
DISEASE-SPECIFIC LEGISLATION IN COMPARATIVE PERSPECTIVE: EXAMINING HIV AND CANCER LAWS IN INDIA, AUSTRALIA, AND JAPAN

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ABSTRACT

The intersection of law and public health embodies how governments respond to disease burdens within their jurisdictions. Disease-specific legislation aims not only to manage clinical or epidemiological outcomes but also to protect human rights, reduce stigma, and ensure equitable access to care. This paper examines legal frameworks targeting Human Immunodeficiency Virus (HIV) and cancer in **India, Australia, and Japan**—three countries with diverse legal cultures, healthcare systems, and disease burdens. While India and Japan have enacted distinct laws addressing HIV and cancer control, Australia's approach is embedded in broader public health legislation with strong human rights protections. A comparative analysis reveals shared goals, divergent strategies, and persistent challenges in balancing public health imperatives with civil liberties.

Disease-specific legislation reflects how states respond to particular public health crises through targeted statutory frameworks. This paper comparatively examines HIV and cancer laws in India, Australia, and Japan. HIV, as a communicable disease historically marked by stigma and discrimination, has generated rights-based statutory interventions, especially in India. Cancer, a non-communicable disease (NCD), has prompted structured public health planning, particularly in Japan through dedicated legislation. Australia adopts a decentralised, rights-oriented public health model rather than disease-specific criminal statutes. Through statutory analysis and judicial interpretation, this paper evaluates the balance between public health objectives, human rights protections, and policy effectiveness.

Keywords: Legal- HIV- Cancer- Disease- Examining- Legislation

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1. Introduction

Disease-specific legislation refers to laws designed to address the prevention, control, and management of particular diseases or health conditions. Historically, acute infectious diseases such as smallpox and plague were regulated through mandatory reporting and quarantine measures. In modern times, legislation has expanded to include non-communicable diseases such as cancer and chronic infectious diseases such as HIV, reflecting evolving epidemiological priorities and human rights norms.

The legal responses to HIV and cancer vary significantly across jurisdictions. HIV, a transmissible infectious disease with deep histories of stigma and discrimination, has prompted laws that often intersect with criminal law, public health law, and anti-discrimination protections. Conversely, cancer control legislation tends to focus on prevention, screening, research, healthcare infrastructure, and patient support systems given its non-communicable nature and long disease course.

This paper analyses the legislative frameworks pertaining to HIV and cancer in India, Australia, and Japan, highlighting similarities and differences in legal approaches, the role of human rights, and the efficacy of legal scaffolding in impacting health outcomes.

Law has long functioned as an instrument of public health governance. While early disease control laws focused primarily on quarantine and surveillance, modern legal frameworks increasingly integrate human rights norms, access to healthcare, and non-discrimination principles. Disease-specific legislation represents a focused legal response tailored to the epidemiological, social, and ethical complexities of particular diseases.

HIV and cancer present contrasting regulatory challenges. HIV, as a transmissible infectious disease, intersects with criminal law, confidentiality, privacy, and anti-discrimination protections. Cancer, as a leading cause of mortality globally, requires coordinated prevention, screening, research, and financing frameworks.

This paper undertakes a comparative study of:

- **The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017**

- The **Cancer Control Act**
- The **Public Health Act 2010** (as representative of Australia's approach)
- The **Infectious Diseases Control Law**

The analysis also incorporates key judicial decisions shaping HIV-related rights in India and comparative perspectives from Australia and Japan.

2. HIV-Specific Legislation

2.1 India

India's journey toward HIV-specific legislation culminated in the enactment of the **Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017** ("HIV/AIDS Act"). This landmark law aims to prevent and control HIV and AIDS while safeguarding the rights of persons living with HIV (PLHIV).³

Key features include:

- **Non-discrimination protections:** The Act prohibits discrimination against PLHIV in employment, education, healthcare, insurance, housing, and public services.
- **Informed consent and confidentiality:** HIV testing, treatment, and research require explicit informed consent, and unauthorized disclosure of status is prohibited absent a court order.
- **Anti-hate provisions:** The law criminalises propagation of hate against PLHIV, with fines and imprisonment for violators.
- **State obligations:** Government authorities are mandated to provide prevention, testing, counselling, and treatment services.

