

**International Taxation Committee
of
Bombay Chartered Accountants' Society**

**Digital Taxation
Attack on Indian Sovereignty
26th June, 2023**

CA Rashmin C. Sanghvi

Short forms used

COM	Country of Market
COR	Country of Residence
COS	Country of Source includes Host for PE
DRM	Dispute Resolution Mechanism
DST	Digital Services Tax
DTA	Double Tax Avoidance Agreement

Market Tax: New proposal by USA through OECD – MLC
OECD IF: OECD Inclusive Framework of 140 countries.

Summary

I. How USA forces the world for Digital Tax DTA rules.
Legal - Conceptual discussion.
Slides 1 to 50 explain US greed.

II. How long Should world remain afraid of USA?
International Economics. Slides 51 to 73.

We will emphasise the 1st part.

Only if time remains, we shall discuss 2nd part.

Both parts are given in this presentation.

First Part of the Presentation

How USA has scuttled Digital Taxation plans
& is now forcing
Whole world to accept
a system of Market Taxation that
benefits USA &
Deprives rest of the world.

We will see how the proposed system is unfair.

How long to draft Digital Tax Treaty Model?

OECD has been working on Digital Taxation from the year **1996**.
Till **2015** OECD could not give solution acceptable to majority.

Hence, India imposed **Equalisation Levy**. 5 other countries imposed their own Digital Services Tax (**DST**).

U.S. Presidents threatened all six countries:

- President Trump Trade War
- President Biden USTR

6 countries succumbed to US threat

In year 2021 All 6 countries have signed Bilateral Agreements
with USA to

- (i) Abolish the laws they have passed &
- (ii) NOT to pass any Unilateral DST in future.

See Indian PIB release here:

<https://pib.gov.in/PressReleasePage.aspx?PRID=1774692>

See US announcement here:

<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/october/ustr-welcomes-agreement-austria-france-italy-spain-and-united-kingdom-digital-services-taxes>

Thresholds for Market Tax – Pillar 1

This new proposal tax will be applicable only if an MNC crosses two thresholds:
Global turnover exceeds Euro 20 Bn. &
It earns more than 10% net profits.

This is The First law globally & historically
Exempting assesseees upto Rs. 1,80,000* crores turnover
(*Rs. 1.8 Trillions)
& Rs. 18,000 crores taxable profits.

Thresholds

These Thresholds apply to all COM & COS
But will NOT apply to COR – USA.

Globally, largest digital corporations are US residents.
USA will tax them from income of \$ One;
@ 21% tax rate.

Why such Thresholds?

Above Thresholds clearly show that
USA does not want
Rest of the world to tax US corporations.

Since the world was demanding
Right to tax –
USA is throwing bits of taxing rights
& in return asking for permanent peace for
US Corporations.

An Illustration.

Assumed Facts

Consequences of OECD IF proposal shown
Separately for two assumed profit rates.

One MNC has a global turnover of Euro 30 Billions

And

Indian turnover of Euro 1 Billion.

Two alternative assumptions:

Net profit @ 12% or 20%

OECD Pillar 1 Amount A

€ Billions € Billions

MNC Digital Global Turnover 30.00 30.00

Net Profit @ 12% 3.60

 @20% 6.00

Deduct 10% of global turnover 3.00 3.00

Balance 0.60 3.00

Further Deduct 75% 0.45 2.25

Net 25% 0.15 0.75

*Reserved for COR ===== =====

OECD Pillar 1 Amount A

	€ Millions	€ Millions
Net amount in Millions	150	750
Take Proportion of Indian Turnover (One Bn) upon Global Turnover (30)		
Profit taxable in India 1/30	5	25
Apply Indian tax rate for Foreign Co. 41%	2	10
Final tax as % of Indian Turnover	0.02%	1.00%
Compare with Equalisation Levy 2% of turnover.	20.00	20.00

Unfair Multilateral Convention (MLC)

This illustration with
two different profit ratios establishes
That the MLC proposal is **Unfair.**

It gives too little taxing rights to Country of Market.

(Note: In year 2000, I had projected that COR will become irrelevant.

Tax sharing based on Market will be more important.

US step is unfair but in right direction.)

OECD Pillar 1 Amount A

By several means USA is trying to ensure that

As far as digital corporations are concerned,
99% of Digital tax revenue remains with USA.

