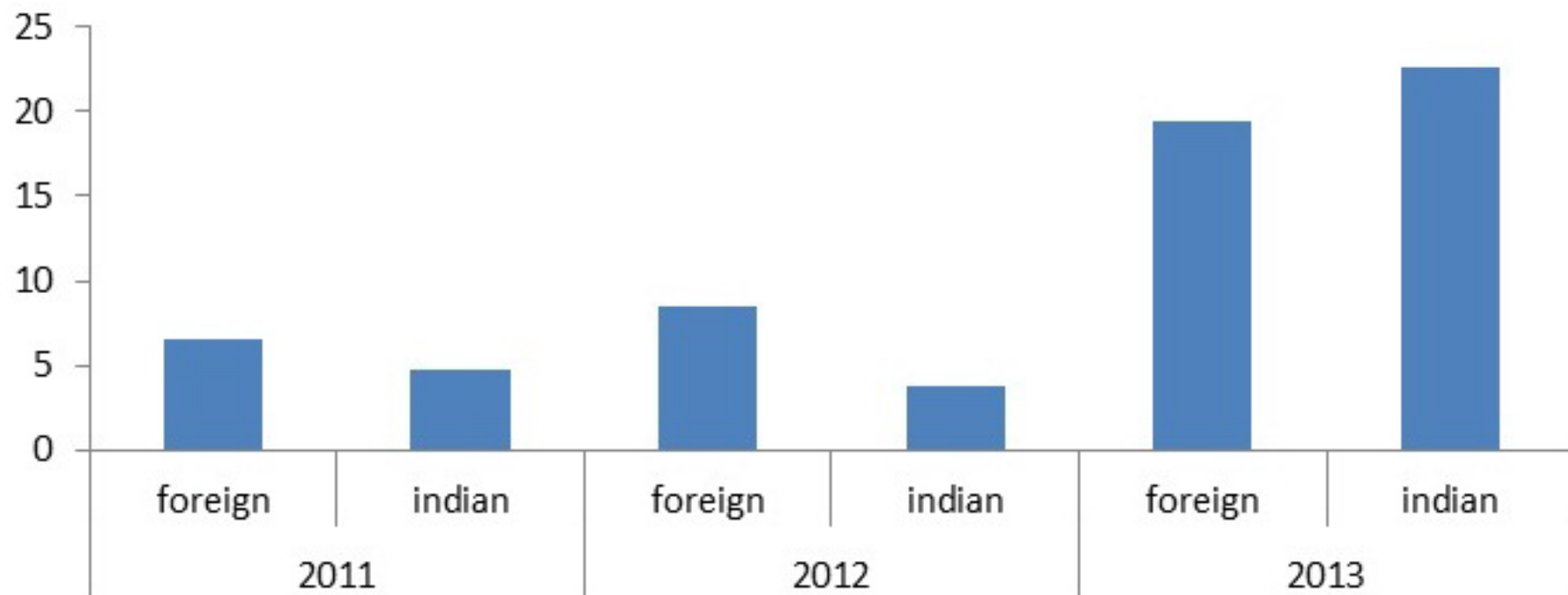
Trend of Average CSR Expenditure



X-axis: Year; Y-axis: Average CSR expenditure of all firms (in million rupees)

Source: Calculated by the author using Business data for the year 2010-13

Average CSR Expenditure by Foreign and Indian Firms

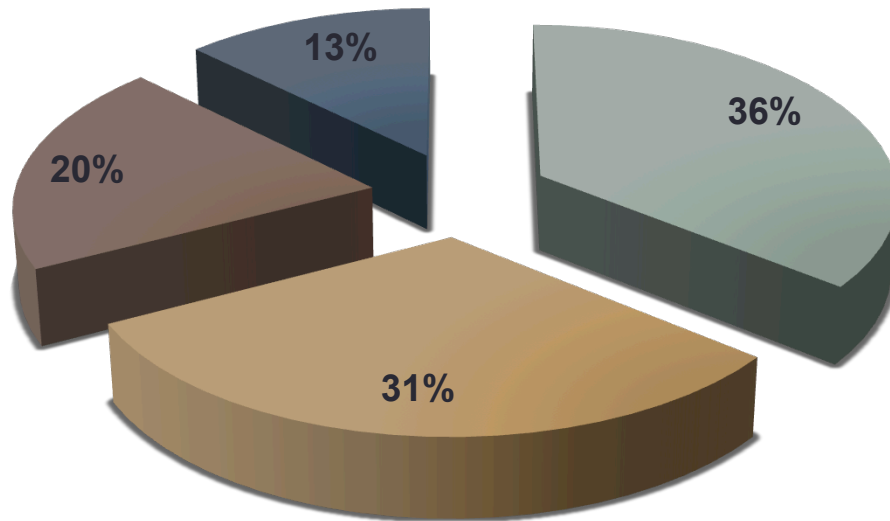


X-axis: Firm ownership and Year; Y-axis: Average CSR expenditure (in million rupees)

Firms which are owned by foreign parent companies have been classified as foreign.

Source: Calculated by the authors using Prowess data for the year 2012-13.

Mode of expenditure



- Own private foundations
- Collaborating with NGOs
- One time free medical/educational camp
- Donations

Issues and challenges

- **Approach** – against the spirit of CSR
- **Content**
 - Conflicting figures regarding number of companies that fall within the purview (Ranges from 15000 to 17000 out of total 600,000 registered)
 - Different views on estimated funds to be spent 1.5 to 3 million US\$
 - Many companies do not fall within the purview of this law
 - Tendency among companies to undervalue profits
 - Spending done through their own foundations
 - *Salaries paid by the companies to regular CSR staff as well as to volunteers of the companies (in proportion to company's time/hours spent specifically on CSR) can be factored into CSR project cost as part of the CSR expenditure.*

Issues...

- Contribution to Corpus of a Trust/ society/ section 8 companies etc. qualifies as CSR expenditure as long as it is created for undertaking CSR activities
- No significant increase in the quantum of expenditure post CSR (135)
- Allocation of 2% of net profit has largely remained tokenism
- Transparency as mandated earlier has in fact reaped more result
- In the garb of CSR law environment laws have in fact got further diluted in favour of corporates

Merci!