

Akmal Shaikh's trial shows China must improve its handling of criminal suspects with mental issues, writes **Jerome A. Cohen**

Rough justice

A month ago, Akmal Shaikh was an unknown British subject of Pakistani origin waiting for China's Supreme People's Court to decide whether he should have been given a psychiatric evaluation before being convicted of the capital crime of smuggling heroin. Recent weeks made him the focus of international attention, especially after the court upheld his death sentence and the government rejected appeals for clemency.

Shaikh's execution last Tuesday ignited a firestorm that further poisoned China's already souring relations with Britain and the European Union. British Prime Minister Gordon Brown was "appalled" by the execution, and Foreign Office minister Ivan Lewis said that "any court in any civilised part of the world" would have instituted a full medical assessment of Shaikh's mental state.

The response of the Foreign Ministry was unimpressive. It claimed that "the concerns of the British side were ... taken

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into consideration by the Chinese judicial authorities". British accusations were groundless, it said. "Nobody has the right to speak ill of China's judicial sovereignty."

Some Chinese commentators saw Britain's pleas for a mental evaluation and clemency as a belated attempt to reopen the Opium Wars of the 19th century and again frustrate China's efforts to protect itself against unwanted foreign narcotics. Others saw the foreign protests as retaliation for China's recent refusal to meet Western demands regarding climate control, currency revaluation and other issues. Many branded the protests as imperialist bullying to gain privileged treatment for foreigners, interfere with China's "judicial independence" and discredit the ever-popular death penalty.

Foreign pundits also had a field day. Some saw racism in the decision to make Shaikh the first European national executed by China in more than 50 years. Others thought that China did not wish to

grant mercy to a foreign Muslim while executing many local Muslims for alleged rioting in Xinjiang (新疆). Several critics argued that the incident demonstrated China spurned international standards. Some said Westerners needed to develop new ways to influence China. Many commented that Shaikh was a victim of China's rising power, confidence and even arrogance. Shaikh's family accused Britain of failing to pursue a "hard-hitting strategy".

Yet heated rhetoric and speculation should not obscure the fact that the case turned on a legal issue: whether the information presented to the courts about Shaikh's mental condition was sufficient to warrant ordering his psychiatric examination. Although much about the case has yet to be revealed, what we do know confirms the need to improve judicial handling of this issue.

Will Shaikh's case stimulate necessary procedural reforms? Some knowledgeable observers doubt it. Yet there may be reasons for optimism, even during China's present conservative political climate.

First, China's leaders must now be aware that the refusal to allow professional evaluation of Shaikh's mental condition seriously damaged the government's efforts to enhance its "soft power" abroad.

Second, although several prominent Chinese scholars expressed support for that refusal, a larger number of legal experts would have opposed it, had they been free to do so, and can be expected to work quietly to prevent its repetition. After all, a life was at stake, and there was strong evidence, certainly by the time of Shaikh's second instance trial, that he may well have been delusional when he brought in the heroin. There was also a serious question about his capacity to stand trial.

Third, the problem of mental responsibility for crime is enormously important to China's social stability. Each year, it often comes up, or should, in many of the thousands of death penalty cases and the roughly 700,000 non-capital cases that flood the courts. Reportedly, 170

million Chinese suffer from mental health problems, and almost 16 million need treatment. In China, as elsewhere, a large percentage of the people who run afoul of the criminal process are mentally troubled.

Fourth, existing legislation, which shows that China shares the world's abhorrence of punishing mentally irresponsible people, provides judges, prosecutors, police, lawyers and mental-health specialists with too few guidelines regarding both the substantive criteria for determining mental responsibility and the procedures required for a fair and accurate decision-making process. The resulting broad discretion conferred on law-enforcement officials lends itself to unjust results. Thus, those who commit heinous

crimes due to mental illness are frequently denied psychiatric evaluations and given only cursory scrutiny by officials who do not want to risk the wrath of either political leaders or an enraged public.

The controversial 2008 execution of Yang Jia (楊佳), allegedly a seriously disturbed man who killed six policemen in retaliation for earlier police abuse against him, spurred some Chinese experts to seek necessary law reforms. Shaikh's sad case may add fuel to the fire.

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