

Federal Challenges in Implementing International Obligations

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doi:10.56397/SLJ.2025.10.05

Abstract

This paper analyzes the structural challenges federal governments face in implementing international treaty obligations by comparing two landmark cases: *Commonwealth v Tasmania* (1983) from the Australian High Court and *Vishakha v State of Rajasthan* (1997) from the Indian Supreme Court. Both cases reveal contradictions in power distribution within federal systems, but with different root causes: the *Tasmanian Dam Case* reflects jurisdictional conflicts between federal and state governments, while *Vishakha* exposes legislative inertia. Through judicial intervention, the two cases were resolved respectively by expanding federal powers and enacting judicial guidelines. The paper argues that while federalism creates coordination inefficiencies and implementation delays, these challenges can be overcome through improved constitutional frameworks, enhanced coordination mechanisms, and timely legislative action.

Keywords: federalism, implementation of international obligations, jurisdictional conflicts, external affairs power, legislative inertia, judicial intervention, *Commonwealth v Tasmania*, *Vishakha v State of Rajasthan*, world heritage convention, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

1. Introduction

The High Court decision in *Commonwealth v Tasmania*,¹ commonly known as the *Tasmanian Dam Case*, is a landmark in Australian constitutional law. In this case, we can notice the difficulties federal governments face in introducing legislation to implement international obligations, particularly in balancing federal and state powers. By comparison, the Indian Supreme Court's judgment in *Vishakha v State of Rajasthan*² reveals

similar challenges in a different context. This paper argues that both cases underscore the inherent tension between federalism and the implementation of international obligations, and both reflect some of the drawbacks of federalism, albeit with different mechanisms of resolution.

2. Backgrounds

2.1 *Commonwealth v Tasmania* (1983)

The *Tasmanian Dam Case* was decided in 1983 by the High Court of Australia, marking a pivotal landmark in constitutional law. At first, the Tasmanian government planned to build a hydroelectric dam on the Franklin River to

¹ *Commonwealth v Tasmania* (1983) 158 CLR 1.

² *Vishakha v State of Rajasthan* AIR 1997 SC 3011.

promote local economic development. Due to its natural beauty and ecological diversity, this area was listed as a UNESCO World Heritage site. Thus, the Commonwealth claimed construction of the dam was prohibited under the *World Heritage Properties Conservation Act 1975* (Cth), which is also called the WHPC Act. However, the Tasmanian government argued that the WHPC Act was unconstitutional on the basis that it was beyond the powers of the commonwealth to legislate (Section 51 of the Constitution) and claimed that land and water management were state matters.

There exist two main issues, the first is external affairs power, whether the federal government can legislate in areas traditionally under state control by invoking its external affairs power to fulfill international treaty obligations. Since the Commonwealth does not have specific powers to legislate on the environment within its territory or the protection of national or world cultural heritage, it seeks to justify legislation by invoking various powers, including the power to legislate on external affairs, as well as the legislative power arising from the national nature of the Government in matters that are particularly appropriate for regulation at the national level.¹

The second is jurisdiction conflicts between the federal and states, is land and water management belongs to the federal government or states. The Court split as to which particular sections of the Act and regulations were valid, but in the end, sufficient legislation survived to prevent the Tasmanian Hydroelectric Commission from proceeding with the construction of the dam without the permission of the responsible federal Minister.²

2.2 *Vishakha v State of Rajasthan* (1997)

This landmark case happened in a village in the state of Rajasthan where a female social worker Vishakha was brutally gang-raped.³ Although India had ratified the Convention on the Elimination of All Forms of Discrimination

Against Women (CEDAW) in 1993, no corresponding domestic legislation had been enacted to address sexual harassment in the workplace.⁴ Thus the petitioners invoked CEDAW to argue for judicial intervention.

The case illustrates that India lacks a resolving mechanism to deal with such circumstances. As what petitioners appeal, it is essential for the Indian Government to legislate to give victims access to seek justice. The honorable after hearing all the facts of the case exercised the power of the Indian Constitution (U/A 32) and stated that not only crime has been committed against the women but also her fundamental rights had been infringed. The court further concluded by giving various guidelines in this respect that should be followed.⁵

There also exist two key issues. The first one is legislative gaps between domestic laws and international treaties. In India, until this case's judgment was given out, there was no law to govern this matter.⁶ Although the Indian government has recognized CEDAW, it failed to translate international commitments into actionable legislation. The second one is overlapping jurisdiction between federal and state governments. Given India's federal structure, the issue involved in this case will cause jurisdictional disputes in the legislative process, which delay the legislative process.

3. Judgments and Challenges

3.1 *Commonwealth v Tasmania* (1983)

The High Court ruled in favor of the Commonwealth, with a 4-3 majority. In the judgment, the High Court of Australia held the view that "parts of the WHPC Act were constitutional because it implemented a treaty and the Commonwealth was empowered to do so under its external affairs power in Section 51 (xxix) of the Australian Constitution, therefore Tasmanian was not able to build the dam". The Court insisted that the external affairs power enabled the federal government to legislate to fulfill its international treaty obligations, even in areas traditionally under state jurisdiction. This expanded the scope of federal legislative authority, particularly concerning environmental protection and international

¹ Andrew C. Byrnes. (1985). The Implementation of Treaties in Australia after the Tasmanian Dams Case: The External Affairs Power and the Influence of Federalism. *Boston College International and Comparative Law Review*, 8(2), 275, 293.

