



Gucci model and 'Mental Health is Not Fashion' protest.
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Forced Internment in Mental Health Institutions in China

Compulsory Treatment and Involuntary Hospitalisation

GUO Zhiyuan

In China, people with mental disorders may be committed to mental hospitals for treatment in accordance with either the Mental Health Law or the Criminal Procedure Law depending on the specific situation. This essay gives a brief introduction to the two institutions involving forced deprivation of liberty of the mentally ill; compulsory treatment and involuntary hospitalisation. By comparing these two institutions, it also points out their shortcomings and some possible steps forward.

For many years, the relationship between Qiu Guoshi—a Taiwanese businessman living in Shanghai—and his wife, Wen Xiuqin, had been rocky. She, however, refused to agree to a divorce. In September 2001, Qiu called the Shanghai Mental Health Centre, saying that his wife was suffering from a serious mental illness and requested help. Upon receiving the call, a doctor and several nurses rushed to her workplace, and forcibly took the woman to the Shanghai Mental Health

Centre for treatment. Qiu signed a consent form authorising hospitalisation and treatment for his wife. Three days later, Wen sought help from her daughter. A foundation contacted by the daughter intervened in the case and was successful in having Qiu's wife returned to Taiwan. After her release, Wen filed a complaint alleging that her husband's conduct had been criminal. He was convicted of depriving her of her liberty and sentenced to 14 months in prison. This is just one of many publicised cases in China that involve controversial involuntary hospitalisation (Hualüwang 2019).

In China as elsewhere, people with mental disorders may be committed to mental hospitals for treatment. However, different laws apply depending on the specific situation. When a person suffering from a mental disorder has already exhibited self-harming conduct, or there is a perceived danger that they may harm themselves or endanger the safety of others, they may be hospitalised and medicated without their consent. The technical term for the procedure is 'involuntary hospitalisation' (非自愿住院治疗) or 'civil commitment' (民事收治), and the legal basis for these kind of cases can be found in the Mental Health Law (MHL). If a person with a mental disorder has committed a violent act that would constitute a crime if done by a sane person, they can be exempted from criminal responsibility but committed to a specialised mental hospital for treatment. This is called 'compulsory treatment' (强制医疗)—which is interchangeable with criminal commitment in other jurisdictions, such as the United States, and is regulated by the Criminal Procedure Law (CPL). While involuntary hospitalisation and compulsory treatment both have a long history in China, formal legislation was not established until 2012, when the MHL was enacted in October and the CPL was amended. In this essay, I will briefly outline these two institutions that mediate the deprivation of liberty of the mentally disordered.

Compulsory Treatment

Compulsory treatment has always been at the centre of debates on human rights because it involves not only the deprivation of liberty of individuals with mental illness, but also forces medical treatment in psychiatric hospitals. The amended CPL of 2012 adopted a new special procedure on compulsory treatment, which sets out the scope, procedures, and supervision mechanisms for compulsory psychiatric treatment in criminal cases in China.

While in the past this practice was dominated by the police, the new legislation introduced a judicial review mechanism that put the power in the hands of the judiciary. This has been hailed as a key step towards ensuring that the decisions are made neutrally, on the basis of legal standards. Article 284 of the 2012 CPL also specifies three criteria for the compulsory treatment of people with mental disorders: if he/she (a) has committed a violent crime, endangered public security, or caused death or injury to others; (b) was determined to be not guilty because of insanity after a mental health assessment in accordance with law; and (c) poses a continuing risk of endangering public security. If all of these conditions are met, the individual may be compelled to receive medical treatment in a special psychiatric hospital called an *ankang yiyuan* (安康医院), which in China is usually run by the police. Of the three criteria, the 'continuing risk' is the most difficult to evaluate, as many practitioners believe that a mentally-ill individual who has committed a violent act and caused death or injury to others necessarily pose a continuing risk of endangering public security. For this reason, an understanding of potential risk has been absorbed into the consideration of violence and, as a result, the 'potential risk' criterion is essentially met if there has been a history of violence.

Under the amended CPL, a panel of judges will decide through a hearing whether a mentally-ill individual should be committed to a psychiatric hospital. The hearing is



Mental Hospital.
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adversarial in that both prosecutor and the subject of the proceeding, as well as their legal representatives, should be present and contest each other. When the family wishes to care for the subject themselves, they have to present supporting evidence, which may then be examined and debated in the courtroom. Similarly, when a psychiatric hospital during a periodical evaluation submits an opinion to the court that the mentally-ill person is no longer dangerous and thus ready for release, a panel of judges will determine through a hearing whether the subject has met the criteria for release.

