LAW AND SOCIAL POLICY IN SOCIAL AND HUMAN SERVICES

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WHAT IS LAW?

- **Syariah**: Commands, prohibitions, guidance and principles that Allah has addressed to mankind pertaining to their conduct in this world and in the next.

- **Natural Law**: Morality, conscience and justice are significance considerations in law. What is just is legal, what is unjust is not.

- **Legal Positivism**: Law is a command of the sovereign enforceable by sanction.
WHAT IS LAW?

- **Theory of Rules:** Law is a system of rule designed to ensure that people live in peace and harmony. Embodies the rights, duties and obligations of the people and failure to observe will result in sanction.

- **Jowitt’s Dictionary of Law:** Law is a rule of action to which men are obliged to make their conduct conformable; a command, enforced by some sanction, to acts or forbearance of a class.
RELATIONSHIP BETWEEN LAW AND ETHICS

- The law is government-enforced rules...ethics go "above and beyond" the law to encompass what is right and wrong.
- Sometimes, the law does not always give "justice" (because justice is subjective and everyone can have a different opinion of what is right and wrong, which is why a judge's judgment is needed in legal cases).

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• Ethics are subjective whereas laws are (on the whole) objective, which is why some people may believe that their ethics tell them that something is right but the law may say that it's illegal - example: euthanasia.

• Law removes people's biases (it removes ethics from the equation) and it attempts to put all peoples' judgment on a level playing field.
ETHICS AND SHS

- Forms the basic of legal expectations governing the behavior of SHS workers.
- The law can looks into when evaluating a complaint of malpractice or violation of the standard care.
- Stresses on the importance of human relationships and spell out inappropriate boundary violations and the fundamental responsibilities of protecting client’s privacy.
- Requires SHS workers to behave ethically and to practice within their areas of competence.

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THEORETICAL FOUNDATIONS OF ETHICS IN SHS

- Designed to provide *compensation* to people injured directly as a result of a SHS worker’s action or omissions.
- To *regulate* poor practice and to *remove* incompetent SHS workers.
- Do not directly affect practice but can give impact on the lives of SHS clients.
- Can be weapon for social change when it is used creatively by social workers to address social problems.
SOCIAL FUNCTIONS OF LAW

- Pervasive influence in our life affecting almost everything we do.
  1. Social control
  2. Conflict resolution
  3. Facilitative
  4. Integrative
  5. Social engineering
  6. Social welfare

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PUBLIC POLICY

- Can be generally defined as the course of action or inaction taken by governmental entities (the decisions of government) with regard to a particular issue or set of issues.
- Courses of action, regulatory measures, laws, and funding priorities concerning a given topic promulgated by a governmental entity or its representatives.
- Is commonly embodied in constitutions, legislative acts, and judicial decisions.

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There are three parts to public policy-making: problems, players, and the policy.

The problem is the issue that needs to be addressed. The player is the individual or group that is influential in forming a plan to address the problem in question. Policy is the finalized course of action decided upon by the government.

Public policy is also made by leaders of religious and cultural institutions.
TYPES OF PUBLIC POLICY

- Regulatory policy
- Redistributive policy
- Distributive policy
- Security policy
SOCIAL POLICY

- Guidelines and interventions for the changing, maintenance or creation of living conditions that are conducive to human welfare.
- Implemented to render social justice and to achieve these needs: material, emotional and security, social recognition.
- A part of public policy that deals with social issues.
- Social policy is very much influenced by the ideological leanings of the government.
In 1993, due to ineffective healthcare policies, the Clinton administration sought to implement a policy that would bring about a national healthcare system. As part of the policies being considered, the US federal government would protect the healthcare consumer’s rights, consumers would be able to form alliances to obtain better healthcare prices, and caregivers would be required to provide fair healthcare packages. Players involved in the policy-making process included lobbying groups and politicians. While some changes were made to healthcare provisions by legislators, the policies advocated by the Clinton administration were not put into effect as a result of political differences.
IMPORTANT AREAS OF SOCIAL POLICY

- The welfare state
- Unemployment insurance
- Pensions
- Healthcare
- Education policy
- Social care

- Social housing
- Social exclusion
- Crime and criminal justice
- Labour regulation

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The umbrella policy which encompasses the philosophy and various national social development policies is founded on the Constitution, Rukunegara (Pillars of Nationhood), Vision 2020 and national commitments at the international level.
GOAL STATEMENT

To create a progressive and established Malaysian society with every member having the opportunity to develop his/her potential to the optimum in a healthy social environment based on the qualities of unity, resilience, democracy, morality, tolerance, progress, care, fairness and equity in accordance with the goal of Vision 2020.
POLICY STATEMENT

Social development policy founded on noble values and the improvement of human potential to achieve social integrity and stability, national fortitude and well-being for a progressive and established Malaysian society.

