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*Mémoire*

**Exploring criminal responsibility of PTSD patients; findings from a survey in Chinese  
Mainland courts**

**Explorer la responsabilité pénale des patients atteints de PTSD; résultats d'une enquête  
dans les tribunaux de la Chine continentale**

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*Authors' contributions*

Xiao-fu Li contributed to the conception of the paper, conducted the data collection and drafted the manuscript. Xiao-fan Li supported the statistical analysis for the paper, and helped finalize the manuscript.

**Abstract**

*Background* – The Wenchuan Earthquake in Sichuan Province is China's deadliest natural disaster in a generation; after such disturbance, a kind of mental illness named post-traumatic

stress disorder (PTSD, also called delayed psychogenic reaction) raises concern in Mainland China, but probably not rapidly sufficient. Different from that in the USA, earthquake is both the reason and focus of PTSD research in China.

*Methods* – In order to find out the relationship between the PTSD defense and criminal responsibility in Mainland China, the authors decided to use certain academic tools and analysis judicial decisions (816 cases). The authors identified key information from government official websites.

*Results.* – Data demonstrated that research regarding PTSD increases considerably after the Wenchuan earthquake in 2008. However, data also showed that Chinese courts are hesitant in accepting PTSD as a mental defense for criminals, despite relevant existing rules. Some legal ambiguities, such as lack of procedures or instructions for the connection between diagnosis and judgment, can be observed when courts encounter criminals with PTSD.

*Conclusions* – PTSD patients occur in all races, classes, religions, and nationalities and some would unfortunately be criminals. This pattern reveals concern for the boundary between the reasonable use and abuse of PTSD in view of medico-legal expertise practice. Expert testimony or opinion cannot replace the judges' decision. Chinese courts should learn from the American Bar Association and accept the three-part analysis for forensic consideration of PTSD. Further details regarding the regulations for resolving the criminal responsibility of PTSD patients should be obtained.

*Key-words:* Criminal Responsibility; Legal Identification; Mainland China; Post-traumatic Stress Disorder

## **Résumé**

Le trouble de stress post-traumatique (TSPT ou PTSD en anglais *post traumatic stress disorder*) est un sujet brûlant pour la société chinoise et la recherche sur le TSPT a augmenté fortement après le tremblement de terre de Wenchuan en 2008. On sait que les patients atteints du TSPT pourraient malheureusement être des criminels. Compte tenu de la pratique de l'expertise médico-légale, la limite entre l'utilisation raisonnable et l'abus du TSPT a révélé beaucoup de préoccupations. Ici, nous présentons l'origine du TSPT et son développement

aux États-Unis avec des cas particuliers. En utilisant des outils académiques et en analysant les décisions judiciaires, ainsi que les informations clés des sites officiels du gouvernement, nous constatons que même dix ans après la catastrophe de Wenchuan, les tribunaux chinois hésitent encore à accepter le TSPT comme défense mentale des jeunes délinquants, alors que certaines règles pertinentes existent. Il existe des lacunes juridiques dans les lois lorsque les tribunaux rencontrent des criminels mineurs atteints du TSPT, comme l'absence de procédures ou d'instructions pour le lien entre le diagnostic et le jugement. Nous croyons qu'il est temps que le gouvernement établisse des règlements détaillés pour les troubles mentaux spéciaux afin de suivre le développement de la technologie scientifique. Une analyse en trois parties pour l'examen médico-légal du TSPT pourrait être un bon moyen pour les tribunaux chinois dans certains cas particuliers.

*Mots-clés* : Chine continentale ; Identification légale ; Responsabilité pénale ; Trouble de stress post-traumatique

## **1. Background**

The Wenchuan Earthquake ten years ago in Sichuan Province is China's deadliest natural disaster in a generation [1]; after such disturbance, a kind of mental illness named post-traumatic stress disorder (PTSD, also called delayed psychogenic reaction) raises concern in Mainland China [2], but probably not rapidly sufficient [3]. Different from that in the USA, earthquake is both the reason and focus of PTSD research in China.

