

## Military Trial of Emperor Bahadur Shah Zafar: An Assessment of its Legitimacy

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### Abstract

*The East India Company's rule in India (1757-1857) facilitated the transfer of wealth to European nations amidst widespread indigenous resistance, notably within the Company's military. Responding with force, the Company arrested Emperor Bahadur Shah Zafar, tried him for sedition, and exiled him. In London, Governor-General Warren Hastings faced accusations of economic exploitation, avoiding impeachment despite a prolonged legal battle. The British Parliament swiftly convicted Bahadur Shah Zafar of treason, highlighting the breach of earlier treaties recognizing Mughal sovereignty. This study examines the unjust military trial within the context of international law, asserting it as an act of treason. Queen Victoria's endorsement of Bahadur Shah Zafar's sentencing underscores British government complicity. The trial, marked by extrajudicial practices and misappropriation of funds, saw the King portrayed as a criminal defendant. Simultaneously, the Company pillaged Delhi while adjudicating charges against Bahadur Shah Zafar. Legislation following his conviction transformed India into a British colony, leading to the Company's expulsion and asset forfeiture.*

**Keywords:** East India Company, Colonial exploitation, Bahadur Shah Zafar, Military Trail, Sovereignty, India's War of Independence, International law

### Introduction

In a historical context, King of England, Thomas Roe<sup>1</sup>, undertook a diplomatic mission to India with the objective of securing a trade license from the fourth Mughal Emperor, Nur-ud-Din Muhammad Saleem, renowned as Jahangir (1605-1627), a prominent figure within the Timurid dynasty of India. This diplomatic endeavor necessitated a protracted period of four years within the Mughal court, characterized by extensive negotiations and diplomatic engagements, aimed at obtaining the crucial permission to initiate trade activities with India.

Ultimately, Emperor Jahangir accorded approval for the East India Company to engage in trade with India. Subsequently, the Company embarked on the establishment of trading houses, serving the dual purpose of safeguarding the goods procured from India and discreetly instituting military cantonments. In tandem with the shipment of merchandise on board vessels, the Company undertook the recruitment and deployment of trained soldiers from Britain, stationing them within these fortifications. This strategic move paved the way for the Company to assume command of a professionally trained army, which, remarkably, after a span of a century and a half, played a pivotal role in the historic Battle of Plassey in 1757.

During this battle, the Nawab of Bengal, Siraj-ud-Daulah, found himself pitted against the forces of the East India Company. Mir Jafar, a key military general in the Nawab's army, adopted the role of a collaborator in the British army's war strategy by betraying his homeland. In a fateful turn of

events, Mir Jafar, together with his son Miran, orchestrated the assassination of Siraj-ud-Daulah, accompanied by the tragic massacre of over 300 members of his family. This coup led to Mir Jafar's ascension as the Nawab of Bengal, effectively opening the door to British dominance and rule in India.

The East India Company established a firm political ascendancy over Bengal, Bihar, and Orissa through a series of agreements with Mir Jafar. These agreements granted the company distinct privileges, such as special licenses, tax exemptions, and the legal prerogative to harness the economic potential of local merchants. Consequently, the Company further solidified its political influence, culminating in the acquisition of administrative authority over Bengal, Bihar, and Orissa, thereby augmenting its economic control within the region. This overarching expansion of power was formalized through a formal pact with Shah Alam on August 17, 1765<sup>ii</sup>. (Anand, *Constitutional Law & History of Government of India*)

Approximately three decades later, in the year 1803, the East India Company entered into another consequential accord with the central authority of the Mughal Empire. This accord conferred upon the Company significant civil authority extending as far as Delhi. The intricate particulars of this agreement shall be expounded upon in subsequent sections. Politically, the Mughal Empire's ascendancy in the Indian subcontinent was brought to a close in 1803. Upon the ascension of Bahadur Shah Zafar to the Mughal throne in 1837, the position of the Emperor of India had been reduced to a purely symbolic one. The emperor's political authority had waned, and the jurisdiction of the Mughal Empire was circumscribed to the precincts of the Red Fort.