Once a compulsory treatment procedure is initiated, while waiting for the court to make the final decision the person with a mental disorder might pose threats to their personal safety or the safety of others. For this reason, the 2012 CPL empowered the police to adopt temporary restrictive measures (临时保护性约束措施) to protect mentally-ill people exhibiting violent behaviour. These measures do not require judicial determination, as they are intended to give the police an instrument to protect public security while awaiting a

formal decision from the court. Unfortunately, although the measures constitute a distinct type of detention, the law does not contain specific provisions regarding boundaries, contents, time limits, remedies, and so on. Recognising how this could lead to abuse, in December 2012 the Ministry of Public Security (MPS) has published administrative regulations requiring that such restraints are approved at the county level or above and exclude them when there is no danger to society. Moreover, the Ministry has made clear that the means, methods, and intensity of the restraints should not go beyond the needs of avoiding danger to the personal safety of the mentally-ill person and public security. Though extremely vague, these provisions indicate that the police in China is conscious of the risks involved in such procedures and is trying to impose restrictions on their use.

Although the MPS rules tried to put a limit to the arbitrary powers of the police, in practice people with mental disorders can still be deprived of liberty for a long time and reversals in these kinds of cases remain very rare. While most are held in mental health facilities, due

to the lack of specialised institutions some are held in detention centres. More importantly, the MPS rules provide that, if necessary, the suspect or defendant may be sent to a psychiatric hospital for treatment. This pre-treatment, although sometimes necessary, makes it so that compulsory treatment can actually still be provided at the discretion of the police. If not strictly limited and supervised, this has the potential to expand the police's power, rendering the rules useless and undermining the judicial character of the decision entirely.

Under the compulsory treatment law, three rights are granted to mentally-ill individuals. First, the law endows people with mental disorders with the right to legal representation and legal aid. If a mentally-ill individual has not hired a litigation representative, a legal aid organisation shall appoint a lawyer to serve as his/her counsel and to provide him/her with legal assistance. Second, the law grants the person subjected to compulsory treatment, their legal representative, or their close relatives, the right to apply for reconsideration to the higher level of the judiciary if they are not satisfied with the decision of the court. However, the compulsory treatment will not be suspended during the reconsideration. Third, once a mentally-ill person is committed to a psychiatric hospital, they or their family members can file an application anytime with the court for removal of compulsory treatment. The court will ask the hospital to make a special evaluation, and then determine through a hearing whether the person is ready for release.

Involuntary Hospitalisation

According to the World Health Organization, autonomy and informed consent should form the basis of the treatment and rehabilitation of people with mental disorders (WHO 2005). However, before the adoption of the

2012 MHL, mental hospitals in China had the right to take patients from their homes and forcibly admit them merely at the request of the patients' family or police. Under the MHL, a person suffering from a mental disorder has the right to refuse residential therapy, unless they have already exhibited conduct that pose a danger to themselves or others, or if there is a perceived risk that they will in the future. These provisions emphasise that voluntary hospitalisation should be the first line of treatment, require informed consent from the patient or the family, and restrict the use of involuntary hospitalisation by requiring an assessment of danger.

The 2012 MHL also grants patients with mental health issues and their guardians the right to contest involuntary hospitalisation. When the patient has already exhibited self-harming conduct or there is a danger of self-injury, the guardian has the right to agree or disagree to residential therapy. When the mental patient has already exhibited conduct that endangers the safety of others, or there is danger that he or she will endanger the safety of others, if the patient or his/her guardians disagree with involuntary hospitalisation, either of them can apply for a second diagnosis or evaluation and even for an independent expert assessment. The MHL also grants patients and their guardians the right to file lawsuits when they believe their rights have been infringed upon.

There are two major problems with the current rules on involuntary hospitalisation: absence of judicial review and lack of control over guardians. It is a basic jurisprudential principle that all people are entitled to a full and impartial judicial hearing prior to a loss of liberty (Gostin 1987). In the area of civil commitment law, the presence of regular and ongoing judicial review has served as a bulwark of protection against arbitrary state action (Perlin 1998). Therefore, to reduce the discretion of physicians and limit medical paternalism, many jurisdictions have enacted laws transferring the authority to order an involuntary admission from physicians to

non-medical authorities (Dressing and Salize 2004). However, the involuntary admission in China is still determined by the hospital. The court does not play a role in the determination of involuntary hospitalisation at all. In this respect, China's MHL is not in line with the international standards because there is no independent and neutral authority to authorise all involuntary admissions.

