

## CHAPTER 5

### PARAGRAPH 12A OF THE SIXTH SCHEDULE AND MEGHALAYA POLITICS\*

Dr. L.S. Gassah

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The Autonomous District Councils in Meghalaya were first introduced in 1952 in the then United Khasi-Jaintia Hills District and the Garo Hills District along with other Autonomous District Councils in the other hill districts of the then composite State of Assam. A separate District Council for the then Jowai sub-division (now Jaintia Hills District) was created in 1964 (but started actual functioning) in 1967 after its bifurcation from the then United Khasi-Jaintia Hills District. At present there are three Autonomous District Councils as per the Sixth Schedule to the Constitution of India for the seven districts in Meghalaya.

When the North Eastern Re-organisation Act of 1971 came into force in 1972, a full-fledged State of Meghalaya was born. This Act has also its effect on certain paragraphs of the Sixth Schedule. A prominent new paragraph was inserted in paragraph 12 of the Sixth Schedule where a new sub-paragraph was added, thus making it paragraph 12A. This Paragraph states thus:

Notwithstanding anything in this Constitution if any provision of a law made by a District or Regional Council in the State of Meghalaya with respect to any matter specified in sub-paragraph (1) of paragraph 3 of the Schedule or if any provision of any regulation made by a District Council or a Regional Council

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\* This article was earlier published in the *Proceedings of the North East India Political Science Association, Third Annual Conference, Doimukh 1993*

in that State under paragraph 8 or paragraph 10 of this Schedule, is repugnant to any provision of a law made by the Legislature of the State of Meghalaya with respect to that matter, then, the law or regulation made by the District Council or, as the case may be, the Regional Council whether made before or after the law made by the Legislature of the State of Meghalaya, shall, to the extent of repugnancy, be void and the law made by the Legislature of the State of Meghalaya shall prevail.

Paragraph 12A of the Sixth Schedule states very clearly that 'if the State Government and the District Councils make laws on the same subject, the legislation or laws of the State Government shall prevail over those of the District Councils'. This Paragraph therefore lays down the over-riding authority of a law made by the Legislature of the State of Meghalaya over a similar law made by the District Councils in the State in case of the question of repugnancy arises. The Paragraph spells out that in case any provision of a law made by the District Council "is repugnant to any provision of a law made by the Legislature of the State of Meghalaya shall prevail."

This Paragraph has agitated the minds and thoughts of the leaders of the Regional Political Parties in Meghalaya, especially that of the Hill State People's Democratic Party (HSPDP). This party has for several years been demanding for the deletion of Paragraph 12A from the Sixth Schedule of the Constitution. True to what those leaders spoke in public, this certain Paragraph found its place in the election manifesto of this party in the elections to both the Legislative Assembly and District Councils. The demand for deletion of this Paragraph also appeared almost every year in the Annual General meetings of the party and in its memoranda and appeals to various bodies, organisations and the public in general. This particular political party has not as yet stopped to make fervent appeal and demand for the deletion of Paragraph 12A. The other major Regional Political Parties in the State like the Hill People Union (HPU) and the Public Demands Implementation Convention (PDIC) have also demanded the same. These three Regional Political Parties have reiterated all along, the urgent need to delete what they call the "discriminatory" Paragraph 12A of the Sixth Schedule. The main complain is that this Paragraph empowers the laws of the State Govern-

ment to over-ride the laws passed by the Autonomous District Councils even in matters allotted to the District Councils by the Constitution.'

The leaders of the Regional Political Parties have been trying for the last many years to do away with Paragraph 12A of the Sixth Schedule by appealing to the Central Government to do something to meet their demand. They feel that the State Government have already had enough powers under the State List as well as in the Concurrent List. They are therefore of the opinion that the State Government should concentrate on those subjects and leave the District Councils alone with whatever powers and functions and subjects as empowered and entrusted by the Sixth Schedule to them. The former Chief Executive Member of the Khasi Hills Autonomous District Council, Mr. G.S. Massar, even went to the extent of suggesting that the District Councils in Meghalaya should be given the same powers enjoyed by the Panchayats in Assam.

The Regional Political Parties in Meghalaya put the blame on the Congress(I) Government both at the Centre and the State for the indifferent attitude shown on this issue. This problem is more acute when different political parties are ruling at the State and District Council level. With two different political parties ruling the respective administrative set up, the clash of interests is bound to take place. While the Opposition-ruled District Councils feel that the State Government (under Congress I rule) might discriminate against them, the State Government obviously wants that its writ should run large in important matters, including the District Council affairs.

In 1990, when the Congress(I) was in power in the State of Meghalaya, one of the issues over which a tug of war took a serious turn between the two camps, was Paragraph 12A of the Sixth Schedule. The Minister for District Council Affairs at that time when asked of his opinion about the demand of the Opposition to delete Paragraph 12 A said that if their demand is granted, it could create complications as both the State Government and the District Councils would exercise their powers independently of each other. This according to him could happen because of the fact that in Meghalaya both the State Government and the District Councils exercise their powers over the whole State. Under the circumstances, the State Government

feels that if the District Councils are entrusted with powers to make their own laws, the authority of the State would be diluted. The Opposition leaders however, would not like to draw such conclusion as to them Paragraph 12 A is a threat to the powers of the District Councils in the State. These leaders have since been fighting for the deletion of this particular Paragraph so as, according to them, to gain a truly 'autonomous status' for District Councils.

The question of deleting Paragraph 12 A (or for that matter any paragraph in the Constitution) of the Sixth Schedule does not depend entirely on the State Government. If such a paragraph is to be deleted, it has to be done by the Parliament because of the fact that the Constitution itself has to be amended. The leaders of the Regional Political Parties in the State understood this constitutional requirement very well. They therefore tried to seize the opportunity during the National Front rule hoping that unlike the Congress (I), they would be more sympathetic towards their demand and get things done under the National Front Government at the Centre. They therefore went on delegation to Delhi to meet V.P. Singh, the then Prime Minister of India and other Central Ministers too. They also met V.P. Singh at Guwahati during his visit there where they raised the issue and pleaded for the need to delete this Paragraph. However, not much headway came in this respect.

Way back in 1988-89, a Commission of Inquiry on Autonomous Districts Administration in the State of Meghalaya was appointed which was headed by the former Chief Justice of the Gauhati High Court, Mr. S.K. Dutta. One of the interesting recommendations of this Commission was on this vexed issue of Paragraph 12 A. The Report of the Commission indicated its recommendation 'for the deletion of Paragraph 12 A of the Sixth Schedule relating to application of the Acts of the Legislature of the State to Autonomous District councils'. Further, in the same Report which was also placed in the Meghalaya Legislative Assembly in September 1989, the Commission pointed out certain difficulties under which the Autonomous District Councils are functioning and recommended that there should be statutory provisions to remove them. "But", the Report stated, "the main reasons for the failure of the administration of the District Councils appear to be their want of realization about their sphere of

duty and responsibility. They seem to devote their time and thought to development works rather than to the enactment of laws for the protection of healthy customs and usages relating to their democratic systems of administration, inheritance of property, marriage and divorce and other social customs . . . Indeed, the District Council members do not appear to have realised that with the formation of Meghalaya, the status of the District Councils in Meghalaya has been reduced more or less to that of a Municipal Board by the insertion of Paragraph 12 A in the Sixth Schedule . . . The District Council, therefore, can function only if it maintains harmonious relationship with the State Government."