Ladies and Gentlemen,

I would like to thank the Indo-EU Business forum for inviting me to speak here today. I have been made to understand that the substantive focus of this programme is on the inter-relationship between economic reforms and the judicial system in India. The gradual liberalisation of the Indian economy over the last two decades has of course had profound implications for the legal system. The efficient judicial enforcement of contractual obligations as well as property rights is a pre-condition for generating confidence among domestic as well as foreign entrepreneurs and investors.

In this regard, the Indian judiciary – especially at the subordinate level, has been the target of persistent criticism for mounting arrears as well as inefficiency in disposing of litigation involving business interests. I can attempt to answer both these charges, but it will be more worthwhile to concentrate on specific measures taken to improve judicial efficiency rather than being defensive about the existing problems. The larger agenda for judicial reforms touches on several issues – namely the methods for selection and appointment of judges at different levels, the urgent
need for improvements in the physical infrastructure available to the judiciary, the state of legal education as well as Continuing Legal Education (CLE) in India and last but not the least, the continuing debate about judicial accountability. Each of these issues have been intensely debated in various settings and it would not be possible for me to comment on all of them in this speech. However, I would like to comment on some specific initiatives taken in recent years to improve judicial efficiency through better ‘case-management’ techniques.

Without doubt, a perpetual hurdle faced by our judicial system is that of mounting arrears. Numerous empirical studies have indicated a time lag between the stages of filing and disposal of cases by courts all over the country. It must be borne in mind that the actual rate of disposal of cases per judge has been consistently improving in recent years, but the rate of institution of proceedings has been growing at an even faster pace. It is this growing gap between the rate of disposal and the rate of institution that is a cause for worry. It is in response to these problems, that it is important to implement effective strategies for proper case management.

Today I would like to focus on the advances we have made, the possibilities that await us and some of the choices that confront us as we attempt to streamline the judicial process towards ensuring timely justice. In this regard, I will emphasise the continuously evolving role of the judge and the judicial system as we move towards more rigorous planning and management in our judiciary. I would also like
to refer to the increasing importance of the use of information technology (IT) in facilitating these developments.

‘Case management’ pertains to the objective of speeding up the litigation process by way of innovation and adaptation.¹ The role of the judge is therefore no longer confined to merely deciding the case, but also requires him/her to play an active part in the manner of its resolution. The concept of applying managerial principles to improve the efficiency of the judicial process is not a recent phenomenon. Faced with the problems of arrears, numerous judicial systems have reformed to adopt more effective case management strategies. Starting with the United States in the last half of the century² and the 1996 Woolf Committee recommendations³ in the United Kingdom, the measures evolved include emphasis on pre-trial procedures, time-bound hearings, the demarcation between fast and multi-track courts as well as a host of other mechanisms. The previously documented principles and procedures followed in the aforementioned countries cannot be picked verbatim and applied in the Indian scenario; these must be adapted and calibrated to suit the ground realities of our country.

In our aspiration for effective case management, we all

---
² Federal Rules of Civil Procedure, 1938, Rule 1 sets out the goal of the Judicial System “To secure the just, speedy and inexpensive determination of every action”
understand the importance of planning at a national level. It is important in this context to set targets with regard to disposal rates. It has been proposed that the target for the disposal level at the national level should be raised from 60% of the total case-load (at present) to 95% of the total case-load in five years. This will require co-operative efforts at all levels of the judiciary, so that this target is pursued at the district and state levels as well. Furthermore, Courts should ensure that not more than 5% of the cases pending before them should be more than 5 years old (5x5 rule) within the next three years. The subsequent objective should be to ensure that in 5 years not more than 1% of the cases should be more than 1 years old (1x1 rule).

However, setting targets is only the first step. Priority should be given to creating timetables for every contested case and monitoring its progression by means of a computerized Signaling System. The National Judicial Academy (Bhopal) has developed and piloted a model for the same. Another measure proposed is that case numbers should indicate “litigation start dates” prominently in addition to filing dates.