In 1980, PTSD was first officially recognized by the American Psychiatric Association's third edition on its Diagnostic and Statistical Manual of Mental Disorders (DSM-III) and included in the psychiatric nomenclature [3]. In the fifth edition (DSM-5), PTSD was updated to four groups. DSM-5 also estimated that the rates of patients with PTSD during a given year are between 0.5% and 1% [4]. Relevant information regarding PTSD patients, such as population and age distribution, is not largely available in Chinese official websites or private organizations. A domestic scholar found that 420 (14.1%) college students who experienced

the earthquake in Wenchuan in 2008 suffered from mild to severe PTSD [5]. In Mainland China, PTSD's description in the third edition of Chinese Classification of Mental Disorder is the same as the American counterpart in the DSM-III. Although PTSD is under stress-related disorder category, the disease definition and symptom criteria are the same. The symptoms last for more than a month after the traumatic event [6].

## **2. Methods**

In order to find out the relationship between the PTSD defense and criminal responsibility in Mainland China, the current authors decided to use certain academic tools and analysis judicial decisions. The authors identified key information from government official websites.

## **3. Data collection**

China National Knowledge Infrastructure (CNKI, <http://ezlibrary.sufe.edu.cn>) is one of the most popular academic network platforms in Mainland China. The authors used Chinese phrase for PTSD as keywords in searching CNKI.

In Mainland China, each court has a mandatory requirement of uploading the judgment of a case on the official website from January 1, 2014. The *Provision of Publishing Judgment Documents on the Internet*, which was released by the Supreme Court in Mainland China, and its amendment (2016) [7], mandated that judgments should be published online; for state secret, minor crime, mediation or confirmation of the effectiveness of people's mediation agreement, divorce or related minor child custody or guardianship, or commercial secret, the court shall take some technical approaches to protect the privacy or secret. China Judgment Online (<http://wenshu.court.gov.cn>) is the official website for downloading judgments in Mainland China. PTSD symptom is not confidential for adult criminals, but judgments should employ particular measures to protect minor PTSD patients and keep their identities confidential.

Technically, trauma means wound; psychologically, as defined in the Webster's Second New College Dictionary, trauma means "an emotional shock that creates substantial and lasting damage to the development of the individual." Metaphorically, trauma is a suffering that strains the psyche [8]. Whether the criminal justice system should establish some special rules or treatments when perpetrators of criminal assaults or homicides exhibit a high risk of suffering from PTSD should be determined. Moreover, the mechanism to assess the criminal responsibility of the actor should be investigated. PTSD and its effects can undermine the mental stability of a criminal defendant. Certain Chinese scholar demonstrated that a person experiencing PTSD may present nervous illness or grown arousal coupled with tough focusing or completion of tasks.<sup>7</sup> All of these symptoms of PTSD in a criminal defendant can potentially sap the client's ability to resist law enforcement's coercive tactics or satisfy the competence to stand trial criteria; in addition, American criminal cases showed that when someone develops PTSD, he/she may hurt people around them, even loved ones or passerby [9].

#### **4. Data analysis**

When checking the relevant data of criminal cases of PTSD patients, the authors also pay attention to four general forensic psychiatric issues.

*A. Do Chinese forensic psychiatric practitioners realize the relationship between the PTSD defense and criminal responsibility?*

*B. What is the legal role of forensic psychiatric practitioners in Chinese courts?*

*C. What is the Standard of criminal responsibility for PTSD patients in Mainland China?*

*D. How does the legal insanity work as defense in a Chinese trial?*

#### **5. Results**

PTSD is not only catalogued in Chinese hospital textbooks as a mental disorder, but a large number of judicial authentications also acknowledge and diagnose PTSD patients. In CNKI website, the annual number of articles (2005–2015) whose abstract contain "Chinese

phrase for PTSD” increases considerably after the Wenchuan earthquake in 2008 (**Table 1**). These papers or articles are mainly on medical research or clinical trials, and they analyzed the etiology, pathogenesis, clinical manifestation, diagnostic criterion, treatment, and prevention of PTSD. Moreover, approximately one-fifth of these articles are on the relationship between earthquake and trauma.

