

Presentation to the Task Force on Enforcement of Contracts, NITI Aayog

DAKSH

July 2021



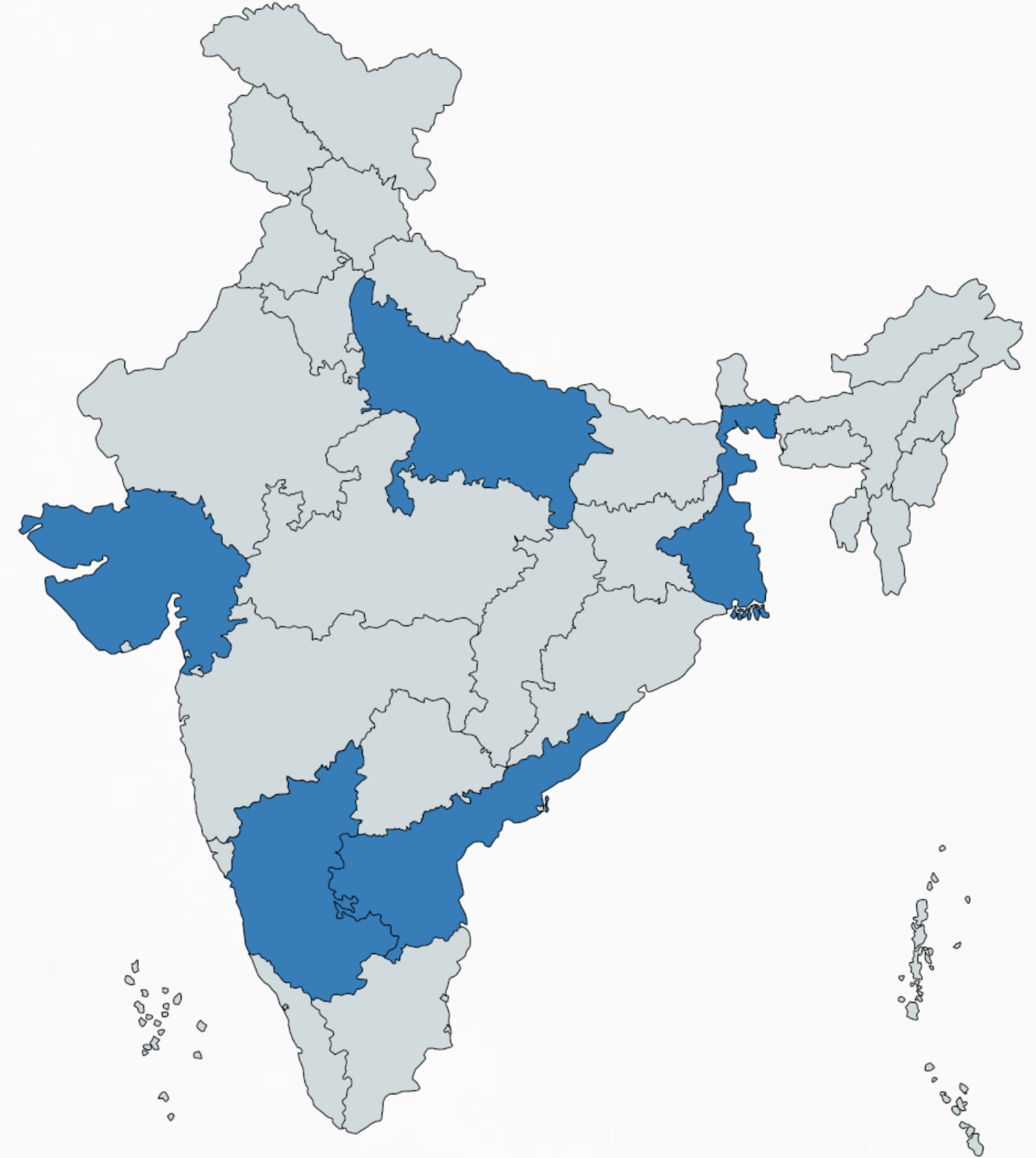
Data Sources



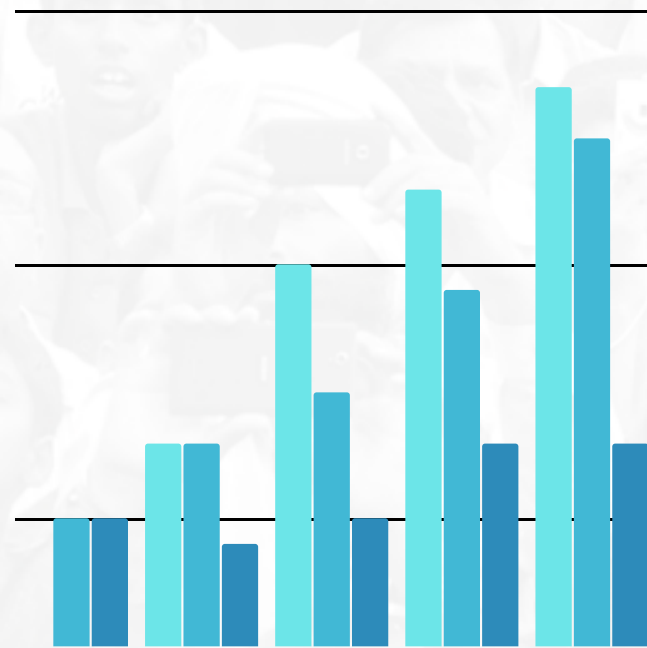
Publicly available data on HC websites



Interviews with judges and advocates from Gujarat, Uttar Pradesh, Karnataka, Tamil Nadu and West Bengal

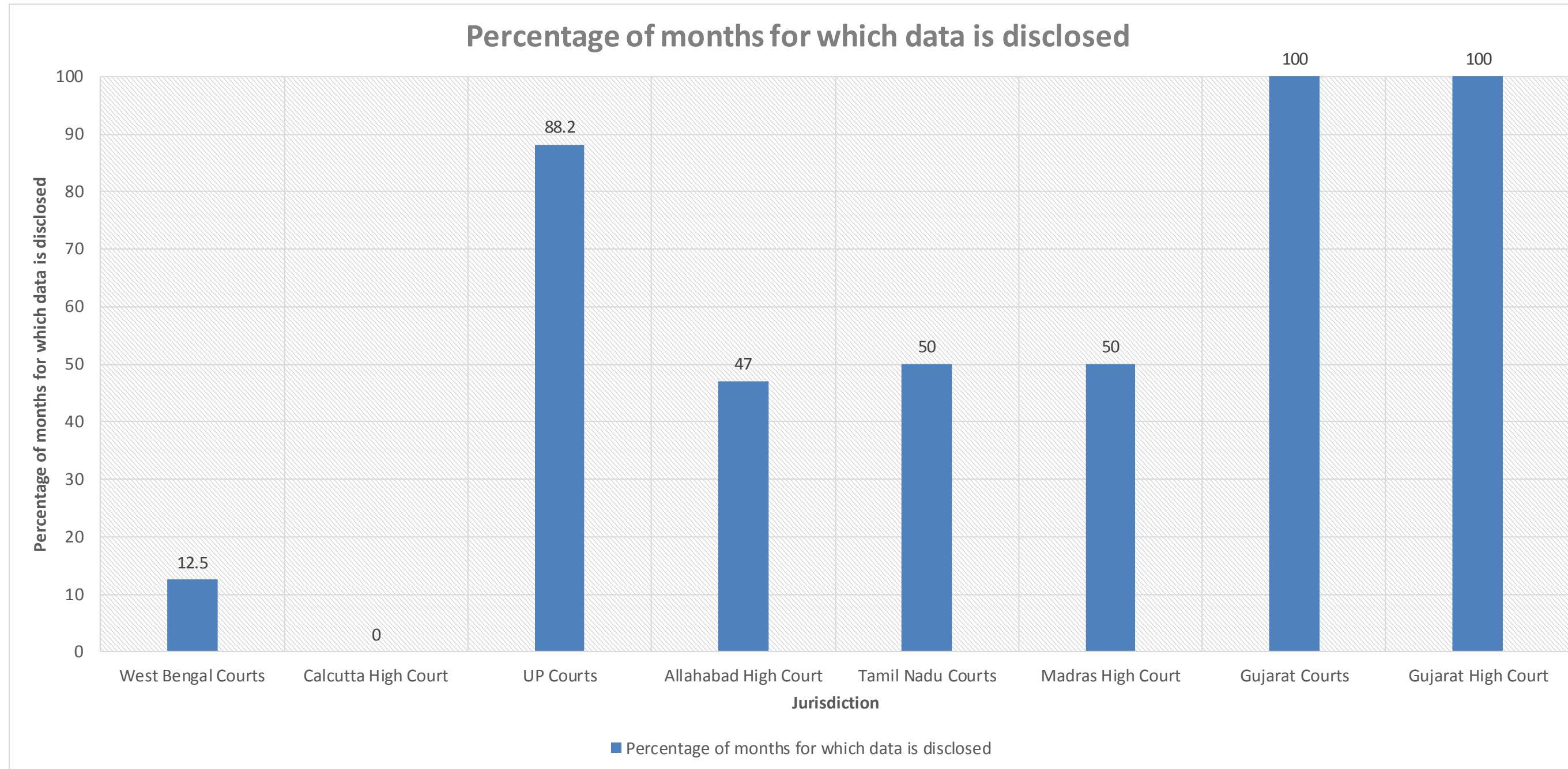


Extent of compliance – types of disclosure of statistics under S.17



- Examples of data to be disclosed on a monthly basis
 - Number of cases instituted
 - Number of cases disposed
 - Number of pending cases
 - Average number of days for disposal of cases
 - Number of cases with e-filing, e-payment of court fees, electronic service of processes
- Overall, average level of compliance is unsatisfactory and varies widely from state to state
- Data regarding average period of disposal data is nearly absent in the states studied.