1% will be spread over balance 139 countries.

- (i) Threshold of € 20 Bn & Profit 10%
 - (ii) Extremely low attribution of profits to COM.
- All this, after **26 years of intense negotiations.**

Artificial Generative Intelligence (AI)

Till now OECD has not been able to draft a just & fair
DTA for Digital Commerce.

It took 26 years to draft one piece of Treaty Model.
Reason: US Greed.

Global experts say that **AI** is
The Most Dangerous instrument developed by mankind so far.
They urgently call for regulating AI.
How many decades will be required?

Validity of a Contract – Indian Contract Act

All agreements are valid contracts if they are made by the
free consent of
parties **competent to contract**.

Party is capable of **understanding** it and of forming a **rational judgment** as to its effect upon his interests.

Consent is said to be free when it is not caused by –
(1) coercion, or (2) undue influence.

MLC would fail under Contract Act

Most of the 140 countries

Do not even understand what is going on.

Those who understand, have been forced.

Object of the MLC is malafide.

Object is to deprive countries of Market

Of their due share of tax

On Digital profits.

DTA was always Voluntary

So far, the DTA system was such that

OECD, UN, USA & India had published their Model DTAs.

Every country was free to choose the model that she liked.

Even within a model DTA, countries could “Pick & choose”.

It was a voluntary, bilateral process.

Even BEPS MLI is voluntary except for Minimum Standard.

US proposal under MLC

USA through OECD now tells the world's Parliaments:

- (i) **Abolish** Digital Service Tax (DST) laws passed by you.
- (ii) **Pass** the law that I am giving you.
- (iii) Commit that in **future** you will not pass any DST.
- (iv) You have no option to adopt **U.N. model** or any other model DTA.
- (v) Your **courts** will interpret the Market Tax Law as per commentary that I am giving you.

US proposal under MLC

(vi) Still, if there is a disagreement, there will be **binding Dispute Resolution Mechanism.**

One can download OECD report from:

<https://www.oecd.org/tax/beps/progress-report-on-amount-a-of-pillar-one-july-2022.pdf>

It is called “OECD G20 BEPS Progress report on Amount A of Pillar One”. There are several OECD publications. This report is directly relevant.

Attack on Sovereignty

This is direct attack on the sovereignty of
Indian & 138 other countries'
Parliaments & Judiciary.

Let us see how the world has reached
Such a position of **Global Dictatorship**.

OECD IF

“OECD G20 group” worked on BEPS proposals.
Now they call it “OECD Inclusive Framework (IF)” with
140 countries.

US & OECD claim that
140 countries have agreed to Pillars 1 & 2 proposals.

This list includes USA & India.
So there are 138 other countries & jurisdictions.

OECD Pillar 1 Amount A

COM tax officer is expected to accept the figures that
COR MNCs give. He cannot make further enquiries or scrutiny.

This demand despite the fact that US corporations are
Famous for aggressive tax planning.

Ignorance & Fear

Why do so many countries agree to OECD proposal?

100 countries do not even understand what they are signing.

38 countries have been terrorised by threats of Trade War etc.

Illustrations of countries who do not comply with US demands:

Iraq, Venezuela, Libya etc. have been destroyed because

They were selling oil in currencies other than \$.

Iran is suffering crippling sanctions for same reason.

Indian Situation

In India,

How many CITs & CAs & Lawyers have studied these reports
from the Sovereignty angle?

We jump to interpretation of the law given to us.

We all need to look at –

“Who is drafting the law & what is his objective”.

No Digital Taxation

There is no talk about “Digital Taxation”.

It is simply “International Taxation”

Or Market Taxation.

At the instance of USA,

The idea of a separate Digital Tax is dropped.

What is now proposed is a **New Taxing right to COM**

applicable to All International business including

Goods & Services.

Goods & Services

Under the new proposal

If Tata Motors sells trucks to Malaysia;

Or Indian Company exports Ore to Japan;

Or TCS sells software services to USA,

Malaysia, Japan & USA being COM Will levy tax on
Indian exporters' Gross revenue.

Largest Importer of goods & services **will benefit.**

USA is world's largest importer.

No need for PE under new tax rules.

Under the new proposal
Concept of PE will not be applicable.
A controversy is eliminated.

However, traditional taxation based on PE will continue.