**Table 1** Numbers of articles which containing the phrase “PTSD” from 2005 to 2015 in China National Knowledge Infrastructure

| Year   | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|--------|------|------|------|------|------|------|------|------|------|------|------|
| Number | 78   | 82   | 66   | 129  | 203  | 211  | 255  | 231  | 219  | 232  | 224  |

On October 5, 2016, the authors used the Chinese phrase for PTSD as keywords in searching the China Judgment Online and obtained 816 results. The subject matters were obtained from 89 criminal cases, 618 civil cases, and 14 administrative cases. A total of 332 results deal with medical identification, and 281 are involved in compensation on personal injury. The situation is confusing when some victims were diagnosed with PTSD in criminal cases or civil cases, but no defendants were identified or recorded as PTSD patients in the past two years and nine months. The previous studies showed mentally disorder offender are diverted from the prison system to forensic hospital, general hospitals, or back into the community (Every-Palmer et al) [10]. However, the authors cannot pick up the information of prisoners with PTSD from the website of Bureau of Prison Administration in China ([http://www.moj.gov.cn/jyglj/node\\_213.htm](http://www.moj.gov.cn/jyglj/node_213.htm)).

Given that no legal demand to upload judgment paper in the Mainland China before 2014 is available, searching for the criminal cases of actors with PTSD is relatively difficult. Only a case with PTSD can be reviewed on the government official website: a 42-year-old woman named Ma Yu-xia testified to an unhappy married life and frequent violent incidents by her husband, Mr. Yuan. She was beaten, choked, or humiliated in various ways. They divorced in 2003, then remarried, and lived together after their family members persuaded them. One day, before Yuan went to bed, they had a terrible quarrel. Afterward, Ma could not sleep and used an ax to attack and smashed Yuan on October 2, 2007. The Court of Chifeng City, Inner

Mongolia Province delivered the opinion that she was in a long-term state of physical and psychological suffering, which caused PTSD symptoms and prompted her to commit the criminal offense. Additionally, the court considered the killer with diminished criminal responsibility, and the woman obtained a 12-year imprisonment sentence [11]. Article 232 of *Criminal Law of the People's Republic of China* (CLPRC) states that whoever intentionally commits homicide shall be sentenced to a fixed-term imprisonment of not less than 10 years or more severe punishment, e.g., life imprisonment or death penalty. With the 12-year imprisonment, the court accepted Ma as a quasi-mental patient for suffering PTSD, but not as a complete mental patient.

## **6. Discussion**

### ***6.1. Rules and jurisprudence in identifying the criminal responsibility of PTSD patients***

Individuals are responsible for their behavior, including criminal behavior or civil behavior, unless the court determines otherwise. Rules of criminal responsibility for mental patients exist in both material and procedure laws. Crime and crime composition are different concepts in Mainland China. The Soviet Union criminal jurisprudence exerts a major influence on Mainland China, despite that other theories from certain Western countries, especially the dissemination of German and Japanese three-stage criminal construction systems, were recommended in the late 1990s. To date, the majority of legal occupations, such as judges, lawyers, scholars, and forensic psychiatric practitioners, are still affected by the system of four-element criminal construction traced to the early 1980s [12].

Article 4 of CLPRC stresses on the equal application of law, and Article 5 formulates that the degree of punishment corresponds to the crime committed. Article 13 states that an act will be a crime if it endangers the society or public and is punishable by criminal law. Moreover, CLPRC excludes minor offenses that cause no harm to the society. The essence of CLPRC is crime composition. CLPRC emphasizes the integrity of objective and subjective elements in composing crime. Objective elements include acts, outcomes, and causal relations; subjective elements include intention and motive. Court/judge considers the crime

composition in adjudicating a case. The integrity of objective and subjective elements means that the establishment of crime not only requires the person to commit an offense that threatens the social security objectively and possess intentional and negligent purpose subjectively, but also requires the unity of objective and subjective contents of crime. An act is only a crime if a person conducts an act purposefully, and his/her act endangers the social and personal interest objectively. If the person did not act purposefully, and no prerequisite knowledge exists about the object, he/she should not be responsible for the offense he/she committed [13].

Section 1 of Article 17 provides the age range for Chinese criminals: 14 and 16 years old are significant for criminal responsibility in Mainland China. Anyone under 14 has no criminal responsibility regardless of what he/she does. Only eight criminal charges are suitable for people who are between the ages of 14 and 15 (**Table 2**). According to Clause 1 of Article 18, after verification and confirmation through legal procedure, CLPRC specifies that “he/she is not responsible for criminal conduct if, at the time of such conduct, and as a result of mental illness or defect, he/she was unable to appreciate the wrongfulness of such conduct.” The three other clauses from Article 18 make the supplementary specification for Clause 1. First, a person of recurrent insanity shall bear criminal responsibility if he/she commits a crime when he/she is in a normal mental state (Clause 2). Second, the court can provide a person of recurrent insanity with light or mitigated punishment when the judge(s) confronted a verification and confirmation through legal procedure, which demonstrated that he/she has not completely lost the ability of recognizing or controlling his/her own conduct (Clause 3). Mainland China also distinguishes intoxicated person from mental criminals and requires that intoxicated person shall bear criminal responsibility when he/she commits crimes (Clause 4). Cases where criminal responsibility is queried are referred for assessment by the police, the prosecution, or the court in China [10].