Recent studies have pointed to four key bottlenecks that cause delays in civil and criminal proceedings, namely (a) Service of process; (b) Adjournments; (c) Interlocutory Orders; and (d) Appearance of witnesses and accused.

The progression of a case through these problematic stages should be monitored through a computerized system and special
cells can be created at the High Court and District Court levels to resolve issues in coordination with law-enforcement and other governmental authorities.

Better ‘Case management’ also involves the use of strategies to keep matters out of courts. Apart from the expansion and modernisation of the judiciary in our country, it is important to promote the use of alternative dispute resolution (ADR) methods. In recent years, some legislative changes have already pointed in this direction. The Arbitration and Conciliation Act, 1996 replaced an earlier legislation dealing with arbitration, with the clear intent of promoting the use of *ad hoc* as well as institutional arbitration mechanisms. While private businesses have been increasingly relying on domestic as well as international commercial arbitration in the course of their dealings, the use of methods such as conciliation and mediation for resolving other categories of civil disputes still needs governmental support. A crucial legislative intervention in this regard was the 2002 amendment to the Code of Civil Procedure (CPC) which recognised Court-annexed ADR methods in India. Section 89 of the CPC mandates that judges can direct parties in civil proceedings to resort to methods such as arbitration, conciliation, mediation and negotiation under circumstances where it is perceived that the dispute can be resolved in a cooperative and non-adversarial manner. This provision is important since a significant portion of pending litigation at the trial level such as rent disputes, property disputes and those pertaining to family matters are best resolved through these methods. Civil litigation has an inherently adversarial
character and is widely perceived in society as a tool of confrontation and unnecessary harassment. Especially in instances where parties are otherwise well-known to each other, their involvement in lengthy and acrimonious civil suits can do irreparable damage to their mutual relationships. Under such conditions, judges can use their discretion to direct the use of ADR methods under their supervision. If this approach is internalised in our system, it can greatly reduce the case-load before the Courts of Law. A related development in respect of criminal proceedings is the provision for ‘plea-bargaining’ which was inserted by way of an amendment to the Code of Criminal Procedure (CrPC) in 2005. This provision allows persons accused of certain offences to avoid the stigmatisation associated with lengthy criminal trial proceedings. In respect of minor offences, it gives the parties a chance to avoid adversarial litigation altogether.

The understanding of ‘case management’ does not stop here. The increasing pressure on the docket of the court will require us to make more fundamental and innovative changes to our judicial processes. The continuously evolving nature of the judge and the judicial system in respect of improving ‘case management’ techniques raise some important issues which need due consideration.

The modern approach to case management envisions the emergence of a pro-active judge, whose function is to set out the issues involved, limit the time taken for each step of the litigation in order to ensure a speedy procedure as well as to decide the outcome
of the case. Indeed the underlying message is, to quote Lord Woolf,

“that ultimate responsibility for the control of litigation must move from the litigants and their legal advisers to the court”. ⁴

This change in the function of the judge would seem to imply a basic shift in our judicial system, away from adversarial litigation and towards a slightly more pro-active approach that borders on the inquisitorial style. A possible concern is that the adversarial nature of litigation will be undermined given the new role of the judge. The traditional notion of litigation in common law has been structured around the agency of the parties. Hence, there are questions about the extent and limits of the control that the judge should exercise over the procedural aspects in the courtroom.

In addressing such concerns we must keep in mind that the objective is not to divest the parties of their agency but simply to permit them to handle their legal proceedings in a controlled environment. Under the supervision of the court the core issues relating to the case can be identified and addressed with greater speed, while frivolous aspects can be ignored. Pro-active judicial involvement in case-management thus serves to improve the effectiveness of the adversarial process rather than to supplant it.

It is also of great importance to ensure that the justice that we are trying to secure is “just and ready” as opposed to “rough and ready”. Though expediting judicial proceedings is of great importance, there must be mechanisms in place to ensure that this does not compromise the rights of the parties involved. Especially in the field of criminal law, the rights of the accused cannot be undermined, and any mechanisms adopted to expedite management of the cases must conform to standards that secure for the accused the right to a fair trial. Ultimately, both parties benefit from an expeditious trial so long as it is ensured that no great detriment is caused to either party.

