

MSME and Startup

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MSME refers to Micro, Small & Medium Enterprises. Classification of MSME on the basis of Investment and Turnover is as follows:

1. Micro-Enterprise: Investment less than Rs. 1 crore and Turnover less than Rs. 5 crore
2. Small Enterprise: Investment less than Rs. 10 crore and Turnover up to Rs. 50 crore
3. Medium Enterprise: Investment is less than Rs. 50 crore and Turnover up to Rs. 250 crore

Why MSME was introduced?

MSME were earlier known as Small Scale Industries (SSI). Over a period of time concept of Small-Scale Industries has gone through many amendments by government of India. Gist of these amendments are as below:

- **1938 – 1995:** These industries were recognized to observe the challenges faced by the Small scale Industries by Prime Minister Jawahar Lal Nehru
- **1955 – 1960:** The Government of India allowed that an enterprise working without power can have 50-100 employees to get the work done and capital investment cannot be more than Rs. 5Lakh
- **1960 – 1962:** The Government of India removed the filter of number of employees allowed to work in SSI but investment was kept same to Rs. 5 Lakh.
- **1962 – 1974:** The capital investment ceiling was increased from Rs. 5 Lakh to Rs. 10 Lakh.
- **1974 – 1980:** A new unit with Small Scale was introduced which was known as Ancillary Units. The investment for Small Scale was Rs. 10 Lakhs and for Ancillary units it was introduced to Rs. 15 Lakhs.
- **1980 – 1985:** The investment ceiling was raised from Rs. 10Lakhs to Rs. 20 Lakhs for SSI and from Rs. 15 Lakh to Rs 25 Lakhs for Ancillary Units.
- **1985 – 1991:** At this stage investment ceiling was raised for SSI units to Rs. 25 Lakhs and for Ancillary units to Rs. 45 lakhs.
- **1991 – 1997:** During this phase, the Indian economy was going through many revolutions like introduction of Liberalization, Privatization and Globalization and the focus of government was towards the development of country. Thus, investment ceiling was raised to Rs. 60 Lakhs for SSI units and Rs. 75 Lakhs for Ancillary units.
- **1997 – 2007:** The reforms made the investment for both SSI and ancillary units equal at INR 3 crores.
- **2007 – till now:** With various other amendments in the number of employees, investment, turnover, technology in the past years the Small Scale Industries were finally named Micro Small and Medium Enterprises (MSME) in the year 2007.

MSME was introduced for the development and encouragement of small and medium sized businesses and the Khadi industries to establish their new business and increase employment possibilities. To encourage MSME, government of India rolls out several schemes.

Prime Minister Employment Generation Programme (PMEGP)

Credit Guarantee Scheme for Micro & Small Enterprises (CGTMSE)

Micro & Small Enterprises Cluster Development Programme (MSE-CDP) Scheme

1. Prime Minister Employment Generation Programme (PMEGP):

Objectives are to provide sustainable job opportunities in rural and urban areas by offering financial support for the establishment of self-employment companies. To create long-term, stable work options for young people in rural areas who are unemployed and aspiring traditional artisans, thereby preventing occupational migration.

2. Credit Guarantee Scheme for Micro & Small Enterprises (CGTMSE):

To encourage first-generation business owners to pursue self-employment prospects by providing credit guarantee support for loans to Micro & Small Enterprises (MSEs) that are collateral-free or third-party guaranteed, particularly in the absence of collateral.

3. Micro & Small Enterprises Cluster Development Programme (MSE-CDP) Scheme:

To aid MSEs in remaining viable and expanding by tackling concerns like bettering technology, skills, and market access, among others, to build or upgrade infrastructure in MSEs' current or new industrial areas and clusters and promoting environmentally friendly and sustainable industrial practices for the clusters.

Importance of MSME in India

MSME has become the backbone of Indian Economy, which has contributed in providing employment to large number of people in rural as well as urban areas. It has helped in reducing the regional imbalance and enabled more equitable distribution of national income and wealth by facilitating the industrialization of rural and less developed areas.

It has played an essential role in providing employment opportunities in underprivileged areas. They have also contributed and played an essential role in the country's development in different areas like the

requirement of low investment, flexibility in operations, low rate of imports, and a high contribution to domestic production.