Before this Act, HIV responses in India largely relied on general public health laws and anti-

³ Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 in India provides for HIV prevention, anti-discrimination, confidentiality, and state obligations.

discrimination principles arose primarily from constitutional litigation and policy measures.⁴

Despite its progressive framework, critics argue the Act's implementation mechanisms and language may inadequately address systemic stigma and structural inequalities facing PLHIV, particularly in rural areas or among key populations.⁵

India enacted the HIV/AIDS Act in 2017 after years of civil society advocacy. The statute was influenced by constitutional jurisprudence protecting dignity, equality, and privacy under Articles 14, 19, and 21 of the Constitution of India.

1. Statutory Framework

The Act provides:

- Prohibition of discrimination in employment, healthcare, education, housing, insurance.
- Mandatory informed consent for HIV testing.
- Strict confidentiality protections.
- Government obligation to provide treatment and prevention services.
- Establishment of Ombudsman for grievance redressal.

This statute marked a shift from purely programmatic responses (National AIDS Control Programme) to enforceable rights.

2. Judicial Developments

Before statutory enactment, Indian courts played a crucial role.

In **Mr. X v. Hospital Z**, the Supreme Court dealt with disclosure of HIV status. The Court allowed limited disclosure where a third party's life was at risk but emphasised confidentiality

⁴ India's HIV legislative evolution was rooted in draft bills initiated in the early 2000s and civil society advocacy.

⁵ The Act's provisions include prohibiting discrimination, requiring informed consent, and penalising hate propagation against persons with HIV/AIDS

as a general rule.⁶ This case highlighted tension between privacy and public health.

In **MX of Bombay Indian Inhabitant v. M/s. ZY**, termination of employment due to HIV status was held discriminatory.⁷ The Court recognised HIV status as protected under constitutional equality principles.

More recently, privacy jurisprudence in **Justice K.S. Puttaswamy (Retd.) v. Union of India** reinforced informational privacy, strengthening the legal basis for confidentiality protections under the HIV Act.⁸

Further, in **Navtej Singh Johar v. Union of India**, decriminalisation of consensual same-sex relations indirectly improved the legal environment for HIV prevention among key populations.⁹

3. Critical Evaluation

The HIV/AIDS Act represents one of the most rights-protective HIV statutes globally. However, implementation challenges remain:

- Insurance sector non-compliance.
- Persistent stigma in rural healthcare.
- Limited awareness of Ombudsman mechanisms.

Despite progressive drafting, enforcement capacity determines real impact.

2.2 Australia

Australia has not enacted HIV-specific national legislation that singularly governs prevention and control. Rather, HIV is addressed within broader public health statutes at the state and territory level, and through a human rights-oriented public health approach that emphasises voluntary testing, confidentiality, and community engagement.

⁶ Mr. X v. Hospital Z, (1998) 8 SCC 296

⁷ MX of Bombay Indian Inhabitant v. M/s. ZY, AIR 1997 Bom 406

⁸ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1

⁹ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1

- **Public health legislation:** In every Australian jurisdiction, HIV is a notifiable condition (de-identified data) in public health acts, enabling surveillance without breaching confidentiality.
- **Decriminalisation:** There is no specific criminal law for HIV transmission; prosecutions for exposure or transmission are handled under general criminal provisions or public health laws where relevant. Australia repealed its last HIV-specific criminalisation laws in 2015.
- **Human rights focus:** Legal reforms in Australia reflect a commitment to human rights, and community organisations have played a central role in shaping supportive legal environments.

