

## 14 Bullying, Law and Pre-service Teachers' Perspectives

Australian and Indian Contexts

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Globally there has been much discussion concerning how the law and legislation might operate in relation to serious cases of bullying and cyberbullying. Some countries and states/provinces have enacted specific laws to prevent bullying, whereas others have sought to apply existing legislation (Campbell et al., 2010; Spears et al., 2014). In the United States, for example, 49 of the 50 states have an anti-bullying law in place to prevent bullying; however, little is known about their effectiveness.

In one study of the effectiveness of such laws, Ramirez and colleagues (2016) measured the impact of an anti-bullying law in Iowa in preventing bullying and improving teacher response to bullying, over three data points between 2001 and 2010 (pre-law, one year post and three years post). They found that after the law was introduced, there was an initial increase in reporting of bullying, largely due to heightened awareness, but it did eventually result in longer-term reductions in prevalence. However, what was not impacted was the extent to which teachers intervened in bullying incidents at school. Whilst teacher intervention was good, with most students reporting that they did intervene 'often or very often', there was a progressive decline in teacher intervention post-law introduction, i.e. the introduction of the law did *not* improve teacher intervention over time as expected.

This finding demonstrates a need to target what teachers actually do when a law is introduced, and how they are supported to interpret that law in the school setting. It also suggests to not solely rely on legal responses to generate change in school bullying. The importance of staff and leadership turnover in terms of prevention and intervention continuity over a five-year time frame is also highlighted through this study. Impacts occur to programmes, for example, with staff turnover as new teachers arrive and others leave, and the changing skill set available in the school to deal with bullying is altered (Spears et al., 2015).

Ramirez and colleagues (2016, p. 2) suggested that the theoretical basis underpinning the employment of anti-bullying laws is situated within socio-ecological approaches to prevention. They noted that activities related to anti-bullying laws, such as reporting, response strategies, disciplinary action, staffing and training, occur at various levels of the school/community ecology (Dresler-Hawke & Whitehead, 2009; Espelage, 2014). These are relevant to this chapter, as pre-service teachers (PSTs) are an important element of the total teaching ecology, and form part of staff rejuvenation and replacement strategies in schools, potentially impacting school climate through their arrival and capacity to respond to bullying, or lack of it (Spears et al., 2015).

Whilst there is a growing body of research concerning Western PSTs' capacity and competence to deal with bullying and cyberbullying (e.g. Bauman & Del Rio, 2005, 2006; Boulton et al., 2014; Nicolaidis, Toda & Smith, 2002; Spears et al., 2015), little is currently known about Indian PSTs' attitudes to and knowledge or understanding of bullying and cyberbullying (see also Chapter 13), nor the legal contexts which oversee these behaviours within, and outside of, the school setting.

Currently in Australia, a matrix of existing civil and criminal laws operates to regulate serious behaviours related to bullying. At present, there is a dearth of literature exploring the laws governing bullying and cyberbullying in India. This chapter makes a significant contribution to the extant knowledge base by: (1) examining existing statutes and referring to relevant jurisprudence in relation to bullying, cyberbullying and other culturally relevant behaviours, such as ragging and Eve teasing, and (2) considering Indian and Australian PSTs' knowledge in relation to those legal contexts.

### **Issues of Definition**

Before considering the legal contexts, and the views of PSTs, it is important to briefly reflect upon how bullying is defined and what it may mean for these contexts. Whilst it is often framed as a contested notion, there are three reliable elements upon which most researchers agree. Variations of Olweus' definition (1993, 1994) are most often quoted, identifying: *an aggressive behaviour perpetrated with the intent to harm the target; repeated over time; and characterised by real or perceived imbalance of power*. Whilst there are many subtypes of bullying, the common forms relate to physical, verbal, social/relational (psychological) and, most recently, cyberbullying behaviours. Debate also continues around the online/offline dichotomy and the overlap and interplay which occurs between them, and whether one is a continuation of the other, using digital means, or a new, unique form of bullying in its own right (see Smith, 2014, for review).

Relevant to this chapter are concerns about the cultural relevance of the definition. Coffin, Larson and Cross (2010), in their study of bullying in an Australian Aboriginal context, remind us that definitions are contextual, reliant upon the language and cultural patterns common to the settings in which individuals live, thus they determine how bullying is perceived and explained in that context. The role of 'voice' is therefore also important in understanding how these behaviours are construed in situ, and Spears and Kofoed (2013) argue for greater inclusion of voice when determining definitions, particularly in culturally and linguistically diverse settings.

This chapter now turns to the legal contexts in India and Australia relevant to schooling environments. Discussions surrounding the application of relevant laws are based on doctrinal methods of research. This methodological approach involves legal analysis of case law, legislation, regulations, parliamentary reports and other legal materials (Pearce, Campbell & Harding, 1987). Footnotes on these are gathered at the end of this chapter. Following this, a snapshot of relevant PST data from both cultural contexts is presented.

## **Indian Legal Context**

### *Legal Framework Governing Bullying in Education Institutions*

Bullying in Indian educational institutions (schools, colleges and universities) is not governed comprehensively by 'anti-bullying' laws. Applicable laws regulating instances of victimisation in these settings are detailed (primarily) in the Indian Penal Code 1860.<sup>1</sup> From a Western perspective, two forms of victimisation which may be labelled as bullying are 'ragging' and 'Eve teasing'. Both behaviours are prevalent in the Indian schooling and higher educational institution contexts (Ban on Ragging, 2007). Although there are nuances which delineate these behaviours from 'bullying' per se, it is useful to include ragging and Eve teasing when considering how Indian law regulates aggressive behaviours akin to bullying, especially given recent legislative changes.

### *Ragging*

Recently, ragging has been identified as a category of aggressive behaviours carried out in the schooling context (Central Board of Secondary Education, 2015). Prior to this, it was deemed limited to the higher

<sup>1</sup> Indian Penal Code 1860 (India).

educational institution context (colleges, universities) (Jaishanker & Halder, 2009, pp. 579–582),<sup>2</sup> where it has been described as the ‘off-spring of bullying’ and served as a ‘means of ice-breaking between the juniors and seniors’.<sup>3</sup>

From a Western perspective, there are similarities and slight differences between ‘bullying’ and ‘ragging’. Both encompass aggressive behaviours carried out to intentionally harm a victim. Harm in both contexts includes low-level emotional harm such as short-term annoyance, fear and grief, and extends to encompass protracted psychological injury. Both types of conduct involve an imbalance of power. A person’s characteristics (e.g. height, intelligence, physical strength, age, gender, popularity and socio-economic status) can give a perpetrator perceived or actual power over a victim (Patchin & Hinduja, 2006). In India, caste and skin colour may also give rise to an asymmetric power relationship between peers. Notably, one key nuance between bullying and ragging relates to the aspect of repetition. In the bullying context, conduct is usually repeated. Instances of ragging may, however, involve only one isolated act, delineating ragging from bullying to a degree. Another point of distinction relates to the highly physical nature of ragging, unlike bullying, which may be relational, social, verbal or physical. Given the similarities between the behaviours, any dialogue around the regulation of bullying in India ought to therefore include ragging, *especially since it has been recently identified within the schooling context* (Central Board of Secondary Education, 2015).