The military might of the East India Company catalyzed a period of economic exploitation directed towards the indigenous population. This exploitation extended beyond civilian inhabitants to encompass the treatment of local Indians by the Company's military personnel, marked by a derogatory disposition. Consequently, the seeds of revolt were sown, beginning within the confines of the Company's military cantonments and subsequently proliferating among the civilian populace, ultimately finding its epicenter in Delhi. The ensuing insurrection, characterized by a lack of organizational coherence, was quelled through the application of military force, culminating in the apprehension of Bahadur Shah Zafar.

In contravention of established treaties, wherein the Company operated as a subordinate entity under the aegis of the Emperor of India, the Company opted to level charges of rebellion against Bahadur Shah Zafar following his arrest. To adjudicate this case, a military court was convened, and after a mere 21 days of legal proceedings, Bahadur Shah Zafar was indicted. This landmark military trial, rife with legal inconsistencies, not only deprived the Emperor of India of his right to appeal, but also presented the emperor's own legal counsel as a witness against him. This act constituted a grave breach of the treaties and a charge of high treason was brought against the Company. Subsequently, the Emperor of India was forcibly exiled from the subcontinent, and as a means to fortify political control, mutiny cases were tried within the military courts of the Company. Over the course of a year, individuals of Indian descent were subjected to executions on the basis of these cases, marking a grim chapter in the annals of colonial history<sup>iii</sup>.

The expulsion of the Muslim population from Delhi ensued, accompanied by the confiscation of their assets, which were subsequently distributed among military personnel. Concurrently, the Emperor of India, Bahadur Shah Zafar, was subjected to an edict of exile following a military trial. In delving into the complexities of this historical episode, it becomes imperative to scrutinize its legal dimensions. In pursuit of a comprehensive understanding, we must endeavor to address the following inquiries:

1. What was the legality of Bahadur Shah Zafar's arrest?
2. Did the military trial against the Emperor of India adhere to legal norms?
3. Did the East India Company possess the legal authority, as per prevailing international law, to subject Bahadur Shah to trial?
4. Was the establishment of a military commission under Section 14 of the Act of 1857 and the subsequent trial within a special court in conformity with recognized principles of international law?
5. To what extent did the East India Company acknowledge the Emperor of India's sovereignty under the Treaty of 1805?
6. Can the affixation of the Emperor of India's seal on Indian currency be validated as a binding commitment?
7. Was the Emperor of India regarded as a stipendiary recipient by the East India Company?

### **The Seizure of Bahadur Shah Zafar**

On September 26, 1857, Captain William Stephen Hudson, a prominent figure within the East India Company's military, undertook a visit to Humayun's tomb. In his company were approximately one hundred soldiers, all equipped with weaponry. Subsequently, they advanced towards a destination where the last reigning Mughal emperor, Bahadur Shah Zafar, was accompanied by his consort, Begum Zeenat Mahal, his sons, and a contingent of soldiers. Major Hudson's written account encapsulates the event, detailing the capture of the Emperor of India as follows:

*I, Hudson, engaged in protracted deliberations to secure the authorization for the apprehension of the emperor. Notably, despite assurances of his safety, neither preparatory measures nor decisive steps were taken to ensure his protection. Concurrently, Queen Zeenat Mahal and her sons sought refuge within the precincts of Humayun's Tomb. General Nicholson advocated for the apprehension of this entire party, and acting upon this counsel, I dispatched a communication, imploring the princes to surrender and submit to arrest. After the elapse of two hours, this apprehension was successfully executed. Bahadur Shah Zafar relinquished his sword to me, including the surrender of approximately five hundred additional swords. The British army also laid claim to the horses. Tragically, the princes met a grim fate as they were met with a fatal volley of gunfire, and their lifeless bodies were publicly displayed in front of the Kotwali<sup>iv</sup>. (Hudson 339-341)*

Illustrating the episode of the apprehension, Major Hudson's narrative unfolded as follows:

*Following the successful capture of Humayun's Tomb, the procession set forth on its march toward the city. A curious crowd of onlookers from the city observed this unfolding spectacle. Ultimately, the procession arrived at the Lahori Gate, where Major Hudson issued instructions to have the gate opened. The officer on duty inquired about the occupant of the palanquin, to which the response was unequivocal: it contained none other than the King of Delhi. Major Hudson subsequently convened a formal meeting with the civil officer, Mr. Sanders, who, notably, would later become a central figure in the subsequent military trial, being Hudson's son-in-law. Within the confines of the Red Fort, Major Hudson formally relinquished custody of the royal detainees to Mr. Sanders. It was during this exchange that Mr. Sanders voiced an exclamation, remarking, "By Jove, Hudson,*

*you should be appointed as Commander-in-Chief for this remarkable undertaking." Subsequently, Major Hudson proceeded to deposit all the seized arms at the General Quarters. At this juncture, fellow military officers extended an unusual privilege, allowing Major Hudson to select his weapon of choice. In response, Major Hudson opted for two distinguished swords, one bearing the name of Nadi Shah, and the other displaying the seal of Jahangir. Noteworthy is the fact that Major Hudson received these swords as a gift to be presented to the Queen of Great Britain<sup>v</sup>. (Hudson 343-346)*

Major Hudson documented the tragic fate of Bahadur Shah Zafar's sons, Mirza Mughal, Mirza Shah Abbas, and Mirza Jawan Bakht as follows:

*The identification of the aforementioned individuals, namely the sons of Bahadur Shah Zafar, was facilitated by a nephew of the emperor who was in our company. This nephew, who also provided testimony against the king, openly acknowledged his participation in the events. He went by the name Mirza Mughal and held the dual distinction of being the king's nephew and the foremost figure within this rebellion. Mirza Shah Abbas, another prominent figure within the rebellion, was notorious for his involvement in acts of violence against women and children. Additionally, Mirza Jawan Bakht, who was designated as both the commander-in-chief and the heir to the throne, played a pivotal role in the unfolding events<sup>vi</sup>. (Hudson 352)*

**Context of the Military Trial of Bahadur Shah Zafar:** Subsequent to the apprehension of Bahadur Shah Zafar, he was presented before the Military Commission<sup>vii</sup> within the Diwan-i-Khas of the Lal Fort. During the proceedings, Bahadur Shah Zafar assumed the role of the accused, while Advocate General Major F. J. Harriet formally articulated four distinct charges against him. These allegations are summarized as follows:

#### **The First Accusation**

Bahadur Shah Zafar, while incarcerated as a prisoner under the jurisdiction of the British Government in India, is indicted for actions undertaken within Delhi between the dates of 10th May and 1st October 1857. It is alleged that during this period, he extended aid, support, and complicity to the Provincial Dar of Artillery, Muhammad Bakht Khan, as well as other local commissioned officers and unidentified soldiers in the service of the East India Company, thereby contributing to acts of mutiny and sedition against the State.

#### **The Second Accusation**

While residing in Delhi, Bahadur Shah Zafar is accused of having engaged in meetings, on various occasions between 10th May and 1st October, with his son Mirza Mughal, a subject of the British Government in India. Additionally, these meetings purportedly involved interactions with unidentified residents of Delhi and individuals from the North-Western Provinces of India, who were subjects of the British Government. It is contended that during these encounters, Bahadur Shah Zafar actively encouraged and abetted these individuals, who were subjects of the Government, to embark on acts of rebellion and warfare against the State.

#### **The Third Accusation**

In defiance of his duty of obedience as a subject of the British Government in India, Bahadur Shah Zafar is accused of having, on May 11, assumed the role of a ruler and sovereign of India within the confines of Delhi. He is further charged with the unlawful occupation of the city of Delhi through acts of theft and disloyalty. Subsequently, between May 11 and October 1, 1857, Bahadur



Shah Zafar, along with his son Mirza Mughal and the Provincial Dar Bakht Khan of the artillery regiment, alongside other unidentified conspirators, is alleged to have engaged in rebellion against the government and initiated hostilities against the State. Moreover, in furtherance of his revolutionary objectives aimed at overthrowing the British Government in India, he is accused of amassing armed forces within Delhi and deploying them to wage war against the aforementioned British Government.

