SENSITIZATION PROGRAMMES FOR LEAGL FRATERNITY: A GROWING NEED IN EVOLVING TIME

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# Abstract

The noun sensitization is formed from the verb sensitize, which in turn comes from the adjective sensitive, meaning "capable of sensation." In psychology talk, a person might develop a sensitization from an emotional situation. For example, a child who is verbally bullied on a regular basis might, through constant fear of attack, develop a sensitization toward other children and become more withdrawn.

LGBT people, as members of a social minority group, are suffering from various forms of socioeconomic and cultural injustice. The lacks of social recognition has an effect on the capacity of LGBT people to fully access and enjoy their rights as citizens. They are more likely to experience intolerance, discrimination, harassment, and the threat of violence due to their sexual orientation, than those that identify themselves as heterosexual. Even the advocates, judges and the police officers are insensitive towards dealing with the issues of these communities. So there is growing need of sensitization programmes in evolving time. Highlighting the need and importance of sensitization programmes for legal fraternity for the betterment of the LGBT is the theme of this research paper.

**Key Words:** *LGBT, Sensitization, Impact of sensitization programmes, sensitization training.*

# 

# Introduction

“***I am what I am, so take me as I am***”

CJI Misra begins his opinion by quoting German thinker, Johann Wolfgang von Goethe, who had said,

*“****I am what I am, so take me as I am****”.*

He also quotes Arthur Schopenhauer who had said,

***“No one can escape from their individuality”****,*

and John Stuart Mill’s quote:

***“But society has now fairly got the better of individuality; and the danger which***

***threatens human nature is not the excess, but the deficiency of personal impulses***

***and preferences.”[[1]](#footnote-2)***

Lesbian, gay, bisexual and transgender people are more likely to experience intolerance, discrimination, harassment, and the threat of violence due to their sexual orientation, than those that identify themselves as heterosexual. LGBT rights struggle to find universal acceptance. The fact that the Universal Declaration for Human Rights, drafted in 1948, does not specifically include sexual orientation allows some people to consider LGBT rights debatable.[[2]](#footnote-3) The declaration does however state: ― ‘Everyone is entitled to all the rights and freedoms set forth in this declaration without distinction of any kind. Now more and more people are openly expressing their sexual orientation, and organizing and demanding their rights. Influential international human rights organizations such as Amnesty International and Human Rights Watch continue to run effective campaigns for the protection of LGBT rights.’

In recent trend, LGBT people also face the problem of insensitivity by judges, advocates and police officers towards them. Sometimes advocates while dealing with the cases of heinous crimes and those which include some sensitive issues like rape, become insensitive towards them. LGBT people also face the problem insensitivity by the police officer and advocates.

CJI Misra’s [[3]](#footnote-4)opinion candidly declares that the LGBT community possesses equal rights as all other citizens of the country under the Constitution of India. He even makes reference to the “rainbow”, which has become the symbol of LGBT pride throughout the world.

Justice Indu Malhotra[[4]](#footnote-5) added that LGBT people deserved an apology for the delay in redressing their suffering.

The justices’ poetic flourishes clear the path for future courts to recognize LGBT( and possibly intersex) rights in areas like employment ,education ,and family.

Justice Mishra[[5]](#footnote-6) held that sexual minorities should live without fear or shame when expressing their intimacies in public.

Justice Chandrachund[[6]](#footnote-7) cited queer scholars such as Ruth Vanita and Eve Sedgwick to deconstruct how social norms make heterosexuality and binary gender appear natural while making sexual and gender non-conformity “unnatural”.

**Sensitization and its impact on lgbt –**

*Meaning of sensitization-*

Sensitization basically is the process of making someone react to something that previously had no effect. It is the process of becoming highly sensitive to specific events or situations (especially emotional events or situations). The noun sensitization is formed from the verb sensitize, which in turn comes from the adjective sensitive, meaning "capable of sensation." In psychology talk, a person might develop a sensitization from an emotional situation.[[7]](#footnote-8) For example, a child who is verbally bullied on a regular basis might, through constant fear of attack, develop a sensitization toward other children and become more withdrawn.