Ragging has received significant judicial attention in India, particularly over the past 20 years (Garg, 2009).<sup>4</sup> The conduct is governed, to an extent, by legislation at the federal level, where it is likely to fall within the scope of various offence provisions of the Indian Penal Code.<sup>5</sup> The element which criminalises ragging usually relates to the ‘assault’ element of the conduct – the physical force applied.<sup>6</sup> In addition, several

<sup>2</sup> Anecdotal evidence based on discussions with university academics Dr Damanjit Sandhu, Annamalai University and Patalia University (Punjab, India) and Dr Suresh Sundaram (Tamil Nadu, India).

<sup>3</sup> Anecdotal evidence based on discussions with university academic Dr Damanjit Sandhu, Annamalai University and Patalia University (Punjab, India).

<sup>4</sup> *University of Kerala v Council, Principals, Colleges and Others* [2009] INSC 284 (11 February 2009).

<sup>5</sup> Indian Penal Code 1860 (India). See, for example, s 294 – obscene acts and songs; s 321 – voluntarily causing hurt; s 322 – voluntarily causing grievous hurt; s 326 – voluntarily causing hurt by dangerous weapons or means; s 339 – wrongful restraint; s 340 – wrongful confinement; s 350 – criminal force.

<sup>6</sup> Although s 294 – obscene acts and songs – does not require a physical act; an obscene song, ballad or uttering of words (without physical force) directed at the victim, in or near a public place, constitutes this offence. The requirement that the conduct is carried out in or near a ‘public place’ is an important element of this offence as it encapsulates the resulting harm; the public humiliation of the victim.

states also have enacted specific anti-ragging legislation prohibiting the conduct in higher educational institutions.<sup>7</sup>

The Supreme Court decision of *Vishwa Jagriti Mission through President v Central Government through Cabinet Secretary and Others*<sup>8</sup> (*Vishwa*) played a fundamental role in raising awareness of ragging in India among scholars, advocates and educational institutions generally.<sup>9</sup> The decision had a particularly profound impact on how Indian higher educational institutions respond to instances of ragging, given the primary role institutions have in managing student behaviour. Based on the *Report of the Committee to Curb the Menace of Ragging in Universities/Educational Institution* (University Grants Commission, 1999), the court issued directions, in the form of guidelines, for implementation by state governments and higher educational institutions.<sup>10</sup> These outlined a comprehensive prohibition/prevention/punishment approach.<sup>11</sup> Guidelines stipulated that non-complying institutions would be subject to University Grants Commission funding cuts.<sup>12</sup> Unfortunately, institutions implemented these measures to varying degrees, which limited the efficacy of the proposed approach/measures.<sup>13</sup>

Prompted by a further increase in ragging incidents, prevention and management strategies for higher educational institutions were reconsidered in 2006.<sup>14</sup> In 2007, the selected investigatory committee (the Raghaven Committee) filed *The Menace of Ragging in Educational Institutions and Measures to Curb It* (Raghaven Committee Report, 2007). The report delivered detailed findings on the nature of ragging (definition; scope); provided an overview of existing ragging measures, including a comparison of state anti-ragging legislation; and posited a series of recommendations for the strategic management of the conduct

<sup>7</sup> State legislation has been enacted in the following states: Andhra Pradesh, Maharashtra, Karnataka, Uttar Pradesh, Haryana, Tripura, Tamil Nadu, Assam, Kerala, West Bengal, Goa, Jammu and Kashmir, Himachal Pradesh and Punjab.

<sup>8</sup> AIR 2001 SC 2793.

<sup>9</sup> By virtue of the directions handed down in the decision itself (a decision of the Apex Court) and through the research findings and recommendations publicised in a report commissioned by the University Grants Research Council (the 1999 Report), which discussed forms of ragging, reasons for ragging, increase in prevalence of ragging and anti-ragging measures.

<sup>10</sup> *Vishwa Jagriti Mission through President v Central Government through Cabinet Secretary and Others* 2001 (3) SCR 540.

<sup>11</sup> Ibid. <sup>12</sup> Ibid.

<sup>13</sup> The investigatory committee appointed in 2006 did not come across any serious effort to implement the guidelines of the Supreme Court in the manner intended (*The Menace of Ragging in Educational Institutions and Measures to Curb It* [2007], 3.09).

<sup>14</sup> *University of Kerala v Council of Principals and Colleges* SLP (C) No 24296–24299 of 2004, WP (Crl) No 173/2006 and SLP (C) No 14356/2005.

in Indian higher educational institutions specifically, and prevention of the conduct more broadly. As a result, the University Grants Commission Regulations on Curbing the Menace of Ragging in Higher Educational Institutions (the Regulations) came into force in 2009.<sup>15</sup>

The Regulations unequivocally prohibit ragging in all Indian higher educational institutions (University Grants Commission, 2009, s 6). In order to promote a uniform understanding, the Regulations provide a broad, comprehensive definition (University Grants Commission, 2009, s 3). Notably, from a Western perspective, most of the behaviours described would be understood as bullying, where the act is *repeated* (as opposed to an isolated event), where a *power imbalance* between the perpetrator and the victim is established and where an *intent to harm* can be inferred.<sup>16</sup>

Importantly, the Raghaven Committee Report noted the significance of adopting a holistic approach to curbing ragging in India. Although the focus of the 2007 Report related to the management of student behaviour in higher educational settings, the Raghaven Committee recommended that *human rights education programmes, which raise awareness of ragging, become compulsory in the school curriculum*.<sup>17</sup> Given that ragging is a learnt, arguably entrenched cultural behaviour in India, Nakassis (2013) argued for values-based learning in the early years of education, to highlight respect for privacy, diversity and equality as a way forward.<sup>18</sup>

*The Committee recommended that the curriculum for the Bachelor of Education (B.Ed) and other teacher training courses include a mandatory learning module/unit on bullying*.<sup>19</sup> This suggestion indicates an awareness that teachers play a fundamental role in managing and responding to

<sup>15</sup> University Grants Commission Regulations on Curbing the Menace of Ragging in Higher Educational Institutions (2009) F.1-16/2007 (CPP-II); *University of Kerala v Council, Principals, Colleges and Others* [2009] INSC 284 (11 February 2009), [3].

<sup>16</sup> Note, in relation to s 3(a): instances of long-term 'teasing' may be characterised as bullying, as conduct intended to harm another. Behaviour described in s 3(d) is very broad (low threshold). Peer-to-peer 'disruption' or 'disturbance' would need to be both aggressive and intentional to constitute bullying.

<sup>17</sup> Report of the Committee Constituted by the Supreme Court of India in SLP No 24295 of 2006, *The Menace of Ragging in Educational Institutions and Measures to Curb It* (2007), para 5.02. Unfortunately this recommendation was not reflected in the directions delivered by the Supreme Court in *University of Kerala v Council, Principals, Colleges and Others* [2009] INSC 284 (11 February 2009).

<sup>18</sup> Report of the Committee Constituted by the Supreme Court of India in SLP No 24295 of 2006, *The Menace of Ragging in Educational Institutions and Measures to Curb It* (2007), para 5.03.

