

Original Paper

The Criminal Law Dependence of Human Rights Protection and Social Governance: Centered on the Abduction and Rescue of People with Mental Disabilities¹

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Abstract

Human rights are universal and should be protected by the rule of law. However, if social governance excessively relies on criminal law, it is likely to lead to great risks to the rule of law. When solving structural human rights issues such as the abduction and rescue of patients with mental disorders, it is especially prone to problems such as the simplification of governance initiatives and the neglect of the real demands of subjects. The online field investigation of the Xuzhou chained woman incident shows that public opinion and governance actions of the state were focused on the governance of trafficking crimes, while the core issue of rights protection for women with mental disorders has been ignored, reflecting the dependence of social governance and human rights protection on the path of criminal law in China. In order to fully realize the equal protection of human rights, it is necessary to properly learn from the qualitative research methods in the field of sociology, enter the concrete life situation of the parties, fully respect the subjectivity of “the protected”, hearing their voices, and letting them to participate (indirectly) in the construction process of law and policy as the subject.

Keywords

The crime of abducting and trafficking, subject construction, intersubjectivity, empirical research

¹ Note: First of all, due to the different purposes of trafficking crimes against different groups, patients with mental disorders are mainly the criminal targets of the women abducting crime (Article 240 of the Criminal Law of the People’s Republic of China, the crime of abducting and trafficking in women and children, which is a selective crime), that is, the vast majority of abducted patients with mental disorders are women; secondly, female patients with mental disorders and those with intellectual disabilities face basically the same situation, especially women with severe mental disorders and severe mental retardation. Based on this, due to the limited space of the article, this paper mainly focuses on the discussion of mental disorder women.

1. Background and Research Question

Universal (born to be equal) and inalienable (should be protected) are two fundamental principles of human rights theory.² The (equal) protection of rights, especially the protection of vulnerable rights (with emphasis), and punishment of violations are two basic aspects of human rights protection. It is an important symbol of civilizational progress in modern society that human rights are concreted into the basic rights of citizens, and then institutionalized into legal rights,³ so as to realize the legal protection of human rights by coercive force of the state. However, the human rights issues of each countries have their own special regional and complex characteristics. Although “combating crimes and protecting citizens’ rights” through “construction of system and implementation of law” under the legal framework is certainly an important path for social governance, the work of human rights protection is often faced with structural difficulties.

Focusing on the abduction and rescue of patients with mental disorders⁴, as a vulnerable group in society, the protection of their basic rights⁵ is a systematic social governance task. It is true that in the context of “victimization” and “rescue” of criminal law, it is indispensable to focus on crime-fighting

² See What are human rights? Human Rights Office of the High Commissioner, United Nations, <https://www.ohchr.org/zh/what-are-human-rights>.

³ See Jiao Hongchang. (2004). Constitutional analysis of “The State respects and protects human rights”. *China Legal Science*, (03), 42-49.

⁴ An analysis of 1,038 publicly available judgments of women abducting and trafficking crimes between 2000 and 2017 found that more than 26.7% of the victims suffered from varying degrees of mental illness. (See Hang Zhongliang, Weng Wenguo & Zhai Binxu. (2019). Characteristics and governance strategies of trafficking in women in China. *Journal of People’s Public Security University of China (Social Sciences Edition)*, (05), 19-17.) A study of 616 cases of abduction and trafficking in women between 2017 and 2020 found that about 20% of the women were disabled, mostly mentally ill. (See Jiang Jingyi, Jiang Naifei ... & Yang Chuchu. The Abducted Women: 1252 priced lives. WeChat, “Pai Ke Workshop”, October 14, 2021, <https://mp.weixin.qq.com/s/N2FZhCjE9MGnuejkVf13OQ>.)

⁵ According to the Universal Declaration of Human Rights, human rights of particular relevance to persons with mental disabilities include: all human beings are born free and equal in dignity and rights; everyone has the right to life, liberty and security of person; everyone has the right to freedom of movement and residence within the borders of each state; Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality; everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control, etc.

and state relief against violation of the rights and interests of people with mental disorders, but if the related social governance continues to strengthen its reliance on criminal law, it is likely to bring great risks to the rule of law. In the past, “excessive use of criminal law”⁶ and its negative effects have been well discussed in the field of criminal law, but such a path dependence has long existed in the concepts and governance thinking of the public and social administrators, and has been further externalized into the trend of criminalization and heavy punishment in legislation and justice. When it comes to social problems such as infringement on the rights and interests of people with mental disorders, the public always hopes to solve the problem by severe punishment and heavy sentences on perpetrators, as well as constant legislative amendments, criminalization of some conduct or increasement of the statutory penalties for relevant crimes. Due to their inertia, social administrators also tend to realize human rights protection through the deterrent and disciplinary effects of penalty, so as to highlight the position and protection strength of legal paternalism.

Regardless of how criminal governance can achieve a reasonable balance between crime combating and legal interest protection, for special groups like patients with mental disorders, how to coordinate and arrange all-round and multi-level protection of rights and interests, including poverty alleviation and livelihood care, so as to break the reliance on the post-facto relief of harsh penalty, and to more fully achieve the purpose of human rights protection at the level of “rights realization”, relevant research needs to be placed in the context of specific social issues and real life situations, and to restore the subjective perspective and interest appeal of people with mental disorders as much as possible.

2. Method

Based on the above explanation and considering the limited conditions of field investigation, this study adopts the empirical method of “network ethnography”⁷, following the four steps of “problem determination”, “data collection”, “data analysis” and “report generation”, and taking two network social and communication fields, Sina Weibo⁸ and Wechat⁹, as the main objects of observation,

⁶ He Ronggong. (2015). Philosophical Comments on the Excessive Use of Criminal Law for the Social Governance. *Peking University Law Journal*, (02), 523-547.

