

GOVERNMENT OF INDIA
MINISTRY OF TRIBAL AFFAIRS
LOK SABHA
UNSTARRED QUESTION NO- 3466
TO BE ANSWERED ON- 20/12/2021

VTH SCHEDULE AREAS

3466. SHRI NABA KUMAR SARANIA:

Will the Minister of TRIBAL AFFAIRS be pleased to state:

- (a) whether the State Governments are following the provisions of the 5th Schedule in letter and spirit to protect and safeguard the Tribal Rights;
- (b) the number of Municipalities existing in the 5th Scheduled areas and whether it violate the Constitutional provisions 243 ZC;
- (c) the steps taken by the Union and State Governments to implement the provisions of the 5th Schedule of the Constitution;
- (d) the details of land transferred from the Tribals to non-Tribals by the companies/corporate/Governments in the States of Chhattisgarh, Odisha and Jharkhand, District wise; and
- (e) the steps taken to protect and preserve the Constitutional provisions in the Scheduled (MADA) areas and also steps taken and planned to be taken up for protection and safeguarding the rights of tribals?

ANSWER

MINISTER OF STATE FOR TRIBAL AFFAIRS
(SHRI BISHWESWAR TUDU)

(a), (c) & (e): In regard to the letter and spirit of the provisions of the Fifth Schedule under Article 244(1) “Provisions as to the administration and control of Schedule areas and Schedule Tribes” to protect and safeguard the tribal rights, the constitution provides special powers to Governor who is required to make a report to the President of India regarding its administration. Further Union Government can give directions with regard to administration of said area. There is also provision of establishment of Tribes Advisory Council to advise on issues referred to it by the Governor.

The importance of insertion of word “Schedule Tribe” after the words 'scheduled areas' wherever they occur was brought to light by "Shri Jaipal Singh (M.P. Bihar) during constitutional debate on 5th September 2019. He was of the view that the report of the Governor or Ruler to the Government of India should comprehend all the scheduled tribes, whether they are within the scheduled areas of the future or outside them. If the report is to apply only to those tribes who are in the scheduled areas, it would simply mean that the Government of India would know very little about scheduled tribes as a whole and, there would be literally millions of them outside the scheduled areas. Without knowing how the scheduled areas are going to be demarcated, it is almost futile to argue whether or not the report will include all the scheduled tribes of a particular list. Therefore, issue raised that there must be a definite and certain provision whereby the Governor will be constrained to report on what has been done for all the scheduled tribes and, for the matter of that, of the backward people in each State and insisted that the scheduled

tribes be included as a whole. So, he put forward his concern as "The Governor or Ruler of each State having scheduled areas and scheduled tribes therein shall annually make a report to the Government of India regarding the administration of the scheduled areas and scheduled tribes in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas and scheduled tribes of the State." He further told that there are only two principles involved: first, that the Scheduled Tribes, all of them, should be benefited by the provisions of the Fifth Schedule and, secondly, that the Tribes Advisory Council should be a reality and not a farce with a big name, without any powers to do things.

Accordingly, as laid down in the provision, the Governors from Schedule Areas send reports on the administration of schedule area to the President which are also duly examined by the Ministry and the advisory is issued to states based on the state specific findings. Further NCST also in its annual report gives its findings on various issues concerning tribals and schedule areas, on which action taken report is sought from the State Government by the Ministry. Further in the Annual Governor's conference, all Governors across country including the Governor of 5th Schedule meet and discuss and exchange views about the constitutional and developmental issues pertaining to tribals and tribal areas being faced them.

(b): The Ministry of Tribal Affairs has not maintained any centralized data of the number of Municipalities existing in the Fifth Schedule areas and violation of constitutional provisions 243ZC as the matter is within purview of the State Governments.

(d): The 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]. As such land transfer from tribals to non-tribals, if any, are done by the State Governments. As such no segregated data about land transfer from tribals to non-tribals is maintained by the Ministry of Tribal Affairs.

Certain states like Telangana has promulgated the Telangana Scheduled Areas Land Transfer Regulation, 1959 as amended by Regulation 1 of 1970 that prohibits transfer of immovable property from tribe to non-tribe and non-tribe to non-tribe.

(e): All the States having Scheduled Areas therein have their land regulation Acts relating to restriction of land alienation and transfer of tribal lands to non-tribals regulating money lending business in Scheduled Areas to protect and safeguard to the Scheduled Tribes (STs) in Scheduled Areas. The implementation of provisions of Fifth Schedule of the Constitution it is the responsibility of the State Governments concerned having Scheduled Areas therein. Many States have brought into effect safeguards depending on area specific requirements to ensure tribal welfare and to protect and safeguard tribals and tribal areas.