<sup>19</sup> *Ibid.*, 5.05. Reflected in the University Grants Commission Regulations on Curbing the Menace of Ragging in Higher Educational Institutions (2009) (India) s6.1 (d)(e).

bullying behaviours. This recommendation is reflected in University Grants Commission regulations.<sup>20</sup>

Since the publication of the Raghaven Committee Report, however, little is known about the extent to which Indian schools have implemented compulsory learning modules on ragging or bullying more generally. It is currently *not* mandatory for Indian schools to implement anti-bullying policies and there are *no uniform regulations* (Jaishanker & Halder, 2009; Srivastava, 2012, p. 20). However, there seems to be some movement in this direction.

In March 2015, the Central Board of Secondary Education disseminated a circular to schools within its jurisdiction<sup>21</sup> outlining interventions schools ought to consider implementing. Recommendations included: publishing a no-tolerance approach to bullying in school guidelines; constituting anti-bullying committees within schools; arranging counselling services within primary, secondary and senior secondary schools; educating parents; and implementing comprehensive guidelines for school behaviour management (Central Board of Secondary Education, 2015). *Additionally, the Central Board recommended that teacher training courses mandatorily include topics on sensitisation and prevention of bullying in schools* (Central Board of Secondary Education, 2015).

Whether these policy and legal changes and initiatives have as yet filtered through to current PSTs and teachers generally in India is unknown and requires ongoing investigation. Data for this project were collected in 2014, immediately prior to these legislative changes, thus this chapter (and Chapter 13) provides an important snapshot/baseline of PSTs attitudes and knowledge prior to the mandatory requirement to include topics on bullying.

### *Eve Teasing*

Eve teasing, like ragging, is another culturally specific, 'highly prevalent' behaviour related to bullying in India<sup>22</sup> and is described as a 'social crime' which happens 'everywhere in schools and in homes irrespective of caste and creed' (Athill & Jha, 2009, p. 166). It is a specific form of aggressive conduct perpetrated by males and is akin to sexual harassment in Western

<sup>20</sup> University Grants Commission Regulations on Curbing the Menace of Ragging in Higher Educational Institutions (2009) (India), s 6.1(k).

<sup>21</sup> The Board has jurisdiction over 15,799 schools in India (as of 9 March 2015) located in the Union Territory of Chandigarh, Andaman and Nicobar Island, Arunachal Pradesh, Sikkim, Jharkhand, Uttaranchal and Chhattisgarh.

<sup>22</sup> Anecdotal evidence: Dr Daman Sandhu, Annamalai University and Patalia University (Punjab, India).

situations. It is generally described as the sexual harassment of a woman occurring in a public place, and has been categorised into five forms: physical, verbal, psychological, sexual and harassment through objects (Halder & Jaishanker, 2011, p. 386).<sup>23</sup>

Tamil Nadu is the only state in India to enact specific legislation prohibiting the conduct (see Figure 14.1), originally, the Tamil Nadu Prohibition of Eve-Teasing Act 1997.<sup>24</sup> Notably, it was amended in 1998: the term *eve-teasing* was replaced with *harassment* and the Act was renamed The Tamil Nadu Prohibition of Harassment of Woman Act 1998.<sup>25</sup> Harassment (the legislature's interpretation of Eve teasing) is defined in the following way:



Figure 14.1 Street signage in Tamil Nadu concerning Eve teasing. Photo by Barbara A. Spears.

<sup>23</sup> *Deputy Inspector General of Police and Another v S Sumuthriam* 2012 (11) SCALE 420, [31].

<sup>24</sup> Tamil Nadu Prohibition of Eve-Teasing Act 1997 (Tamil Nadu, India).

<sup>25</sup> Tamil Nadu Prohibition of Harassment of Woman Act 1998 (Tamil Nadu, India).

any indecent conduct or act by a man which causes or is likely to cause intimidation, fear, shame or embarrassment, including abusing or causing hurt or nuisance or assault or use of force.<sup>26</sup>

Inherent in this definition is the element of power imbalance, which exists by virtue of a person's gender, where a male has a power differential vis-à-vis a female. Given that the aim of Eve teasing is to humiliate a female victim, it is likely that an intention to cause the victim harm will be inferred.<sup>27</sup> The definition is broad and is capable of encompassing conduct which could be construed as bullying where the conduct is repeated.

India has no specific federal law which governs Eve teasing. It is, however, possible to prosecute Eve teasing under several provisions of the Indian Penal Code.<sup>28</sup> The most applicable provision relates to s 509, which prohibits a man from uttering a word, making a gesture or doing an act 'intended to insult the modesty of a woman'.

In 2012 the Supreme Court of India considered the case of *Deputy Inspector General of Police and Another v S Sumuthriam*.<sup>29</sup> The Court condemned Eve teasing as a 'pernicious, horrid and disgusting practice'<sup>30</sup> and expressed the urgent need for specific uniform legislation.<sup>31</sup> Notably, the Court delivered multiple directions in the form of guidelines (for urgent implementation by the states) aimed at curtailing instances of Eve teasing.<sup>32</sup> Situational crime prevention measures included deploying plain-clothed female police officers to public places such as bus stands, railway stations, metro stations, cinema theatres, shopping malls, parks, beaches, public service vehicles and places of worship to monitor and supervise incidents of Eve teasing,<sup>33</sup> including installing closed-circuit television in strategic positions.<sup>34</sup> The Court ordered that women's help-lines be established in various cities within three months<sup>35</sup> and that

<sup>26</sup> *Ibid.*, s 4(a).

<sup>27</sup> The wording of the provision indicates that the threshold for 'harm' is low; the inclusion of 'nuisance' describes an almost trivial reaction.

<sup>28</sup> Indian Penal Code 1890 (India) s 509 – word, gesture or act intended to insult the modesty of any woman; s 354 – assault or criminal force to woman with intent to outrage her modesty; s 294 – obscene acts and songs; Criminal Law Amendment Act 2013 (India) s 354A – sexual harassment; s 354B – using force with intent to disrobe a woman (amends Indian Penal Code).

<sup>29</sup> *Deputy Inspector General of Police and Another v S Sumuthriam* 2012 (11) SCALE 420. The Supreme Court of India has considered sexual harassment in *Vishaka and Others v State of Rajasthan* (1977) 6 SCC 241.

<sup>30</sup> *Deputy Inspector General of Police and Another v S Sumuthriam* 2012 (11) SCALE 420, [31].

<sup>31</sup> *Ibid.*, [30]. Note, no uniform legislation has been enacted to date. <sup>32</sup> *Ibid.*, [32].

<sup>33</sup> *Ibid.*, [32 (1)]. <sup>34</sup> *Ibid.*, [32(2)].

<sup>35</sup> *Ibid.*, [32(5)]. Helplines have been established. See, for example, 'Helplines against eve-teasing, ragging,' *The Tribune* (Himachal), 3 July 2015 [www.tribuneindia.com/news/himachal/community/helpline-against-eve-teasing-ragging/62023.html](http://www.tribuneindia.com/news/himachal/community/helpline-against-eve-teasing-ragging/62023.html).

boards (billboards) cautioning against Eve teasing be exhibited in all public places (see Figure 1).<sup>36</sup> Notably, however, no specific measures for implementation in schools were issued as part of the Court's directions. The implementation of the 2015 recommendations for curbing bullying, issued by the Central Board of Secondary Education, would go some way towards addressing Eve teasing in schools. As a form of victimisation, the conduct would fall within school bullying guidelines as unacceptable conduct.<sup>37</sup> Again, it is not known whether these recommendations have trickled down to PSTs or indeed practising teachers and schools and warrants further investigation.