Australian law underscores how public health protections and human rights can be integrated to manage infectious diseases without overly punitive approaches.¹⁰

Australia does not have a single HIV-specific statute. Instead, HIV regulation is embedded within state-based public health laws such as the **Public Health Act 2010**.

1. Public Health Model

Key features include:

- HIV as a notifiable condition (de-identified reporting).
- Public health orders for individuals posing transmission risks.
- Emphasis on voluntary testing and community engagement.

Australia's approach has historically rejected HIV-specific criminalisation, preferring general criminal law where intentional transmission occurs.

2. Case Law

In **R v. Cuerrier**, although Canadian, courts internationally including Australia referenced

¹⁰ Australia's approach to HIV law emphasises public health statutes with notifications and human rights protections without a single HIV-specific criminal statute

principles concerning non-disclosure and consent.¹¹

Australian courts have addressed HIV transmission under general criminal law provisions, such as grievous bodily harm statutes. However, judicial reasoning often emphasises intent and recklessness rather than mere status.

Australia's High Court has also strengthened anti-discrimination norms through cases such as **IW v City of Perth**, reinforcing equality principles applicable in health discrimination contexts.¹²

3. Evaluation

Australia's decentralised model demonstrates:

- High testing and treatment uptake.
- Reduced stigma compared to punitive jurisdictions.
- Strong community-led prevention frameworks.

However, inconsistency between states may create variability in enforcement.

2.3 Japan

Japan's HIV legislative history reflects shifting paradigms in public health regulation. Initially, the **Law Concerning the Prevention of Acquired Immunodeficiency Syndrome (AIDS Prevention Law)** was enacted in 1989 to formalise reporting systems. It was later abolished and its provisions were incorporated into the **Act on Prevention of Infectious Diseases and Medical Care for Patients with Infectious Diseases (New Law on Infectious Diseases)** in 1998. Under this framework, HIV falls under the category of Infectious Disease Type IV.¹³

This integration signifies Japan's preference for managing HIV within general infectious disease legislation rather than through a separate disease-specific statute. The approach focuses on epidemiological surveillance, reporting, and clinical management rather than explicit anti-

¹¹ R v. Cuierrier, [1998] 2 SCR 371 (Supreme Court of Canada).

¹² IW v City of Perth (1997) 191 CLR 1 (High Court of Australia).

¹³ Japan integrated its HIV legislation into a broader infectious disease law, reflecting a focus on epidemiological management rather than standalone rights-based statute.

discrimination protections seen in India or the civil liberties emphasis in Australia.

Japan initially enacted the AIDS Prevention Law (1989), later integrated into the **Infectious Diseases Control Law**.

1. Legislative Approach

HIV is classified as a Category IV infectious disease. The law emphasises:

- Mandatory reporting.
- Epidemiological surveillance.
- Public health management.

Unlike India, Japan's framework does not contain extensive standalone anti-discrimination provisions specific to HIV.

2. Judicial and Historical Context

Japan's public health legal history includes controversial quarantine policies concerning other diseases, such as leprosy.

In **Kumamoto Leprosy Lawsuit**, the Kumamoto District Court ruled that Japan's leprosy segregation policy was unconstitutional.¹⁴ Although not an HIV case, it shaped Japan's cautious approach toward coercive infectious disease regulation.

This historical background influences contemporary infectious disease governance, including HIV policy.

3. Cancer-Related Legislation

Unlike HIV, which is an infectious disease with significant legal, social, and ethical dimensions, cancer is a non-communicable disease that requires multifaceted policy responses encompassing prevention, screening, treatment, research, and patient support. Most countries do not have "cancer laws" in the same sense as HIV legislation but instead adopt **cancer**

¹⁴ Kumamoto District Court, Leprosy Segregation Case (2001).

control acts or national programmes that are statutory or policy-based.

3.1 India

India has not enacted a dedicated “cancer law” comparable to HIV/AIDS legislation. Instead, cancer control activities operate through policy frameworks and broader national health programmes.