Opportunities in MSME industry are increasing because of its succeeding factors:

- ❖ Government's Promotion and Support
- ❖ Less Capital required
- ❖ Project Profiles
- ❖ Raw Material and Machinery Procurement
- ❖ Growth in demand in the domestic market
- ❖ Funding – Finance & Subsidies
- ❖ Export Promotion and potential for Indian products
- ❖ Manpower Training

Factsheet of MSME Registration in 2022-2023

Total MSME Registration – 1,34,84,325		
Micro	Small	Medium
1,29,33,143	4,38,952	39,992

**Source Udyam Registration's Official website.*

Estimated numbers of MSMEs in India – 2021-2022

Activity Category/Sector	Estimated Number of Enterprises (in lakh)	Share
Manufacturing	196.65	31%
Trade	230.35	36%
Services	206.85	33%
All	633.88	100%

As per the official MSME annual report of 2022-23, a total number of MSME is registered in India are 65,23,067, out of which 36,75,597 enterprises registered under Manufacturing category and 94,18,101 enterprises registered under Service sector.

As per the **National Sample Survey (NSS) 73rd round conducted during the period 2015-16,**

1. MSME sector has been creating 11.10 crore jobs (360.41 lakh in Manufacturing, 0.07 lakh in Non-captive Electricity Generation and Transmission, 387.18 lakh in Trade and 362.82 lakh in Other Services) in the rural and the urban areas across the country.

Statement No. 2.7: Estimated Employment in the MSME Sector (Activity Wise)

Broad Activity Category	Employment (in lakh)			Share (%)
	Rural	Urban	Total	
(1)	(2)	(3)	(4)	(5)
Manufacturing	186.56	173.86	360.41	32
Electricity*	0.06	0.02	0.07	0
Trade	160.64	226.54	387.18	35
Other Services	150.53	211.69	362.22	33
All	497.78	612.10	1109.89	100

*Non-captive electricity generation and transmission

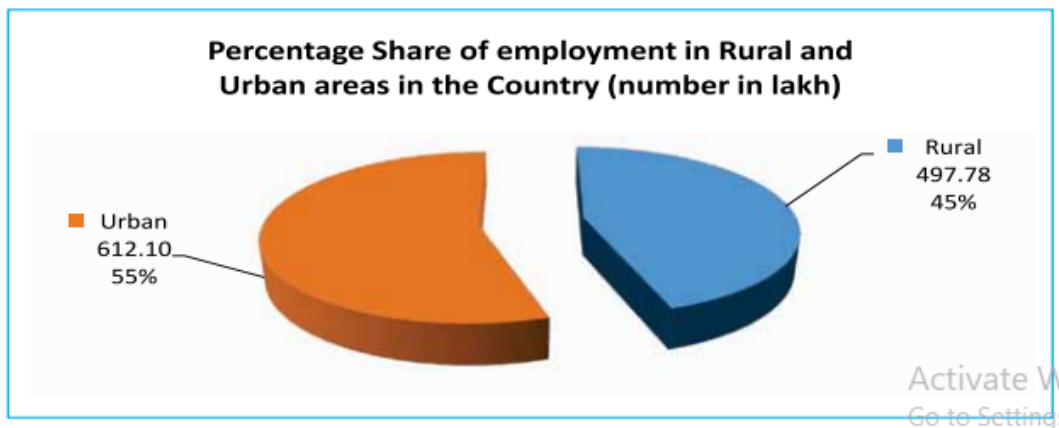
2. Micro sector with 630.52 lakh estimated enterprises provided employment to 1076.19 lakh persons that in turn accounts for around 97% of total employment in the sector. Small sector with 3.31 lakh and Medium sector with 0.05 lakh estimated MSMEs provided employment to 31.95 lakh (2.88%) and 1.75 lakh (0.16%) persons of total employment in MSME sector, respectively.

Statement No. 2.8: Distribution of employment by type of Enterprises in Rural and Urban Areas

(Numbers in lakh)

Sector	Micro	Small	Medium	Total	Share (%)
Rural	489.30	7.88	0.60	497.78	45
Urban	586.88	24.06	1.16	612.10	55
All	1076.19	31.95	1.75	1109.89	100