**Table 2** China's criminal responsibility system

| Age                   | Responsibility    | Act   |
|-----------------------|-------------------|---|
| Under 14              | No                | No criminal charges   |
| 14 and 15             | Possible          | 8 criminal charges: causing serious injury or death of the person, or committing rape, robbery, drug- trafficking, arson, explosion or poisoning    |
| 16, 17 and 18         | Lesser than adult | 472 criminal charges, according to Criminal Law of the People's Republic of China and 9 Amendments (including 8 criminal charges for age 14 and 15) |
| 18 and above (normal) | Full              | 472 criminal charges, according to Criminal Law of the People's Republic of China and 9 Amendments (including 8 criminal charges for age 14 and 15) |

In China, if a crime is committed consequent to a mental disorder as determined by law (i.e., psychotic disorder), the court may excuse an individual from criminal responsibility, suspend sentencing, and refer the offender to psychiatric treatment, whether inpatient or ambulatory, by executing the appropriate order. A direct relationship must exist between the crime and the mental illness, e.g., the medical test and/or the lack of capacity to avoid the crime (irresistible impulse).

Free will is assumed the foundation of Chinese criminal laws, responsibility doctrines, and practices. A defendant who fails to satisfy the criteria for legal insanity is said to have free will, and the defendant who succeeds with the defense is said to lack it [14]. PTSD patients obtain sentence mitigation, or exemption is also justified and reasonable because the illness causes the difficulty or impossibility for the actors to obey the law or stop what he/she is doing. Aggravation and mitigation are significant sentencing concepts in both Western countries and Mainland China. The court/judge imposes a lower sentence than normal/average sentence through a/some mitigating factor(s) and vice versa. When confronting PTSD patients, the important question for Chinese criminal justice system is the

factor that is appropriately classified as mitigating factor, and a question more important than this is often referred as punishment theory [15].

A sanction should not merely be helpful or useful—it should treat the offending conduct as wrong. Punishment aims to display disapproval for the actor's wrongdoing and clearly blame his/her criminal actions. Consequently, the justice system punishes, the government/court penalizes to censure (retribution), and government/court does not castigate merely to assist a human being to improve (rehabilitation). CLPRC clauses contain retribution and consequentialism. Retribution distributes punishment according to the blameworthiness of the offender. Furthermore, consequentialism distributes punishment on the basis of the consequences that punishment is likely to yield, i.e., based on what is most likely to prevent future crimes [15]. When someone lost free will, retribution and consequentialism are not needed, and technical treatments should be established.

A Chinese judge does not need the National Medical Licensing Examination, but confronting a criminal case might be a work, including medical certification and law knowledge. When dealing with mental defense and following the rule of law, Chinese courts determine criminal responsibility through a two-tiered approach: scientific verification and subsequent legal decision, which means that judges review the criminal responsibility of mental disabilities on the basis of medical evaluation.

## ***6.2. Legal role and function of forensic psychiatric practitioner for criminal responsibility***

Mental defense requires evidence and diagnosis. Forensic psychiatric practitioner<sup>[15]</sup> plays vital role in judgment of criminal responsibility and they are the bridge between science and law. Chinese forensic psychiatric practitioners follow no common criminal jurisprudence with regard to their role or function for criminal responsibility. They are used to reference the counterparts from law school or scholar, thereby raising questions on their practice. Chinese forensic psychiatric practitioners are confronted with three misunderstandings of the legal role. First, some victims and their relatives who consider service from forensic psychiatric practitioners, especially lawyers holding the mental status diagnosis of a defendant, are aim to absolve the patients from liability. Second, some citizens prioritize expert opinion and even

regard forensic psychiatric practitioner as judge. Third, when the public confused the accuracy or valuation of diagnosis, the forensic psychiatric practitioners should provide explanation immediately [16].

