

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

# Disclaimer

- ❖ Views in the paper and presentation are personal views of the author
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# **Strategy for Delay Reduction and Expeditious Disposal of Cases**

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**Organized by**  
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# Sequence of presentation

8<sup>th</sup> judicial conference

- ❖ **Problem Statement**
- ❖ **Scope of Paper**
- ❖ **Turnover Analysis**
- ❖ **Issues**
- ❖ **Recommendations**
- ❖ **Conclusions**

# Problem Statement

There is a large number of pending cases at various courts and appellate fora and the average disposal time is rather long. This situation creates hardship for the litigants. Government revenue is stuck up in tax related cases. Cost of litigation swells. Justice delayed is justice denied.

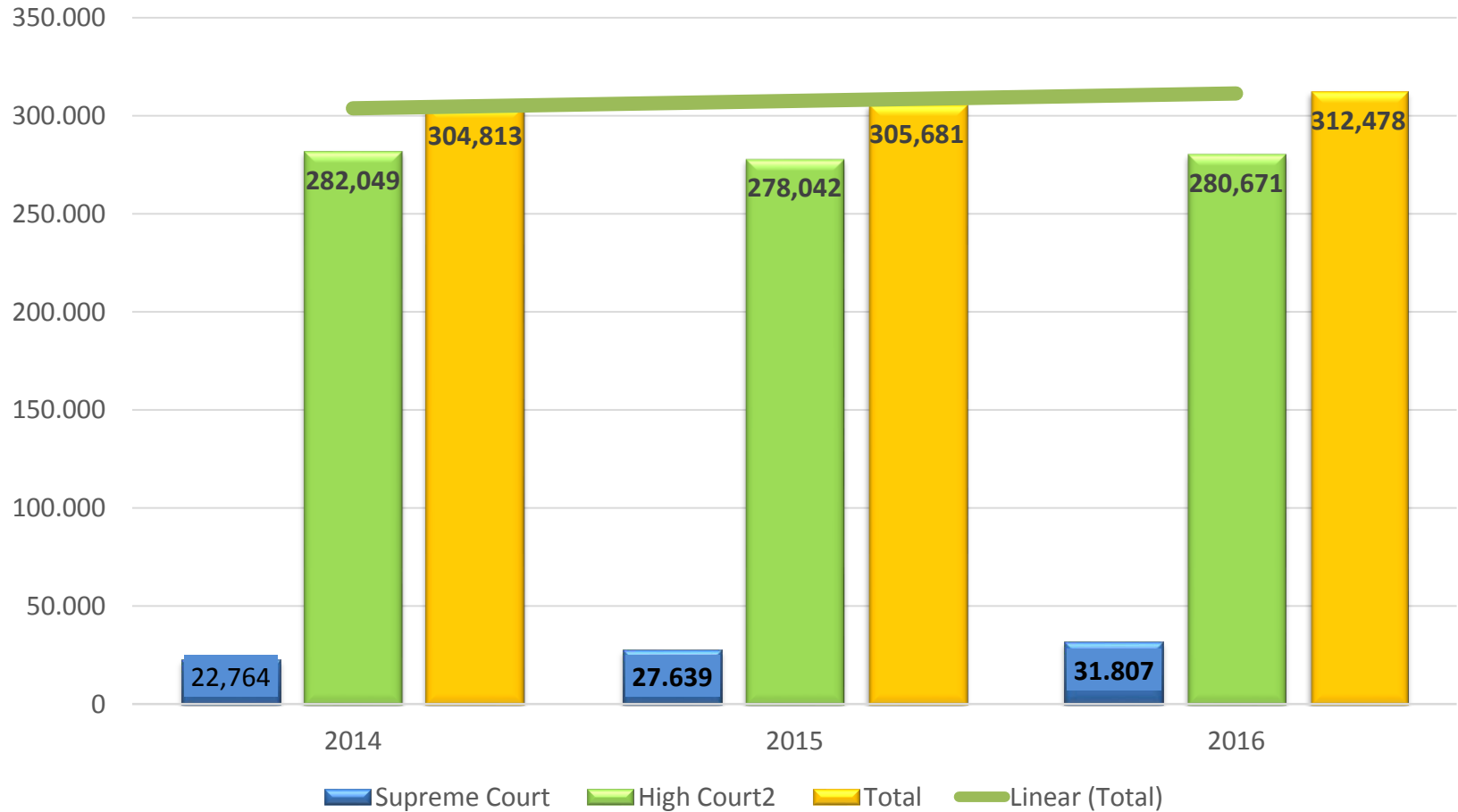
# Scope

- ❖ Supreme Court And High Court Level
- ❖ FBR Perspective –Relating to Federal Taxes
- ❖ Appellate Tribunals & First Appeal stage:  
addressed indirectly
- ❖ Exclusions:
  - District Judiciary
  - Administrative Fora