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GENERAL OBJECTIVE

• To ensure that every individual, family and community, regardless of ethnic group, religion, culture, gender and political belief as well as region is able to participate and contribute to national development as well as enjoy continuous contentment in life.
SPECIFIC OBJECTIVES

- To ensure that the basic necessities of the individual, family and community are provided for.
- To develop and empower humans for life.
- To consolidate and develop the social support system and services.
- To generate multisector synergy.

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IMPLEMENTATION OF NSP

- **National Social Council**
  - **National Social Development Committee**
    - **Ministerial Level Social Development Working Committee**
      - **State Development Council**
        - **State Development Working Committee**
          - **District/Division Development Working Committee**
            - **Social Reference Centre (SRC)**
THE RELATIONSHIP BETWEEN LAW AND SHS

- Law has both direct and indirect effects on human behaviour and human services.
- **In direct sense** - the law tells people what behaviour is legal, what behaviour is illegal and what the consequences are for illegal behaviour.
- In other words, the law codifies many of society’s rules of conduct.

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• Indirectly - the existence of laws that proscribe certain individual’s behaviours influences some people to behave prosocially (for common good).

• The laws also influences the behaviour of functioning of groups or society as a whole in regard to its individual member.

• In other words, it defines individual rights and society’s obligation.
THE IMPORTANCE OF LAW AND POLICY TO SHS

- Social workers deals with intangible things as human relationships in a field where there exist practically no methods of measuring results, where few criteria have been set up to determine what constitutes good social work.'

Louise Odencrantz (1929)
• After 70 years, the legal system had influenced the SHS profession to develop more explicit and empirical standard for practice.

• Today, SHS must interact with the law on many levels and competent practice now requires social workers to have basic knowledge of legal issues.
HOW LAW/LEGAL SYSTEM RELATES TO SHS

• Legal Structures – shaped the context of direct practice.

• Legal Rules – detailing how a SHS worker handles certain things.

• Legal Expectation – establishing standard for professional practice.

• Others – Clients bring their legal issues and SHS worker directly practice in legal system
FACTORS THAT INCREASE INTERACTION BETWEEN LEGAL SYSTEM AND HUMAN SERVICES SYSTEM

1. Greater density of urban and suburban population has increased the probability that people will infringed on the rights of others.

2. Behaviour that once was considered sinful or unlawful was now is explained by human service professional as being due to psychological or social causes for which an individual may have no responsibility.
CONTINUE

3. Under the *paren patria doctrine*, the state is seen as having the obligation to intervene in the lives of minors (or in the lives of others who are considered unable to make decisions that are in their own best interest) who might become community problems.

4. There has been increased financial support by public, private and charitable organisations for lawyers to become involved in litigation over human services issues.

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5. Since the 1950s, much media attention has been given to legal groundbreaking human services cases.

6. There has been an increased familiarity among judges and lawyers with the subfields of human services and a corresponding increase in their interactions with those systems.
7. Increase concern with the constitutional rights of citizen, particularly, in regard to the concepts of involuntary treatment or incarceration, paralleling the concerns over civil rights issues such as racial discrimination.
THERAPEUTIC STATE

• Much of the concern of the judiciary system regarding human services has focused on the development of the phenomenon called therapeutic state.

• *Therapeutic state* refers to a legal system based on the notion that socially proscribed behaviour (including legal acts) is often not a function of free will but rather is determined by psychological, social, or medical causes.

• Thus, it should not be punished but treated or rehabilitated.

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CONTINUE

• **Criticism** - although the notion seems enlightened, it results in a number of abuses of personal liberty of the people to whom it is applied.

• **Major problem** - this approach has led to a situation in which indeterminate sentences of incarceration in restrictive human services settings have supplanted determinate sentences in jails or prisons.

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• E.g. Thousands of individuals around the US are incarcerated in mental hospitals, juvenile detention homes, and mental retardation facilities for an indeterminate period until they are believed to be cured of whatever problem supposedly led them to engage in criminal behaviour.
1. Voluntary versus involuntary services.
2. Due process and equal protection.
3. The right to services.
4. The right to refuse services.
5. The least drastic or restrictive alternative.
6. The privilege of confidential communication.
7. The duty to warn.
VOLUNTARY VERSUS INVOLUNTARY SERVICES

- **Voluntary** - client make an informed decision that help is needed and that they want to change.
- Client set their own goals and objectives and enter into a written or verbal contract (service plan) with the service provider on what will happen.
- Client can terminate the relationship and services at will.

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• **Involuntary** - people other that the clients decided that the client needs services and the client is **required** to have the service.

• The clients are powerless in deciding what kind of services they will receive and some authority figure sets the goals and objectives for how and when the service will be terminated.
DUE PROCESS AND EQUAL PROTECTION

• The Constitution provides that if government activities affects citizens in a way that would deprive them of liberty or property, this must be done with due process of law.

• Requires a hearing before an impartial entity. with the opportunities of witnesses to testify, with representation of the client by an attorney/counsel and with the opportunity for an appeal.
CONTINUE

• E.g. school administrators have to specify in writing those offences for which children can be discipline, must notify the children that the rule is going to be applied, must conduct hearing at which the children and their parents can be present when an action such as expulsion is considered.