⁷ Ethnography originally originated from field investigation. With the rapid development of Internet technology, network ethnography has emerged and become an important tool of sociological research. Netnography, also known as virtual ethnography or cyberethnography, is “the process of gaining an understanding and description of cultural or community phenomena through participatory observation and research work based on online fields (the Internet) at a given time”. (See Yang Tongyue. (2017). The Boundaries of Virtual Fields in the Internet Perspective. *New Media Research*, (15), 154-156.)

⁸ A Chinese microblogging website like Twitter and Instagram, through which users can upload pictures and videos publicly for instant sharing, with other users being able to comment with text, pictures and videos, or use a multimedia instant messaging service. Besides, a user can mention or talk to other people using “@UserName”

description and analysis, to investigate the “Xiao Huamei’s case” (i.e., the “Fengxian eight-child mother incident” or “Xuzhou chained woman incident”,¹⁰ hereinafter referred to as the “chained woman incident”) in the online field¹¹ (i.e., the Internet). When participating in the observation, this study strive to use “parallel” vision, avoiding preconceptions and the influences from other factors, so as to restore the neglected factual details behind the legal events, analyze the criminal law dependence of human rights protection and social governance, explore the reasons for the loss of focus on human rights protection, and present the pain points and difficulties of social governance.

At the end of January 2022, a Douyin¹² video that captured the living environment of an eight-child mother tied by a chain in Dongji Village, Huankou Town, Feng County, Xuzhou City, Jiangsu Province, was transmitted to Weibo via Douban¹³ and quickly exploded in the Simplified Chinese online world. With the continuous fermentation of public opinion, the curiosity and concern about the living situation of the “chained woman”¹⁴ gradually shifted to the questioning of her real identity, and thus implicated the abduction and trafficking of Xiao Huamei. In the late stage of the public opinion, all parties in the society have launched a heated discussion on whether Dong Zhimin, her “current husband”, has further constituted the crime of rape¹⁵ after purchasing the abducted woman, and whether the punishment for his crime is too light. In the process of public opinion fermentation, the focus on more topical issues

formatting, add hashtags, follow other users to make their posts appear in one’s own timeline, re-post with “//@UserName”, and select posts for one’s favorites list. It is now one of the biggest social media platforms in China, with over 582 million monthly active users (252 million daily active users) as of Q1 2022. (See https://en.wikipedia.org/wiki/Sina_Weibo.)

⁹ A Chinese instant messaging, social media, and mobile payment app like WhatsApp and Snapchat, which provides text messaging, hold-to-talk voice messaging, broadcast (one-to-many) messaging, video conferencing, mobile payment, sharing of photographs and videos and location sharing. WeChat users can also register as a public account, which enables them to push feeds to subscribers, interact with subscribers and provide them with services. Wechat is now the world’s largest standalone mobile app with over 1 billion monthly active users. (See <https://en.wikipedia.org/wiki/WeChat>.)

¹⁰ See https://en.wikipedia.org/wiki/Xuzhou_chained_woman_incident.

¹¹ See Robert V. Kozinet. (2016). *Netnography: doing ethnographic research online*, translated by Ye Weiming. Chongqing: Chongqing University Press, 74.

¹² A short-form video hosting service, and the overseas counterpart of which is TikTok.

¹³ A Chinese online database and social networking service that allows registered users to record information and create content related to film, books, music, recent events, and activities etc. (See <https://en.wikipedia.org/wiki/Douban>.)

¹⁴ This is a commonly used name for the parties involved in the incident in public discussions, and “Xiao Huamei” in the following text is the real name of the woman according to official notice.

¹⁵ Article 236 of the Criminal Law of the People’s Republic of China.

such as “human trafficking”, “imprisonment”, “sexual assault” and “illegal birth” has almost overshadowed the discussion on the realization of Xiao Huamei’s basic rights to subsistence and live as one of disadvantage group who has the dual identity of “patient with mental disorders” and “rural poor population”. Accordingly, the theme of social governance focused on the abduction and rescue of Xiao Huamei, mainly on the conviction and sentencing in the criminal field. In fact, in the women abducting and trafficking crime, a significant number of the victims have mental illness or intellectual problems, and as a special crowd, the human rights problems of patients with mental disorders are not limited to being abducted and trafficked, in addition to the rescue and crackdown of criminal law, the protection and realization of the practical living interests of vulnerable groups is a more core and critical work for the relevant social governance.

3. Findings

3.1 Online Public Opinion Concentrated on the Crime of Abducting and Trafficking, Gender Opposition and Identity Doubt

a) From calling for severe punishment of trafficking to denouncing “male-dominated society”

In the video which first expose the Xuzhou chain woman incident, the female who was obviously mentally abnormal was chained to the neck, locked in a broken hut, wearing thin clothes, with messy hair, slurred speech, and almost all her teeth were lost. As someone commented below the video that “people in their village said that the children’s mother was educated when she came, she used to speak English, and there was nothing wrong with her intelligence, it was the children’s father who beat her silly and pulled out her teeth when she did not obey”, many netizens suspected that the woman had been abducted and asked the local police to deal with it as soon as possible. After the public opinion fermented, the local government quickly responded and issued a statement at around 7 P.M on 28 December 2022, saying that there was no trafficking and that the woman was suffering from mental illness.¹⁶ However, netizens did not approve of this reply, and subsequently “dug up” more “evidence”¹⁷ that the woman had been trafficked, and strongly requested the local government to respond accurately. Under the sudden increasing pressure of public opinion, the Feng County Government issued an investigation notice on the evening of January 30, saying that the woman was

¹⁶ More details see <https://mp.weixin.qq.com/s/FxePNeEAXLXuAY39-2VQXg>.