The new COM taxing right will
Not affect other taxes.

US stand

USA has started telling that:

“You have participated in MLC negotiations

“You have signed the MLC.

“Now you will be bound by it.”

However, this MLC is **not** being developed

With **Free Consent**.

USA has used threats of

Trade Wars (Trump) & USTR (Biden) to force the MLC.

MLI & MLC

BEPS reports were finalised in the year 2015
And Multilateral Instrument (MLI) was signed
By a Hundred Countries.

However, USA has not signed it.

US expects 139 countries to sign
Multilateral Convention (MLC).
However, US will not sign MLC.

Assume International Litigation

India would appoint best of the
lawyers to argue Indian case.

USA would say:

“I will draft the law;

“I will appoint the Judges;

“I will also appoint best of the American Lawyers.”

FATCA Unilateralism

USA forces all countries around the world
To share data of US tax-payers' assets or incomes in
Those countries including India.

However, USA accepts no obligation
To share data of
Indian tax-payer's assets/ incomes in USA.

USA is biggest Tax Haven today.

US Unilateralism - प्रभुत्व

US insists under Nuclear Non-Proliferation Treaty that
No country other than NPT cartel
Shall make nuclear weapons.

In essence: USA says:

“I will continue to develop better versions of nuclear weapons.

“You don’t even begin.

“So, forever I remain Super Power &

“You remain my economic colony.”

Tax Arbitration

Indian Government understands this Unilateral US position
Where apparently, all formalities are conducted
But in reality, case is predetermined in favour of USA.

Hence India has never accepted International
Arbitration in Tax Matters

Now the MLC would make
Dispute Resolution Mechanism compulsory.

Apple - EU Digital Tax War - 1



Apple - EU Digital Tax War - 2

Ms. Vestager, Chairman of the EU authority to investigate tax avoidance & tax evasion imposed a **penalty of Euro 13 Bn + interest on Apple Corpn.**

USA made a lot of noise while EU Court hearings were going on.
It was interference in EU legal process.

Finally, USA ensured that in EU appeal court, the penalty was reversed & **Apple got full refund** of the penalty with interest.

140 countries Unanimously agree

To say that 140 countries have agreed
is like saying that:

Chinese Premier Xi Jinping
was elected to be Life-Time Premier
by Chinese Congress Unanimously

Those who do not vote for him, will disappear.



US Theory

US government, lobbies & many individuals believe:

“This is a Tax War.

“We will try our best to further our interests.

“You fight it out.

“Winner will take ALL.

“There is no question of morality or ethics in wars.”

In the 20th Century Hitler made similar statements.

Law of Karma

In the years 1999 to 2001 when Indian E-Commerce committee was looking at E-Commerce taxation,

Britain, France, etc. considered themselves as COR.
They were not interested in changing existing tax rules.

Nature played its role.

For E-commerce - USA remained COR
and Britain, France & EU became COS.

Law of Karma & Europe

EU has done elaborate work & developed full laws for E-Com. Taxation.

They developed the concept of SEP -
Which is adopted with modifications by India.
Now, under MLC, all these laws have to be scrapped.

Once EU was not interested in listening to Indian – COM view.
Now US is not interested in listening to EU views.

Law of Karma & Taxation

Does philosophy – Law of karma have
A role in technical/ legal discussion on taxation?

Gandhiji stated & I submit:
Law of Karma has role in every aspect of our life.

It is possible that the tables will again turn
& USA may be on the receiving side.

Hitopadesh on human weaknesses.

यौवनं धन संपत्तिः प्रभुत्वम् च अविवेकिता ।

एकैकमप्यनर्थाय किमु यत्र चतुष्टयम् ॥

Desire to rule over others

Can be stronger than the desire for wealth or sex.

It will bring spiritual disaster.

Clear Attack on Sovereignty of nations

USA is trying to become a Global Dictator on DTAs.

It is already a dictator in Dollarisation of
World trade & Investments.

and

In Economic Sanctions =
Economic Wars.

Etc. etc.

Sovereignty is Non-Negotiable

When USA starts talking about –

“What our Parliament should or should not legislate;

“And what our Courts should or should not interpret;

India should boycott OECD IF negotiations.

Political decision

Above view is from Tax & Constitution perspectives.

Sometimes, a government is helpless;

Or has other political necessities.

