A Study on the Role of Commercial Law in Protecting Small and Medium Enterprises (SMEs) in India

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Abstract

Small and Medium Enterprises (SMEs) are widely recognized as the backbone of the Indian economy, contributing significantly to employment, GDP, and export earnings. However, SMEs face persistent legal and regulatory challenges that impede their growth and sustainability. This paper explores the role of commercial law in protecting the interests of SMEs in India. It examines key legal frameworks, assesses their effectiveness, and highlights areas requiring reform. Drawing upon recent studies and legal reviews, the analysis underscores the critical function of commercial law in enabling equitable market participation, reducing litigation burdens, and fostering a predictable business environment. The findings suggest that while legislative measures such as the Insolvency and Bankruptcy Code (IBC), micro, small and medium enterprises facilitation councils, and contract enforcement mechanisms offer protection, issues pertaining to implementation and awareness remain barriers. Policy recommendations are offered to strengthen the protective capacity of commercial law for SMEs.

Keywords: Commercial Law; Small and Medium Enterprises (SMEs); Contract Enforcement; Legal Protection

1. Introduction

Small and Medium Enterprises (SMEs) play a decisive role in the structural and functional development of the Indian economy. Contributing nearly 30 percent to the national Gross Domestic Product (GDP) and generating employment for approximately 110 million

people, SMEs serve as a vital engine of industrial growth, entrepreneurship, and regional development. They promote inclusive economic participation by fostering self-employment, reducing regional imbalances, and enabling innovation at the grassroots level. In an emerging economy like India, where large-scale industrialization coexists with informal and semi-formal enterprises, the sustainability of SMEs is intrinsically linked to the robustness of the legal and regulatory framework governing commercial activities.

Despite their significant economic contribution, SMEs remain legally vulnerable due to inherent structural disadvantages. These enterprises often operate with limited financial resources, restricted legal expertise, and weaker bargaining power compared to large corporations. Consequently, they face persistent challenges such as unfair contractual terms, delayed payments, compliance burdens, and prolonged litigation. Recent legal and economic studies highlight that inadequate legal protection and weak enforcement mechanisms significantly constrain SME growth and competitiveness (Sharma & Singh, 2023; Rao, 2024). These vulnerabilities underscore the importance of commercial law as a protective mechanism that ensures fairness, predictability, and accountability in business transactions.

Commercial law in India encompasses a broad spectrum of statutes and judicial principles that regulate business conduct, including contract law, insolvency law, company law, and dispute resolution mechanisms. Legislative interventions such as the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, the Insolvency and Bankruptcy Code (IBC), 2016, and reforms under the Commercial Courts Act, 2015 were introduced with the explicit objective of strengthening legal safeguards for businesses, particularly SMEs. These legal instruments aim to promote timely payments, facilitate contract enforcement, provide structured insolvency resolution, and reduce transaction costs. Scholars argue that such frameworks are essential in correcting market imbalances and protecting SMEs from exploitative practices by dominant market players (Kumar, 2023).

However, contemporary reviews reveal a significant gap between legal intent and practical outcomes. While statutory protections exist on paper, their effectiveness is often undermined by delayed enforcement, procedural complexity, limited institutional capacity, and low levels of legal awareness among SME owners. Facilitation councils under the MSMED Act, for instance, are underutilized due to lack of awareness and apprehension regarding prolonged dispute resolution. Similarly, although the IBC promises time-bound

insolvency resolution, smaller enterprises frequently find the process costly and inaccessible. Such limitations raise concerns about the actual protective capacity of commercial law in addressing the day-to-day legal challenges faced by SMEs.

The evolving landscape of digital commerce and technology-driven business models has further complicated the legal environment for SMEs. The increased use of electronic contracts, digital signatures, online marketplaces, and cross-border transactions introduces new legal risks relating to data protection, cybersecurity, and contractual validity. Existing commercial laws, largely designed for traditional business models, struggle to adequately address these emerging challenges. Recent studies emphasize the need for adaptive legal frameworks that align commercial law with digital transformation while ensuring SME protection (Rao, 2024).

In this context, the present study seeks to critically examine the role of commercial law in protecting SMEs in India. Drawing upon recent scholarly reviews, statutory provisions, and regulatory developments, the paper analyzes the extent to which existing legal frameworks safeguard SME interests and promote a fair business environment. By identifying strengths, weaknesses, and implementation gaps, the study aims to propose actionable recommendations to enhance the effectiveness of commercial law as a tool for SME protection and sustainable economic development.