¹⁷ Some netizens have transferred more videos of the chained women taken by short video bloggers to Weibo. In one of the videos, the chained woman said a few words in dialect, which was identified by netizens as “far, how can I go? It is impossible to let me go.” “The world doesn’t want me!” And “This family is all rapists.” According to this, netizens firmly believe that the chain woman was abducted, and believe that the statement released by Fengxian County does not contain the woman’s birth and family information, nor does it respond to the question of the woman’s teeth being pulled, and there is no explanation about the rationality of mental patients giving birth to eight children. Instead of calming down, the public opinion intensified.

taken in by Dong Zhimin's father when she was wandering and begging nearby, and later lived with Dong Zhimin. The notice also said that Dong Zhimin's behavior of restraining the woman with an iron chain was suspected of violating the law, and the public security authorities had already launched an investigation.¹⁸ However, because the notification still insisted that there was no abduction, after its release, public anger over the situation has not abated with netizens questioning the Feng County Government strongly. Subsequently, many old news and literary works were retrieved and re-posted by netizens in large numbers, such as the tragic experience of Sichuan female college student Cao Xiaoqing¹⁹ after being abducted and sold, and the dark experience of the "Wushan child bride incident"²⁰ party and her mentally ill mother who were abducted several times. Other examples are the documentary literature "Ancient Sins"²¹ published in 1989, the film "The Woman who Married the Mountain"²² based on the real experience of an abducted woman, and the novel about an abducted city girl, "Broken Wings"²³, by well-known Chinese writer Jia Pingwa, and so on. At the same time, many Weibo users post their own experiences of being nearly abducted before, or those of people close to them, or the abductions that they ever heard about.

Due to the unusual experience of Xiao Huamei being chained and giving birth to eight children, as well as the numerous plots of abducted women being forced to conceive and give birth in both real cases and literary works, gradually the central issue in the online public opinion field began to diverge. In addition to questioning the responses from officials and calling for a strict crackdown on abduction and trafficking, public opinion has gradually begun to speak out about the current living situation of women

¹⁸ More details see <https://mp.weixin.qq.com/s/AfIDhmjNCr0-O51dgELDqA>.

¹⁹ Cao Xiaoqing, a female college student from Sichuan province, was abducted to Inner Mongolia, her father found her two years later but did not bring her home. "In the next decade, Cao Xiaoqing was sold several times, abused, married to father and son, and beaten while pregnant," the report said. (See http://news.sohu.com/20080320/n255816749_1.shtml.)

²⁰ More details see

<https://zh.wikipedia.org/zh-cn/%E5%B7%AB%E5%B1%B1%E7%AB%A5%E5%85%BB%E5%AA%B3%E4%BA%8B%E4%BB%B6>.

²¹ The book is written by Jia Lusheng and published in 1989, reflecting the trafficking of women in China in the 1980s. According to the book, 48,100 women were trafficked from all over the country to Xuzhou in just three or four years from 1986 to 1989, according to photos of the book posted by netizens. In addition, the book also mentioned that many grassroots cadres, government servants, police were co-conspirators and buyers in the abduction and trafficking industry chain.

²² More details see

<https://zh.wikipedia.org/zh-cn/%E5%AB%81%E7%BB%99%E5%A4%A7%E5%B1%B1%E7%9A%84%E5%A5%B3%E4%BA%BA>.

²³ Jia Pingwa. (2019). *Broken Wings*. London: Sinoist Books. ISBN 978-1910760451.

in China – it is the structural oppression of patriarchal society is the root cause of the crime of abducting and trafficking in women. Netizens argued that abducted women are “fertility machines”, and the inaction of police and grass-roots governments stems from the male identity of the staff involved, and it is precisely because they have a vested interest, so they will choose to become “accomplices in harboring and conniving criminals”. Further, all the value given to women by society lies in the “womb”, and marriage and childbirth are both exploitation of women. From the embryonic period to work and marriage, a woman will face various kinds of persecution from men, or the entire patriarchal society.²⁴ This storm of public opinion, from the initial questioning of the government and the collective empathy for the abduction of women, has gradually shifted to the overall liquidation of the “male-dominated society”.

b) From doubting her real identity to “cyberbullying” a poor mother

The day after the incident came to light, a Weibo user posted photos and personal information of her uncle’s missing daughter, Li Ying, saying that the chained woman looked similar to her and that Li Ying’s father has passed away because he missed his daughter too much. This post caused massive re-posting, and the comparison photos of Li Ying and the chained woman soon went viral on major Internet platforms, and many netizens asserted that the chained woman “must be Li Ying” after comparing the photos. According to another Weibo user who claimed to be the daughter of Li Ying’s father’s comrade-in-arms, Li Ying’s father was a member of the armed police and served in Tibet for more than ten years. After the news broke, a large number of netizens urged to compare the DNA of the two sides. On February 7, Li Ying’s mother told a media that she had learned on January 29 that the DNA of Li Ying and the chained woman did not match, adding that “my daughter was 158 centimeters tall when she went missing, and I don’t think her accent would have changed that much.”²⁵ On the same day, Li Ying’s uncle submitted a handwritten application to the Chinese Ministry of Public Security, requesting that DNA samples from both sides be collected again and compared by a third-party agency. As the heat of the incident continued to rise, doubts grew, but the next two notices issued by Xuzhou Government on February 7 and 10 only said that the chained woman was Xiao Huamei, did not directly mention Li Ying. On February 17, a media reported that Li Ying’s mother had received two comparison results, none of which were matched, she also said that the photos spread on the Internet did look similar, but had been doctored, wasn’t the original photos she scanned and uploaded, and that she watched the video of the chained woman, and felt that they two had a big

²⁴ A Weibo user posted that she was “lucky to live”, because “I am a girl whose mother strongly protected me and has not been aborted; I’m the teenage girl who went to and from school alone and didn’t get abducted; I am a girl who has the opportunity to study without having to trade my life for a bride price.” The post was reposted more than 20,000 times and has now been deleted.

