

<b>Case Name</b>	<b>Apparel Export Promotion Council v A K Chopra</b>
<b>Topic</b>	Actions that outrage the modesty of female employees constitutes sexual harassment; physical contact not required for sexual harassment
<b>Category</b>	WOMEN - sexual harassment;
<b>Tribunal</b>	Supreme Court
<b>Country</b>	India (Asia)
<b>Case Date</b>	20 Jan 1999
<b>Judge(s)</b>	Anand CJI, Khare J

The respondent was removed from his post as an employee of the appellant council after the relevant disciplinary authorities found him guilty of sexually harassing X, a junior employee. He filed a writ petition before the High Court challenging his dismissal. A single judge allowed the petition, finding that the respondent's dismissal was unjustified on the grounds that he had only tried to molest X and had not actually established any physical contact with her. The appellant was ordered to reinstate him. The Division Bench of the High Court upheld this decision and the appellant appealed to the Supreme Court. The appellant, *inter alia*, relied upon the fundamental rights to equality (Art 14) and life and liberty (Art 21), as well as India's international obligations under the **Convention on the Elimination of All Forms of Discrimination against Women**, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Beijing Declaration.

In allowing the appeal, it was held that:

1. In the absence of procedural irregularity, the High Court was wrong to interfere with the findings of fact recorded by the disciplinary authorities and with the punishment which they imposed. It is a well-settled principle that, in exercising the power of judicial review, the court is not concerned with the correctness of findings of fact which are reasonably supported by evidence, but with the decision-making process itself (*Union of India v Parma Nanda* (1989) 2 SCC 177 (Ind SC), *B C Chaturvedi v Union of India* (1995) 6 SCC 749 (Ind SC) and *Government of Tamil Nadu & Anor v A Rajapandian* (1995) 1 SCC 216 (Ind SC) followed).
2. Sexual harassment is a form of sex **discrimination** projected through direct or implied unwelcome sexual advances, requests for sexual favours and other verbal or physical conduct of a sexual nature. It is exacerbated when submission to or rejection of such conduct by the female employee may affect her employment, unreasonably interfere with her performance at work and create an intimidating or hostile working environment for her (*dicta* of Verma J in *Vishaka & Ors v State of Rajasthan & Ors* (1997) 6 SCC 241, [1999] 2 CHRLD 202 (Ind SC) followed).
3. Each incident of sexual harassment in the workplace is incompatible with the dignity and honour of **women** and violates the fundamental rights to equality, life and liberty.
4. The respondent's behaviour did not cease to be outrageous for want of physical contact and the observations made by the High Court to the effect that the respondent did not actually molest X because he did not establish such contact with her are unacceptable. The courts should examine all the evidence to determine the genuineness of the complaint and should rely on the evidence of a credible victim.
5. The respondent's conduct offended **against** morality, decency and X's modesty. It constituted an act unbecoming of the good conduct and behaviour expected from a superior employee and undoubtedly amounted to sexual harassment. It follows that the punishment imposed on the respondent was commensurate with the gravity of his objectionable behaviour and there was no justification for the High Court to interfere with it. Any reduction in punishment is bound to have a demoralising effect on **women** employees and is a retrograde step.

Observation:

The Courts are obliged to give due regard to international **conventions** and norms when construing domestic laws particularly when they are consistent and where there is a void in domestic law. Moreover, the **Convention on the Elimination of All Forms of Discrimination against Women**, ICESCR and the Beijing Declaration impose obligations on India to gender-sensitise its laws.

<b>Legal Provision</b>	Convention on the Elimination of All Forms of Discrimination Against Women, (CEDAW), 1979 Beijing Declaration International Convention on Economic, Social and Cultural Rights, (ICESCR), 1966, Art 7
<b>Citations</b>	1999 (1) SCALE 57, AIR 1999 SC 625, [2000] 1 LRC 563, (1999) 2 C