Figure 2.6: Percentage Share of Rural and Urban MSMEs in the Country



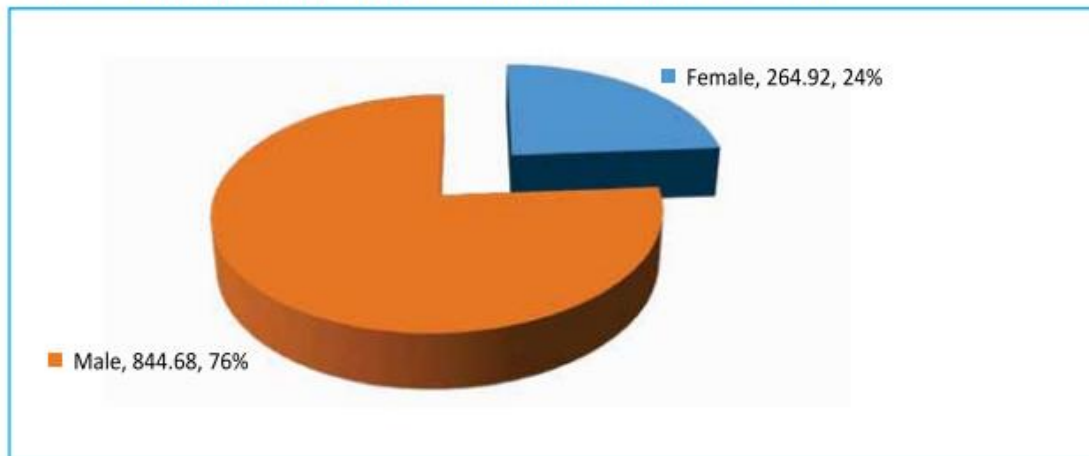
3. Out of 1109.89 lakh employees in MSME sector, 844.68 (76%) are male employees and remaining 264.92 lakh (24%) are females.

Statement No. 2.9: Distribution of workers by gender in rural & urban areas

(Numbers in lakh)

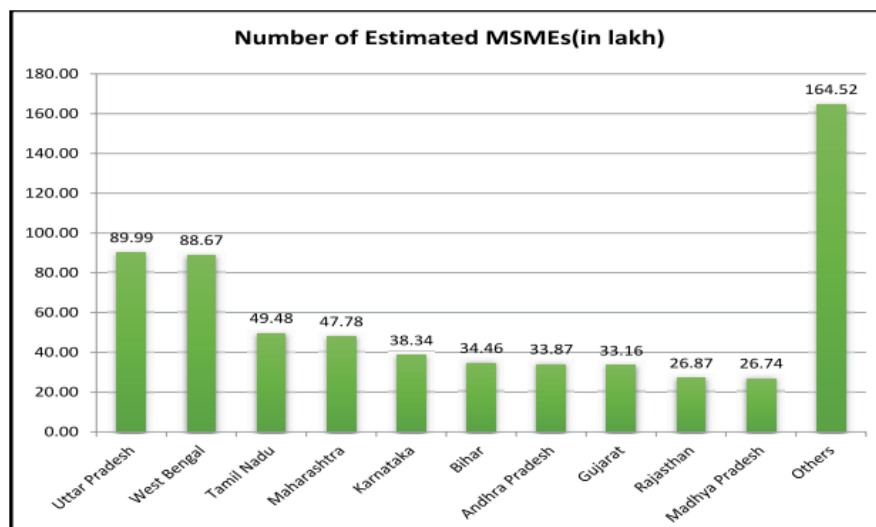
Sector	Female	Male	Total	Share (%)
Rural	137.50	360.15	497.78	45
Urban	127.42	484.54	612.10	55
Total	264.92	844.68	1109.89	100
Share (%)	24	76	100	

Figure 2.7: Distribution of workers in Male and Female Category



4. State of Uttar Pradesh had the largest number of estimated MSMEs with a share of 14.20% of MSMEs in the country. Top 10 States accounted for a share of 74.05% of the total estimated number of MSMEs in the country.

Figure 2.8: Distribution of MSMEs in Top Ten States



Thus, we can say that The Indian economy is supported by MSME. This industry has demonstrated its crucial role in the development of the country, the leveraging of exports, and the enormous employment opportunities for the unskilled, recent graduates, and the underemployed. Additionally, it increased banks' options for providing more credit to businesses in the MSME sector. To ensure the longevity of this industry, the government should take great effort to address the relevance of MSME Registration by establishing improved laws and enabling financial institutions to offer more credit at lower interest rates. Innoviti gives several specialised digital payment solutions for SMEs in the market. A new-to-market offering is an example of an online payment solution that uses online EMI wallets to help SMEs with their cash flow and reward programs.