Extent of compliance - disclosure of statistics under S.17



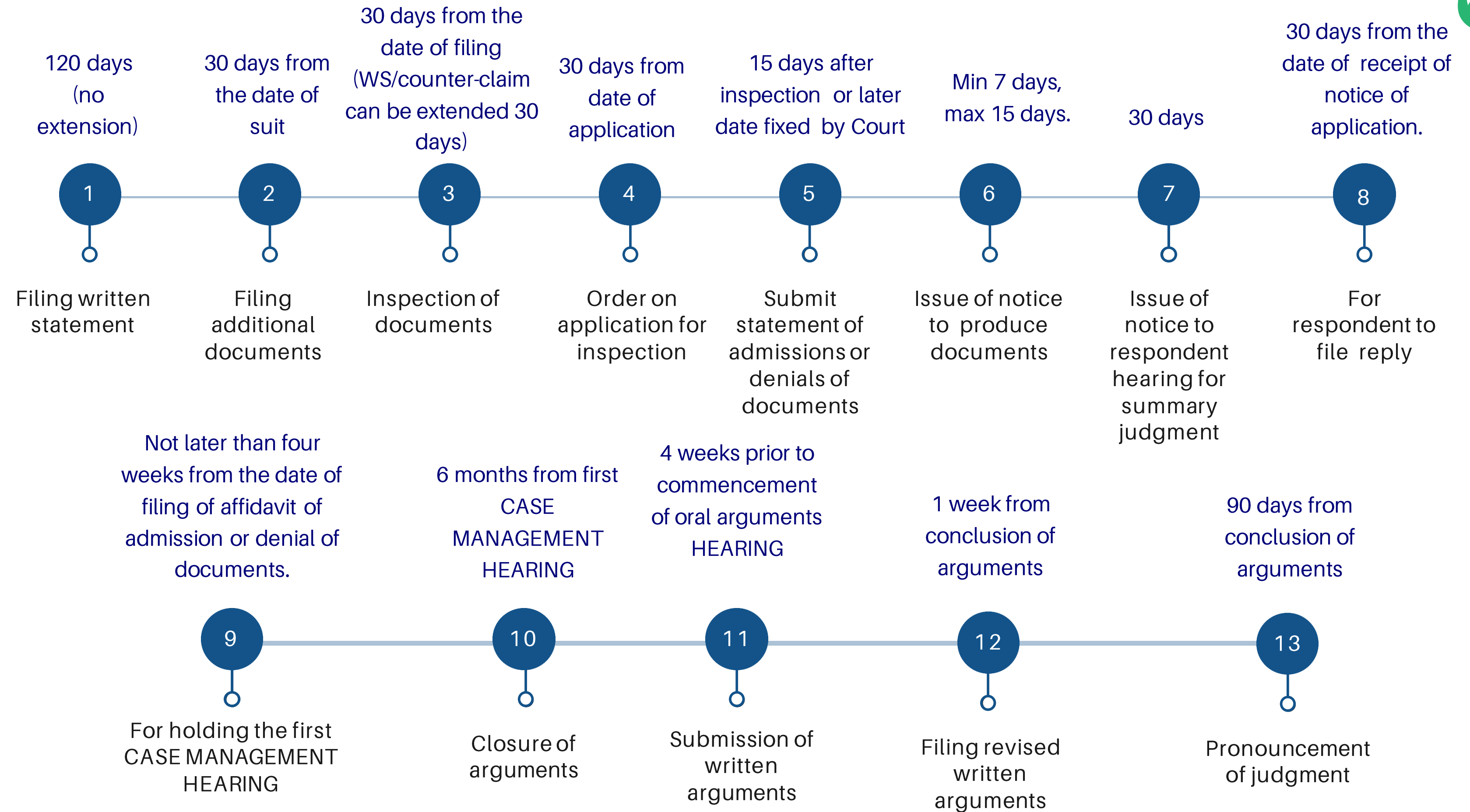
The only courts that disclosed data on average number of days for disposal of cases are the court at Rajarghat (3 months), Asansol (2 months) and Siliguri (1 month).

Percentage of months between September 2018 - July 2021 for which data has been maintained.