### *Cyberbullying*

To date, no specific cyberbullying law has been enacted in India. Rather, some instances of cyberbullying are captured by existing federal law provisions, where the conduct falls within the scope of an offence. The statutes of particular relevance include the Information Technology Act 2000<sup>38</sup> (ITA), Information Technology (Amendment) Act 2008<sup>39</sup> (ITAA) (which amends the ITA by providing for a range of new offences) and the Indian Penal Code.

The ITAA came into force in 2009 and amended the principal Act (the ITA). As a result, particular forms of cyberbullying are criminalised. For example, s 66 C, which provides for the offence of 'identity theft', may govern instances of 'impersonation' (where the perpetrator dishonestly uses a victim's electronic signature, password or unique identifications feature).<sup>40</sup> Dissemination of pornography and child pornography is governed by s 67A and s 67B of the ITA (by virtue of the ITAA). This regulates cyberbullying known as 'harassment' where a victim is repeatedly sent sexually explicit (pornographic) material either directly (e.g. a victim's personal email account or mobile phone) or indirectly (e.g. to a social media platform or website) (this conduct is also known as Internet trolling) (Langos, 2013, pp. 52–53). These provisions also may regulate cyberbullying known as 'denigration' by way of an image of a sexual or intimate nature (Langos, 2013, pp. 55–58). This form of cyberbullying

<sup>36</sup> *Deputy Inspector General of Police and Another v S Sumuthriam* 2012 (11) SCALE 420, [32(6)].

<sup>37</sup> Note also that the University Grants Commission (Promotion of Equity in Higher Educational Institutions) Regulations 2012 (India) enacted to address discrimination in higher educational institutions encompass gender victimisation. Thus, Eve teasing in colleges and universities is prohibited.

<sup>38</sup> Information Technology Act 2000 (India) (ITA). <sup>39</sup> *Ibid.*

<sup>40</sup> Information Technology (Amendment) Act 2008 (India) (ITAA) s 66C. Note that a similar provision is provided for in Indian Penal Code s 416 – Cheating by personation.

involves the distribution of an image of a sexual (depicting the subject engaging in a sexual act) or intimate (depicting the subject's genital or anal area, or using a toilet) nature, which identifies the subject (shows the subject's face or otherwise identifiable features) and is disseminated without the subject's consent. Where the materials published or transmitted are not sexually explicit, they may still be prohibited. Section 67 of the ITA is a broader provision which captures 'obscene' material in electronic form more generally (material need not be 'sexually explicit').<sup>41</sup> This provision potentially governs any form of cyberbullying which involves transmission of material containing lewd content via mobile phone SMS, email, post to social media platform or website.

Eve teasing in the cyber context is highly likely to constitute cyberbullying, particularly where it occurs in a public online forum, such as social media, a publicly viewable website or via email or SMS text message with multiple recipients. The act is repeated by virtue of the public nature of the forum (Langos, 2012).<sup>42</sup> 'Online' Eve teasing is not governed by a specific law. However, such conduct may fall within the scope of section 509 of the Indian Penal Code.<sup>43</sup> The law may be infringed where a perpetrator has morphed a victim's image to be sexually suggestive (to 'insult the modesty' of the victim), or where comments 'insulting the modesty' of a female victim are posted. There also may be scope to punish perpetrators who post video footage capturing an act(s) intended to 'insult the modesty' of a female victim, where the 'posting' of the video without consent is considered 'an act' for the purposes of the offence. There is, therefore, potential for the provision to regulate instances of 'happy slapping'<sup>44</sup> where the victim is female.

### *Age of Criminal Responsibility in India*

Although federal legislation governing some instances of bullying (specifically ragging and Eve teasing) and cyberbullying exists, a perpetrator

<sup>41</sup> ITA s 67.

<sup>42</sup> In a cyberbullying context, 'repetition' does not necessarily involve several instances. In instances where a perpetrator posts an electronic communication to a public forum, such as a public blog, a social media forum or a video-sharing website, it is no longer necessary for the victim to fall subject to a series of acts to satisfy the element of 'repetition' in this context. 'Repetition' occurs by virtue of the public online forum in which the behaviour occurs.

<sup>43</sup> Indian Penal Code 1860 (India) s 509 – Word, gesture or act intended to insult the modesty of a woman.

<sup>44</sup> 'Happy slapping' involves the filming of a physical assault on a victim and the subsequent distribution of the film to humiliate the victim publicly.

may be of an age where the law deems the person incapable of forming criminal intent (*mens rea*). In India a child under the age of seven cannot be prosecuted. A child between the ages of seven and 12 is presumed incapable of committing a crime because of a lack of understanding of the differences between right and wrong, and consequential lack of *mens rea*, although a rebuttable presumption exists.<sup>45</sup> A child over the age of 12 is considered capable of committing a crime having attained the developmental maturity to be held fully responsible for their actions under the criminal law.<sup>46</sup> The Juvenile Justice (Care and Protection of Children) Act 2000 applies to all children under the age of 18.<sup>47</sup> This means that young people charged with offences when aged between 12–18 years at the time of the offence<sup>48</sup> will be heard by the Juvenile Justice Board (as distinct from an adversarial adult court).

It is apparent that there are initiatives to bring bullying, ragging, Eve teasing and cyberbullying to the notice of the legal and schooling communities in India, in ways which might serve to protect vulnerable children and keep them safe in school settings. Whether and how PSTs might make sense of these are presented after the brief review of Australian legislative responses.

### Australian Legal Context

Scholars have examined criminal and civil legal frameworks governing bullying and cyberbullying in Australia in detail (Campbell, Butler & Kift, 2008; Katz et al., 2014; Langos, 2014a). As such, the purpose of this section is to provide the reader with an overview of potentially applicable laws, and to consider the laws PSTs ought to be familiar with prior to their appointment within the teaching profession.

#### *Criminal Law*

There is no single body of criminal law governing the whole of Australia (Findlay, Odgers & Yeo, 2014, p. 7). Australian states and territories are responsible for their own criminal laws. The Commonwealth government may enact federal criminal legislation pursuant only to the powers vested

<sup>45</sup> The older the child, the more easily the presumption may be rebutted – although the threshold for rebuttable is high.

<sup>46</sup> There have been no amendments to the Juvenile Justice Act prohibiting ragging (or bullying).

<sup>47</sup> Juvenile Justice (Care and Protection of Children) Act 2000 (India).

<sup>48</sup> Note that children between the ages of seven and 12 may be prosecuted under the Act. The prosecution must establish that the child has the developmental maturity to be capable of forming *mens rea*.

in the Commonwealth Constitution.<sup>49</sup> At present, no specific bullying or cyberbullying offence exists per se. Rather, a complex matrix of state and federal laws can criminalise bullying and cyberbullying behaviours falling within the scope of existing offences (Katz et al., 2014; Langos, 2014a; Spears et al., 2014).