²⁵ More details see https://www.thepaper.cn/newsDetail_forward_16600193.

difference both in appearance and accent.²⁶ Unexpectedly, the content of these two interviews brought Li Ying's mother a barrage of cyber-violence, including slut-shaming.²⁷ On February 23, after the provincial investigation team issued a briefing, stating clearly that the chained woman was not Li Ying,²⁸ a large number of netizens still believed in the "fact" that the chained woman was Li Ying,²⁹ and this is still the case today.

c) Concern that the voices of people with mental disorders are collectively silenced

In fact, the first time when the authority announce that Xiao Huamei has mental illness, there were some we-media bloggers spoke out on behalf of the mentally disabled (and intellectually disabled) and their families on Wechat and other platforms,³⁰ trying to get the public to pay some attention to their plight, but the comments were mostly negative, saying that they were diverting attention and "whitewashing" Dong Zhimin and the local government. There were also few articles that try to restore the traces of the chained woman's life before her abduction, and invite relevant scholars to discuss the possible options of Xiao Huamei after her release from the hospital and introduce some information about the mental health field in China,³¹ but they were accused by netizens of being "full of loopholes" and were also questioned as "completely corroborating Xuzhou's announcement". These bloggers either got little reading of their articles, or closed their comment sections or even deleted the whole

²⁶ More details see <https://china.caixin.com/2022-02-17/101843433.html>.

²⁷ Some netizens found out the civil judgment announcing the death of Li Ying, believing that Li's mother applied for the declaration of death twenty years after her daughter's disappearance "unworthy of being a mother", and some "informed sources" said that she cheated on Li Ying's father and had a son with another man, and she remarried only three months after her husband's death, and even some netizens imagined outrageous "plot" that she deliberately prevented her daughter from being rescued in order to inherit all the estate to her son.

²⁸ The notice said that the three DNA comparisons conducted by the public security organs of Jiangsu and Sichuan, as well as the judicial identification of Nanjing Medical University and the Ministry of Justice, all ruled out the biological parent-child relationship between Li Ying's mother and the chained woman, which determined that the chained woman and Li Ying were not the same person. More details see <https://card.weibo.com/article/m/show/id/2309404740000486129692?id=2309404740000486129692>.

²⁹ They believed that the reason why the chained woman cannot be Li Ying is that "someone does not let her be Li Ying", and made a "reasonable assumption": Li Ying's father was a soldier, based on his special identity, if the chained woman is confirmed to be Li Ying indeed, the public outrage over this matter will be greater. For this reason, the official will not hesitate to fabricate the comparison results and hide the real identity of the chained woman.

³⁰ For example: <https://mp.weixin.qq.com/s/yPc1s8-PVwecdnein64bYA>; <https://mp.weixin.qq.com/s/yPc1s8-PVwecdnein64bYA>, etc.

³¹ The original article has been deleted and the archived content can be seen at <https://zhuanlan.zhihu.com/p/466742223>.

passage after being reviled, in addition to this, they didn't stir up much fuss.

3.2 National Governance Focused on the Criminal Punishment of Abducting and Trafficking Crimes

After the exposure of the incident, whether to raise the statutory penalty for the crime of buying abducted women has aroused the focused attention and heated discussion in China's criminal law circle. After Prof. Che Hao and Prof. Luo Xiang exchanged their views in a series of papers around February 7, a number of criminal law scholars also accepted interviews or wrote their own papers to clarify their positions. With the continuous fermentation of public opinion, scholars in many fields such as jurisprudence and sociology also joined the debate. Support for increasing the statutory penalty for buying abducted women grow louder and louder, and eventually gained ground.

At the same time, a number of deputies to the National People's Congress and members of the Chinese People's Political Consultative Conference have also begun to call for raising the starting penalty for the crime of buying abducted women and children. Some people suggested that buying and selling should be equally sentenced, while others thought that the buyer's punishment should be heavier than the seller. In addition, others advocated that the marriage and adoption of purchased women and children should be invalid from the beginning. Another NPC deputy mentioned that all administrative regions should conduct thorough investigations on women and children of unknown origin in their jurisdiction and continue to do so as a long-term work, especially for women with mental illness and deaf women who are taken in privately, and the information should be made public after the investigation to help them find their relatives.³²

On this basis, on March 2, 2022, the Ministry of Public Security announced to launch a special operation for 10 months to crack down on the abduction and trafficking of women and children, specifically referring to the need to "thoroughly identify women and children of unknown origin, such as vagrants and beggars, and those who have intellectual disabilities, mental illness, deaf-mute disabilities, etc."³³ On March 5, Premier Li Keqiang of The State Council took the initiative to mention the Xuzhou chained woman incident at a press conference, saying that he was "not only sad for the victims, but also very indignant". And "those who showed disregard for people's rights and interests must be firmly held accountable, and the act of abducting and trafficking women and children must be severely crack down on and punished."³⁴ On March 29, The State Council's Inter-Ministerial Joint

³² At present, the statutory punishment for the crime of abducting and selling women and children in China's criminal law is much higher than that for the crime of buying abducted women and children (Article 241). Many people believe that the punishment for the buyer is too light to act as a deterrent, and the statutory punishment for the crime of buying abducted women and children should be increased. (More details see http://epaper.ynet.com/html/2022-03/04/content_393885.htm?div=-1.)