Role of Commercial Law in the Indian Economic Framework

Commercial law encompasses the statutes, judicial decisions, and regulatory norms that govern business transactions, contractual relations, securities trading, debt recovery, insolvency, and dispute resolution. For SMEs, commercial law is not merely a backdrop but a tool that modulates risk, defines rights, and prescribes remedies when disputes arise.

Contract Law and SME Protection

At the heart of commercial transactions lies contract law, primarily codified within the Indian Contract Act, 1872. This statute establishes the fundamental principles of offer, acceptance, consideration, capacity, and legality. For SMEs, enforceable contracts ensure predictable outcomes and legal recourse against breaching parties. Commercial law empowers SMEs to seek remedies such as damages, specific performance, and restitution.

The advent of digital contracts upheld legally by the Information Technology Act, 2000 further expands contractual reach beyond physical boundaries.

However, contract enforcement for SMEs is often hampered by delays in civil litigation, high legal costs, and procedural complexities. Recognizing this issue, commercial law in India has seen enhancements through mechanisms like Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (established under the Commercial Courts Act, 2015) to expedite resolution of commercial disputes. These forums are designed to offer timely justice a critical need for cash-strapped SMEs.

Insolvency Law and Financial Protection

Insolvency and bankruptcy proceedings have traditionally disadvantaged smaller firms, which lacked effective restructuring avenues. The Insolvency and Bankruptcy Code (IBC) 2016 transformed this landscape by providing time-bound procedures for corporate debtors to restructure under judicial oversight. For SMEs, the IBC has the potential to safeguard business continuity, protect creditor rights, and discipline errant debtors.

Yet, empirical analyses indicate that high costs associated with IBC proceedings may dissuade smaller enterprises from leveraging these remedies. Moreover, the thresholds for initiating insolvency resolution often exclude smaller SME entities, leaving them vulnerable to informal settlement practices that satisfy larger creditors but harm SME interests.

Statutory Safeguards against Delayed Payments

Delayed payments from larger buyers pose existential risks to SMEs. To combat this, commercial legislation has instituted measures such as the MSMED Act 2006, which empowers SMEs to file claims for interest on delayed payments. Through facilitation councils and adjudication mechanisms, SMEs can assert their rights without resorting to protracted litigation.

Despite its promise, the MSMED Act's enforcement record has been mixed. Many SMEs remain uninformed of their statutory rights or are reluctant to engage legal counsel due to cost concerns. As a result, a significant proportion of delayed payments go unresolved, undermining the very purpose of the legal protection.

Legal Mechanisms and Their Impact

This section provides an in-depth discussion of the principal commercial legal mechanisms that influence SME operations in India.

Commercial Courts and Fast-Track Litigation

The creation of Commercial Courts under the Commercial Courts Act, 2015, marked a significant stride toward efficient dispute resolution. These specialized courts deal with commercial disputes involving specified monetary thresholds and aim to ensure speedy adjudication, with strict timelines prescribed for various stages of litigation.

For SMEs, access to a specialized court means reduced wait times and procedural clarity. Faster dispute resolution enhances business certainty, allowing SMEs to allocate resources more efficiently. However, whether these benefits accrue uniformly across jurisdictions remains debatable; in some regions, resource constraints and judicial backlogs persist.

Alternative Dispute Resolution (ADR)

Commercial law encourages the use of Alternative Dispute Resolution (ADR) tools such as arbitration, mediation, and conciliation. ADR offers a cost-effective and confidential means of settling disputes without consuming excessive time. Many SME contracts now include ADR clauses specifically to avoid the unpredictability of court litigation.

In practice, however, ADR is underutilized by SMEs due to limited legal literacy and apprehension regarding the enforceability of ADR awards. Strengthening awareness campaigns and reducing ADR costs could enhance uptake among smaller firms.

Regulatory Compliance and Ease of Doing Business

Commercial law intersects with regulatory compliance in areas such as taxation, labor laws, environmental standards, and foreign trade regulations. Reforms under the “Ease of Doing Business” agenda have sought to simplify compliance procedures, automate filings, and reduce regulatory multiplicity.

These changes benefit SMEs by lowering administrative burdens and reducing compliance-related delays. Nevertheless, compliance remains a complex terrain for SMEs with limited legal expertise, highlighting the need for targeted legal assistance programs.

Challenges Facing SMEs Under Commercial Law

Despite progress, several structural challenges continue to undermine the protective intent of commercial law for SMEs.