### *Age of Criminal Responsibility*

The common law doctrine of *doli incapax* applies to youths (juvenile) aged between 10 and 13 years in all Australian jurisdictions.<sup>50</sup> Once a youth is aged between 14 and 17 years, the youth is taken to have attained the developmental maturity to be held fully responsible for their actions under the criminal law. This is important to note given that bullying and cyberbullying are prevalent amongst young people.

All Australian states have their own juvenile justice systems. By way of example, the design of the South Australian model is founded on a tiered system of pre-court diversion. As such, youths under the age of 18 are afforded special protections on account of their youth and welfare needs. Most instances involving bullying or cyberbullying warranting police involvement are resolved through formal warning or family conferencing rather than through a formal hearing.

### *State Law*

It has been well documented that state offences governing 'unlawful threats',<sup>51,52</sup> 'assault',<sup>53</sup> or 'stalking',<sup>54</sup> may regulate instances of traditional (face-to-face) bullying. These provisions may, equally, govern cyberbullying – online manifestations of conduct falling within the scope of these provisions (Katz et al., 2014; Langos, 2014a; Spears et al., 2014). State 'filming offences'<sup>55</sup> may have particular application in relation to a range of specific cyberbullying behaviours involving the non-consensual distribution of visual content (images or film).

South Australia has recently enacted laws which better regulate cyberbullying behaviours colloquially known as non-consensual

<sup>49</sup> Australian Constitution s 51.

<sup>50</sup> *Doli incapax* is a rebuttable legal presumption that a youth 10–13 years of age is incapable of crime under statute or the common law because of a lack of understanding of the differences between right and wrong, and consequential lack of *mens rea*.

<sup>51</sup> South Australia is used as the jurisdiction of choice.

<sup>52</sup> For example, the Criminal Law Consolidations Act 1935 (SA) s 19.

<sup>53</sup> For example, *ibid.*, s 20. <sup>54</sup> For example, *ibid.*, s 19AA.

<sup>55</sup> For example, the Summary Offences Act 1953 (SA) Part 5A.

'sexting',<sup>56</sup> 'revenge porn',<sup>57</sup> and 'happy slapping'.<sup>58,59</sup> One of the most important features of the Summary Offences (Filming and Sexting Offences) Amendment Act 2016 (SA), which came into operation October 2016, is that it criminalises threats to distribute an invasive image/film (depicting the subject engaged in a sexual act or using a toilet or the subject's breasts or bare genital region).<sup>60</sup> Given that repeated threats of this kind can be regarded as bullying, the law serves as a novel legislative response to a behaviour which is prevalent as a result of the pervasive nature of technology. The new law also enables police to charge a young offender with a non-indictable offence for non-consensual distribution of such material.<sup>61</sup> Given the sexual nature of images and film involved in sexting and dissemination of revenge porn, state child pornography offences could apply where the subject of the image or film is under the age of 17 years.<sup>62</sup> Charging a young person with possession and/or dissemination of child pornography for consensual or non-consensual sexting is arguably inappropriate given the very serious consequences of conviction (Langos, 2014b). Police now have an alternative offence to turn to when a criminal response to publishing visual content of a sexual nature is warranted.

### *Federal Law*

Federal law has a role to play in the regulation of cyberbullying.<sup>63</sup> The provision which has the greatest relevance, capturing a broad range of cyberbullying behaviours, governs 'harassing, menacing or offensive' material transmitted electronically.<sup>64</sup> A perpetrator commits this federal indictable offence if he or she uses a carriage service ('making a telephone call, sending a message by facsimile, sending an SMS message, or sending a message by email or some other means of using

<sup>56</sup> Described as an electronic communication(s) containing sexual material, such as suggestive or provocative text, or images that are nude, nearly nude or sexually explicit (Salter, Crofts & Lee, 2013), 301.

<sup>57</sup> Involves image-based exploitation. Occurs where a person formerly in an intimate relationship with the subject of a private (sexually explicit) image/film distributes the image/film without consent as an act of revenge (once a relationship has come to an end).

<sup>58</sup> Involves the filming of a physical assault on a victim and the subsequent distribution of the film to humiliate the victim publicly.

<sup>59</sup> The Summary Offences (Filming Offences) Act 2013 (SA) introduced new offences to the Summary Offences Act 1953 (SA); the Summary Offences (Filming and Sexting Offences) Amendment Act 2016 (SA) made further amendments to the Summary Offences Act 1953 (SA).

<sup>60</sup> Summary Offences Act 1953 (SA) s 26D. <sup>61</sup> *Ibid.*, s 26DA.

<sup>62</sup> Criminal Law Consolidation Act 1935 (SA) s 63 and s 63A; *R v Marcus James Empen* (Unreported, District Court of South Australia, Rice J, 22 August 2014).

<sup>63</sup> Australian Constitution s 51(v). <sup>64</sup> Criminal Code Act 1995 (Cth) s 414.17.

the Internet')<sup>65</sup> to menace, harass or cause offence to a victim.<sup>66</sup> This provision is broad in scope given that the prohibited conduct need only reach a threshold of being 'offensive'. As such, the provision potentially captures a wide range of cyberbullying. Notably, the offence requires the prosecution to prove that the perpetrator was aware that his or her conduct could be viewed as harassing, threatening or offensive. This means that it may be possible for an eccentric or unreasonable perpetrator (not capable of forming an awareness of risk) to escape conviction.

In 2016, the Criminal Code Amendment (Private Sexual Material) Bill 2016 was introduced to the Parliament of Australia, largely in response to and in recognition of 'the community's increased use of telecommunications to engage in harmful and abusive behaviour of a sexual nature and the harm that can be caused' (Commonwealth Parliament, 2016). The proposed offence prohibits non-consensual distribution of private sexual material<sup>67</sup> using a carriage service where distribution causes the subject depicted in the material distress or harm or there is a risk of causing the subject distress or harm.<sup>68</sup> The offender would need to be able to form an awareness of a substantial risk of causing the subject depicted in the private material distress or harm. The Bill was withdrawn in 2017, following the second reading of the Bill, leaving prosecutors without an alternative federal offence tailored more specifically to managing some forms of cyberbullying, particularly revenge porn or non-consensual sexting.

### *Ragging and Eve Teasing*

Ragging and Eve teasing are not discrete behaviours prevalent in the Australian education context or wider community. If they were, both would be largely encompassed by existing Australian criminal laws. Given the physical nature of ragging, 'assault' provisions provided for under state laws would be particularly significant. In relation to Eve teasing, equally, state laws are likely to govern the conduct. For example,

<sup>65</sup> Commonwealth Parliament, Explanatory Memorandum, Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No 2) 2004 (Cth) s 474.15.

<sup>66</sup> Consideration of the meanings of the terms *harass*, *threaten* and *offensive* suggests that the term *offensive* is given the broadest meaning and relates to resentful displeasure.