In the brain, repeated thoughts and actions train sequences of neuron firing, thereby embedding these so they are more and more easily accessed. This is a common way in which learning occurs. The amplified response of a sensitized subject may in turn sensitize others. This can be lead to escalation and argument as both falls into a sensitized, reactive state.

In some ways, sensitization is the opposite of [response lag](http://changingminds.org/techniques/conditioning/response_lag.htm), where a subject is slow to respond with the desired reaction. Sensitization can often be a startle response and is often associated with anxiety.

## *Sensitization comes from the word sensitize which means-*

• To make someone to be aware of something

• To make someone sensitive to something

• The business.com dictionary defines sensitization as the attempt to make oneself or others aware of and responsive to certain ideas, events, situation, or trend.

## Concept of lgbt*-*

LGBT is an initialism that stands for lesbian, gay, bisexual, and transgender. The initialism LGBT is intended to emphasize a diversity of sexuality and gender identity-based cultures and is sometimes used to refer to anyone who is non-heterosexual or non is gender instead of exclusively to people who are lesbian, gay, bisexual, or transgender.[[8]](#footnote-9)

## *Problems faced by lgbt people-*

Lesbian, gay, bisexual, transgender (LGBT) people face tremendous difficulties growing up in a society where heterosexuality is often presented as the only acceptable orientation and homo sexuality is regarded as deviant. They continue to face discrimination and exclusion across the world in all spheres of life.[[9]](#footnote-10) Homophobic violence and abuse targeting LGBT people occur on a regular basis. In most EU Member States, same-sex couples do not enjoy the same rights and protections as opposite sex couples, and consequently suffer from discrimination and disadvantage in access to social protection schemes, such as health care and pensions[[10]](#footnote-11). In the labour market, a majority of LGBT people continue to hide their sexual orientation or to endure harassment out of fear of losing their job.

Particularly vulnerable are young LGBT people who experience estrangement from family and friendship networks, harassment at school and invisibility, which can lead in some cases to underachievement at school, school drop-out, mental ill-health and homelessness. This discrimination not only denies LGBT people equal access to key social goods, such as employment, health care, education and housing, but it also marginalizes them in society and makes them one of the vulnerable groups who are at risk of becoming socially excluded.[[11]](#footnote-12)

Even the advocates, judges and the police officers are insensitive towards dealing with the issues of these communities. So there is growing need of sensitization programmes in evolving time.

*Need of sensitization programmes****-***

As we know that sensitization basically talks about making someone react to something that previously had no effect. It is the process of becoming highly sensitive to specific events or situations (especially emotional events or situations).

The increasing cases of discrimination and misbehavior by police officers like while filing F.I.R of a LGBT community or any rape victim or even the harsh and brutal words used by the advocates and lawyers in the court lead to the need of sensitization.[[12]](#footnote-13) Being sensitive towards the society or towards such sensitive issues of the society will help in proper dealing of the cases and it will also help in building the trust of the society. There is need of sensitization programmes because of the following reasons-

* *Sensitization is necessary and quite essential for a better society***[[13]](#footnote-14)-** There is nothing called as right or wrong, natural or unnatural if it exists in the world. So, if plants and organisms can be bisexual and homosexual even human beings can be. If sensitivity is inculcated in the judicial bodies than they will become considerate towards other genders and sexual orientation and it will also help in the cases like rape where the victim needs the emotional support, love and care the most.
* *It is an urgent need to fragment the load of our biased values and orthodox beliefs***[[14]](#footnote-15)-** There is definitely an urgent need for us to shed our biased values and those unorthodox beliefs. Only then we will compassionate about others. Without sensitization of the LGBT community, hatred, killing, depression amongst the youth will be common issue and they will be not able to get justice properly by the judicial bodies.
* *LGBT sensitization is necessary to avoid suicide and killings***-** If India learns to be sensitive towards gender identity we can surely get rid of issues like suicide and killings.[[15]](#footnote-16)