All of what we have accomplished, and a large part of what we hope to achieve can only been made possible by the use of information technology. I have already referred earlier to the computerised signalling system for monitoring the progression of pending cases, the computerised tracking of ‘bottleneck’ areas and the promotion of alternative dispute resolution (ADR) methods as well as ‘plea-bargaining’. The Judgment Information System (JUDIS) has made the decisions of the Supreme Court of India, all the High Courts as well as some District Courts freely available online. Plans are afoot to ensure that within a few years, the decisions of all courts and tribunals in the country will be made freely accessible.

The use of information technology (IT) in our justice-system crossed an important threshold with the introduction of the electronic-filing of cases before the Supreme Court of India. Similar e-filing systems are being planned for the various High Courts in the near
future and eventually in the District Courts as well. In this regard, a
clear roadmap has been prepared in the form of the ‘National Policy
and Action Plan for Implementation of Information and
Communication Technology in the Indian Judiciary.’

The efficiency of judicial functions is also being enhanced with
the use of information technology (IT) for case management. Until a
few years ago, the allocation of matters before different judges and
the preparation of cause-lists was a time-consuming process.
However, computerisation in the higher judiciary since 1990 has led
to tremendous improvements. The detailed particulars of the cases
are entered into the computer which permit grouping and tagging of
cases with similar subject-matter. They are categorised and
classified, so that similar matters are heard by the same benches in
order to avoid conflicting and overlapping decisions. The progressive
introduction of these measures in the Supreme Court has helped in
increasing the disposal rate by avoiding undue repetition of similar
cases.

The National Judicial Academy (Bhopal) is presently studying
advanced methods strategies for case-management that can be
implemented in the Indian setting. These methods will be far more
sophisticated and factor in parameters such as the duration of the
pendency of a case in order to accord priority as well as background

---

5 This policy was drafted by an E-Committee headed by Justice G.C. Bharuka (Retd.),
which also consisted of three specialist members. The E-Committee submitted a report to
the then Chief Justice of India on 11.5.2005, which after the requisite consultations was
developed into the policy that was approved on 4.8.2005.
information on the expertise and past decisions of a judge. With the ever-increasing rate of institution of proceedings, judges can benefit immensely from these advanced case-management techniques.

I therefore fully endorse the implementation of information technology (IT) solutions right from the Supreme Court to the subordinate courts at the district level. Information technology will enable judges to assume far greater responsibility in tracking and managing cases. A national level tracking mechanism can therefore enable the monitoring of the progress of cases, the scheduling of judges' workloads and the listing of cases among other parameters. The progress of a case right from the stage of first instance to its conclusion can be recorded and information about costs and delays can be made available. Indeed the availability of this information increases the accountability of the judiciary and would thereby increase its efficiency. It is also perceived that the wide circulation of such statistics will increase the public scrutiny of the performance of individual judges.

There is also a suggestion to the effect of making judgments authenticated by digital signatures available online. Such innovative suggestions are a welcome addition to our efforts in improving efficiency and making our courts more accessible. Technology thus opens up myriad possibilities to improving case flow, co-ordination

---

6 T. K. Viswanathan, Tackling judicial arrears, The Hindu (Friday, April 19, 2002)
between courts, maintaining statistics and is an important component of the roadmap for reforms in the administration of justice in India.

I would like to point out however that planning and management is not a ‘magic potion’, whose brew will cure the system of the malady that is judicial arrears. It is however a key facet in an integrated approach for ensuring timely justice. The adoption of an effective management system needs to be coupled with other longstanding requirements such as improving judicial infrastructure, increasing the strength of the judiciary, promoting alternative dispute resolution and implementation of legislative reforms to truly prove effective.

Case management and planning is therefore vital to the functioning of a modern judiciary. Its implementation will however at some stage require serious reflection on the changes required in our system. I am however confident and optimistic that if implemented appropriately it will go a long way in addressing the problems of arrears and delay.

THANK YOU!