² Ibid 294.

³ Saksham Chhabra. (2020). Critical Analysis on Sexual Harassment at Workplace of Women in India. *International Journal of Law Management & Humanities*, 3, 1147, 1149.

⁴ Palakdeep Kaur and Inderjeet Kaur. (2023). Sexual Harassment Laws: Its Analysis and Impact. *Indian Journal of Law and Legal Research*, 5(1), 4.

⁵ Saksham (n 6) 1149.

⁶ Palakdeep (n 7) 6.

obligations. The reason why the Dam Case can be a landmark is that it expanded the federal government's power to implement international obligations, which set a precedent for the primacy of international treaties in domestic legislation.

According to the judgment, it is difficult to align state interests with federal obligations under international law, which leads to inefficiencies in the federal system. Due to federal-state jurisdiction disputes, the implementation of international commitments could be delayed or complicated. Nonetheless, one is forced to conclude that the federal system and the institutional and political difficulties that federalism engenders have been extremely important in retarding Australian participation in international treaty regimes.¹

According to comparison, this may be due in part to the federal government's failure to put pressure on the states when they do not respond to its initiatives with a reasonable speed, but the presence of an extra layer of government creates organizational problems that don't arise in a unitary state. These problems have had a severely inhibiting effect on Australia's participation in international treaty regimes.²

3.2 *Vishakha v State of Rajasthan (1997)*

The Supreme Court, invoking CEDAW and Article 32 of the Indian Constitution, issued the *Vishakha Guidelines*, which served as a binding framework for addressing workplace harassment until legislation was enacted. The Court emphasized the significance of aligning domestic laws with international treaty obligations and effectively filled the legislative void.

The case exposed the government's inability to enact laws promptly to fulfill international commitments. However, the court stated that the UN Convention sets out various strict sexual harassment laws on an international scale, and claimed that to date, India has not enacted any strict sexual harassment laws, that there is no conflict between domestic and international legislatures, and that the international laws that India has ratified and the UN Conventions should apply, and ordered the implementation of these guidelines.³

¹ Andrew (n 1)338.

² Ibid 339.

³ Saksham (n 6) 1156.

The root cause of this case might be all the policies and regulations established in recent years have failed to implement.⁴ For example, employers have been careless and implementing the same at the workplace which in turn hampers the safety of women.⁵

4. Similarities Between the Cases

According to the above analysis of the two cases, those two cases have three similarities.

The first one is both cases illustrate challenges to the federal government. In Australia, the jurisdictional conflicts between federal and states result in separating state interests from federal obligations under international law. In India, legislative inertia in the federal government causes the legislative gap between domestic laws and international treaties.

The second one is courts in both cases played a pivotal role in resolving federal inefficiencies by upholding the federal authority (*Commonwealth v Tasmania*) or enacting binding guidelines (*Vishakha*).

The third one is both cases rely on international treaties. Case *Commonwealth v Tasmania* used the World Heritage Convention and Case *Vishakha* used CEDAW, both treaties were used to justify the rationality of federal governments' actions.

5. Differences Between the Cases

Based on the analysis of the two cases, I have summarized three main differences between them. The first one is the root of the problem. In the *Dam Case*, the overlap in jurisdiction between the federal and states had led to a dispute over whether the state of Tasmania had the right to build the dam. However, in *Vishakha*, due to legislative inertia, there is a legislative gap in sexual harassment cases. Before the *Vishakha Guidelines* came into the picture, women had to take matters of Sexual Harassment at the Workplace by complaining under Sec 354 and 509 of the Indian Penal Code.

The second one is the type of challenge. In the *Dam Case*, the main challenge mainly came from resistance from states. Tasmanian government claimed the WHPC Act was unconstitutional, which the federal government used to limit the state's power. However, in *Vishakha*, the key challenge is legislative inertia.

The third one is the resolution mechanism. *Dam*

⁴ Ibid 1160.

⁵ Ibid 1161.

Case solved the problem by expanding federal powers through external affairs. However, *Vishakha* solved the problem by enacting judicial guidelines to fill legislative gaps.

According to the above analysis, I insist that federal systems present structural challenges. Firstly, both cases demonstrate federal-state jurisdiction conflicts, which makes the implementation of international obligations delayed or complicated. Secondly, in federal systems, federal and state governments require coordination, resulting in inefficiencies. Lastly, due to systemic inefficiencies, courts must take actions to solve, such as mediate conflicts or fill legislative voids.

From my perspective, the challenges of federal systems can be mitigated through clearer constitutional provisions, better coordination mechanisms, and timely legislative action. Judicial intervention, as seen in both cases, provides a temporary solution but is not sustainable in the long term.

6. Conclusion

The *Commonwealth v Tasmania* and *Vishakha v State of Rajasthan* cases highlight distinct but interconnected challenges in federal systems. The former underscores jurisdictional conflicts between federal and state governments, while the latter emphasizes legislative inertia and judicial activism. Both cases illustrate the complexities of aligning domestic laws with international obligations in federal systems.

While these challenges are significant, they are not insurmountable. Federal systems can overcome these hurdles through enhanced coordination, clear constitutional frameworks, and proactive legislative action. Ultimately, these cases underscore the importance of balancing federal structures with the need for timely and effective implementation of international commitments.

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