However, one matter is clear.

Do NOT consider USA & OECD as our LEADERS.

They are out to exploit us.

Stay alert & at early opportunity stop this exploitation.

Backlash

OECD Claims that 140 nations have agreed on Pillars 1 & 2.

Fact is:

Seventy nations have started a separate series of negotiations under the auspices of United Nations.

There is a backlash at UN ECOSOC & other places.

Mr. Rasmi Ranjan Das's statement at ECOSOC is worth reading.

https://estatements.unmeetings.org/estatements/30.0010/20230331100000000/Rgrh23edGaVY/KoaslFVw10k7_en.pdf

Lateral thinking - Technology

Observe: How beneficial has been digital technology

In our commerce, in personal life & charity.

Life has changed For the better.

We should be talking -

How to maximise benefits of Digital Tech in

Everyone's life.

Instead, we are wasting precious time in

Wasteful discussions on tax sharing.

This should have been resolved in one year.

Artificial Generative Technology

Positive side of AI

Will be far more significant than Digital Tech.

Work on making AI reach

Unto the Last.

Protect humanity against negative sides of AI.

Stop bickering over taxation &

Spoiling global relations by threats.

BCAS needs to start a new Study Circle on AI.

UN Model

Article 12B of UN model
is a straight forward, simple method.
First draft can be taken as starting point
And developed further.

US Greed has forced to waste
Excellent work done at UN.

Lateral Thinking - Philosophy - Advait Vedant

As per Advait principle

“We are All One.”

Hence, I have no bad will for anyone.

And yet, as illustrated in **Mahabharat**,

One must fight for justice.

Fight without hatred.

Like – **Gandhiji** fought against Britishers without hatred.

Second Part of the presentation:

International Economics

How long should the world remain afraid of
US Threats of Trade wars, Economic Sanctions,
Currency Wars, Economic Wars &
Weapons Wars ?

Note: In this part I am making radical statements.
You consider statistics, logic & form your view.

US Imports & exports

For non-digital goods & services USA ensures that
the **Currencies** of countries

Exporting goods to USA are **under-valued**.

US distributors sell within USA imported goods & services

At a multiple of import price.

Tax Revenue earned by exporters to USA will be small.

US traders command high margins.

US Government gets maximum tax on profits.

Economics is important in determining Tax Revenue.

How long will USA exploit the world?

UK, France & others who understand
All provisions in depth – Are not protesting.

FEAR is the only cause.

Is there a way out?

Let us see how powerful is Super Power 1.

Is US Economy sound?

US Economy & Huge Debt

Today USA appears to be super power No.1.

However, she is world's biggest debtor.

She can't live without continuously borrowing more and more.

USA knows her need to **borrow free money**.

Hence, she is forcing the world for **Dollarisation**

of international trade, investment, speculation ... all.

US Deficit Financing

On 29th Feb., 2020, **M1 money** supply in USA was \$ 4 trillion.

In June 2023 it stands at \$ 18 Trillion.

US **Debt** increased from 27 Tr. To 31 Tr. in the same period.

This does not include \$ 75 Tr. Of Social Security & Medical relief.

Total excess money spent in 3 years- \$ 14 + 4 = **\$ 18 Tr.**

For these 3 years – 2020, 2021 & 2022.

US GDP was **\$ 69 Tr.**

Impact on GDP

When US Govt. created **money out of air**
& spent within USA, it **increased GDP**.

Consider **Multiplier** Effect also.

How long is it sustainable?

Inflation in USA

Massive Deficit financing
And global reduction of Dollar acceptability
Has caused inflation in USA
After 40 years.

It has affected life for the common man in USA.

Dollarisation or Death

Any nation that tries to go out of Dollarisation is destroyed.

South East Asian countries tried to conduct their trade with Japan in Yen. They were made insolvent in 1997.

Iraq was destroyed because Saddam Hussain sold oil in Euros.

Lebanon, Venezuela have been destroyed and Iran damaged because these countries sold crude oil in currencies other than U.S. \$.

US Wars

USA has caused more wars & injustice than whole of Europe put together.

It seems that Europe, Latin America, Africa, Asia - no one has the guts to fight back USA - Except China & Russia and several Muslim Nations.

How will the Law of Karma
Strike USA?

