

GOVERNMENT OF INDIA
MINISTRY OF TRIBAL AFFAIRS
LOK SABHA
UNSTARRED QUESTION NO- 189
TO BE ANSWERED ON- 04/12/2023

TRANSFER OF ST LAND TO NON-ST PERSONS

189. SHRIMATI RAKSHA NIKHIL KHADSE:

Will the Minister of TRIBAL AFFAIRS

be pleased to state that the number of cases to whom permission has been granted by the State Government especially Maharashtra State for the transfer of land belonging to schedule tribes to non-scheduled tribes persons during the period from 2004 to 2023, district wise?

ANSWER

MINISTER OF STATE FOR TRIBAL AFFAIRS
(SHRI BISHWESWAR TUDU)

Land and its management fall under the exclusive legislative and administrative jurisdiction of States as provided under the Constitution of India [Seventh Schedule- List II (State List)- Entry No. (18)] and as such State Governments concerned are responsible to protect and safeguard the land rights of STs keeping in view the relevant constitutional provisions and legislative enactments. Some of the most important Constitutional and legislative provisions in this regard are at **Annexure**.

The transfer of land from STs to non STs is a major concern of the Ministry of Tribal Affairs and hence, advisory has been issued to all States, including those comprising of Scheduled Areas, to ensure that the Constitutional and Legislative safeguards are implemented effectively. The NCST has also been requested to monitor the implementation of these provisions during its visits to and interactions with the States.

Annexure referred to in reply to Lok Sabha Unstarred Question No. 189 for answer on 04/12/2023.

Constitutional and legal provisions to protect and safeguard the land rights of STs and to address the issue of Land Acquisition and displacement of tribals

- i. The Fifth Schedule under Article 244(1) of the Constitution at Part B, Para 5 (2) *inter alia* states that “*the Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area. In particular and without prejudice to the generality of the foregoing power, such regulations may— (a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area; (b) regulate the allotment of land to members of the Scheduled Tribes in such area*”
- ii. The Panchayats (Extension to Scheduled Areas) Act, 1996, also provides that the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas or development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State Level.
- iii. Government has enacted the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013 which stipulates the provisions for Compensation, Rehabilitation and Resettlement in the matter of land acquired for public purposes. RFCTLARR Act also stipulates that as far as possible, no land is to be acquired in the Scheduled areas except as last resort. Prior consent of the concerned Gram Sabha or the Panchayats or the autonomous District Councils, at the appropriate level in Scheduled Areas under the Fifth Schedule to the Constitution, as the case may be, are required to be obtained, in all cases of land acquisition in such areas, including acquisition in case of urgency. The provision of land for land in case of land acquisition prescribed at Serial No. 2 as an element of rehabilitation and resettlement in the Second Schedule of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RTFCLARR) Act, 2013 is another provision.

- iv. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA in short) is an Act to recognize and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded. Section 4(4) of FRA enables that a right conferred to STFDs and OTFDs shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next-of-kin. Section 4(5) of Forest Rights Act, 2006, which mandates that no forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers shall be evicted or removed from the forest land under his occupation till the recognition and verification procedure is complete.
- v. The Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989” has been introduced to prevent the commission of offences of atrocities against members of the Scheduled Castes and the Scheduled Tribes. Wrongfully dispossessing members of Scheduled Caste or Scheduled Tribes from their land or premises or interfering with the enjoyment of their rights, including forest rights, over any land or premises or water or irrigation facilities or destroying the crops or taking away the produce there from amount to offence of atrocities and are subject to punishment under the said Act.