<sup>67</sup> Defined as material depicting the subject engaging in a sexual pose or sexual activity (whether or not in the presence of other persons); or in a manner or context that is sexual; or a sexual organ or the anal region of the subject; or the breasts of the subject who is female, or who is transgender or an intersex person who identifies as female; and a reasonable person in the position of the subject would expect the material to be kept private.

<sup>68</sup> Criminal Code Amendment (Private Sexual Material) Bill 2016 s 474.24E.

in South Australia the offence of ‘disorderly or offensive conduct or language’<sup>69</sup> could encapsulate less serious instances, whilst ‘assault’ provisions may govern the more heinous forms of Eve teasing which result in physical harm. Online manifestations of Eve teasing would be subject to the host of state and federal laws enacted to govern instances of technological misuse.

## **Civil Laws in Australia**

### *Tort of Negligence*

Another significant facet of the law relevant in a bullying and cyberbullying context relates to the duty of care owed by school authorities. At common law, schools owe students a duty of care to prevent and respond appropriately to instances of both on- and off-campus bullying. State legislation too may have a role to play in this regard. For example, in South Australia, the Civil Liability Act 1936 (SA) prescribes that a school authority must take ‘reasonable precautions’ against risk of harm – effective implementation of school anti-bullying policies and response measures may be particularly relevant in establishing the taking of ‘reasonable precautions’. A successful negligence claim hinges upon proof of the victim sustaining a recognised psychiatric illness<sup>70</sup> as a result of the school’s negligence (Spyrou, 2015).

### *Defamation*

Pursuing a claim for defamation can, in some instances, be a useful avenue of legal redress for a victim of bullying where the perpetrator makes repeated defamatory (slandering) statements about the victim to a third party.<sup>71</sup> It may be relevant in relation to cyberbullying given the unprecedented growth of online platforms, such as social media, publicly accessible blogs and websites and video-sharing websites. It is important to note, however, that civil actions can incur significant associated legal costs. Further, where a perpetrator does not have assets (highly likely when the perpetrator is a young person), there may be little financial incentive for a victim to pursue a claim for compensatory damages.

<sup>69</sup> Summary Offences Act 1953 (SA) s 7. <sup>70</sup> Civil Liability Act 1936 (SA) s 53(2).

<sup>71</sup> Defamation Act 2005 (SA).

*Self-Regulation on Social Media*

If content posted on social media sites is not illegal,<sup>72</sup> content is not regulated by the law per se. Thus, content posted to social media is largely self-regulated. When individuals sign up to use social media (e.g. Facebook, Twitter), they agree to set terms and conditions of use in the form of a Statement of Rights and Responsibilities or Terms of Use Agreement. A user must agree before being able to 'sign up for' (access and use) the site. This is a contractual agreement between the user and the social media provider. As such, violation of any of the terms of the contract enables the social media provider to sever the agreement – remove infringing content and terminate its contract with the user. Users themselves have the ability to make use of the inbuilt safety tools provided by the social media site. For example, Facebook give users the power to report offensive content and for administrators to vet messages before they go online and to block certain users from posting content. A practical issue of concern for victims of cyberbullying via social media relates to the provider's delayed response. User-end reports of abuse often prove not to be a 'quick fix' for content removal. To that end, the Office of the eSafety Commissioner was established.<sup>73</sup>

*eSafety Commissioner*

The Office of the eSafety Commissioner (<https://www.esafety.gov.au>) functions as a central point of contact for online safety issues for all Australians. It operates as a civil enforcement mechanism which has particular relevance for managing serious instances of cyberbullying targeting children, image-based abuse and removing illegal content.<sup>74</sup> The website provides a user-friendly reporting portal, as well as a range of self-help resources. Once a complaint is received the instance is investigated and assessed.<sup>75</sup> Factors such as the nature of the material, the age of the target and the statutory classification of the social media service are taken into account. To that end, one of the Commissioner's primary roles is to communicate with social media services where cyberbullying material (material an ordinary, reasonable person would consider seriously threatening, intimidating, harassing or humiliating where the material<sup>76</sup>) is not removed and request its removal. Whether social media providers

<sup>72</sup> Illegal as deemed under state or federal criminal law provisions or the Broadcasting Services Act 1992 (Cth).

<sup>73</sup> Enhancing Online Safety Act 2015 (Cth).

<sup>74</sup> Office of the eSafety Commissioner: [www.esafety.gov.au/about-the-office/role-of-the-office](http://www.esafety.gov.au/about-the-office/role-of-the-office).

<sup>75</sup> Enhancing Online Safety Act 2015 (Cth), s 19. <sup>76</sup> *Ibid.*, s 5.

can be compelled to remove the material will depend upon how the service is classified under the legislation.<sup>77</sup> Where the service is a ‘tier 1’ service, the Commissioner can, within 48 hours of a request for removal being made, provide the service with a written notice requesting removal, but has no direct removal powers.<sup>78</sup> Where the service is a ‘tier 2’ service (e.g. Facebook), the Commissioner can, within 48 hours of a request for removal being made, provide the service with a written notice requesting removal. Failure to remove the content can result in the service entering into an enforceable undertaking or the issuing of a court-ordered injunction and/or fine.<sup>79</sup>

Arguably the most useful aspect of this regime is the statutory power conferred upon the Commissioner to communicate with social media services to *request the removal of cyberbullying material* and, where circumstances permit, *enforce* content removal. The more expediently harmful online content is removed, the less public humiliation need be endured by an Australian child targeted by the material. It is imperative that teachers have a sound understanding of this regime so that they are empowered to direct students in their care who are victims of cyberbullying to the resources available or suggest to parents that they assist with the complaints process.

### **Pre-service Teachers, Bullying and the Law**

Laws provide a community with parameters on how members of that community ought to behave, and inform as to the types of conduct which fall foul of acceptable standards. Knowledge of laws provides victims of conduct deemed a crime with just deserts (criminal law) and facilitates legal redress in instances where a legal right has been infringed (civil law). Teachers are placed in a special position of power and care over school-children and students in higher education contexts. Not only are they responsible for facilitating the communication of knowledge, they also provide students in their care with guidance on behavioural norms in the classroom and, to an extent, beyond the school gates. In order to manage bullying behaviours, whether online or offline, teachers ought to be empowered with regard to the laws which govern these behaviours. Having a comprehensive understanding of legal frameworks and the corresponding avenues of redress will enable teachers, and indeed PSTs, to make informed decisions about *appropriate disciplinary action* and when the matter should be *reported to the police* for investigation, and

<sup>77</sup> Social media services will be classified as a tier 1 or tier 2 service – *ibid.*, Part 4.

<sup>78</sup> *Ibid.*, s 29(2). <sup>79</sup> *Ibid.*, s 35(1), s 36, s 46–48.

provide some initial guidance as to *where victims in their care may be able to seek external assistance*.

The following section provides insight into PSTs' understanding of bullying and the law in India and Australia. The data provide useful perspectives as to whether PSTs currently have a sound understanding of legal frameworks and whether they feel confident about responding to instances of bullying and cyberbullying.

