

Accessibility of Psychiatric Assessment for Capital Crime Offenders with Mental Illness in China

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Abstract

This article investigates the accessibility of psychiatric assessment for capital crime offenders in China. At present, only the judicial authority agencies can order an assessment whereas suspects' requests for mental evaluation are subject to the approval of the former, who, in practice, tend to accept requests from suspects bearing misdemeanor charges, but are inclined to refuse to conduct an assessment when dealing with felony offenses. This article begins with an introduction to the legislation related to psychiatric assessment in China, and is followed by an investigation of the factors militating against China's judicial authority from ordering a psychiatric assessment for capital crime offenders raising the defense of insanity. It then examines the public stigma in Chinese society and concludes that the punitive attitude toward mental illness will continue influencing stakeholders' choices in the context of psychiatric assessment as long as China's judicial system emphasizes the superiority of social stability over individual human rights.

Keywords: Mental illness; Psychiatric assessment; the Death penalty; China

1. Introduction

Li Haiwei, a 29-year-old farmer claiming insanity in trial, was sentenced to life imprisonment in November 2015. Li came from an impoverished village in northeast China. He was arrested in 2014 for assaulting a man whom he suspected was having an affair with his ex-wife. During the investigation, his father requested the local police to conduct a psychiatric assessment for Li: there was a family history of mental illness on Li's mother's side; Li had become paranoid and aggressive since 2009, which eventually led to his divorce. Unfortunately no assessment was ordered as his father could not afford the assessment fee; Li was then deemed sane and held in a detention center awaiting trial. There he participated in a jailbreak.

On an early morning of September 2014, Li followed two other inmates, escaping from the detention center after subduing a guard, who later died of suffocation. He was swiftly captured due to running directly towards his home. When asked why he had chosen the most predictable route, he explained that he had missed his son so much that he just wanted to go back home to see him. Li's father requested for an assessment for his son again and was ready to pay. But both the police and the procuratorate rejected his request this time stating that a mentally ill person would not have the capacity to break out of jail (Li & Fu, 2014). Li was charged with breaking out of jail using violence and intentional homicide, and faced the death penalty. In court, the other two jail breakers described Li as a "psychotic" and confirmed that they did not disclose their plan to Li but lured him to participate by promising to help him go home. Li also mentioned that he had been given psychotropic medicine every day at the detention centre.

The judges, however, stated that was not relevant to this case. Legal experts rendered their opinions on various occasions that it is very likely that Li would be sentenced to death (as cited in Mei & Wang, 2014; Zhang, 2015). Fortunately, Li passed the death penalty eventually as he was deemed accomplice. His mental state, however, was not considered by the judges when making their final decision. Li's story raises significant questions regarding the legal treatment of criminal offenders with mental illness in China, specifically, the role and accessibility of psychiatric assessment in the Chinese criminal justice system. In a capital punishment retentionist country, psychiatric assessment can be used as an effective tool to protect this special population from the death penalty. Presently in China, only judicial authority agencies can initiate a psychiatric assessment in criminal cases whereas offenders' requests for a mental evaluation are subject to the former's approval. This article intends to identify and map the web of primary stakeholders involved in decision making with respect to the initiation of psychiatric assessments in China, indicate how conflicts arise amongst the actors when dealing with capital crime offenders who might have mental illness, compare their responses, and explain the background considerations leading to their choices.

This article will begin with an introduction to the evolution of the legislations related to psychiatric assessment in modern China, and will be followed by an investigation of the factors militating against China's judicial authority ordering a psychiatric assessment for capital crime offenders raising the defense of insanity. It will then examine the public stigma in Chinese society and conclude with some practicable recommendations.

2. Legislation Regarding Psychiatric Assessment in China

It was stated in China's first modern criminal law enforced in 1935 that "an act committed by a person who is insane is not punishable". But no specific provisions could be found in contemporary criminal procedure law regarding how to determine whether an offender was, in fact, insane. In practice, when necessary, judges or public prosecutors would designate one or more expert witnesses to provide their opinions on offenders' mental state. Unfortunately, after years of continuous warfare, no more than 60 qualified psychiatrists were available in China by 1949 serving a population of over 500 million (Munro, 2000).