³³ See

http://english.www.gov.cn/statecouncil/ministries/202203/02/content_WS621f57b3c6d09c94e48a5ca8.html.

³⁴ See http://english.www.gov.cn/premier/news/202203/11/content_WS622b67b8c6d09c94e48a685e.html.

Conference on Anti-trafficking was held in Beijing, emphasizing the need to further promote special actions to combat the crime of abducting and trafficking women and children, and resolutely safeguard the legitimate rights and interests of women and children.³⁵ On April 30, the Supreme People's Court, Supreme People's Procuratorate and the Ministry of Public Security jointly issued a circular urging suspects involved in the trafficking in women and children to turn themselves in before June 30.³⁶ On May 6, China's MPS released a list of the six most-wanted fugitives for their involvement in major crimes related.³⁷

Whether it is the NPC deputies and CPPCC members who make proposals for the state, the experts and scholars who provide professional analysis and theoretical support for legislation and law revision, or even the responses at the national level, all of them mentioned women with mental illness, but the final governance motion and actual governance countermeasures are either actively or passively placed in the criminal law governance of trafficking crimes, women with mental disorders were only discussed as the object of crime, their own survival interests and rights protection hidden after abducting and trafficking were not radiated.

3.3 Summary

The peak of trafficking crimes in China was concentrated in the 1980s and 1990s. Since then, the government of China has begun to make efforts to crack down on trafficking crimes. Programmatic documents such as the "China National Plan of Action on Combating Trafficking in Women and Children"³⁸ have been issued, laws, regulations and policies have been continuously improved, and various national and regional special actions have also been carried out frequently. According to national statistics, the number of cases of abducting and trafficking in women solved by public security organs has dropped from 2,439 in 2010 to 251 in 2021, and the proportion of registered cases of abducting and trafficking in women and children in all criminal cases has also dropped from 0.17% to 0.06%.³⁹ The case number nationwide in 2021 has decreased by 88.3% compared with that in 2013.⁴⁰ It can be said that after the state and the government's continuous and severe crackdown on trafficking

³⁵ See http://english.www.gov.cn/premier/news/202203/29/content_WS624314dfc6d02e53353286e4.html.

³⁶ See https://english.court.gov.cn/2022-05/05/c_768952.htm.

³⁷ See

http://english.www.gov.cn/statecouncil/ministries/202205/06/content_WS6274b85ac6d02e533532a52b.html

³⁸ In December 2007, The State Council issued "China National Plan of Action on Combating Trafficking in Women and Children (2008-2012)"; in 2013, China issued "China National Plan of Action on Combating Human Trafficking (2013-2020)"; in 2021, "China National Plan of Action on Combating Human Trafficking (2021-2030)" was issued.

³⁹ Wan Donghua & Song Wenzhen. (2022). *Statistical Data of Women and Children in China (2022)*. Beijing: China Statistics Press, 94-95, table 9.5 & 9.6.

⁴⁰ See https://www.gov.cn/xinwen/2022-03/02/content_5676425.htm

crimes during the past two to three decades, the situation has been greatly improved, and it is not as bad as people think, or even more rampant. What lies in front of us today, and the need for governance of which is more urgent, is not the trafficking after “knocking out a city girl” that the public is worried about and afraid of, but the abduction of female patients with mental disorders from poor rural areas. This is not only the issue of human trafficking, and not just the task of criminal law, which is more critical, is the protection of rights of poor rural women with mental disorders, and this issue requires the joint efforts of multiple state departments and even the whole society.

A scholar once summarized the characteristics of the current Chinese online public opinion field as “prejudice first, facts second; emotion first, objectivity second; discourse first, awareness second”⁴¹. It is believed that when the society faces with many challenges such as the divergence of interests, the disparity between the rich and the poor, and the diversity of thoughts, the public is prone to negative emotions and stereotyped opinions in the face of some social events, and thus China’s public opinion field has obvious emotional characteristics.⁴² As Lippmann said, in many cases, people tend to understand things according to the stereotypes they have set in their minds.⁴³ At the beginning of the incident, the chained woman was labeled as “educated” and “can speak English”, and the children’s father not only “beat her silly”, but also “pulled out her teeth”, which just fits the most common imagination of trafficking crime under the sexual exploitation theory - because of the structural oppression of patriarchal society and extreme gender inequality, “the chain is around every female’s neck”, and “we are only one blow away from the chained woman”. This is also why, no matter how many times the authorities have made DNA comparisons, netizens have always been reluctant to believe that the chained woman is Xiao Huamei, a female from an extremely poor village in Yunnan Province who does not even have an formal name, and she “must” be Li Ying, a good-looking and educated girl from a city in Sichuan Province, and also, the daughter of a soldier. When the official announcement finalized the incident, where the “story” goes actually “deviated” from the public’s imagination based on inherent stereotypes and influenced by feminist discourse, huge anger erupted among netizens, and they even abandoned the facts under the drive of emotions to attack a poor mother who lost her daughter.

⁴¹ Zhang Hua. (2017). Chinese Journalism in The Post-truth Era. *Journalism Research*, (03), 28-33+61+147-148.

⁴² Guo Xiaolan. (2019). The Emotions, Prejudices and “the Miracle of Aggregation” in the Public Opinion: from the Concept of the “Post-truth”. *Chinese Journal of Journalism & Communication*, (01), 115-132.

⁴³ See Walter Lippmann. (2018). *Public Opinion*, translated by CHANG Jiang & XIAO Han. Beijing: Peking University Press, 67.