## *Impact of sensitization programmes-*

* These programmes will empower people to demand justice, accountability and effective remedies at all levels.
* They will also help in raising awareness and building capacity among the society.
* Awareness and education of judicial bodies.[[16]](#footnote-17)
* Training of judicial bodies for dealing with the sensitive issues of the society.
* Recognition of legal responsibility of the judicial bodies towards the society.
* Enhances social skills and competencies for change.

## *Sensitization in rape cases-*

The word sensitization plays a major role in most of the sexually assaults cases. We should always remember that a rape victim is the one who begs for love and care, who is dying to be treated with a proper treatment of love, care and support and justice, by maintain the dignity. He/ she should be pampered first with all the love and care, not only by family members and closed ones but also by the legal bodies.[[17]](#footnote-18)

Once an individual is sexually assaulted, he/she than only rely upon the law for the justice. The victim could not see anything but the law and the respectively legal body as GOD FATHER.

There are several reasons behind the silence of victims-[[18]](#footnote-19)

* Fear of retaliation.
* Not wanting others to know about the rape.

One of the major reasons behind this silence is nothing else but the reputation of the victims and his family. There is no doubt in saying that rapists should be hanged in front of all (forgetting the law for a second). But, calling the interrogators as the one who scratches the wound again and again by the unsuitable question and harsh words or by using a bad and not so dignified way of investigation, they are nothing less but a reason behind mental and social distractions, which the victim has to face once he/she reports.

Also it has been noticed in many of the cases that victim somehow gathers courage to report it to the legal bodies, but then at a point when that legal body investigates and interrogates by different methods forgetting the dignity. The victim than consider himself as weak and tries to quit it by even committing suicide many a times. That is the time when not only he/she loses but along with them their families got broken. Loses trust on law enforcement, the respected judges and all the parties who got involved into that case.

There should be proper measures that should be taken care of while dealing with the victims of sexual and physical assaults. Proper orientation of training should be given to the legal bodies.

Last but not the least if the proper way of investigation is conducted keeping in mind the dignity and sensuality towards such cases, we can see a new picture of India. Let’s bring out the people who can say again ‘I have faith in the judicial system’.

## Sensitization training and impact of Such training-

## *Need of sensitization training-*

“*Race, gender, religion, sexuality, we are all people and that's it. We're all people. We're all equal.”[[19]](#footnote-20)*

On September 6, 2018 the honorable court lifted the seigh of relief by criminalizing homosexuality, specifically section 377 of Indian penal code 1860. This section criminalizes carnal intercourse against the order nature. Broadly this gives the right for homosexuality as they not treated properly, they were harassed, treated as sexual minorities and abused at work place and also by the government in jobs.

Due to the discrimination and ill-treatment by the legal bodies, they need some training so that they can deal with them properly and can value their emotions also by being sensitive towards them. There is need of training because of the following reason: [[20]](#footnote-21)

* Understanding the difference between the sexual orientation and gender identity.
* So that people in the society are treated equally and article 14 is justified because lesbians and gays are not treated equally by the society.
* As this community is abused at work place, mentally harassed by the society etc.
* So that they can also avail the right which are provided to men and women of the country.
* Training will help the judges, advocates and police officers to know the right way of dealing with the sensitive issues of the people where emotional support and care is must.
* Training will help the legal bodies to know the general framework and recent laws relating to such sensitive issues.
* It is important for the society to accept them even if they are against their culture or lifestyle as it is their choice and they have right to choose their way of living in this democratic country and treat them as part of the society.