The Communist Party took over power at the end of 1949 and repealed the previous legislation system entirely. No criminal law existed from then for about 30 years because the whole country was jammed into social and political turmoil for decades (Zhao, 2012). Psychiatry barely obtained any support from the authorities; mentally ill people were deemed "political lunatics" and were imprisoned or even executed (Munro, 2000). The first criminal law of the new Chinese regime was enacted in 1979 and stipulated that mental illness can be used as a defense to exempt criminal offenders from punishment (Art. 15). The amendment of the criminal law in 1996 further stressed in Art. 18 that mentally ill offenders are free of criminal responsibility fully or in part depending on the offenders' mental conditions while committing the offense, and added that the offenders' mental status should be assessed for exemption or mitigation. Accordingly, the term "mental (illness) evaluation" appeared for the first time in Chinese criminal procedure law amended in the same year (Arts. 120 & 122). This principle has been kept in the subsequent amendments.

However, one cannot find a specific definition for "mental illness" in Chinese criminal law or in any other related regulations. A widely accepted theory in Chinese criminology is that mental illness falls into three categories, namely, offenders who have been professionally diagnosed with psychosis, those who suffer from moderate or severe intellectual deficiency, or those who show psychotic equivalents (Hu, 1998; Lin, 2008; Chen et al., 2011). Non-psychotic disorders were suggested to be added to the mental illness stipulation in the revision of the criminal law, but the commonly accepted theory prevailed. Mental illness is narrowly defined in practice, and mentally ill offenders are usually referred to as being psychotic or retarded individuals in China.

Presently in China, there were no specific provisions describing standard procedures of a psychiatric evaluation, especially who is entitled to starting the process. Psychiatric assessment is classified as "forensic identification and evaluation" and subject to the general official-dominated model procedures (Guo, 2013). That is to say, only judicial authority agencies, including the police, the people's procuratorates, and the people's courts, can initiate a psychiatric assessment in the criminal legal process. Offenders, on the other hand, cannot order an evaluation by themselves. They can, at various stages in the criminal legal process, request the judicial authority agency in charge for an assessment. If their request is rejected, however, there is no channel for them to appeal. When an assessment is set up upon the offenders' request, normally the costs shall be borne by the offenders.

If the offenders are not satisfied with the assessment result, they can, only during a court session, apply for a re-assessment, which needs to be approved by the judges, and the judges' decision is final. When an offender is found not to bear criminal liability on account of his/her mental illness, s/he is turned over to his/her family or guardian for supervision and control, and the latter are supposed to make appropriate medical treatment arrangement for the offender. If the offender is found to have severely harmed people in violence and is believed to continue to pose a potential threat to the public, the court may order or approve the request of the police or the procuratorates for compulsory hospitalization. However, there are no detailed guidelines on how to proceed with the mandatory treatment, and in which situations the patients can be released.

Studies indicate that, in practice, most offenders' requests for mental evaluation have been approved during the investigation and prosecution process (Chen et al., 2011; Guo, 2013). What deserves attention is that the police and the procuratorates tend to accept requests from suspects bearing misdemeanor charges, but are inclined to deny a psychiatric assessment when dealing with felony offenses (Chen & Cheng, 2012). If no mental evaluation was conducted during investigation and prosecution, the chances that a psychiatric assessment is ordered in the first trial would be very low, as exemplified in Li's story above. This pattern has been observed in some controversial serious criminal cases in recent years, in which, regardless of some psychiatrists' questioning about the mental status of the offenders, the offenders were executed because of the seriousness of their crimes (Sun, 2008; Yan, 2009; Guo, 2010; Chen & Cheng, 2012).