• Equal protection - agency cannot treat one group differently from another when both are entitled to the same treatment.
THE RIGHTS TO SERVICES

• Accepted assumption in the US that individuals who are involuntarily deprived of freedom (unable to care for themselves or dangerous to others) have the right to helping services (Schopp, 2001).

• The facilities must demonstrate that they are really providing the service for which the client was committed.

• Currently - the rights to receive services has been extended to community setting.
THE RIGHT TO REFUSE SERVICES

• Case law has confirmed that clients do have the right to refuse services.

• E.g. If a patient in mental hospital refuses to take a prescribed medication, it is illegal to force him to do so unless a court of law judges the patient to be incompetent to make such a decision.

• In practice, this patient right is routinely violated - many courts seem to be overly willing to declare person incompetent.

• Controversial issue...
THE LEAST DRASTIC OR RESTRICTIVE ALTERNATIVE

• Patients or clients have the right to be helped in an effective manner that is least restrictive.

• Depend on the availability of community alternative. E.g. patient who can manage in the community while receiving out-patient treatment should not be hospitalized.

• Correctional setting, mental hospitals, sheltered care setting etc. exist simply because there are no less restrictive alternative in the community.

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Trust and confidentiality between client and service provider is crucial in helping relationships.

Confidentiality is not a right but a privilege.

Some HS workers feel that confidentiality should be absolute; others believe that in some situations confidentiality must be breached.

The law permits breach of confidentiality in certain circumstances - e.g. it is a legal duty to report evidence of child or elder abuse.

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THE DUTY TO WARN

• Based on the notion that helping service providers who have good evidence that the client intends to harm someone must warn the intended victim –


• Requirement - the service provider in good conscience believes the threats may be acted upon (Kermani and Drob, 1987).

• Failure to warn - may be sued in negligence.

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Some professionals object that the requirement to warn is fraught with problems:

a) The difficulty of being sure that the client really means the threats.

b) The duty to warn may compromise the trust relationship with clients who make threats but who actually would not act upon - the therapists will warn more often than necessary out of fear of being sued if they make mistake.

In spite of these issues, the duty to warn remains a legal requirement.
ETHICAL STANDARD FOR HUMAN SERVICE WORKER

- Treat clients with dignity and respect.
- Help every client to the best of your ability.
- Respect the client’s privacy.
- Maintain confidential relationship.
- Engage only in activities in which you are competent.
• Maintain a professional helping relationship.
• Continue to upgrade your skills.
• Protect your community against the unethical practices of others.
• Respect your colleagues and relate to them in a professional manner.
VALUE CONTEXT OF SHS

• Determine by many systems – socio-cultural milieu (society), agency settings, clients and social workers.

• Systems intertwine – interact creates a unique hierarchy of competing values and conflicting loyalties.

• Examples:
  1. ‘Value’ influence how clients and practitioners define the issues or problems.
2. Approaches to resolving social problems – reflecting opposing community and professional priorities.

3. Appropriateness of intervention methods prescribe by agency conflict with the practitioners professional opinions.

4. Family disagreement about the right solution place practitioners in a position when balancing issues of self-determination.
VALUE CONTEXT OF SHS

Socio-political-cultural context

Agency context

Client system

SHS worker

Problem

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ETHICAL DILEMMA

Confidential and privacy.
- Limited, duty to warn, need guidance.

Self determination and paternalism.
- SW respect and promote the client’s right for self determination
- Assist clients in their efforts to identify and clarify their goals
Boundary issues.

- Need to maintain clear boundaries in the relationship with clients
- Boundary violations can be damaging to clients (dual or multiple relationships)
- Occurs when SHS worker related to clients in more than one way, whether sexual, social, professional or business (inappropriate or unethical)
- SHS worker take advantage of their clients to further their own interests.

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Divided loyalties and conflict of interest.

- Some boundary issues involve situations where SHS worker feel caught between their obligation to their clients and some other party.
- SHS worker unsure to whom they owe their primary duty.
- SHS worker need to choose between their client’s interest and those of some other party.

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CONTINUE

Professionalism and personal values.

- Conflict between SHS values and owns.

SHS values and clients’ value.

- Must carefully examine the nature of their own values and the potential impact of those values on the way they serve clients.
- Stereotypes, prejudice, biases.
CONTINUE

Whistle blowing.

- Occasionally encounter wrong doing by colleagues
- Colleagues may be involve in unethical or illegal conduct
- Professional colleagues often feel loyal to one another and reluctant to ‘blow the whistle’
- Obligation to the profession and public make them difficult to stand quietly on the sidelines when they have reason to believe that a colleagues misconduct is causing harm to clients and other parties.

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Manage care

- Carefully administered health and human services design to enhance fiscal responsibility and cost containment
- SHS worker may face ethical choice in serving the clients:
  ✓ Insurance benefit exhausted.
  ✓ Providing inadequate or insufficient services to the clients whose problem need more intervention.
  ✓ Which clients will be assigned priority?

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