US INTERVENTIONS SINCE WWII

BOMB ATTACKS, SABOTAGE, ATTEMPTED REGIME CHANGE

CHINA, 1945-46	PERU, 1965	BOSNIA, 1995
SYRIA, 1949	GREECE, 1967	IRAQ, 1998
KOREA, 1950-53	GUATEMALA, 1967-69	SUDAN, 1998
CHINA, 1950-53	CAMBODIA, 1969-70	AFGHANISTAN, 1998
IRAN, 1953	CHILE, 1970-73	YUGOSLAVIA, 1999
GUATEMALA, 1954	ARGENTINA, 1976	AFGHANISTAN, 2001
TIBET, 1955-70s	ANGOLA, 1976-92	IRAQ, 2002-03
INDONESIA, 1958	TURKEY, 1980	YEMEN, 2002-20
CUBA, 1959	POLAND, 1980-81	HAITI, 2004
DEMOCRATIC	EL SALVADOR, 1981-92	SOMALIA, 2006-07
REPUBLIC OF	NICARAGUA, 1981-90	IRAN, 2005-PRESENT
CONGO, 1960-65	CAMBODIA, 1980-95	HONDURAS, 2009
DOMINICAN	LEBANON, 1982-84	LIBYA, 2011
REPUBLIC, 1961	GRENADA, 1983-84	SYRIA, 2011-PRESENT
VIETNAM, 1961-73	LIBYA, 1986	BRAZIL, 2016
BRAZIL, 1964	IRAN, 1987-88	BOLIVIA, 2019
BRITISH GUIANA, 1964	LIBYA, 1989	VENEZUELA, 2019
REPUBLIC OF	PHILIPPINES, 1989	GUYANA, 2020
CONGO, 1964	PANAMA, 1989-90	IRAQ, 2020
GUATEMALA, 1964	HAITI, 1991	SOMALIA, 2020
LAOS, 1964-73	IRAQ, 1991	AFGHANISTAN, 2020
DOMINICAN	KUWAIT, 1991	
REPUBLIC, 1965-66	SOMALIA, 1992-94	
INDONESIA, 1965	IRAQ, 1992-96	

US Interest rate rise

Silicone Valley Bank (SVB) performed

As per Financial World criteria “conservatively”.

All cash - \$ 120 Bn. was invested in **US treasury bonds**.

“Safest” bonds in the world. And yet, it went Broke. Why?

Fed increased interest rate on new bonds.

Old bonds’ market price went down.

SVB had large exposure to the bonds. Went insolvent.

RBI may have \$ 300 Bn.

China may have \$ 2,000 Bn.

How USSR was destroyed?

USSR was Super Power No. 2

with giant weapons power & abundant resources.

USA hit USSR where it hurt most – Economy.

USA used **Afghanistan** as an instrument (**Camel**)

To impoverish USSR.

In 1992 USSR crashed and broke into 15 parts.

Old Forts & Camels

Today USA is damaging Russia by using as **Camels** –

(i) **Ukraine**; & (ii) **Europe**.

This is a war between USA and Russia.

*Ukraine has been hit badly.

Europe and UK are equally hit with gas shortage.

Biden is planning a war on China.

He is surrounding China with NATO countries.

Is he eyeing **India as a camel?**

Europe

Oil exports by Middle East - in Euro currency

would strengthen Euro
& weaken \$.

And yet, in US's wars to weaken Euro;

UK and EU are helping USA.

Illustrations: War on Iraq; Sanctions on Iran

Does Europe know where its safety lies?

U.S. sabotaged **Nord Stream** – Under Sea Pipeline – so that Europe's dependence on Russia is forcefully cut down.

It damaged Russia and Europe both.

Why there is no reaction?

World is scared of USA.

Why Europe is helping USA in the current Ukraine war?

How long will Europe help USA?

Future of Euro

If Europe suffers too badly, the Union can break down.

With political destruction of the Union;

Euro will also become history.

Dollar will be re-established as the single most important global currency.

U.S. borrowings will continue free of cost and unlimited.

And Europe & UK are helping USA in this war.

Fiscal Cliff

Every few years US Parliament goes through a drama –
Whether **Opposition** will permit increase in Debt ceiling.

In a short period, USA will have to worry
Whether **rest of the world** will accept US \$ =
Whether rest of the world will continue lending to USA?