4. Discussions

4.1 *The Crux of the Problem is the Protection of the Rights and Interests of the (Rural Poor) Mentally Disabled*

At the end of the chained woman incident, another netizen exposed a woman locked in an iron cage (hereinafter referred to as Tao) in Jia County⁴⁴, Shaanxi Province. Similar to Xiao Huamei's abnormal speech and behavior appeared before her abduction, this woman was diagnosed with mental illness when she was in high school (diagnosed as schizophrenia later). She disappeared after leaving home alone in 2010, and was taken in by a man when she wandered to Xi'an. In the end, she was sold to Li, with whom she lived for more than 20 years, and they have a son.

It is undeniable that whether it is Xiao HuaMei or Tao, as living human beings, they were directly traded by others as a commodity, which is undoubtedly a gross violation of their personal freedom and personal dignity. We must severely crack down on those who seriously infringe the human rights of others and bring them to justice. However, the government and society should do much more than that. It should be noted that abduction and trafficking is not the only thing they suffer from, and gender is not the only root of their tragedy, fundamentally, what leads to their abduction, or more accurately, what makes them easier to become the object of trafficking crime, is the identity of patients with mental disorders. In fact, the experiences of Xiao Huamei and Tao represent the two most typical abducting methods for women with mental disabilities in China at present - being cheated⁴⁵ or being picked up: The reason why the abductor can easily take Xiao Huamei away with such a lame excuse of "taking her to the doctor and setting her up with someone" is that Xiao Huamei's mother, based on her

⁴⁴ The woman's real family name is Tao. According to official investigation, her "husband" Li did not abuse her, and has been taking care of Tao's life, although they two did not register for marriage. The incident was exposed on March 1, 2022, and on April 6, the official announcement of the result of the treatment was that Tao was sent to a medical institution for treatment, his son was taken care of by special personnel, several abductors were placed in criminal detention, 13 government workers were dealt with, and Li's action of purchasing was not pursued because of the statute of limitations. (More details see [http://m.weibo.cn/status/4755333047652519?.](http://m.weibo.cn/status/4755333047652519?))

⁴⁵ According to official investigation results, Xiao Huamei, who married in 1995 to Baoshan City, Yunnan province, and returned to Yagu Village after a divorce in 1997, already showed mental abnormalities at that time. In early 1998, Sang Heniu, a woman in the same county with her, took the Xiao Huamei away from her mother on the grounds of introducing her to someone and taking her to doctors, and sold her to others. Three or four months later, Xiao Huamei went missing and was taken in by someone when she wandered to Henan, and she was later sold to Dong Zhimin's father. "Being cheated" actually has two common situations: one is like Xiao Huamei, who is tricked away from the guardian by the abductor; the other is the patient being cheated away by the abductors when she is out alone.

own survival experience and intellectual experience,⁴⁶ has judged that “marrying someone in the developed area in eastern China”, and having a “husband” to take care of her, is obviously a “more favorable” choice for Xiao Huamei than staying in that poor village all her life; the reason why Tao was eventually picked up and sold by others is that she was mentally and behaviorally abnormal, and left home while her family wasn’t looking.

Compared with the prosecution of criminals, how to effectively prevent such crimes and give reasonable protection and follow-up support to relevant parties after the crime is what we should pay more attention to in similar incidents, and also the focus of social governance.

a) The current support and protection for patients with mental disorders and their families in China are inadequate

In China, mental health has long been a major public health problem and a relatively prominent social problem. Since the 21st century, China’s medical and health service system was faced with an enormous mental health disorder burden, large treatment gaps and alarming regional disparities in access to and quality of mental health care, which exist not only between rural and urban regions, as well as across provinces.⁴⁷ Research data shows that around 2012, China has about 16 million serious mental disorder patients, among patients with major psychiatric disorders, 20% are likely to cause accidents if they are not hospitalized for systematic treatment.⁴⁸ Another survey indicated that as of 2018, there were about 5.99 million cases of patients with severe mental disorders registered in the country, of which poor patients accounted for about 60%.⁴⁹ These figures are already alarming, but it is still unknown how many patients are not being detected and are not being enrolled in the system. In fact, over the past decades, to meet the demand for mental health services, China has initiated a series of work plans and extensive mental health care system reforms. The efforts over the years have indeed made great progress in ensuring China’s mental health care. Data show that by the end of 2021, the number of licensed (assistant) psychiatrists in China has exceeded 50,000, while by September 2022,

⁴⁶ According to a folk survey, Xiaomei’s mother had been married four times. (See <http://m.weibo.cn/status/4736143964244635?>.) Moreover, according to the book *Research on Cross-Province Marriage Migration of Lisu Women in Nujiang area*, after 1978, a large number of Lisu women in Nujiang area actively or passively migrated through marriage to the eastern coastal areas for economic reasons. (See Chen Yeqiang. (2015). *A Study on Inter-Provincial Marriage Migration of Lisu Women in Nujiang Area*. Beijing: China Social Sciences Press.)

⁴⁷ Liang, D., Mays, V. M., & Hwang, W. C. (2018). Integrated mental health services in China: challenges and planning for the future. *Health policy and planning*, 33(1), 107-122.

⁴⁸ See https://www.gov.cn/jrzq/2013-07/24/content_2454662.htm.