3. Stakeholders' Role in Initiating Mental Evaluation Process

In practice, most psychiatric assessments are carried out during the police investigation period. Empirical studies have found that over 90% of the assessments were ordered by local police (Qi & Kang, 2006; Wu et al., 2010; Chen et al., 2011; Li & Ouyang, 2013). Compared with prosecutors and judges, local police have more advantages in detecting the mental abnormalities of offenders.

China's police system has a unique strategy known as mass-line policing, which includes two types of surveillance organizations, namely neighborhood committees and internal security units. A neighborhood committee consists of volunteers who are familiar with the conditions of a residential area and most inhabitants in that area, and functions as a security safeguard, public health inspector and conflict resolver for the area (Shaw, 1996). An internal security unit is located within the workplace. All work units are required to set up an internal division to supervise the security measures in the workplace, and to provide information regarding their employees to the police, in order to assist official investigations. Both neighborhood committees and internal security units are directly connected to individual police officers and are accredited to being their eyes and ears within the community (Ma, 2014). Depending on the close cooperation and assistance of the neighborhood committees and internal security units, the local police can have an effective surveillance over the residents in its jurisdictional area without frequent patrol or home visits. Research shows that around 40% of the offenders sent for mental examination are community residents who had a mental illness history that the local police was aware of (Zhou et al., 2010; Li & Ouyang, 2013).

Nevertheless, it is hard to initiate a psychiatric assessment for the investigation of capital crime cases. Pressure from the government authorities can prevent the local police from initiating a psychiatric assessment even when there is reasonable doubt about the offender's mental state. That can be glimpsed in the case below.

Zheng Minsheng, a 42 year old laid-off community doctor, stabbed eight elementary school students to death and injured five other students on 23 March 2010 in Nanping, a city in northwestern China. Informed of the accident, the provincial governor and the secretary of the provincial Party Committee instructed the local police to control the suspect immediately, pacify the victims' families, and maintain social stability (Jiang, 2010). Nanping's municipal government then set up an "investigate fast, try fast, and sentence hard" principle for this case (Li, 2010; Ma, 2010). Accordingly, the local police arrested Zheng on March 24th, and completed all investigation and interrogation by the early morning of March 25th. Although the media reported that Zheng might have mental health issues based on their interviews with Zheng's relatives and neighbors, no mental evaluation was arranged by the police for him. The local police and the municipal government explained during the press briefing on March 26th that Zheng had no psychiatric history and therefore was deemed mentally well (Cai, 2010). This opinion became the final conclusion on Zheng's mental state. Zheng was sentenced to death and executed in 37 days.

Victim families' grief, and the fear and anger of the public can also form a kind of invisible but intense pressure on local police. In Zheng's case, for instance, his family believed that he might be suffering from paranoid schizophrenia because he kept telling them that his past colleagues were framing him for a murder (Cai, 2010). But later on, the disclosure of the details of Zheng's atrocity and cruelty in the murder and Zheng's confession that he was planning to kill 30 children fueled the public's rage; Zheng's relatives and acquaintances became silent. After Zheng's identity was disclosed, Zheng's brothers got fired, because their employers could not bear the pressure from the local community; his family hid in a secret place fearing that they might face revenge (Cai, 2010). If Zheng was assessed as being insane, he would have been sent back home under his family's supervision or to a psychiatric facility for involuntary medical treatment. However, such a decision might have caused mass protest in the local community which is deemed detrimental to social stability. Undoubtedly, Nanping police had little will to conduct an assessment for Zheng while under the pressure from both the government authorities and the public. Zheng's relatives told the media: "Even if he is insane, he has to be executed. He killed eight kids. Heaven forbids!" (Cai, 2010).

Nanping police's response in this case is not uncommon. When an extremely heinous crime is committed, the local police will be immediately exposed to greater scrutiny and become the center of public attention. Political intervention usually occurs at this stage stressing that social order reigns supreme among priorities. Ordering a mental examination for a capital crime offender, especially an offender caught red-handed, will be viewed by the public as the police offering a chance to walk away to the offender. The local police deem it a safer choice to presume the offender sane and transfer the case to the procuratorate. After all, both the prosecutors and the judges can order a psychiatric assessment if they have reasonable doubt about the offender's mental conditions. Unfortunately, neither of the two actors have immunity against external pressures when dealing with high-profile cases.