### *Methodology*

This study employed an exploratory, mixed-method, cross-sectional survey design. Questionnaires were developed from various existing published studies, and included novel questions to gather culturally relevant knowledge about bullying. Australian PSTs were invited by email distribution lists to complete online surveys (N = 178), and Indian PSTs, from two states (Punjab and Tamil Nadu), completed hard copy versions in English, in the presence of a local researcher (N = 510). A coding sheet facilitated data entry on both continents, and the data files were subsequently merged and entered into the IBM SPSS Statistics package, V 23. Qualitative responses to open-ended questions were reviewed by four independent researchers for trustworthiness and legitimacy of the ideas (micro themes), and macro themes were subsequently noted. (For fuller details on the sample and procedure, see Chapter 13.)

The Human Research Ethics Committee of the University of South Australia granted approval to conduct anonymous surveys about cyberbullying in both countries. The principals/heads of school/relevant authorities of each Indian university/training college were approached and consent was granted for PSTs to participate. Completion of the questionnaire indicated individual informed consent.

### *Results and Discussion*

*Qualitative* Open text boxes in the surveys enabled participants to respond and expand on key questions concerning their understanding of bullying, why they thought it occurred and whether there should be a criminal law against it. Data were analysed thematically (Braun & Clarke, 2006), within and across each group, to gather insights into the lived realities of each cohort. Exemplar quotes are included to illustrate some of the emerging key themes.

Overall, when asked *why bullying occurs*, a plethora of reasons were provided across all contexts which had remarkable similarity relating to being targeted due to interpersonal differences, social and socio-

economic differences and cultural differences. A view held by many related to cultural diversity/status:

*Because of stratification in society* (Punjab, Male, 22 years).

*Diversity will always make for bullying* (Australia, Male, 20 years).

*Bullying occurs because too many people don't understand how to accept people's differences* (Australia, Female, 19 years).

*Culture favours it . . . stronger expected to dominate the weak* (Punjab, Female, 23 years).

*Belonging to a lower caste is the cause of being bullied* (Punjab, Female, 22 years).

*Education system, caste, religion . . .* (Tamil Nadu, Male, 23 years).

*A lack of understanding for diversity in our country, especially for others' situations* (Australia, Female, 21 years).

Others tapped into the more specific elements relating to bullying per se, for example power, repetition and deliberate intent to harm:

*When people need to feel that they have power over others* (Australia, Female, 22 years).

*Repeated, negative behaviour* (Tamil Nadu, Female, 32 years).

*Students from high-class families show off their status by teas[ing] students from lower castes* (Punjab, Male, 23 years).

Comments relating to academic status were noteworthy, suggesting power and status comes with good academic performance:

*Sense of inferiority among academically poor students leads them to low confidence . . . that's why they become the victims of bullying* (Punjab, Female, 23 years).

In addition were those who felt that bullying was under-recognised or not recognised at all:

*[It is] a non-recognised menace* (Punjab, Male, 23 years).

*Awareness is important* (Tamil Nadu, Male, 36 years).

In relation to whether there should be a criminal law addressing bullying, there was considerable variation of responses both in support and against. Quotations that follow capture the essence of the core responses: that having a criminal law will make no difference, will be preventative and teach children something, will make adults take greater responsibility for their children's behaviours or will uphold children's rights.

*I cannot see that a juvenile criminal record would be of any use in reforming the behaviour of bullies. Furthermore I doubt criminal convictions for bullying are unlikely to prevent recidivism. However, I see considerable value in adopting a restorative justice approach to rebuilding relationships in bullying cases* (Australia, Female, 31 years).

*If there is a criminal law against . . . some students may think twice before bullying* (Australia, Female, 44 years).

*The laws should only be applied to adults, such as parents and teachers who failed to control . . . their children* (Punjab, Male, 23 years).

*A specific law against bullying is required to make the bullies realise the consequences of their wrongdoings. It is necessary to tell the bullies that they cannot escape the consequences of their wrong actions. Moreover, making and implementing a law against bullying will contribute in making schools safe and a happy place for the children* (Punjab, Male, 21 years).

*There should be a specific criminal law which regulates bullying because the rights of children need to be upheld* (Australia, Female, 20 years).

Some see no need for a specific law:

*I don't think we need a specific criminal law regulating bullying, as it should be covered in other laws* (Australia, Female, 45 years).

Fundamentally, though, this final sentiment provides some insight into the dilemma concerning the use of criminal law and bullying amongst children:

*Students are not criminals* (Tamil Nadu, Male, 24 years).

*Quantitative* Although cross-cultural differences might be anticipated, nuances within the Indian cultural setting (Punjab/north and Tamil Nadu/south) were evident. This was not unexpected, given there are currently no mandatory or uniform bullying regulations or policies in India. Teachers' awareness of bullying and understanding of approaches for dealing with bullying incidents has been shown to be a key factor in building teacher confidence to intervene in incidents of bullying (Ahtola et al., 2012), hence, the knowledge and confidence which PSTs bring to the profession regarding bullying-related laws were examined.

Within the Indian context, results indicated the level of awareness of bullying-related laws was statistically associated with geographic region, with PSTs from the Tamil region significantly more likely to have an awareness of bullying related laws (see Table 14.1).

Results from the Indian context also revealed a significant association between region and support for bullying-related laws. Although PSTs from the Punjab region were less likely to be aware of bullying-related laws, they were more likely to be in favour of a specific criminal law that regulates bullying (see Table 14.2), and also were similarly more likely to be supportive of a specific criminal law that regulates cyberbullying (see Table 14.3).

The need for and the value of bullying laws, including an explicit cyberbullying law, is, however, a contested issue amongst stakeholders (Katz et al., 2014). There is potential for personal experiences of bullying, in particular, to shape an individual's position on the matter. This significant association was evident in the current study, with Indian PSTs

Table 14.1 *Awareness of bullying-related law by geographic region in India (numbers; percentages in parentheses)*

	Awareness of bullying-related laws	
	Yes	No
Punjab PSTs	1 (0.7%)	208 (65.2%)
Tamil PSTs	143 (99.3%)	111 (34.8%)

$\chi^2 = 166.7$ ,  $df = 1$ ,  $\Phi = 0.60$ .  $p < 0.001$

Table 14.2 *Geographic region in India by support for criminal law which regulates bullying (numbers; percentages in parentheses)*

	Support for criminal law which regulates bullying	
	Yes	No
Punjab PSTs	162 (54.4%)	22 (19.1%)
Tamil PSTs	136 (45.6%)	93 (80.9%)

$\chi^2 = 41.7$ ,  $df = 1$ .  $\Phi = 0.32$ .  $p < 0.001$

Table 14.3 *Geographic region in India by support for criminal law which regulates cyberbullying (numbers; percentages in parentheses)*

	Support for specific criminal law that regulates cyberbullying	
	Yes	No
Punjab PSTs	191 (55.8%)	18 (18.8%)
Tamil PSTs	151 (44.2%)	78 (81.3%)

$\chi^2 = 41.4$ ,  $df = 1$ .  $\Phi = 0.31$ .  $p < 0.001$

who had been victims of bullying at school more likely to support a law against bullying (see Table 14.4). Furthermore, Indian PSTs who supported a law against bullying also supported a law specific to cyberbullying (see Table 14.5).

Scrutiny of PSTs in the Australian context revealed no significant associations between awareness of laws and a PST's perceived capability/competence or confidence in dealing with school bullying. Consistent with findings from the Indian subsample, Australian PSTs who supported a law for bullying also supported a law specific to cyberbullying (see Table 14.6).