STARTUPS

Startup India is an initiative of the Government of India. The campaign was first announced by Indian Prime Minister, Narendra Modi during his speech on 15 August 2015. The action plan of this initiative is to focus on three areas

- ❖ Simplification and Handholding,
- ❖ Funding Support and
- ❖ Incentives.

Any Indian citizen aged 18 or above can apply for the Start Up India scheme. The entry shall be Original Entity that is the Company or Entity should have been formed initially by the promoters and not by splitting up or reconstructing an existing business.

Startups helps to boost economic activity that allows the nation to expand. In addition to this, it also maximizes profits through technological innovations. This eventually improves the GDP of an economy and transfers money into the hands of the customers. Moreover, rise of startups has made India the third largest startup ecosystem in the world. And it has significantly impacted the Indian economy by contributing around 4-5% of GDP of India. There are about 90,000 startups in India.

Artificial Intelligence and Machine Learning: Artificial Intelligence (AI) and Machine Learning (ML) are expected to dominate the startup space in India in 2023. Startups are using AI and ML technologies across various sectors such as healthcare, agriculture, finance, and e-commerce, among others.

Because of COVID 19 pandemic there were many who lost their jobs and out of them some tested their ideas and started their own businesses. While some of them have failed, others thrived like anything. India supports the rise of startups because it has low-cost skilled labor, funding from national and international investors, and growth opportunities. According to Financial Express, start-up funding has reached a new high in 2023.

Some of the Startups which has seen a boon for their businesses and India are:

1. **CRED:** It was founded in the year 2008. It is the platform where one can pay the credit card bills and get rewarded for it. The platform has created a new model where users get "CRED coins" when they pay their bills through the CRED app. These coins can later be redeemed for buying any product, entering a contest, or joining any workshop. It was founded by Mr. Kunal Shah and it is Bangalore based business.

According to TechCrunch, CRED is the youngest Indian startup to be valued at around \$2.2 billion. This 2-year-old startup has more than 6 million customers and about 22% of all credit card holders.

As per the founder and CEO, Kunal Shah, the company is targeting affluent customers and has become one of the most talked-about startups.

2. **Vernacular.ai**: This startup is also Bangalore based and it was founded by Mr. Sourabh Gupta, Mr. Akshay Deshraj, Mr. Prateek Gupta and Mr. Manoj Sarma. This is first SaaS business aiming to become the leading voice automation and AI platform globally. The company provides Speech recognition and Voice assistants as a service to the banking, Food and Beverage and Hospitality industries. As per Economic Times, Vernacular.ai is preparing to hire 100 people in 2021 which could strengthen its leadership team. While there were retrenchments and pay cuts in the last year, Vernacular.ai has strengthened its workforce by 4 times. The company is heading to become the world's most appealing Voice AI platform with employees having multifunctional expertise.
3. **Pharmeasy**: It is Mumbai based startup and it was founded by Mr. Siddharth Shah. It is an online Pharmacy application and now the stores has also opened which specialises in OTC products, diagnostic tests, and medical instruments. During the COVID-19 pandemic, the company has become an essential service that has contributed to its growth. The competitors of PharmEasy in India are 1mg and Netmeds. This health tech startup has raised a massive \$350 million, becoming the first Epharmacy unicorn in India. The funding has been raised after the merger of PharmEasy with its rival Medlife.
4. **Meesho**: It was founded by IIT – Delhi Graduates in the year 2015. Meesho is the reseller platform that is all set to become the big e-commerce distribution channel where the homepreneurs sell products through WhatsApp, Facebook, and Instagram.
5. **Groww**: It was founded in Bangalore by Mr. Lalit Keshre. It is an investing platform that allows its customers to invest in stocks, ETFs, Mutual funds, IPOs and more using its platform. The platform works on both mobile applications and the web. The company was founded in 2016 by 4 ex-Flipkart employees who noticed how difficult it is to invest in India.
6. **Nykaa**: Falguni Nayar, the platform founder and a former investment banker, has visioned to create a platform with thousands of product options. It is an online beauty store and a fashion e-commerce platform that was founded in 2012. The company offers wellness and beauty products to customers at reasonable prices. It is interesting to know that it raised \$25 million in March 2020 and is now valued at \$1.2 billion. The company's investors include Bollywood celebrities like Alia Bhatt and Katrina Kaif.
7. **Swiggy**: It is also founded in Bangalore by Mr. Sriharsha Majety, Mr. Nandan Reddy and Mr. Rahul Jaimini. This company came into the business when Zomato was already in the market. This app started with just 5 delivery boys and 25 restaurant partners in 2014. In 4 years, the company got itself in the unicorn category of startups and is giving tough competition to Zomato. The company's success is built on its splendid customer experience value chain.