In a De-Dollarised world expect US economy to fall from Cliff.

De Dollarisation

What happens when the BRICS countries

And all countries attacked by USA

join together and sell US \$?

A Run on Dollar will be more disastrous than

A Run on Bank.

UK Empire over which Sun never set

UK empire was built on, Injustice, blood, exploitation & death of millions in colonies.

In 2nd World war UK & Europe were flattened.

Law of Karma operated against UK & other European colonialists.

In a few years, Colonies became independent.
UK prosperity & influence went on going down.

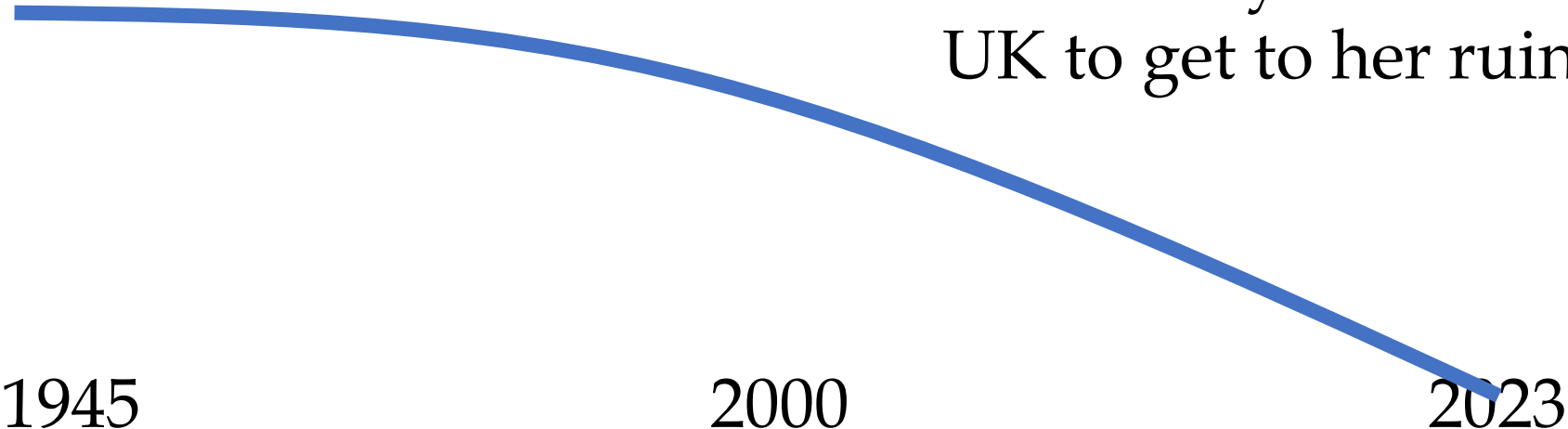
Today UK is confused on Brexit.

UK Economy is badly hit.

It took 80 years for her decline.

UK Decline

It took 78 years for UK to get to her ruin.