Table 14.4 *Indian pre-service teachers' experience of bullying by support for criminal law that regulates bullying (numbers; percentages in parentheses)*

	Support for criminal law which regulates bullying	
	Yes	No
Indian PSTs who had been victims of bullying	158 (54.7%)	36 (31.3%)
Indian PSTs who had not been victims of bullying	53 (18.3%)	45 (39.1%)
Indian PSTs who were unsure if they had been victims of bullying	78 (27.0%)	34 (29.6%)

$$\chi^2 = 24.2, df = 2. \text{Cramer's } V = 0.25. p < 0.001$$

Table 14.5 *Indian pre-service teachers' support of a criminal law which regulates bullying by support for criminal law that regulates cyberbullying (numbers; percentages in parentheses)*

	Support for a criminal law which regulates cyberbullying	
	Yes	No
Indian PSTs who support a criminal law which regulates bullying	269 (87.9%)	21 (22.3%)
Indian PSTs who do not support a criminal law which regulates bullying	37 (12.1%)	73 (77.7%)

$$\chi^2 = 155.1, df = 1. \text{Phi} = 0.62. p < 0.001$$

**Table 14.6** *Australian pre-service teachers' support of a criminal law which regulates bullying by support for a criminal law which regulates cyberbullying (numbers; percentages in parentheses)*

	Support for a criminal law which regulates cyberbullying	
	Yes	No
Australian PSTs who support a criminal law which regulates bullying	67 (80.7%)	4 (22.3%)
Australian PSTs who do not support a criminal law which regulates bullying	16 (19.3%)	17 (81.0%)

$\chi^2 = 29.4$ ,  $df = 1$ .  $\Phi = 0.53$ .  $p < 0.001$

**Table 14.7** *Country of origin by attitudes towards schools' role in managing and responding to school bullying (numbers; percentages in parentheses)*

	Schools' role in managing and responding to school bullying	
	Schools don't have a role	Schools have a role
Australia PSTs	0 (0.0%)	108 (21.6%)
Indian PSTs	114 (100.0%)	391 (78.4%)

$\chi^2 = 30.0$ ,  $df = 1$ .  $\Phi = -0.22$ .  $p < 0.001$

### **Australia and India Comparisons**

When reflecting on where the responsibility lies for addressing bullying in school settings, there is an imperative to understand PSTs' views on the matter, as it speaks to their future capacity to prevent and actively respond to the issue. Results highlighted significant differences both cross-culturally and within the Indian cultural context. Specifically, a significant association was evident between country of origin and a school's role in managing and responding to school bullying (see Table 14.7).

Whilst Australian PSTs were more likely to indicate that schools did have a role in managing and responding to school bullying, Indian PSTs

Table 14.8 *Indian geographic region by attitudes towards schools' role in managing and responding to school bullying (numbers; percentages in parentheses)*

	Schools' role in managing and responding to school bullying	
	Schools don't have a role	Schools have a role
Punjab PSTs	0 (0.0%)	208 (53.5%)
Tamil PSTs	114 (100.0%)	181 (46.5%)

$$\chi^2 = 103.9, df = 1. \text{Phi} = -0.46. p < 0.001$$

were less likely to feel that schools had a role to play. Examination of these views by Indian geographic region revealed that PSTs from the Punjab region were more likely than PSTs from the Tamil region to indicate that schools had a role to play in addressing school bullying (see Table 14.8).

This is interesting, given that PSTs from Tamil Nadu reported a greater awareness of bullying-related laws, yet appear more likely to exonerate schools from having a role in addressing school bullying. It is possible that PSTs from the Tamil Nadu region feel that the issue is one which lies within the legal rather than educational domain, and is a finding that potentially aligns with the study by Ramirez and colleagues (2016). This will be important to follow up now that there are changes to the laws in India and the Central Board of Secondary Education (2015) *recommendation that teacher training courses mandatorily include topics on sensitisation and prevention of bullying in schools*. There are important opportunities here to explore and discuss the place of preventative bullying measures that focus on an educative process, as opposed to reactive response, which potentially could align more closely to legal interventions.

PSTs in both contexts clearly need to engage more with the legal frameworks in place so that they can enhance their capacity to successfully intervene and provide accurate information when they move out into schools as graduate teachers, to be able to make informed decisions about *appropriate disciplinary action* and when the matter should be *reported to the police* for investigation, and to provide some initial guidance as to *where victims in their care may be able to seek external assistance*.

### **Strengths and Limitations**

A particular strength of this research is that it is the first time that a comparative study has explored Australian and Indian PSTs' understanding of bullying and the relative legal context in each jurisdiction. Successfully employing a mixed-method approach across two different cultural contexts has enabled a comprehensive exploration of the issue within and between the two settings: Australia and India (Tamil Nadu and Punjab). Dedicated efforts were taken to appropriately contextualise scenarios for each cultural setting (not reported in this chapter), which along with research processes and protocols was validated by colleagues from India.

Furthermore, the doctrinal research methodology employed in this study provided the basis for analysing the operation of potentially applicable laws and means of legal redress relevant to bullying and cyberbullying. Having a sound understanding of the statutory requirements of identified laws and the operation of common law doctrines underpins the legitimacy of research which explores how particular conduct is governed by way of the law. The comprehensive exploratory legal research conducted so as to inform the analysis presented in this study is a strength. What is important to keep in mind is that the question as to whether a particular instance of bullying or cyberbullying infringes upon a law or provides a victim with civil redress must be considered in light of the specific facts of each case – there is no definitive 'black or white' answer.

There are also some limitations of the study that need to be noted. As a cross-sectional study, data have been collected at a single point in time. Additionally, given the nature of the sampling approach (purposive and convenience), there is potential for response and non-response bias, and as such, conclusions cannot be drawn regarding the representativeness of the sample. This further restricts any generalisations being drawn in relation to PSTs across all Indian and Australian states and jurisdictions.

Limited access to digital resources and possible language barriers also needed consideration. In recognising that technology was not easily accessible in some Indian locations, surveys were disseminated via two different modes: Indian PSTs completed print surveys, whilst Australian PSTs completed surveys online. Every endeavour was made to ensure consistency in the delivery of the protocols/instructions during the dissemination of surveys; however, there may have been language difficulties when completing the survey for the Indian PSTs, as the survey was completed in English. This language limitation did impact recruitment and sample selection as only PSTs from English-speaking training colleges/universities could participate.

## Conclusions and Recommendations

Overall, this study has shed light on two countries' legal contexts in regard to bullying and cyberbullying, and PSTs' views and understanding in relation to the law. The preparation of new teachers in terms of their knowledge and understanding about bullying and the laws pertaining to the same as they step into the profession in future years is paramount, particularly if they are to feel confident and competent in their ability to operate in and around the legal requirements of their relevant systems. One clear recommendation relates to empowering teachers and PSTs through the provision of accurate and relevant legal knowledge and advice, so that they can make informed decisions about appropriate disciplinary action and when the matter should be reported to police for investigation, and how to provide initial advice and guidance as to where victims in their care may be able to seek external assistance.

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