- **National Cancer Control Programme (NCCP):** Initiated in 1975 and later integrated into the **National Programme for Prevention and Control of Cancer, Diabetes, Cardiovascular Diseases and Stroke (NPCDCS)**, it aims to strengthen prevention, early detection, treatment, and palliative care.
- **Regulatory laws:** Laws regulating tobacco use (e.g., **Cigarettes and Other Tobacco Products Act, 2003**) help address major cancer risk factors by prohibiting tobacco advertising, mandating health warnings, and restricting sales.
- **Voluntary cancer notification:** Unlike many developed countries, cancer reporting in India is **not compulsory**, leading to gaps in surveillance.

In the absence of a specific statutory cancer law, legal instruments in India operate through a combination of national programmes, public health policies, and risk-factor control legislation such as tobacco control laws.¹⁵

India lacks a dedicated cancer statute. Instead, cancer governance operates through policy mechanisms like the National Programme for Prevention and Control of Cancer, Diabetes, Cardiovascular Diseases and Stroke (NPCDCS).

Risk-factor legislation includes the **Cigarettes and Other Tobacco Products Act, 2003**.

Judicial Interventions

In **Murli S. Deora v. Union of India**, the Supreme Court banned smoking in public places prior to comprehensive statutory regulation.¹⁶ This case demonstrates judicial activism in

¹⁵ India’s National Cancer Control Programme and the NPCDCS serve as central cancer policy frameworks

¹⁶ *Murli S. Deora v. Union of India*, (2001) 8 SCC 765

cancer prevention via tobacco control.

Further, in **Union of India v. Viplav Sharma**, the Court enforced pictorial health warnings on tobacco packaging, strengthening cancer prevention measures.¹⁷

These decisions illustrate how Indian courts compensate for legislative gaps in disease-specific frameworks.

3.2 Australia

Australia's cancer control framework is embedded within national healthcare and cancer policy rather than a single dedicated statute. It includes:

- **National Cancer Control Plans:** Strategic plans designed by health authorities that coordinate prevention, early detection, and treatment.
- **Universal health coverage:** Australian public health insurance (Medicare) provides cost-effective access to cancer screening and care.
- **Tobacco legislation:** Stringent laws such as plain packaging and advertising bans to reduce tobacco-related cancers.

Australia's legislative approach emphasises **population-based strategies**, backed by legal measures that influence environmental and behavioural risk factors contributing to cancer. Australia integrates cancer governance into national healthcare systems and tobacco regulation laws.

Notably, plain packaging laws were upheld in **JT International SA v Commonwealth**, where the High Court upheld the Tobacco Plain Packaging Act.¹⁸ This case confirmed the constitutionality of aggressive public health regulation targeting cancer risk factors. Australia's approach reflects structural prevention rather than disease-specific codification.

3.3 Japan

Japan adopted the **Cancer Control Act (Act No. 98)** in 2006, which provides a statutory basis

¹⁷ Union of India v. Viplav Sharma, (2016) 9 SCC 749

¹⁸ JT International SA v Commonwealth (2012) 250 CLR 1 (HCA).

for comprehensive cancer control. The law mandates:

- **Cancer Control Promotion Council:** An advisory body that develops basic plans to promote cancer control.
- **Basic cancer control plans:** Governmental plans that define goals for cancer prevention, screening, treatment, research, and patient support.
- **Prefectural plans:** Local government plans that align with national objectives.

Japan's legislation represents an example of a statutory cancer control framework that organises national efforts to reduce cancer mortality and improve the quality of life of patients.¹⁹

Japan enacted the **Cancer Control Act**, establishing:

- National Cancer Control Promotion Plan.
- Prefectural cancer plans.
- Research funding mandates.
- Palliative care frameworks.

The Act institutionalises long-term cancer governance.

While limited litigation surrounds the Act, administrative law mechanisms ensure accountability in implementing cancer plans.

Japan's model demonstrates statutory commitment to coordinated NCD control.