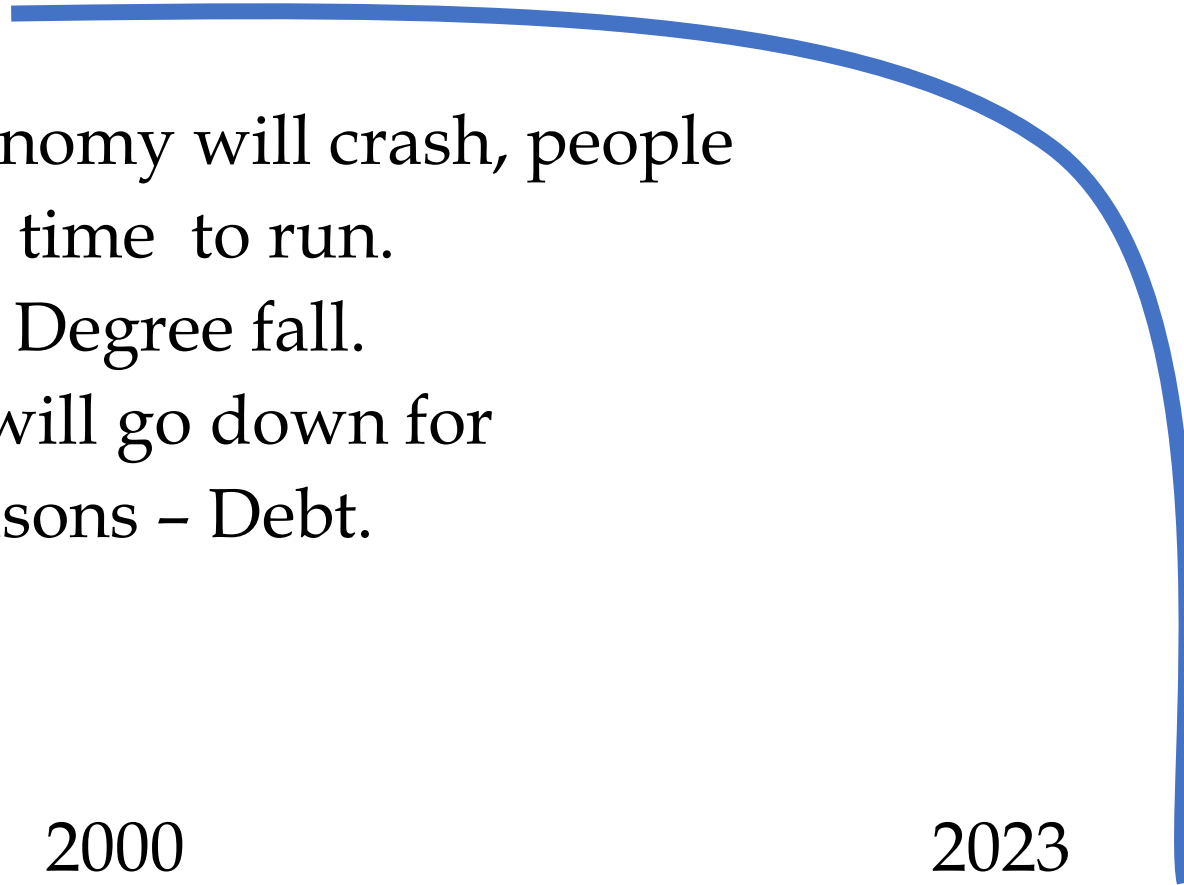
US Decline

When US economy will crash, people
Will not have time to run.
It will be a 90 Degree fall.
It seems, US will go down for
Economic reasons – Debt.

2000

2023

???



Price of Freedom

There will always be attacks on Freedom.

Price of Freedom is Eternal Vigilance.

In a globalised world,

The attacks on liberty are also Global.

सतत संघर्ष संसार का रिवाज है

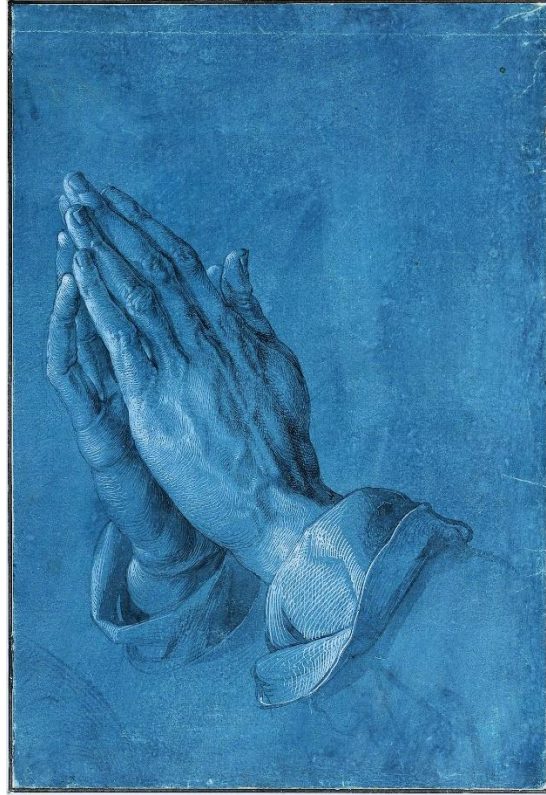
जो सावधान नहीं है वोह स्वतंत्रता खो देंगे

Who will pay the Price for Freedom

I hope,
there will be many tax professionals &
tax officers
who will rise and fight for Indian Sovereignty.

Similarly, several countries will fight
The dictatorship of USA.

Pranam



Rashmin C. Sanghvi