### How training can be given-

Legal group for example advocates, judges, police officers plays the important role in giving them the recognition in the society.[[21]](#footnote-22) But sometimes there acts are insensitive towards them in legal matters like in harassment cases, when they are abused or assaulted at work place; legal department doesn’t give importance to them as they are not accepted by the society. Hence they also neglect them and their problems which they are facing in Indian society. These programs can be conducted through following ways:

* *Education*- by providing them proper education related to these community; about their culture, lifestyle etc.
* *Training-* providing them training on job and legal training so that they can deal the matters efficiently and effectively related to them.
* *Awareness camps*- spreading the awareness about the importance of then to maintain the balance in society which will ultimately relate to equality.

### **Impact of such trainings-**

The impact or sensitization programmes and trainings will be on both LGBT communities as well as on the legal bodies because these programmes will be implemented on legal department for maintaining the balance between genders.[[22]](#footnote-23)

Impact of sensitization training on LGBT community is as following:

* Will provide equal right to them in society.
* Provide legal status and recognition to them.
* It will provide better workplace to transgender at workplace so that they also contribute to development of the nation.[[23]](#footnote-24)
* Their culture will also be respected in this secular country.
* Participation of community in society will be more active.
* Reduce empathy and conflicts within the community.

### **Impact of sensitization training on legal bodies:**

* It will increase the legal awareness of police, advocates, and lawyers etc so that they can provide them right according to their need.
* They will be more sensitive towards the society so that there sentiments are not harmed.
* They will provide equal opportunity to transgender so that they also contribute towards the development.
* They can make the laws as per there need and development as this community is have different lifestyle and culture.
* They can maintain balance different culture including their culture too as India is a secular country.
* Increase understanding of public knowledge.
* They will get the effective support from them in political and socio-culture context.[[24]](#footnote-25)

## Instance of insensitivity by legal fraternity-

## *Insensitivity towards rape victims-*

 "All the (rape) cases that come in the courts these days, 90 percent of them are fake. And the other 10 percent, they have to prove it. You have to see if the girl put herself in the circumstances."

"*Nature is only perfect. Nature has made women innocent, tender like a flower, and physically weak. They have a tremendous ability to withstand pain like the earth. Men have been built like a rock, so that is mother nature's way of allocating responsibilities to men and women. Women look at the things related to household, men look after the security of the family, earn the bread for the family."*

"*No man can have sex with another woman, against his own will. Unless he gets excited, he can't have sex with a woman. You can ask psychiatrists, doctor or any scientist. Women don't need to be excited to have sex, that's how they're made*."

"*A man will get excited when he gets the atmosphere. Atmosphere depends on the circumstances and who is involved in the situation that bring a man to the stage where he can penetrate*."

"*Rape is the last stage. First stage is excitement, second is the circumstance, third stage is the consent of the girl and the final is rape.*"

"*Suppose you have box of sweets and you keep them in front of your house. What will happen? Street dogs will come and finish it off. But if you keep the same box of sweets in your fridge, will the street dogs be able to finish it off*?"

"*Everyone is responsible for their own safety. If someone roams around irresponsibly then they have only themselves to blame if something bad happens to them*."

 "*The circumstances for rape are created by you. And then when something bad happens, you become the victim - when in fact you're equally responsible for it*."

"*To end rape you have to remove the sexual atmosphere created by films with semi-nude/nude women, action shown under a bed sheet, women in bikinis selling everything in ads, what is this nuisance! All the money earned by creating such a sexual atmosphere needs to be stopped*."

"*Kids should not be exposed to such things when they're small, they should wait till the age of 20-22 after which they can get married and find out what sex is. That's when things will improve*."- Advocate M.L.Sharma (defense lawyer of Nirbhaya case).[[25]](#footnote-26)

In the following above ***Nirbhaya case[[26]](#footnote-27)*** he defense lawyer was insensitive towards brutal rape case of girl Delhi on 16th of December 2012. He has made statements against the girls, family which allow their children to move freely and accused the irresponsibility of the parents. Statements given by him was insensitive towards the girl as they also have freedom to move in the society and also family has freedom to how they have to keep their children.