According to statistics, less than 5% of psychiatric assessments were initiated by the people's procuratorates (Qi & Kang, 2006; Chen & Cheng, 2012). There are three main reasons why the procuratorates appeared less proactive when compared to the police. Firstly, prosecutors build their cases based on the evidence and information provided by the police. Unlike the local police, the prosecutors do not have a close connection with local residents, therefore they usually depend on the police's opinions of the suspects' mental status. Secondly, even if they have observed some signs implying that an assessment is needed, the usual practice is that the prosecutors shall return the case to the local police for either dismissal or supplementary investigations. Thirdly, the procuratorates confront the political pressure in an identical manner as the local police do. Initiating a psychiatric assessment for a suspect whom the police have deemed sane may lead the procuratorates to bear the external pressure solely, which they tend to avoid (Liu, 2011; Chen & Cheng, 2012).

Nonetheless, the procuratorates have not been criticized harshly for their inactive attitude in starting mental examinations. In fact, some scholars have questioned whether initiating psychiatric assessment by the police or the procuratorates would undermine their primary duties. In the Chinese criminal system, the police are to reveal crimes and catch wrongdoers, while the procuratorates are to make charges against the suspects and prove them guilty. Considering that wrongdoers may walk free without receiving any punishment after a psychiatric assessment, critics argue that initiating mental evaluations by the police or the prosecutors is against their bounden duties (Huang, 2010; Liu, 2011).

So far, most criticisms toward China's official-dominated model in forensic psychiatric assessment have focused on the judges' inappropriate application of their discretionary power (Xiao & Zhang, 2006; Guo, 2010; Yin, 2013). Statistical data show that only 5% of psychiatric assessments were ordered by the courts, and the judges were even more hesitant to approve a mental evaluation for defendants whose crime may qualify for the death penalty (Chen & Cheng, 2012). Most discussions in academia revolve around whether the judges have misjudged the necessity of a mental examination or held bias against capital crime defendants. First instance courts usually have to bear more pressure than local police and the procurator rates. Criminal investigations are confidential to the public whereas criminal litigation proceedings are comparatively transparent in today's China. Once a public prosecution is raised in the court, the judges are put front and centre. The fact that first instance courts are financed by the local governments makes the judges inclined to comply with the local authorities' directions (Chen & Cheng, 2012). Research has found that first instance courts rarely initiate psychiatric assessments in capital crime cases (Chen et al., 2011; Chen & Cheng, 2012).

Rather, most assessments were ordered by the second instance courts or even by the Supreme People's Court during its review of death sentences, which, as commentators point out, is because the two superior courts generally are beyond the boundary of the local influential forces, and can take a comparatively neutral standpoint accordingly (Chen & Cheng, 2012; Yin, 2013).

But when dealing with extremely serious criminal cases, the courts at higher levels may also not have much resistance against external pressures. The theory of harmonious society has been integrated into the guidelines for the Chinese judicial system since the beginning of this century. Supreme People's Court has stressed that the fundamental duties of the people's courts are to solve social conflicts and maintain social stability, and the courts should shift their work focus to dedicating themselves to social harmony. Theoretically, the courts should exercise their judicial powers independently without any interference. In practice, however, the Party apparatus in China holds an overlying influence on how trials should be run and concluded. In Zheng's case, for instance, following the "try fast, sentence hard" order issued by the municipal party leaders, the local court designated a collegial panel and intervened in advance (Cai, 2010), meaning the panel had a pre-trial review of the case materials supplied by the procuratorate. This "decision first, trial later" pattern used to be a popular practice in China which made most criminal trials become a mere formality (Sun, 1990; Lewis, 2014).