Note:

- No data available for Calcutta High Court Commercial Division or Commercial Appellate Division - only courts at Asansol, Rajarghat, Siliguri, Alipore
- UP has not maintained granular data on workload of each subordinate commercial court

Extent of compliance - Case Management hearing and timelines



Extent of compliance - Case Management hearing and timelines

- Case management hearings are held, helpful in streamlining proceedings
- However, they are not fully adhered to
- Procedural hindrances and difficulties faced in regular civil proceedings have crept into commercial court proceedings
- Costs rarely imposed; low amount has no deterrent effect on delaying tactics

Extent of compliance - Adequacy of Infrastructure



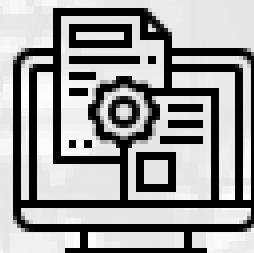
- State governments have failed in their obligation to provide necessary facilities to operationalize the Act in its true spirit



- Merely rebranding of existing district courts as commercial courts without setting up any new infrastructure



- Dedicated commercial courts with separate infrastructure fared better



- Technology facilities are inadequate

Scope for Improvement- Specialized Judges

Specialised judges:

- LCI Reports suggest creation of separate specialized cadre of commercial judges
- Existing set of commercial judges:
 - No specific exposure to commercial matters
 - Frequent transfers in subordinate commercial courts

Digital Infrastructure:

- Limited digitization of records, e-filing of documents and video conferencing facilities
- Cultural resistance to adopt technology

Distribution of dedicated courts:

- No legislative mandate to set up a separate court with its own infrastructural facilities
- Most courts operate out of district courts

Pecuniary and subject matter jurisdiction:

What was envisaged to be a specialized court is now difficult to distinguish from other civil courts

- Pecuniary limit of Rs 3 Lakhs
- Wide definition of “Commercial Dispute”

Path to reform

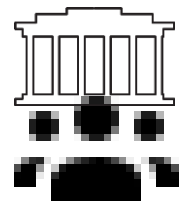
Case Statistics

Digital Infrastructure

Immediate Action

- Release data that been omitted in the past so as to enable clear analysis
- Standardize and align case nomenclature 'Commercial Cases' with the definition of commercial disputes under the Act across jurisdictions

Responsibility



Registry



High Court



Central
Government

Medium Term

- Incorporate Commercial Court statistics within National Judicial Data Grid
- Automation of collection and release of data (coordinate effort of state government and high courts)

Responsibility



E-Committee



High Court

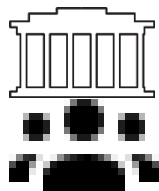


Central
Government

- Online hearings, e-filing, e-payment of fees etc where possible
- Pass rules for video conferencing



Judges



Registry



High Court

- Invest in digital infrastructure to support this vision (State governments)
- Explore possibility of setting up dedicated commercial courts as model digital courts under phase III of the E-courts mission



E-Committee
State
Government



State
Government

Path to reform

Immediate Action	Responsibility	Strategic Goals	Responsibility
Mandatory introductory training for all Commercial Court judges	 High Court  Judicial Academies	Recruitment of separate cadre of judges within 3 years. (High court and state government)	 State Government
Periodical continuous training for Commercial Court Judges	 High Court  Judicial Academies		
Design contemporary courses, handbooks and primers containing evolving best practices for judges	 Judicial Academies  Researchers	Set a minimum time before transfers of commercial court judges and transfers only within commercial courts (high courts)	 High Court
Temporarily, retired judges with expertise in commercial matters may be appointed under Article 224A	 High Court	Encourage best practices like conditional orders and summary proceedings (high courts)	 High Court

Path to reform

Immediate Action		Responsibility	Medium Term	Responsibility
Dedicated commercial courts	Equip existing dedicated courts with adequate infrastructure	 State Government	Setting up of dedicated courts on the basis of concentration of commercial matters	 State Government
	Operationalise Supreme Court for clear, unambiguous, and executable decrees	 High Court	- Amend the Act to include best practices that obligate judges to pass an unambiguous, executable decree - Conduct a study to examine the possibility of - Empowering commercial courts to execute orders - Set up simplified and time bound execution mechanism	 Parliament  Central Government
Jurisdiction	Conduct state specific studies on avg. value of commercial cases in state, set pecuniary limits	 Central Government  State Government	Conduct a study on the possibility of redefining commercial disputes	 Central Government
	- Appoint administrative staff to organize schedules, maintain separate registers for commercial cases - Strictly follow rule restricting adjournments to three	 Courts	An amendment clarifying the status of second appeals from commercial courts below the district level in jurisdictions where High Courts do not have original jurisdiction	 Parliament