# 3 Years Turnover Analysis

8<sup>th</sup> judicial conference

## Supreme Court and High Courts

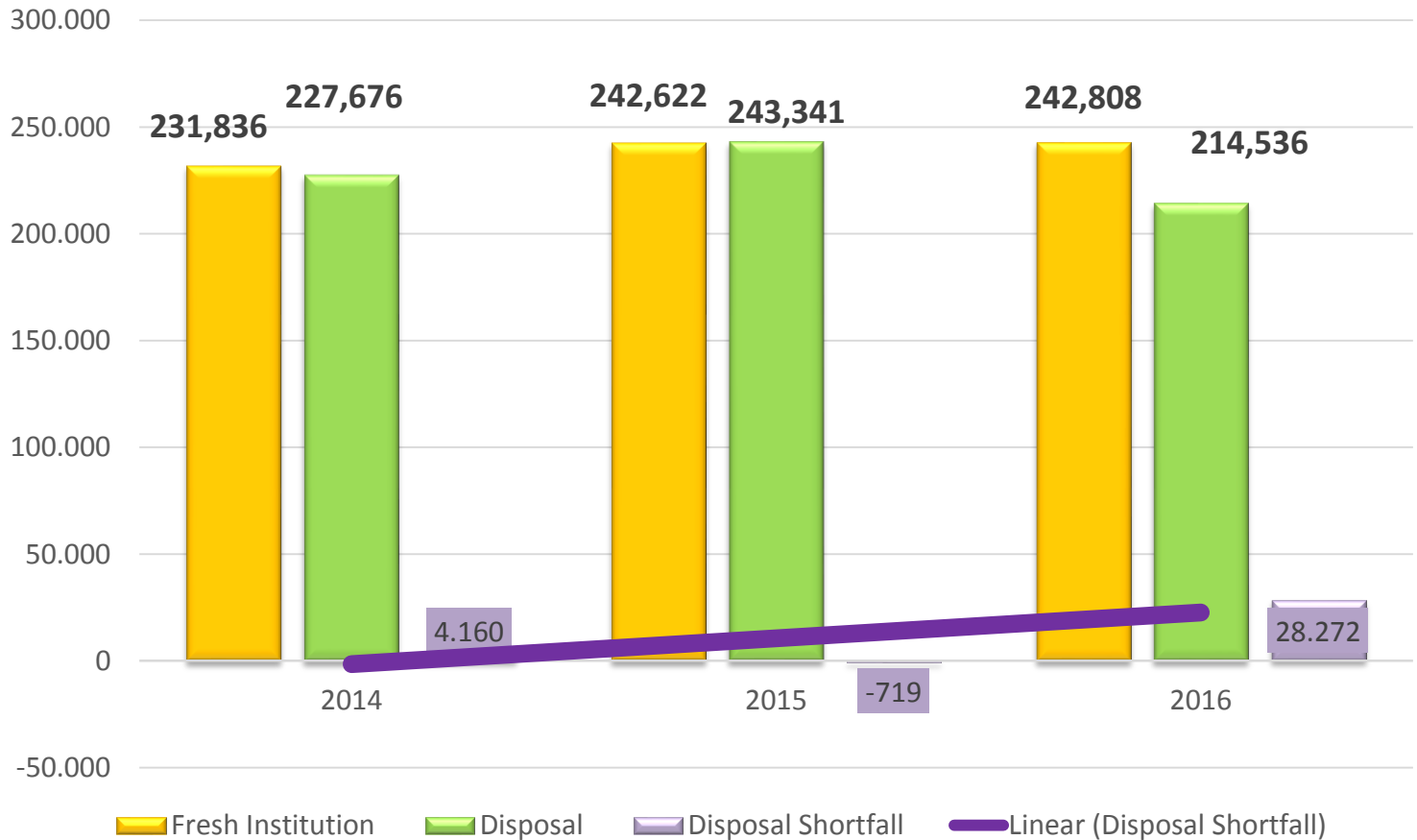


Data Source: Law & Justice Commission of Pakistan

# 3 Years Fresh Institution Vs. Disposal

8<sup>th</sup> judicial conference

## Disposal Combined (Supreme Court + High Courts)





# Inferences

- ❖ Increase in Overall Pendency at SC & HC
- ❖ Fresh Institution Outpaces Disposal
- ❖ If All Factors Remain Constant: Backlog will not be liquidated in near future rather it is going to increase

# Pendency liquidation Projections

## ❖ Keeping All Factors Constant- Backlog Liquidation:

- SC (38,342 Cases Feb 2018) 11 Yrs
- SHC (93,160 Cases Feb 2018) 22 yrs
- PHC (27,862 Cases Feb 2018) 10 Months
- Other HCs ∞ Infinity

# Issues

- ❖ Judges' Workload
- ❖ Court Vacations & Lawyers' Strikes
- ❖ Antiquated Laws & Procedures
  - Multiple tiers of litigation
  - Long drawn oral arguments
  - Complex taxing statutes
  - Change in Benches in part heard cases
  - Identification difficulties-service of notices /orders
  - Infrastructure issues
  - Trained Human resource Issues

- ❖ **Bypassing Appellate Process-  
Invoking Constitutional Jurisdiction**

# Issues (Cont...)

## ❖ Art 199 is not followed

- WPs entertained in spite of other adequate remedy provided by law [199(1)]