4. Comparative Analysis

4.1 Public Health Goals vs Civil Liberties

The legal approaches to HIV and cancer reveal distinct emphases:

¹⁹ Japan's Cancer Control Act establishes statutory mechanisms for nationwide cancer planning.

- **HIV laws** often grapple with stigma, discrimination, and individual autonomy alongside disease control. India's HIV/AIDS Act exemplifies explicit anti-discrimination protections, while Australia emphasizes rights-based public health policies. Japan integrates HIV within general infectious disease regulation with less focus on civil rights.
- **Cancer control laws** focus less on individual liberties and more on coordinated prevention and treatment infrastructures. Japan's Cancer Control Act legislatively mandates systemic planning, whereas India's cancer responses are policy-driven under broader programmes.

4.2 Human Rights and Anti-Discrimination

Human rights concerns are central in HIV legislative frameworks. India's statutory protections reflect international commitments to dignity and non-discrimination. Australia's framework similarly rejects punitive criminalisation and foregrounds confidentiality and voluntary engagement. Japan, while managing HIV under general infectious disease law, faces critiques over limited specific anti-discrimination protections.

Cancer control legislation, by contrast, typically does not explicitly foreground civil liberties in the same way, but indirectly supports rights through improved access to care and prevention.

4.3 Legislative Efficacy and Implementation

The existence of legislation does not automatically translate to effective disease control:

- **Implementation gaps** persist in India's HIV law due to resource constraints and ingrained stigma.
- Australia's state-based public health frameworks benefit from strong community participation but encounter varying uptake of preventive measures.
- Japan's cancer control plans need ongoing evaluation to measure impact on mortality and screening coverage.
- India: Courts active in expanding rights.

- Australia: Courts uphold strong regulatory measures.
- Japan: Courts cautious, influenced by past public health overreach.
- HIV success correlates strongly with anti-stigma protections and community involvement. Cancer outcomes correlate with structured prevention and financing systems.

5. Challenges and Future Directions

5.1 Harmonising Law and Public Health Practice

Disease-specific legislation must be regularly updated to reflect epidemiological changes and scientific advancements. HIV legal frameworks should adapt to prevention innovations (e.g., pre-exposure prophylaxis) and integrate anti-stigma components effectively. Cancer legislation requires improved data systems, compulsory notification, and integration with broader health financing reforms.

5.2 Strengthening Rights Protections

Legislation should reinforce civil rights while enabling public health goals. This is especially relevant for HIV where discrimination undermines prevention and care. Cancer control frameworks should incorporate patient autonomy, informed consent, and protections against discrimination due to cancer diagnosis or survivorship.

5.3 Cross-National Learning and Global Standards

Comparative legal studies offer lessons: Australia's rights-based public health model and Japan's statutory cancer control act provide frameworks that other countries can adapt to local contexts. Harmonising global standards, including through WHO recommendations, can support equitable law-making for disease control.

6. Conclusion

Disease-specific legislation examining HIV and cancer in India, Australia, and Japan highlights the interplay between public health, law, and human rights. While each jurisdiction reflects unique historical and legal cultures, common themes emerge: the need for anti-discrimination

protections, coordinated national strategies, and adequate implementation mechanisms. Future legal reforms must balance effective disease control with individual rights and equity, leveraging law as a catalyst for comprehensive health protection.

Disease-specific legislation reflects broader constitutional values and public health philosophies. India's HIV/AIDS Act represents a landmark rights-based statute shaped by constitutional jurisprudence. Australia demonstrates that rights-respecting public health laws can succeed without disease-specific criminalisation. Japan illustrates the strength of statutory planning in cancer control but a more administrative approach to HIV.

Future reforms should integrate:

- Strong anti-discrimination mechanisms.
- Robust implementation oversight.
- Harmonisation of rights and epidemiological governance.

Law, when designed and enforced effectively, serves as both shield and instrument—protecting individual dignity while advancing collective health.