## Insensitivity towards lgbt community-

“At least nine other petitions have been filed in the Supreme Court, the most famous being that of Baba Ramdev, the brand ambassador for Ayurveda and Pranayama yoga. The challenges are based on arguments that range from assertions that homosexuality is an illness for which there is a cure to expressions of anxiety over the crisis of cultural identity produced by the decision. Most of the challenges allege that homosexuality is associated with rampant promiscuity of the West, which centres hedonism and pleasure that are not apparently a part of our genetic cultural make-up."[[27]](#footnote-28)

They argued for the removal of Section 377 stating that it makes a large number of people in high risk categories in relation to HIV/AIDS reluctant to come forward for treatment due to a fear of law enforcement agencies, and that in driving homosexuality underground it increases risky behaviour such as unprotected sex.[[28]](#footnote-29)

Both the Ministry of Home Affairs (MHA) and the Ministry of Health and Family Welfare submitted legal opinions in respect to the writ petition. Interestingly, however, the two ministries came down on opposite sides of the legal argument offering “completely contradictory affidavits”. The MHA, on one hand, argued for the retention of Section 377 on several grounds. First, that it provided for the prosecution of individuals for the sexual abuse of children. Second, that it filled a gap in the rape laws. Third, that if removed it would provide for “flood gates of delinquent behavior” which would not be in the public interest. Finally, MHA submitted that Indian society does not morally condone such behavior and law should reflect societal values such as these.[[29]](#footnote-30)

*Instances of sensitization by legal bodies-*

* In ***Nirbhaya gang rape*** ***case*** on May 2017 the Supreme Court of India has given the final verdict that accused of crime which was held on 2012 in Delhi will hang till death which was justified towards the brutal crime of rape. But the Supreme Court has given the order in the favor of the welfare of the society and in the favor of women who are treated un equal by the society.
* The Supreme Court has struck down a rule that disallowed girls and women in the 10-50 age group from entering the Sabarimala temple in Kerala. Chief Justice Dipak Misra-headed Constitution bench in a 4-1 verdict said the temple rule violated their right to equality and right to worship. The only note of dissent came from the lone woman judge on the bench, Justice Indu Malhotra. “*We have no hesitation in saying that such an exclusionary practice violates the right of women to visit and enter a temple to freely practice Hindu religion and to exhibit her devotion towards Lord Ayyappa*.” [[30]](#footnote-31)
* Section 377, a part of the IPC that was modeled on a 16th century English law, criminalises "carnal intercourse against the order of nature with any man, woman or animal". Petitions seeking that Section 377 be scrapped were filed by 32 individuals, including celebrities such as Navtej Singh Johar, a dancer, and Ritu Dalmia, a chef and restaurateur. The Supreme Court said today that the part of Section 377 which criminalises consensual unnatural sex, irrational, indefensible and manifestly arbitrary, the news agency PTI reported. The United Nations welcomed the verdict, saying "the UN in India sincerely hopes that the court's ruling will be the first step towards guaranteeing the full range of fundamental rights to LGBT persons." The Supreme Court said due to Section 377, members of the LGBT community were forced live in hiding, and as second-class citizens, while others enjoyed the right to sexual orientation, PTI reported. The court said its judgment should be considered in all pending prosecutions.