- Proper opportunity not provided to respondents [199(4)]

*“unless the prescribed law officer has been given notice of the application and he ..... has had an opportunity of being heard”*

# Issues (Cont...)

## ❖ Art 199 is not followed

- Reasons are not recorded in writing that interim order/stay will not impede assessment and collection of public revenue [199(4)]
- Cases are not decided in 6 months due to proviso to Art 199(4A)

**INTERIM RELIEF IS BIGGER THAN ULTIMATE RELIEF**

- ❖ Vires of Law Remain Undecided
- ❖ Forum Shopping:
  - CS Vs WP Vs Legal Course, ICA Vs CPLA
- ❖ Hearing of CS & WPs- Single Member Bench
- ❖ Frivolous Litigation
- ❖ Recall of Orders
- ❖ Suboptimal Quality of Representation
- ❖ Use of Technology



# Recommendations

## ❖ Increase the Size of Judiciary

- 16 Judges as against 7 in 1947
- There was 1 Judge for 5 M population in 1947
- Now 1 judge for 12.5M Population
- 40 Judges for SC is proposed
  - Projected case load: less than 1000 cases/judge
- For HC maintain the same ratio

# Recommendations (Cont...)

## ❖ Reviewing of Court Calendar

Court	Vacation Days	Working Days	Disposal/Yr	Disposal without Vacation	Disposal with 50% Vacation	Shorten Disposal time
SC	90-95	151	16,212	26,412	22,077	4 years earlier
LHC	60-65	233	148,821	190,337	169,895	3.6 Years earlier