Although mental illness is a legitimate mitigating factor, it can turn into an aggravating factor for consideration in the sentencing process when social order and public safety are the paramount concern of the courts. When hearing and sentencing serious criminal cases, the judges are expected to take the objective of protecting public safety, eliminating continuing dangerousness, and preventing mass protests into account. In China's current practice, most of the mentally ill offenders who have been found not criminally responsible would be released to society. Criminological research has found that severe mental illness is often associated with low socioeconomic status, dangerous neighborhoods, and problematic social relationships (Durrant, 2013). It is not uncommon that serious crime offenders who have mental health issues come from a low-income family, therefore cannot afford the medical treatment they need, yet there are no sufficient and appropriate care and support services provided by the government and the community. At present, only the psychiatric hospitals run by the Public Security Bureau, which are known collectively as "AnKang hospital", would take the offenders who are ordered by the courts for compulsory hospitalization. Unfortunately, there are only 25 AnKang hospitals in China having 10,000 beds in total whereas the annual increase of mentally ill offenders is about the same number (Feng, 2014).

Once assessed as bearing no criminal responsibilities, most of the offenders with mental illness shall return home. Without access to affordable medical treatment and care, it is very probable that their symptoms deteriorate and these people become a potential threat to the public, which no doubt constitutes a destabilizing factor to society. If, by any chance, they cause any severe harm and/or damage again, the agencies which set them free might be identified and held accountable. A senior psychiatrist once criticized China's current flawed forensic psychiatric assessment system by saying: "when dealing with offenders who might be mentally ill but with low social standing, sentencing or even killing them is convenient." (Cai, 2006). This may sound too cynical, but it seems likely that there are not many good alternatives for this special population.

The tragic story below exemplifies that in today's China, public safety and societal harmony are deemed superior to mentally ill offenders' individual human rights: on an evening of September 2011, three young children (3, 6 and 7 years old respectively) were found dead in a house in a small village in Southern China. The police soon found out that the children were murdered by the home owner, Liu. The three kids were playing with Liu's daughter that afternoon. Later on when Liu's daughter wanted to play outside with them, Liu stopped her, fearing that she might be trafficked. While his daughter was arguing with him, Liu strangled her very hard and made her pass out. Liu thought his daughter was dead and became furious. He blamed the other three kids for her death, and hit all of them to death using sticks. The court ordered a psychiatric assessment for him and he was diagnosed as suffering from schizophrenia when he committed the crime, and deemed partially responsible. However, he was still sentenced to death. The presiding judge in this case explained in an interview that, the primary factor they considered in sentencing was the nature and the seriousness of the offence, which merited the death penalty, and their second concern was the continuing dangerousness of the offender (Pan et al., 2012). From the judges' perspective, Liu's killing of three innocent young children was extremely heinous, and he himself was also very dangerous to the public, therefore Liu's mental condition could not diminish the punishment inflicted on him.

Nevertheless, in most cases the judges turn down a defendant's request for mental evaluation at their discretion. Empirical studies indicate that, although they may be subject to political pressure in some high-profile criminal cases, the judges make their refusal decisions mostly because they do not see the necessity (Chen et al., 2011; Guo, 2012; Guo, 2013). However, psychiatry experts often question whether judges have sufficient knowledge to do the "pre-screening" (Sun, 2008; Yin, 2013; Guo, 2013). Some common features have been observed between the cases in which the court's rejection of a psychiatric assessment request sparked wide discussions among psychiatry professionals: the offenders' motive and criminal methods were extremely abnormal, which raises reasonable doubt about the offenders' mental state; the judges, on the other hand, stressed that there was no ground to initiate a mental examination, because the offenders committed the crime in an organized way, and appeared in good spirits during the investigation and during trial (Sun, 2008; Guo, 2010; Chen & Cheng, 2012). It is not uncommon that, in practice, most judges are prone to pre-assessing the mental state of the offenders based on their stereotyped understanding of mental illness.