Chief Justice Misra and Justice Khanwilkar said same-sex relations between two adults aren't harmful for children. A person's sexual orientation is natural, and discrimination on the basis of sexual orientation is a violation of the freedom of expression, the court said. It said the primary objective of having a constitutional society was to transform society progressively, and that constitutional provisions shouldn't be interpreted in a literal sense. Congress leaders Shashi Tharoor and Randeep Singh Surjewala welcomed the Supreme Court's decision. Surjewala called it "momentous" and "an important step forward towards a liberal, tolerant society".[[31]](#footnote-32)

* *Online FIR mandatory***-** Within 10 days of taking oath as the CJI, Justice Misra gave a ruling to make working of police transparent and accountable to police. The Supreme Court ordered all the states to make all FIRs online within 24 hours of its registration. The bench held that uploading the FIR online would help the courts for redress with suitable pleas.
* *Right to reputation-*Hearing petitions filed by politicians including Rahul Gandhi, Arvind Kejriwal and Subramanian Swamy in May 2017, Justice Dipak Misra held reputation of a person could not be allowed to be crucified at the altar of the other’s right of free speech. Justice Dipak Misra ruled, “The right to reputation is a constituent of article 21 of the Constitution. It is an individual’s fundamental right.”
* *National Anthem***-** Justice Dipak Mishra headed bench amended the national anthem ruling a couple of times making it optional in cinema halls.

Case law- *Naz foundation vs. Government of nct delhi****[[32]](#footnote-33)***

This case concerned a writ petition (a public interest action taken before the court) brought by an Indian NGO working with HIV/AIDS sufferers which argued that Section 377 of the Indian Penal Code was unconstitutional. Section 377 entitled “Of Unnatural Offences” has effectively been interpreted as criminalizing consensual sexual acts between persons of the same sex. Section 377 states: “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [imprisonment for life], or with imprisonment of either description for term which may extend to ten years, and shall also be liable to fine.”

The Naz Foundation and others submitted that this interpretation of Section 377 violated the fundamental rights guaranteed under Articles 14, 15, 19 and 21 of the Constitution of India. The Foundation brought the action in the public interest on the grounds that it’s work on combating the spread of HIV/AIDS was being hampered by discrimination against the gay community. This discrimination, the petitioners submitted, resulted in the denial of fundamental human rights, abuse, harassment and assault by public authorities, thus driving the gay community underground and subjecting them to greater vulnerability in violation of their fundamental rights.[[33]](#footnote-34)

*Decision-*

The High Court (Court) firstly reiterated the test for any law which interferes in personal liberty, as set out in *Maneka Gandhi v. Union of India* (1978) 1 SCC 248: that (i) there must be a procedure; (ii) that procedure must be tested against one or more of the fundamental rights conferred under Article 19 which are applicable; and (iii) it is also susceptible to be tested against Article 14, and must be right, just, fair and not arbitrary.[[34]](#footnote-35)

# Conclusion

So we can conclude that the word ‘sensitization’ plays a major role in most of the sexuality assaults cases and the cases relating to LGBT community. We should always remember that a rape victim and people of such community need love and care as they are not treated equally and properly by the society itself and also by the legal bodies in our country. Ill-treatment by the society and the legal bodies like judges, advocates and police officers leads to the victims mental depression and they start considering themselves weak in front of the brutal society.

There should be proper measures that should be taken care of while dealing with the victims of sexual and physical assaults. A proper orientation of training should be given to the legal bodies. Sometimes being a lawyer or a part of legal body one forgets he dignity which is the major drawback of our judiciary system.

As being a citizen of an independent country, everyone should have their self esteem and by the undignified manner of investigation that esteem got vanish brutally. It is nevertheless an irony in saying that- ‘*one man’s vulgarity is another man’s lyrics’*. Indeed it is true that vulgarity leads to destroy the person who faces such miserable actions. So the legal bodies should know the impact of sensitization. There should be proper trainings given to the police administrations, legal officers as well as judges. This will result into grassing the trust and faith of the public.

Therefore, the hypothesis ‘sensitization programmes are good for the development of community like LGBT’ is right and proved.

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33. https://cjp.org.in/wp-content/uploads/2017/12/Case-Summary-Naz-Foundation-v.-Government-of-NCT-of-Delhi-and-Others.pdf [↑](#footnote-ref-34)
34. Ibid [↑](#footnote-ref-35)