⁴⁹ Wang Xun, Ma Ning ... & Wu Xiamin.(2020).Management and services for psychosis in People’s Republic of China in 2018. *Chinese Journal of Psychiatry*, (05), 438-445.

there were 2,449 psychiatric hospitals with 670,000 beds for psychiatry.⁵⁰ This seems so impressive, but considering the huge population base and the actual number of patients in China, the current service resources are apparently far from enough, and moreover, almost half of the mental health resources are concentrated in metropolitan and urban areas, for rural people and those who live in some under-developed western areas, there are still limited resources and inequities in access to mental health care.⁵¹

b) Locking up the mental disorder patients is a common helplessness in rural areas

In the general cognition of the public, locking up sick family members with iron cages or iron chains is an act of abuse in itself, and such act is also fully in line with the constitutive elements of the crime of illegal detention⁵² in China's criminal law, and "not sending sick to the hospital for treatment" is an egregious intentional crime, but similar scenes are actually not rare in families of patients with mental disability in China. Especially in relatively backward rural areas, many patients are often faced with only two ways - to become a "person in cage", being locked at home all year round, or to become a "vagrant" with no one to take care of. It's easy to imagine what will happen to a woman who's wandering around with mental illness. Studies have shown that the lifetime prevalence of mental disorders is 16.6%,⁵³ which means that in China, more than 23 million people and their families suffer from mental disorders throughout their lives. For a family, this is undoubtedly an extremely heavy burden. Sometimes, just one mental disorder patient with troublemaking risk can bring down the whole family, and for poor families in rural areas where economic conditions are relatively backward, medical resources are relatively scarce and social security is relatively weak, this can add to the burden. In their specific life context, for a family member who is prone to running around and hurting people but cannot be hospitalized for continuous treatment due to the family's economic situation, they are not able to keep an eye on them all the time. In the absence of better restraint methods, in order to avoid greater infringement of legal interests on others or society caused by the patient's accidents-causing behavior, locking him/her up has become a "choice without choice". Should all these people who have been struggling to maintain the lives of patients for more than a decade or even decades be arrested and sentenced severely?

In fact, in 2004, China launched a national mental health reform program called "Central Government Support for the Local Management and Treatment for Serious Mental Illness" modeled on the Australian model, and in the early stage of the program, there was a vigorous "Unlocking Action", but

⁵⁰ See <http://www.nhc.gov.cn/wjw/tia/202301/a6691ac531294486b8910858378ecd70.shtml>.

⁵¹ Xu, Z., Gahr, M., Xiang, Y., Kingdon, D., Risch, N., & Wang, G. (2022). The state of mental health care in China. *Asian Journal of Psychiatry*, 69, 102975.

⁵² Article 238 of the Criminal Law of the People's Republic of China.

⁵³ See Huang, Y., Wang, Y. U., Wang, H., Liu, Z., Yu, X., Yan, J., ... & Wu, Y. (2019). Prevalence of mental disorders in China: a cross-sectional epidemiological study. *The Lancet Psychiatry*, 6(3), 211-224.

due to the lack of long-term support and stable guarantee, the operation did not have a good lasting effect in the end. After being “unlocked”, these poor mental disorder patients and their families are still permanently trapped in the barren land in rural areas by invisible chains such as cognitive level, social concepts, resource allocation, and medical quality.

4.2 The “Deviation” in the Direction of Social Governance Reflects the Reliance on Criminal Law for Human Rights Protection

When people participate in the discussion of some social issues, they will subconsciously “assume” themselves and the mainstream society they live in are completely blameless for the relevant events or phenomena. When some unbearable and harmful “vicious events” occur, the public will feel that their moral concepts have been trampled on and their sense of justice has been violated, and therefore need to find a specific object to vent their anger and take responsibility for the occurrence of the event. In the crime of abducting and trafficking, the abductors/sellers and buyers are just such “bad persons” who can be condemned and criticized by the public, and all the government needs to do is to bring these unforgivable “bad persons” to justice, so that this social problem seems to be satisfactorily solved. Compared with spending a huge price to solve the problem of protecting the rights and interests of people with mental disabilities, it is obviously much easier for the government, so why not do it?

Being more difficult than the common type of abduction and trafficking to solve, the problem of abducting rural women with mental disorders is an extremely complex systematic project. However, in the case of the chained women, people subconsciously avoid more complex and difficult governance strategies, and involuntarily turn to criminal law governance of trafficking crimes. This is the manifestation of the “criminal law dependence”⁵⁴ of social governance and human rights protection in China. In the process of the government using criminal law governance as a “resource” to “feed” the public, people’s “sense of morality”, “sense of justice” and the sense of achievement of “participating and promoting in social governance” have been greatly satisfied, but at the same time, these “audiences” who do not really care about social issues will collectively and unconsciously avoid issues such as “the rights protection of poor women with mental disabilities” for which no concrete “bad person” can be responsible, so that these problems cannot be fully concerned and properly solved. When the bad persons are punished, public opinion dies down and spectators disperse, the key issues of social governance and human rights protection are still left in place.

In the end, under the call of the public to “severely punish criminals”, Dong Zhimin, who abused and illegally detained Xiao Huamei, and Sang He’niu, who abducted and sold Xiao Huamei, were punished by law. After more than a year of treatment and care, by April 2023, although Xiao Huamei still had cognitive impairment, she was able to dress and eat with the help of others, and could also communicate with medical staff, even recognize her eldest son and call him by his name. This is

⁵⁴ See Zhao Jun. (2016). Criminal Law Dependency in Construction of Rule of Law and Social Governance. *Law Review*, (06),75-86.

because, due to the huge social attention, after Xiao Huamei was taken to the hospital, she has been consulted by experts from multiple places for 18 times, and in addition to doctors, there are two nursing workers responsible for taking care of her daily life.⁵⁵ There is no doubt that Xiao Huamei's physical and mental condition will continue to improve, and her future life will be well protected. However, those poor female patients with mental disorders in the vast rural areas of China, who are "suffering from the same disease" as her, but have not been seen for a long time and never receive adequate treatment and proper care, their basic human rights protection issue remains a matter of little concern. Therefore, the risk of "simplifying complex social problems" and "ignoring the real interests of the protected subjects" caused by the dependence on the criminal law (path) of social governance has emerged.