Legal Awareness and Access to Justice

A persistent challenge is the lack of legal awareness among SME owners. Many entrepreneurs remain unaware of statutory remedies available under the MSMED Act, the benefits of commercial courts, or the implications of binding arbitration. This knowledge gap erodes the practical value of legal protections.

Legal aid services and targeted training programs can address this gap, but such initiatives are not uniformly available. As a result, SMEs often adopt informal dispute resolution practices that disadvantage them in the long term.

High Costs of Litigation

While commercial courts and ADR mechanisms exist, the actual cost of legal proceedings including attorney fees, court expenses, and opportunity costs related to time spent on legal matters can be prohibitive for SMEs. This financial constraint discourages many from asserting their rights, particularly against larger, resource-rich counter-parties.

Digital Transformation and Regulatory Lag

The rapid digitalization of business transactions has outpaced the legal framework's ability to adapt. Issues such as e-commerce contracts, data protection liabilities, and cybersecurity obligations raise questions that existing commercial law does not fully address. SMEs navigating digital markets may encounter unanticipated legal risks absent clear statutory guidance.

Inconsistent Enforcement across Jurisdictions

Although commercial courts are established nationwide, enforcement consistency varies by region due to differences in judicial capacity, administrative support, and local legal culture. This inconsistency undermines the predictability that commercial law seeks to create, complicating SMEs' strategic planning.

2. Analysis and Discussion

This section synthesizes statutory provisions of commercial law with the practical economic realities faced by Small and Medium Enterprises (SMEs) in India. While legislative reforms have aimed to create a business-friendly legal ecosystem, their real-world effectiveness depends largely on accessibility, enforceability, and institutional efficiency. The analysis evaluates key legal mechanisms contract enforcement, insolvency resolution, and delayed payment remedies to assess whether commercial law adequately protects SME interests and promotes sustainable business operations.

Effectiveness of Contract Enforcement Mechanisms

Contract law forms the backbone of commercial transactions, ensuring predictability, accountability, and mutual trust between contracting parties. For SMEs, enforceable contracts are critical to mitigating risks arising from delayed payments, breach of terms, and opportunistic behavior by larger counterparties. The establishment of commercial courts under the Commercial Courts Act, 2015 represents a significant reform aimed at improving contract enforcement through specialized judicial forums, procedural efficiency, and time-bound dispute resolution.

Empirical observations indicate that faster contract enforcement enhances SME confidence in undertaking higher-value and longer-term contracts, particularly with corporate buyers and government agencies. Reduced uncertainty allows SMEs to plan cash flows, invest in expansion, and participate competitively in supply chains. Moreover, procedural reforms such as mandatory pre-institution mediation and strict timelines for pleadings have contributed to improved efficiency in commercial litigation.

However, the benefits of contract enforcement reforms are unevenly distributed. SMEs operating in rural or semi-urban areas often face limited access to commercial courts

due to geographic distance and lack of legal infrastructure. Procedural complexities, high legal costs, and insufficient legal literacy further discourage SMEs from seeking judicial remedies. As a result, many SMEs prefer informal negotiations or compromise settlements, which may undermine their legal rights and long-term financial stability. These challenges indicate that while commercial law provides a robust framework for contract enforcement, its protective potential remains partially unrealized for a large segment of SMEs.

Insolvency Processes and SME Resilience

The introduction of the Insolvency and Bankruptcy Code (IBC), 2016 marked a paradigm shift in India's approach to insolvency resolution by emphasizing time-bound processes, creditor protection, and business continuity. From a theoretical standpoint, the IBC offers SMEs an opportunity for financial rehabilitation through structured resolution mechanisms, reducing the stigma associated with business failure and encouraging responsible risk-taking.

In practice, however, the application of the IBC to SMEs has yielded mixed outcomes. Larger firms and corporate debtors benefit more from formal insolvency proceedings due to their ability to bear procedural costs and engage professional insolvency practitioners. In contrast, micro and small enterprises often find the insolvency process financially burdensome and procedurally complex. High initiation costs, professional fees, and compliance requirements act as deterrents, leading SMEs to rely on informal debt restructuring or out-of-court settlements.

Furthermore, the insolvency threshold requirements and creditor-dominated decision-making processes may disadvantage SMEs, particularly when dealing with powerful financial institutions. This disparity highlights the need for SME-specific insolvency frameworks that prioritize cost efficiency, simplified procedures, and debtor protection. Without such tailored mechanisms, the insolvency law's capacity to enhance SME resilience remains limited, potentially undermining entrepreneurial confidence and economic dynamism.