Commentators point out that there is a pervasive misunderstanding among the populace and the judicial authority agencies that forensic psychiatric assessment conclusions have a legal binding effect on court decisions (Sun, 2008; Pearson, 1992; Bian & Guo, 2012). I argue that this misunderstanding was created by the law and strengthened in judicial practice. Besides giving a medical diagnosis of the assessed offender's psychiatric conditions, psychiatrists are required to determine whether the offender has full, partial or nil criminal responsibility, and psychiatric assessment conclusions had been regarded as verdict in law until 2013. The probative value of psychiatric assessment has been soundly strengthened because, in practice, over 90% of the assessment results have been adopted by the courts, in which, at least 60% of evaluation conclusions are positive (Yang, 2009; Wu et al., 2010; Hou et al., 2010; Zheng et al., 2013), meaning that over a half of the offenders assessed have been exempt or partially exempt from criminal responsibility.

As indicated earlier, offenders who claim insanity in China do not have to confront a dilemma: either go to jail or stay in a psychiatric hospital. Rather, their chances to be set free are very high. Naturally, some offenders tend to take advantage of psychiatric assessment to be released. Without appropriate supervision, the superior status of psychiatric assessment is likely to cause malpractice and/or corruption (Wang, 2010). Presently, most local courts in China have established an internal policy to limit the right to initiate psychiatric assessment to the judicial committee, member of which are appointed by the local people's congresses. That is to say, neither the judges nor the chief justice of the court have to bear the pressure and the risks for approving a mental evaluation for a defendant who is deemed sane by both the police and the procuratorates.

One may question whether the defense lawyers had performed their duties to the fullest in the above-mentioned cases, and moreover, what defense lawyers' role and influence is in the criminal justice system in China. Actually, defense lawyers in today's China are also subject to the political and public pressures. Prior to the privatization of law firms in the early 1990s, there were no independent defense lawyers in China because the legal profession had worked as state legal workers and their salaries were paid by the government (Feinerman, 1987; Komaiko & Que, 2009). Instead of providing legal expertise assistance to the public in court proceedings, Chinese lawyers by then had collaborated with the judicial authorities and served the interest of the government (Sheng, 2004). Prior to 2012, defense lawyers were not permitted to obtain access to any judicial documents or their clients until the procuratorates had taken over the cases. Defense lawyers used to be given approximately one week to prepare for the trial, and their job mainly focused on finding mitigation factors to plead for lighter sentence in court. The amendment of the Chinese criminal procedure law in 2012 allowed a defense lawyer to meet his/her client after the first interrogation or on the first day of detention for the first time. In practice, however, the judicial activities of defense lawyers for capital crime offenders can still be restricted by the authorities (Sheng, 2004; Ran, 2008; Komaiko & Que, 2009).

In practice, most lawyers, do not have proper psychiatric knowledge and/or have not received special trainings for effectively raising insanity defense on behalf of their clients. They often failed to provide sufficient evidence to convince the judicial authority agencies to initiate a psychiatric assessment (Guo, 2010). In addition, some lawyers' personal stereotyped perception of mental illness may encourage their responsiveness to the judicial authority's opinions. For example, in a controversial cop-killing case in 2008, regardless of the offender's family history of mental illness, his legal aid lawyer said in an interview prior to the first trial that he thought his client was mentally well, and predicted that very possibly his client would be sentenced to death (Wang, 2008).

Defense lawyers have to compromise when confronting external pressures. A psychiatrist disclosed in his blog that, upon hearing of the Nanping school massacre, most people around him doubted if any lawyer would dare defend the killer Zheng because the lawyer might be assaulted by victims' families (Psychological Space-Time Blog). Certainly Zheng was assigned a legal aid defense lawyer, however, the lawyer's performance in trial implied that he was too constrained to fully defend Zheng. The lawyer did not request a mental examination for Zheng; instead of searching for further evidence to save Zheng's life or to lessen his culpability, he declared in court on behalf of Zheng that he had no objection to the criminal evidence provided by the prosecutor and the accusation of intentional homicide. The only defense he prepared for Zheng was to remind the court that Zheng had made a complete confession of his crime and requested that the judges take Zheng's cooperative attitude into consideration when sentencing.