#### **The Fourth Accusation**

On May 16, 1857, within the confines of the palace in Delhi, Bahadur Shah Zafar is charged with the pursuit of his criminal aspirations and involvement in the orchestrated murder of 49 individuals of European and mixed-race descent, predominantly comprising women and children. In addition to these heinous acts, he is alleged to have incited soldiers and other individuals to perpetrate violence against Europeans, including women and children, as well as European officers, within the period spanning from 10th May to 1st October 1857. These actions were purportedly undertaken with the promise of granting promotions and positions in return. Furthermore, Bahadur Shah Zafar is accused of having issued directives to various regional authorities in power across India, urging them to eliminate Christians and Englishmen wherever they were found within their respective territories. A significant aspect of his conduct is deemed a grave offense under Article XIV of the Legislative Assembly Act of 1857<sup>viii</sup>. (Nayyar 201-203)

#### **The legal perspectives of Bahadur Shah Zafar's British citizenship**

The subsequent section will delve into the examination of the applicable legal framework for trying the last Mughal emperor on charges of rebellion within a military court. Prior to embarking on this analysis, it becomes imperative to address a fundamental query: Did the East India Company possess the requisite military authority to prosecute a sovereign monarch? Were they legally empowered to undertake such proceedings? This matter is succinctly encapsulated in William Dalrymple's work, *The Last Mughal*:

*A matter that remained conspicuously unaddressed was the legality of the East India Company's jurisdiction over the trial of the King. Although the Government asserted that Bahadur Shah Zafar was a pensioner of the Company, and therefore subject to their authority, the actual legal standing in this regard was considerably more enigmatic. While the Company had obtained its charter in 1599 from both Parliament and the Queen, its entitlement to engage in trade within the East was, in fact, legally contingent upon the Mughal Emperor. A significant period prior to these events, the emperor had formally sanctioned the Company's role as a tax collector in Bengal, a role that gained authorization following the Battle of Plassey in August 1765. As recently as 1832, when Bahadur Shah Zafar had reached the age of 58, the Company acknowledged his authority by imprinting the seal of the Mughal Emperor on its currency and even on his grand seal, which bore the inscription 'Fadwi Shah Alam' (Dependents of Shah Alam). This historical context underscores the intricate and multifaceted nature of the Company's relationship with the Mughal Empire<sup>ix</sup>. (Dalrymple 432)*

William Dalrymple further writes that:

*Bahadur Shah Zafar had consistently been outside the jurisdiction of the Company, rendering the notion of his culpability for treason legally untenable. Conversely, from a legal perspective, one could argue that it was the East India Company that*

*had actually engaged in rebellion, transgressing against the Fidai supremacy to which it had pledged allegiance for nearly a century*<sup>x</sup>. (Dalrymple)

The proclamation by Advocate General Major Harriet, designating the last Mughal emperor as a British citizen and a stipend recipient in accordance with the Treaty of 1803, raises the essential question of whether this declaration offered sufficient grounds for the initiation of a military trial. Accusing Bahadur Shah Zafar of British citizenship, by extension, constitutes an allegation of sedition. To adjudicate this matter, it is imperative to consider the international laws and British legal principles that prevailed during that historical epoch.

To substantiate Bahadur Shah's classification as a British citizen, the Prosecutor, Major Harriet, would have been required to establish, as a preliminary matter, that the sovereignty of the Delhi Sultanate had ceased to exist, and that Delhi had transformed into a territory conquered by Britain in 1803. Lucinda Dons Bell, in her doctoral thesis, scrutinizes the legitimacy of Bahadur Shah's British citizenship, thus shedding light on this pivotal issue:

A fundamental issue emerges concerning the precise legal nature of the 'protection' granted to the Kingdom of Delhi in 1803. Did this 'protection' entail preservation or dissolution of the kingdom? Notably, the extension of 'protection' in 1803 resulted in the local inhabitants of Delhi obtaining British citizenship, a divergence from the legal doctrine based on the consequential effects of protection. It is a firmly established principle in international law that statehood is not conferred merely through the extension of protection; rather, it materializes through the acquisition of territorial sovereignty. For instance, when a state was annexed, the status of its citizens was determined by the domestic laws of the successor state. The protected state's territory did not become the dominion of the protecting state, and the citizens of the protected state did not automatically acquire the nationality of the protecting state. These principles aligned with English law and were exemplified in cases such as Doss and Saligram, which clearly affirmed that the sovereignty of the Kingdom of Delhi had been under the protection of the Government of India since 1803. This protection did not nullify the existence of the Delhi kingdom, and its sovereignty remained intact until October 3, 1857. Bahadur Shah was consistently "treated and recognized as a king by the British Government." Furthermore, neither Bahadur Shah nor any of his predecessors were deposed by their own subjects, the British Government, or any other external power. Thus, in accordance with established norms of international law, the Delhi Sultanate maintained its legal existence from 1803 to 1857<sup>xi</sup>. (Bell 179-180)

### **Was the Emperor of India a beneficiary of the Company's stipend?**

Certain European accounts sought to depict Shah Alam as having embraced the British as saviors in 1803 to counter the Marathas. However, historical evidence reveals that Shah Alam, during the British-Maratha conflict, engaged in clandestine negotiations with Lord Lake, an act that can be accurately characterized as diplomacy. His objective was to establish a framework with the British in the event of their triumph in the war.

Within the agreement forged between Shah Alam and the East India Company, the Company undertook to provide the King with a monthly allowance of Rs 60,000, along with an annual grant amounting to Rs 11,50,000. Furthermore, the governance of Delhi was restructured under the direct oversight of the Resident, and the appointment of two Accountants was instituted to supervise the treasury. Tragically, Shah Alam passed away in 1806<sup>xii</sup>. (Cheema 466-467)

The stipulations outlined in the covenant with Lord Lake were as follows:

1. All the districts located on the right bank of the Yamuna River, extending north-west of Mouza Khabulpur, forming part of His Majesty's dominion.
2. The collection of revenue from the aforementioned territories of the Darbar-i-Delhi would fall under the jurisdiction of the British Resident, a perpetual arrangement.
3. Officials from the Royal Exchequer would be in attendance at the royal court or the office of the Revenue Collector under the aforementioned dominion. Their responsibility would encompass maintaining a comprehensive record of the revenue generated within the kingdom, ensuring His Majesty's contentment and convenience.
4. As an act of tribute, the British Resident would present a sum of 10,000 rupees to their King on seven prominent annual festivals.
5. Two Qazis and a Mufti, individuals of considerable erudition hailing from Delhi, would be appointed to preside over matters of justice.
6. In instances where a death sentence was pronounced by the Criminal Courts of Delhi, prior to its execution, the sentence would be submitted to the King for his approval, modification, or disapproval.
7. Within the city of Delhi and the broader dominion of the King, currency bearing His Majesty's name would remain in circulation.
8. In the event of an increase in revenue resulting from enhancements in the circumstances of the local cultivators in the designated districts, the augmented sum would be tendered as tribute to the King.
9. The British Resident would annually present 10,000 rupees to the King on each of the seven major festivals, including the two Eids, the accession anniversary, the Nine Days, Ramadan, Holi, and Basant.
10. The company would remunerate Mirza Izad Bakhsh, the King's heir, for the Jagir situated in Du Aab <sup>xiii</sup>. (The Asiatic Journal and Monthly Miscellany 305-306)

Following Shah Alam's demise, the reign of Akbar II commenced. In 1809, Lord Wellesley augmented the stipend to 12 lakhs. By 1827, Akbar II formally petitioned for an increase in the allowance, prompting the King to dispatch Ram Mohan Roy to the royal residence at St. James Palace. In recognition of this mission, Mohan Roy was bestowed with the title of Rajah. The Company reacted to the King's decision, taking measures to thwart Mohan Roy's departure from Britain via ship. Nevertheless, Raja Ram Mohan Roy ultimately embarked for London, where he engaged with Charles Grant, who served as the President of the Board of Control <sup>xiv</sup>. Regrettably, the Court of Directors declined to convene a meeting. Detailed accounts of these interactions are as follows:

Upon the endorsement of Charles Grant, King William IV granted audience to Raja Rammohan Roy and acknowledged his credentials. Subsequently, the Raja presented two propositions to the Company: firstly, to permit the King to assume administrative authority over the designated territories, thereby enabling him to meet his financial requirements from the revenues generated in those regions. Alternatively, in the event that the former proposal was not agreeable, the King sought an annual stipend of 30 lakhs for his maintenance, with the condition that the King would explicitly accept the status of a pensioner. Initially, the Company proffered an annual sum of Rs. 15 lakhs. The King initially declined this offer, citing insufficient funds. However, he later acquiesced to the terms <sup>xv</sup>.

Was the Emperor of India genuinely under the Company's stipend? This inquiry scrutinizes the company's inaugural endeavor in tax collection in Bengal, which emerged from the optional arrangement. Allahabad stands as the significant locale where the British first obtained a formal opportunity for economic exploitation within India. The pivotal moment unfolded in 1765, with the signing of a treaty between Shah Alam II and Robert Clive of the East India Company at Allahabad. In the terms of this treaty, Shah Alam, the Mughal emperor, ceded his Diwani, encompassing the authority for tax collection in Bengal, Bihar, and Orissa, to the East India Company in 1765.

The agreement between the Company and the emperor was formally sealed on August 19, 1765. According to this accord, the Company was obligated to remit an annual sum of 26 lakh rupees to the King. However, the Company transgressed this agreement by discontinuing these payments, contrary to the stipulated terms. The specifics of this agreement are as follows:

Nawab Najam-ud-Daula was to remit an annual sum of 26 lakh rupees to the King from the revenue generated in Bengal, Bihar, and Orissa, with no allowances or deductions permitted on the hundis. Starting from September 1, 1765, a monthly payment of Rs. 2,16,666 was to be made. In exchange, the King conferred upon the Company the Diwani rights for Bengal, Bihar, and Orissa. The Company undertook to ensure the disbursement of this amount to Raja Shatab Rai or any other individual appointed by the King. In the event of an incursion by a foreign adversary into the aforementioned regions, any resulting losses would be deducted from the revenues, with the intention of compensating for the incurred losses <sup>xvi</sup>.

The initial conflict between the East India Company and the Marathas concluded with the signing of the Treaty on December 30, 1803. Subsequently, a treaty was formalized between Shah Alam and the Company in 1805, and this accord received the endorsement of Governor General Wellesley. Per the provisions of this treaty:

Under the terms of this treaty, the territory situated on the right bank of the Yamuna River was ceded to the East India Company. It was stipulated that this land would remain assigned to Shah Alam, with its administration overseen by a British Resident in Delhi. Shah Alam, the Emperor of Delhi, would appoint a Diwan to furnish reports on the revenue generated from the designated territory. To administer both civil and criminal justice, two judicial courts were to be established in accordance with Muslim law for the residents of Delhi. Judges would be selected from the most esteemed and erudite members of the Muslim community in Delhi, and no capital punishment could be imposed by the courts without the King's explicit consent. Regular payments to meet the expenses of the royal court and the imperial family were to be made to Shah Alam, with a fixed monthly stipend of Rs. 90,000, subject to augmentation based on available resources. This monetary provision was to be drawn from the revenues sourced from the territories assigned by Shah Alam. In due course, a military force would be instituted to safeguard the assigned territory. Although the East India Company stationed troops outside the city to ensure the security of the empire, the King of Delhi was compelled to maintain his own armed forces <sup>xvii</sup>.