4.3 The Absence of the Perspective of Subject Construction Leads to the Simplification of Governance Initiatives

The Palermo Protocol mainly emphasizes the three "P"s of human trafficking governance - prevention, prosecution and protection.⁵⁶ When the object of trafficking is a female with mental disorders, prevention and protection is even more difficult. However, no matter what the specific situation of abducted women is, in China's current practice, there is often only one "P" - prosecution, and the subsequent help needed by the victims in terms of legal services, psychological counseling and life assistance is often absent. Compared to other trafficked groups, follow-up support and protection are more critical for women with mental illnesses, however, they sometimes even face disempowerment. It can be seen that whether it is Xiao Huamei or Tao, they all ended up being sent to mental hospital for treatment, and then, the enthusiastic netizens did not ask about them anymore, it seems that everyone feels that this was a good ending for them. But is a mental hospital necessarily a better choice? Is it possible that the demand for a universal crackdown on and severe punishment for "buyers" will be detrimental to their practical life interests? Is the psychiatric hospital the last place they will end up their lives? When they get better, where can they choose to go and how can they live their lives as others? Further, do they have the right to marry, to procreate or even to have sex? If so, how should they assert and realize these rights? The reality is that these critical issues, which are more related to their actual living conditions, have not been given sufficient attention and consideration.

It should be realized that women with mental disorders are not just patients who need treatment and have no autonomy, but people with dignity and diverse needs, just like us. But at the same time, many

⁵⁵ More details see <https://mp.weixin.qq.com/s/Ehn-1UjfaFF95XAkNwuXiQ>.

⁵⁶ See Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Human Rights Office of the High Commissioner, United Nations, <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>.

of their rights cannot be realized automatically, their human rights protection needs more support from the state and society. Trying to solve the problem once and for all by amending the criminal law is undoubtedly a pipe dream. The “invisibility” of the public, experts, scholars, and even social administrators to this issue not only due to the tendency to rely on the means of criminal law for social governance, especially the human rights protection in China, the deeper and more fundamental problem lies in: both those who have the voice on relevant issues and those who formulate the corresponding laws and policies (especially national lawmakers and political advisers) are often “far away” from the living environment and social class of “the protected”, so they always unconsciously take the position of the “protector” and the perspective of “outsider” to examine the life and interests of the parties. Finally, the system design is based on the imagination and construction which deviates from the real life situation and action logic of the parties, and the final direction is likely to be the improper compression of the rights of these vulnerable people who cannot speak for themselves.

Rather than the moral judgment and legal sanction of the object of legal regulation, it is more important to learn from empirical research method properly, change the perspective, try to enter the real life world of the parties, observe and think from their position, so that they, as the biggest stakeholders, could have the opportunity to participate (indirectly) in the construction process of laws and policies as subjects.⁵⁷ Only in this way will it be possible to generalize some institutional ideas that can help prevent the poor women with mental disorders from being victimized without depriving them of the access to marriage, sex and daily care.

5. Conclusion

Human beings cannot be treated as commodities.⁵⁸ As one scholar says, buying women is a crime that objectifies women and infringes on human dignity.⁵⁹ Of course, we should combat crimes that violate women’s rights and interests. But jumping out of the macro dimension of value concept and thinking on a more complex and specific level of personal life, it should be noted that whether the living situation is good or bad, whether they are willing or not, and, the specific survival and life interests or the macro and abstract human dignity, which is more important, these key issues are self-evident to the parties, however, for “outsiders” living in “another world” and at another level, it is often difficult to understand. Therefore, the handling of abducting and trafficking incidents such as Xiao Huamei should

⁵⁷ Zhao Jun. (2023). Exploration, Examination and “Renovation” of Criminal Law Dogmatics: From the Expansion of Empirical Methods to the Transition of Research Orientation. *China Law Review*, (03), 139-151.

⁵⁸ Lao Dongyan. (2022). The Legal Interests and the Nature of Wrongdoing for the Crime of Human Trafficking: Based on the Legislative Review of the Crime of Purchasing Abducted Women. *Journal of National Prosecutors College*, (04), 54-73.

⁵⁹ Che Hao. (2023). Disputes over the Order of Legislation and Interpretation: Taking the Crime of Buying Abducted Women as an Example. *Modern Law Science*, (02), 175-196.

be examined from the perspective of “the protected” and understood from the rights needs of “insiders”, because human are the basis and premise of the existence of all values, and only the person concerned is the “judge” of the meaning and value of his or her own life choices.⁶⁰ As UN Secretary-General António Guterres has said, we should listen and respond to the voices of victims and survivors of human trafficking,⁶¹ but the voices of abducted women are not only helpful in preventing and combating crime, but more importantly, in hearing and ensuring the rights and dignity they really need. As for the problem of the abducting and trafficking of poor rural women with mental disorders, in addition to cracking down on the crime, we also need to start from the aspects of prevention before the abduction occurs and protection and resettlement after the case is solved, and pay full attention to the protection of their rights beyond the identity of “abducted women”. In this regard, only by fully drawing on the qualitative research methods in the field of sociology, entering the specific life situation of the parties concerned, and fully respecting the subjectivity of “the protected” and the survival logic and survival behavior developed by the relevant subjects based on their real life conditions in the process of investigation and research, can the system design more conducive to their actual life interests be produced.

⁶⁰ See Wang Jinlin. (2015). *Study on Human Trafficking in China*. Beijing: Social Science Academic Press (China), 11;17.

⁶¹ See <https://unsdg.un.org/latest/videos/victims-voices-lead-way-fight-against-human-trafficking>.