When the forensic psychiatric diagnosis or report satisfies the judges, medicolegal expertise challenges three primary misconceptions in Mainland China. First, most Chinese courts mistakenly believe that the defendant's legal capacity is positively correlated with the level of severity of patient's condition. However, the relationship between legal capacity and the level of severity of patient's condition should be treated individually. Second, the majority provides mechanical interpretation on mental ability appraisal and considers it ridiculous that patients can do A but not B, when A and B are equal in degree. Third, both society and courts do not provide sufficient attention to the normal mental activity of patients [17].

*Criminal Procedure Law of the People's Republic of China* (CPLPRC) established several articles on the identification of criminal responsibility for PTSD patients on which the legal role and function of forensic psychiatric practitioner are based. Article 48 of CPLPRC underlines that any material proving the facts of a case could be evidence. In the same article, forensic examiner's opinion is contained as a kind of evidence. Article 50 of CPLPRC regulates that forensic psychiatric practitioner, such as adjudicators or prosecutors, must comply with legal procedures to gather kinds of evidence, especially when this information or evidence can prove the suspect or a defendant as guilty or innocent, or they are mitigating and aggravating factors. Article 53 of CPLPRC also confirmed that all the evidence needed to decide a case is verified through legal procedures.

Therefore, forensic psychiatric practitioners are not judges, and they only have the authority of identification in Mainland China [18]. As a sub-speciality of psychiatry and related to criminology, forensic psychiatry encompasses the interface between law and psychiatry. A forensic psychiatrist provides services to governmental organizations, such as courts, police offices, or individuals, and the determination of forensic psychiatrist aims at competency to damages or stand trial. Forensic psychiatrists working with courts/judges evaluate the competency of test object to stand trial, defenses based on mental disorders (i.e., insanity defense), and sentencing recommendations. As a kind of expert, forensic psychiatric

practitioner delivers opinion to the Chinese court/judges; such opinion is limited to whether a suspect/criminal has the ability to understand what he/she was doing at that moment of crime.

### ***6.3. Standard of criminal responsibility for PTSD patients***

Articles 144–147 of CPLPRC are vital in diagnosis of mental patients, but these clauses cause problems in practice. Article 144 of CPLPRC states that experts shall be assigned or invited to give his/her evaluations when judgment is needed. Section 1 of Article 145 of CPLPRC mandates that expert has a duty to write a conclusion of evaluation and affix his/her signature after evaluating a matter. Furthermore, in Section 2, accompanied by false verification, he/she shall assume legal responsibility. To consider PTSD as either a mitigating factor for defense or exemption factor in Mainland China is more difficult than in the American judicial system. Victims, their relatives, and friends doubt the validity of PTSD, similar to any other mental illness, despite that PTSD has now gained further recognition in science and in the USA [9]. Assessing the validity of a PTSD diagnosis in a particular context is controversial. The period between the first definition of PTSD until today is more than half a century. Chinese lawyer can also obtain abundant resources from Americans to make good defense for the defendants. In brief, both Chinese and American judges are concerned that an individual who presents a claim of PTSD defense in the court might fake symptoms to avoid penalty [15]. Article 146 of CPLPRC confirms when needed, by the criminal suspect or the victim, a supplementary expert verification, or another expert verification could be conducted and submitted to the court. Article 154 of CPLPRC sets a period of two months for each criminal investigation, but Article 147 of CPLPRC supplements that the verification time for the mental illness of a criminal suspect is out of the procedure period for handling the case. In practice, a PTSD criminal case requires a long-term medical verification. Additionally, details for the legal responsibility and scope of supplementary expert verification are lacking, thereby causing many questions in other cases because fake expert verification has no punishment. Expert report also has no authority with the absence of rule stating the exact number of times for diagnosis. Section 3 of Article 187 of CPLPRC is also vital for diagnosis when someone (might be the party, the defender, or the agent) doubts the credibility of the expert opinion or

verification, which is concerned for judgment. Chinese court also has the power to ask the expert to appear in court. If the expert does not testify in court, the expert opinion or verification cannot be used as a basis for mental defense [19]. Therefore, diagnosis and regulations present some ambiguities. If PTSD is recognized as a useful defense in Chinese criminal cases, both plaintiff and defendant might use it in each case, which is different in the US. The problem with using PTSD as a cause of the issue is both the legal system and the current cultural state of the US [2].