## Comparing Article 199 of the Constitution with Article 226 of the Indian Constitution

## ❖ Anatomy of Article 226

- HCs have power to issue writs [226 (1)]
- Where interim order is made against any party:
  - (a) Without furnishing copy of the petition and
  - (b) Without furnishing all the documents in support of the plea for interim order and
  - (c) Without opportunity of being heard to that party [226 (3)(a)]

# Recommendations (Cont...)

## ❖ Anatomy of Article 226 (Cont...)

- And such party makes an application to the HC
- And provides copy of application to the petitioner/counsel
- Then HC shall dispose of application in 2 weeks
- Failure to dispose of application within 2 weeks will lead to automatic vacation of stay [226 (3)(b)]

# Recommendations (Cont...)

## ❖ Revisiting Writ Jurisdiction- Art 199

- Discourage WPs against proceedings/ Notices/ where statutory remedy is available
- Serve copy of WP & documents, upon the revenue authority two working days prior to its filing
- HC must serve notice upon the respondent revenue authority and provide reasonable opportunity of hearing before passing any order including interim order
- Article 199(4) must be adhered to

# Recommendations (Cont...)

## ❖ Revisiting Writ Jurisdiction- Art 199 (Cont...)

- Malice be proved beyond reasonable doubts & recorded in the order
- Failure to establish malice may result in reasonable costs
- If interim order is made- hearing on daily basis till disposal
- Adjournment seeking by the petitioner beyond 30 days in aggregate- Automatic vacation of stay
- Proviso to Article 199(4A) may be omitted



# Recommendations (Cont...)

## ❖ Simplification of Laws & Procedures

- Committee to review civil procedure
- Mention CNIC/NTN on court notices/ orders
- Standardize court procedures
- DB to hear WPs in all HCs
- No change in DB in part-heard cases
- Revisiting of Section 3 of the Law Reforms Ord. 1972

# Recommendations (Cont...)

- ❖ Introduce Pre Trial Assessment
- ❖ Change Pleading Styles
- ❖ Issue Wise Bunching of Cases
  - Appointment of lead counsel by both parties
  - Only lead counsel can seek adjournment

# Recommendations (Cont...)

- ❖ Establish Dedicated Tax Benches at SC & HCs
- ❖ Introduce Tech. Judges in HC Tax Benches
- ❖ Establish/Strengthen Bench Clerks at HCs /SC
- ❖ Imposition of Cost on Frivolous Litigations
- ❖ Capacity Building of Advocates & Bars
- ❖ Use of Technology- Enterprise Resource Planning (ERP)  
level computer software system for the entire judiciary

# Recommendations (Cont...)

## ❖ Strengthen Alternate Dispute Resolution

- 5 members ADR Committee headed by Ret. Judge of SC/HC
- 2 private members & 2 from FBR
- Proceedings with the consent of both parties after withdrawing appeals
- Case-specific/Binding Decision within 90 days, extendable by further 60 days

# Conclusions

# Conclusions

- ❖ Pressure on judiciary for speedy delivery of justice
- ❖ No single solution will address the issue
- ❖ Need to adopt multipronged strategy
- ❖ Solutions need to be implemented in harmony
- ❖ Need to revisit the liberal approach towards Art.199

# Conclusions (Cont...)

- ❖ Increasing number of judges & working days will lower the pressure
  - ❖ Establishing of dedicated Tax Benches & appointment of Technical Members & Bench Clerks will pave the way for quick disposal of complex cases
  - ❖ Simplification of procedures will reduce time & cost
  - ❖ Discouraging frivolous litigation by imposing cost
- WILL ENABLE THE COURTS TO ACHIEVE THE DREAM TASK**

**Thank You for Being a Patient Listener**