Reviewing articles and media reports about capital crime cases in which the mental state of the offenders was controversial, one can easily find that most criticisms against the current psychiatric assessment practice are from the academics. The public, on the contrary, have few objections to the application of punishment in most cases to the serious crime offenders regardless of their mental health problems. In the Nanping killing case, the silence of the local community including the offender's family to the offender's mental state is a good demonstration. Even for those who were found not able to bear criminal responsibility, it is not uncommon that their families and/or guardians refused to take them back. In practice, the judicial agencies had to either transfer the offenders to a psychiatric hospital or keep them in detention centres (Zhang et al., 2005; Tang, 2008). No legislation has addressed how these people, who were abandoned by their families and society, should be managed.

Most Chinese people hold a complex attitude toward mentally ill lawbreakers. On one hand, they are aware of related stimulations in the criminal law and acknowledge that offenders with mental illness should not be (fully) punished. In daily life, they tend to avoid having any conflict with the person who they think is abnormal, because "madman kills without consequence". On the other hand, psychiatric assessment, in their eyes, is a tool to help offenders be alleviated of their deserved punishment, and often they would question the fairness and accuracy of the assessments confirming offenders' insanity. The populace still believes whoever breaks the law should take responsibilities, and mentally ill offenders' families are to be blamed for failing to prevent the offending, and accordingly, should take responsibilities for all the pain and damage the mentally ill offenders have caused. Mental illness was deemed a source of shame interfering with social stability in traditional China, and the historical legal treatment of insane offenders was isolation and punishment (Ng, 1990). Unfortunately, the stigma and the harsh legal tradition can still be seen in today's criminal practice. Chinese people's punitive attitude towards mentally ill lawbreakers, to some extent, has influenced the judicial agencies' choices in initiating psychiatric assessment, and has further shaped the tone and tenor of the human rights protection policy for capital crime offenders with mental illness in China.

4. Conclusions and Suggestions

An examination of the role and concern of the primary stakeholders in China's psychiatric assessment regime reveals that psychiatric evaluation has not effectively exempted serious crime offenders with mental illness from the death penalty. Although the monopoly power rested upon the judicial authority agencies has been widely criticized, empirical studies show that the official-dominated model of psychiatric assessment has had, and will have its solid grounds in China (Qi & Kang, 2006; Chen et al., 2011; Guo, 2013; Li & Ouyang, 2013). However, as a researcher stresses, "traditions or values should not excuse the denial of due process" (Guo, 2010). The question arises, therefore, as to how to improve the accessibility of psychiatric assessment for capital crime offenders in China.

Standard procedures for initiating psychiatric assessment should be established, because currently laws affecting psychiatric assessment are still scattered through a variety of statutes. With specific guidelines available, offenders shall know what evidence would suffice to start an assessment. On the other hand, clear criteria shall prohibit judicial authority agencies from abusing their power or rejecting a request just based on individual subjective judgment. Remedy measures including an appeal mechanism need to be taken to ensure that judicial authority agencies' decisions are not final and offenders have full access to psychiatric assessment regardless of their socioeconomic status. A professional third party, for example, a review board consisting of mental health experts, can be instated to deal with all appeals against official decisions.

The state-funded national legal aid system should extend to low income offenders to provide experienced attorneys to help them collect importance evidence to support their insanity claims, and further cover substantial costs for their request for psychiatric assessment. Increasing public awareness of the importance of mental well-being for society as a whole should be set as an imperative goal for public health education in China. Only when the stigma and discrimination are reduced, will Chinese society be more accepting to this vulnerable population. The government should then be more willing to assign more funds to mental health promotion, which shall prevent risk factors for (especially violent) offending, and eventually protect and sustain social order and public well-being. Investment and actions should be taken to promote mental health education, to improve rehabilitation facilities and services, and conduct research on stigmatization removal strategies.

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