Delayed Payments and the MSMED Act

Delayed payments constitute one of the most critical challenges confronting SMEs, directly affecting liquidity, working capital management, and operational continuity.

Recognizing this issue, the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 introduced statutory protections that entitle SMEs to interest on delayed payments and provide access to facilitation councils for dispute resolution. In theory, these provisions are progressive and aim to address the power imbalance between SMEs and larger buyers.

Despite the statutory mandate, empirical reports and case analyses suggest that enforcement of delayed payment provisions remains weak and inconsistent. Many SMEs are either unaware of their rights under the MSMED Act or hesitant to invoke legal remedies due to fear of losing business relationships. Facilitation councils, though established to offer swift resolution, often suffer from administrative delays, limited manpower, and jurisdictional ambiguities. Consequently, disputes related to delayed payments frequently extend over long periods, diluting the deterrent effect of statutory interest provisions.

Additionally, larger buyers sometimes challenge the jurisdiction of facilitation councils or resort to prolonged litigation, effectively neutralizing the protective intent of the law. This enforcement gap underscores a critical disconnect between legislative safeguards and practical outcomes. Strengthening the institutional capacity of facilitation councils, digitizing claim processes, and imposing stricter penalties for non-compliance could significantly enhance the effectiveness of the MSMED Act in protecting SME liquidity.

Interplay Between Legal Frameworks and Economic Realities

The analysis reveals that while India's commercial law framework is comprehensive in design, its protective efficacy for SMEs is constrained by implementation challenges, cost barriers, and institutional inefficiencies. Legal remedies exist across multiple domains contracts, insolvency, and delayed payments but SMEs often lack the resources or confidence to fully utilize them. This gap between law and practice has economic implications, including reduced competitiveness, constrained access to credit, and heightened vulnerability to market shocks.

Moreover, the increasing complexity of business transactions in a digital and globalized economy necessitates a more adaptive legal approach. SMEs require not only statutory protection but also accessible legal support systems that translate legal rights into practical benefits. Bridging this gap is essential to ensuring that commercial law functions as an enabling framework rather than a formalistic regulatory structure.

3. Policy Recommendations

Based on the analysis, the following recommendations are proposed:

i. Enhance legal literacy programs tailored for SMEs, focusing on contract rights, dispute resolution options, and statutory remedies.

ii. Introduce specialized insolvency procedures for micro and small enterprises to reduce procedural costs and simplify restructuring.

iii. Strengthen enforcement of delayed payment provisions under the MSMED Act through digitized tracking and statutory penalties.

iv. Develop legal guidelines for digital commerce to address e-contract disputes, data protection responsibilities, and cross-border digital transactions.

4. Conclusion

Commercial law plays a crucial, yet imperfect, role in protecting SMEs in India. The legal frameworks governing contracts, insolvency, delayed payments, and dispute resolution provide substantive mechanisms for safeguarding SME interests. However, enforcement challenges, limited awareness, and high litigation costs reduce their practical utility. Strengthening these frameworks through targeted reforms, judicial capacity building, and SME-oriented legal support systems will help ensure that commercial law fulfills its protective promise. With thoughtful policy evolution, commercial law can become a pillar that not only regulates markets but actively fosters SME growth and resilience.

References

1) *Kumar, R. (2023). Legal challenges faced by small and medium enterprises in India: An empirical review. Journal of Business Law and Ethics, 15(2), 45–60.*

2) *Rao, S. V. (2024). Commercial law reforms and SME development in India. Indian Journal of Law and Economics, 19(1), 78–94.*

3) *Sharma, A., & Singh, P. (2023). Contract enforcement and business confidence: Evidence from Indian SMEs. Journal of Commercial Law Studies, 12(3), 101–118.*

4) *Ministry of Micro, Small and Medium Enterprises. (2022). Annual Report 2021–22. Government of India.*

5) *Ministry of Finance. (2023). Economic Survey of India 2022–23. Government of India.*

6) *Insolvency and Bankruptcy Board of India. (2023). IBC Annual Report 2022–23. Government of India.*

7) *World Bank. (2020). Doing Business 2020: Comparing Business Regulation in 190 Economies. World Bank Publications.*

8) *Reserve Bank of India. (2022). Report on Trend and Progress of Banking in India. RBI.*

9) *Jain, S., & Mehta, R. (2021). Effectiveness of MSMED Act in addressing delayed payments to SMEs. International Journal of Legal Studies and Research, 9(4), 66–82.*

10) *Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015.*

11) *Micro, Small and Medium Enterprises Development Act, 2006.*

12) *Insolvency and Bankruptcy Code, 2016.*