Unlike Americans [20], Chinese culture in Mainland China demonstrates no convincing acceptance of the link between PTSD and criminal behavior. Conversely, American experience merits attention because PTSD is a common issue in the society. Similar to American courts, certain traumatic experiences can trigger PTSD symptom, which gained sentence mitigation in the case of Ma Yu-xia. We strongly call for Chinese courts should learn from the American Bar Association and accept a three-part analysis for forensic consideration of PTSD because procedures or standard guidelines for the relationship between diagnosis and judgment do not exist. When confronted with a claim of PTSD, the following questions should be answered: (1) Was the underlying incident a trauma within the meaning of the scientific standard (i.e., was it an event that reasonably could be found to have produced the symptoms)?, (2) Did the trauma produce the present symptoms, or are they the result of other factors?, and (3) Are the symptoms real or feigned? Although the courts have not explicitly recognized these central issues in forensic evaluation of PTSD, this format would permit the courts to address systematically the validity of PTSD claims [21]. Moreover, this formulation accords closely with recent scientific developments that are changing the conceptual and clinical understanding of PTSD.

The government and public fight for crimes using law, and one principle of criminal rules is treating criminals fairly. The same situation will result in the same outcome, and different situations will result in different outcomes. An alleged perpetrator's PTSD must be considered in evaluating his/her competence to stand trial, regardless of whether the mental condition existed before or after the crime occurred. In practice, the majority would retain the ordinary constituted man or the reasonable man test of provocation when penalizing mental patients with PTSD. Consequently, disagreement arises among the majority and might cause

unfair treatments from the courts/judgments and the principle of rule of law. The objective ordinary constituted man or reasonable man test leads courts into inquiries, which are morally blameworthy to some extent. According to medical research, several factors are attributed can determine which emotional or mental diseases are extraordinary, and different countries may have different standard or definition. China has the largest population in the world and consists of 56 ethnic groups. One court commonly identifies a particular condition, for instance, domestic violence, which is sufficient to mitigate responsibility, whereas another court considers the same situation not an extraordinary example to become a major factor in obtaining a below-average sentence. In addition, PTSD criminal still commits crimes even if the traumatic event is over. Whether in Chinese society or not, the basic question in a criminal case of mental patient(s) is whether the actor is as culpable as a citizen who hurts or kills solely for self-aggrandizement or out of sheer malevolence with many mental disabilities worldwide. To address this question and obtain a fair result for the actor, judges must place themselves empathetically in the defendant's relatively distinct actual situation. The whole situation should be assessed generally, not only one article of the criminal laws or procedure rules should bind the judge. An inquiry into what most people would do (i.e., what "ordinarily constituted" or "reasonable" people would do) in such circumstances cannot be completely determinative of some issues. The test cannot be wholly objective or wholly subjective. The mental defendant may have been less angry with the victim at the moment of murder than at some time in the past (when he/she checked the impulse to hurt or kill) is irrelevant, if the trier of fact can conclude that given the total experience of the defendant with the victim, the act of violence can be understood in terms that lessen the defendant's blameworthiness [22].

The prerequisites for the use of expert testimony vary with each justice system. Generally, the expert's testimony is the basis for mental defense cases. The expert testimony should be cognate and should comprehend the trier of fact. Chinese courts have been increasingly called to determine the appropriate qualifications for experts offering testimony concerning PTSD cases. Resembling *Insanity Defense Reform Act of 1984 of United States* [23], Chinese legislation should change rules for the expert testimony in PTSD case concerning admissibility procedure of expert testimony. The government should establish particular mental disorder qualifiers for reducing capacity, but the defendant or lawyer should present

powerful medical or forensic evidence to prove the connection between crime commission and PTSD effects, as in the American case *United States v. Johnson* (49 F.3d 766 (D.C. Cir. 1995)). Therefore, the new rule should prohibit expert(s) from expressing his/her own opinion on whether the suspect or defendant is a patient with PTSD. Nonetheless, the expert should interpret how serious the special traumatic event is and whether PTSD symptoms will diminish the capacity of normal citizens. Changing rules aim to create scientific explanations for courts/judges to make decisions and eliminate confusion created by conflicting expert testimonies on trier of fact.