Another concern is the lack of control over guardians. While ideally one's close family members would have the best interests of the mentally-ill person in mind, this is not always the case. As we have seen at the beginning of this essay, China has already seen publicised cases of spouses delivering each other for treatment so as to claim their assets or seek divorce, and parents delivering their adult children for diagnosis when they disapprove of a romantic partner. Many provisions in the 2012 MHL still take it for granted that guardians would act in the best interest of the mental patients. For example, the Law announced a principle of voluntary diagnosis, with the only exception being that 'close family members may deliver a person suspected of having a mental disorder to a mental establishment for a mental disorder diagnosis' (Article 31). This provision makes it easier for family members to have each other held, at least temporarily. For another example, in the case of involuntary admission, the MHL has granted the right to consent to guardians rather than the mental patients when the patient has already exhibited self-harming conduct or there is danger of self-injury. All these provisions ignore the potential conflict of interests the guardians may have and do not subject the guardians to appropriate oversight.

Shortcomings and Possible Steps Forward

Both the CPL and the MHL set up procedural rules for the forced internment in mental health institutions in China. These pieces of legislation indicate that the Chinese authorities

are aware of the existence of problems involving psychiatric commitment—which include both under-inclusion (the failure to give people the treatment they need) and over-inclusion (where people who should not be committed are committed to hospitals)—and are taking actions at the highest levels to resolve them. However, as illustrated above, the results have been uneven. Involuntary hospitalisation rules do not provide enough protection for the rights of mentally-ill individuals: in particular, the availability of free, effective counsel and regular judicial review are especially critical issues to address, and strict oversight over guardians is also needed.

In both pieces of legislation, the confinement of a mentally-ill person constitutes a form of preventative detention, based on providing treatment in an environment where the patient cannot harm others. Under the CPL amended in 2012, the prerequisite of compulsory treatment is having committed a dangerous crime and posing a continuing danger to the public security. Thus, the criminal commitment to a psychiatric hospital is not a punishment; it simply aims at avoiding another offense. The MHL, however, does not require a court to decide on the involuntary civil commitment through a hearing. It just provides for a vague assessment of dangerousness, or risk of dangerousness, as the main criterion for involuntary hospitalisation. In substance, while the 2012 CPL has introduced a judicial review mechanism to determine whether compulsory treatment is necessary, the MHL still places the power of determination in the hands of psychiatric hospitals and guardians, neither of whom can always make the decision in the best interest of the patient. It is also paradoxical that a person with a mental disorder may enjoy more rights protections when they commit a crime-like violent act than if they just pose danger to themselves or others.

Given that involuntary commitment—whether compulsory treatment or involuntary hospitalisation—is a deprivation of liberty, alternative measures should be offered to reflect the principle of proportionality.

Considering the shortage of beds in psychiatric hospitals across the country, a form of psychiatric probation could be implemented, allowing outpatient treatment for patients who are able to regain control of their actions while taking medicine, with maintaining a drug regimen as a condition for the release.

In addition to ensuring that the involuntary hospitalisation law provide better protections for the rights of people with mental disorders, serious considerations should also be given for better coordination and better integration of the civil and criminal commitment laws. The patients in one system are often past or future patients in the other system. Therefore, a transferring mechanism should be established to make it easier for the patient to transfer from one system to another. For example, if a community integration programme is in place, people with mental disorders who are released from the criminal justice system are much less likely to commit new offenses if they receive services from the system. The MHL has already mobilised social forces to participate in the care of people with mental disorders in the local area. Such care could include supervision over those released under psychiatric probation orders.

An even greater obstacle to community-based treatment may be the lack of professionals who can work in the community to ensure that outpatients take their medicine every day. Very few medical students in China want to be psychiatric experts due to the longstanding stigma attached to both people with mental disorder and mental health professionals. Better protection for those with mental disorders may depend ultimately on changing the public attitude towards mental illness and disability. This will not be easy, but it is possible. The United Nations Convention on the Rights of Persons with Disabilities (CRPD) requires that states implement measures that address attitudes towards people with disabilities. China ratified the CRPD in 2008 and demonstrates a national commitment to the rights of persons with disabilities in the community, in psychiatric institutions,

and in correctional facilities. This could be one avenue for China to try to change public attitudes towards people with mental disorders—the largest vulnerable group in the country—further enhancing the protection of their rights. ■