8. **Practo:** Practo is a health tech startup founded in 2008 by Abhinav Lal. This healthcare startup helps consumers to find the best doctors, book instant appointments, and make better health decisions.

There are too many list for startups like Firstcry, Curefit, BigBasket, Milkbasket etc. But one thing is for sure that these startups is driven by new force in the global economy.

Insights

Learning and reading about MSME and Startups gives us a rosy picture and encourage us to do become part of these associations. But it doesn't mean that no challenges are faced by them. Legal, Social, geographical, technical etc. challenges may be faced by them. With the introduction and upcoming of so many MSME and Startup's role of Lawyer has increased widely.

Such as for **MSME** registration is free on Udyam portal but for applying license legal consultant is required. Rules and Regulations has been framed by government for MSME's, which needs specialized knowledge and capability to read within the lines which can only be done by legal consultant and is difficult for general people to understand. Thus, before starting and applying for registration appropriate legal consultation is required.

With the growth of MSME's disputes also arises which need to be settled in courts.

Dispute Resolution in MSME's

Any dispute in respect to delay in payment is presented before the Facilitation Council constituted by the respective State Government. The Facilitation Council either decides the dispute by itself or it refers to the dispute for conducting conciliation under the aegis of the Arbitration & Conciliation Act, 1996.

If the dispute is not settled by Facilitation Council, then it has the power to settle the dispute by referring it to the dispute for Arbitration.

And if the dispute is sent for Arbitration, as per Section 18 of the MSME Act, 2006, the arbitrator has to solve the dispute and complete the proceedings within the statutory period of ninety days from making such reference.¹

Whether Arbitration agreements prevail over MSME Act?

General rule is that the Special Law will always prevail over General Law. But, there are different views regarding the provision of the whether MSME Act will prevail over Arbitration Act. There are different judgments passed by various high courts.

1. *Saryu Plastics Pvt. Ltd. V. Gujarat Water*² Gujarat High Court held that:

- There is no provision under the MSME Act, 2006 that negates the Arbitration Agreement or renders the Arbitration Agreement between the parties ineffective.

¹ <https://bhandarilawfirm.com/dispute-resolution-under-msme/>

² <https://indiankanoon.org/doc/190826761/>

- As per Section 15 to 23 of the MSME Act will prevail over any other law only when there is anything inconsistent with the provision of the Act.
 - As per Section 18 of the MSME act which provides for the forum resolution of disputes, it will not negate the Arbitration Agreement.
 - As there is no inconsistency regarding the provision of Jurisdiction. Since, the provisions of Arbitration & Conciliation Act, 1996 will apply whether the dispute is solved by either Facilitator Council or it is settled by the way of the Arbitration Agreement.
2. *Hindustan Wires Limited vs Mr. R. Suresh*³ in this case Bombay High Court held a different view from the Gujarat High Court as above. In this case, Bombay High Court held that where there is an already existing clause entered between the parties for Arbitration, then the provision of the MSME Act will not apply. The parties will be governed by the provision of the Arbitration and Conciliation Act, 1996.
3. *Bharat Heavy Electricals Limited vs State of UP*⁴ Allahabad high court held different view than of Bombay High Court as above. It states that “Whether there may be an existing Arbitration Clause entered between the parties to contract, still Section 18(4) of MSME Act will apply as Section 18 of the MSME Act further clarifies that it shall have the effect, notwithstanding anything contained in any other law for the time being in force. The provision of MSME Act will apply.

After going through certain judgments and there are many more, we can conclude that MSME Act, 2006 being the special act will override the Arbitration Act in case of consistency. The Legislature will not make different laws for the same subject matter.

Similarly, **Startups** requires lawyer to mitigate risks by ensuring the entity complies with the relevant laws; to acquire requisite licenses and to have water tight contracts with everyone they deal including the founders and employees. Lawyers will help to develop business or employment contracts; Review your leasing agreement; Work with investors and capital funds; Review partnership agreements; Determine the best business structure (i.e. sole trader, company) for you; Deal with disputes; and Register and protect intellectual property.

Oliver North said, “*I’m trusting in the Lord and a good lawyer*”, thus, an ideal startup team would and should always comprise of a good legal team to help them navigate through the legal labyrinth that becomes a major part of starting a start-up at every step of the way.

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