Under Clause 1 of Article 18 of CLPRC, the PTSD patients may not bear responsibility, but his/her family members or guardian should be ordered to keep him/her under strict surveillance and support health care. Thus, aggressive behavior risk assessment of PTSD criminals is necessary. The stressor feature of PTSD may assist in its validation, both in law and society. Three assessment methods for PTSD patients, namely, include clinical approach, actuarial approach/statistical approach, and structured clinical judgment, are available worldwide. Assessment instruments, such as Historical, Clinical, Risk management-20 and violence risk scale, such as Violence risk screening-10, should also be taken into account [24, 25].

New rules or rule changes are essential steps for PTSD criminals and the Chinese justice system. A brief introduction and comparison of the American history is helpful in understanding this evolution. The court or society will need several years to accept that criminal with PTSD should obtain light or mitigated punishment. Acceptance of PTSD as a mitigating reason for judgment is inconsistent at first, which is chiefly because courts/judges treat PTSD unfairly and frequently with judicial skepticism. Prior to 1980, Vietnam War veterans involved in criminal prosecutions attempted, without much success, to introduce their war experience as a causative factor of their criminal behavior. In 1978, PTSD symptoms were first used in the capital case of Charles Heads: domestic violence was accepted by the jury, but they rejected the plea of insanity at first. Three years later, the jury found Charles Heads not guilty of murder because of temporary insanity stemming from his war experiences. The defendant's second trial brought testimony from some veterans about stress resulting from Vietnam War. After the spread of DSM and confession of PTSD, the

lawyer began to persuade the court that Charles Heads is a mental disorder patient, which could be a basis and important evidence for the application of insanity defense [2]. The jury, convinced that Charles Heads was suffering from PTSD, concluded that the defendant is not guilty by reason of insanity. The jury was apparently convinced that Heads' reversion to combat-like behavior is caused by a combat flashback that made it impossible for him to distinguish right from wrong (Louisiana has the M'Naghten Test for criminal responsibility) [26].

Cases promote legal changes. California was the first and Minnesota was the second state in 2008 to produce particular statutory rules for convicted veterans with PTSD. Subsequently, many other states and the US federal government joined them. Embracing PTSD as a mitigating element needs legal tests in the US, where various legal tests for insanity are available. The M'Naghten Test (also called M'Naghten Rule) is the main mental test, which takes its name from the known English case (*Queen v. M'Naghten*, 8 Eng. Rep. 718 [1843]). Approximately half of the 50 states in the US utilize the M'Naghten Test to assess the sanity of a defendant, despite that other insanity test formulations do exist [27].

For instance, under the American Law Institute (ALI), the Control Test is also known as Irresistible Impulse Test in other areas: when the defendant is incapable of controlling his/her behavior as the result of the mental illness, even if he/she is aware that the nature of the act as illegal or guilty, the actors might be exculpated. The ALI test provides two chances for PTSD patient(s) to propose a plea of not guilty by reason of insanity [27].

## **7. Conclusion**

After the considerably strong earthquake in Sichuan province in 2008, a large number of survivors suffer from PTSD. PTSD patients occur in all races, classes, religions, and nationalities, and some would unfortunately be criminals. This pattern reveals concern for the boundary between the reasonable use and abuse of PTSD in view of medicolegal expertise practice. Expert testimony or opinion cannot replace the judges' decision. Chinese courts should learn from the American Bar Association and accept the three-part analysis for

forensic consideration of PTSD. Further details regarding the regulations for resolving the criminal responsibility of PTSD patients should be obtained.

## **Declaration**

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### ***Availability of data and materials***

The data that support the findings of this study are available from China National Knowledge Infrastructure and China Judgment Online, and so are publicly available.

### ***Ethics approval and consent to participate***

The study received the ethics approval from the Chinese government. All the participants in the survey read and signed the informed consent forms.

According to laws of Chinese Mainland, when it comes to the academic research, after the final decision from court, authors can use the information of cases from the criminals when he or she is a adult without his or her agreement, like Ma Yu-xia case. We just use the materials of the case for the official website (<http://old.chinacourt.org>) for paper. And we are not the only one who discussed the case without her consent. So we do not consider it needs consent from Ma Yu-xia or her relatives for publication.

### ***Competing interests***

On behalf of all authors, the corresponding author states that there is no conflict of interest

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