The agreements entered into between the East India Company and the Emperor of India, Bahadur Shah Zafar, unequivocally establish that the Emperor of India was not a stipend recipient of the Company; rather, the Company acknowledged the King's sovereignty. The fixed amount of 90



thousand rupees, designated to be disbursed to the King from the Company's tax revenues, distinctly underscores that the King was not a beneficiary of the Company's stipend. According to the legal framework of the time, there was no provision for altering the citizenship status of a head of state in exchange for monetary compensation. Furthermore, no law or treaty within Great Britain's jurisprudence stipulated that the King would be deemed a British citizen in consideration of these financial disbursements. The accord between Shah Alam II and the East India Company, which entailed the payment of a share of revenue to the King of Delhi, was documented by the Judicial Committee. This arrangement, initially established in 1805, remained in force until 1857. The revenue was disbursed under the Act of State of 1804 but was confiscated under the Act of State of 1857.

The primary objective of this assignment was to uphold the regal dignity of Shah Alam II and to adequately support the elevated standing of his royal family. This arrangement was underpinned by political expediency and the sums remitted to the Kings of Delhi were consistent with established principles and precedents governing transactions between sovereign powers. British courts consistently upheld that they lacked the jurisdiction to arbitrate treaties between two sovereign entities. The legal status of the "pension" provided by the Government of India to the then minor ruler of the state of Punjab, Maharaja Jah Dilip Singh, upon the annexation of Punjab in 1849, was examined by British courts. This "pension" was an act of state, secured through an agreement between sovereign states. Consequently, courts were not vested with the authority to adjudicate the terms of a contract or enforce contractual obligations. The grant of the pension did not engender a contractual relationship or establish equal rights; instead, it predominantly served as a form of assurance <sup>xviii</sup>.

### **1857 and the Implications of the Mutiny Act**

Within the context of the case, the Military Commission lodged a secondary charge of mutiny, contending that Bahadur Shah Zafar had violated his oath of allegiance to the East India Company, thus necessitating legal proceedings. As the military uprising against Company rule, which commenced in May, gained momentum among the general populace, all existing courts and legal systems under the aegis of the Company were disbanded, giving way to the imposition of martial law.

This marked the inception of martial law in India, with the primary objective of expediting trials, held under martial law jurisdiction, for both civilian and military individuals who had joined the uprising. Under the provisions delineated in Regulation X of 1804, the Military Commission was granted authority to take action against the insurgents.

Regulation X introduced a novel legal provision targeting the offense of 'sedition.' In essence, Regulation X constituted an amendment to the existing Islamic law on sedition, as articulated in The Hedaya. As noted by Harrington, the primary objective of Regulation X was to impose severe penalties on individuals found guilty of sedition, particularly those involved in acts of rebellion. Under Regulation X(10), a punishment as severe as the death penalty through hanging was prescribed, in stark contrast to traditional sedition laws where penalties were contingent on repentance. Notably, Regulation X preserved certain elements of Sharia law. An individual was deemed culpable of mutiny exclusively when actively participating in a mutinous army. In a parallel manner, Regulation X extended liability to those individuals engaged in acts of rebellion <sup>xix</sup>.

An essential query that arises in this context pertains to the definition of loyalty to the British Government and, moreover, the legal standing of such loyalty.

This concept of loyalty is rooted in Islamic law, wherein citizens are bound by allegiance to the sovereign. The East India Company positioned itself as the sovereign entity, compelling Indian citizens to pledge their loyalty based on Islamic law. This assertion is substantiated by the Company's acquisition of civil powers from the Mughal Emperor in 1765, a time when the reigning authority in India was vested in the Mughal Emperor. Bahadur Shah Zafar faced charges related to both waging war and instigating warfare in the military tribunal. Within the regions under the Company's dominion, there was a notable absence of well-defined regulations pertaining to mutiny. Even Regulation X of 1804 did not encompass provisions that explicitly defined and criminalized acts of treason<sup>xx</sup>.

Only following the onset of hostilities against the Company did the establishment of General Court Martial regulations occur, which received approval from the Legislative Council on the 16th of May, 1857, a mere six days after the outbreak of the conflict. These legal provisions, as set forth by this law, resulted in a reduction of the military court's membership from 13 to 5. This change meant that only three members, or two-thirds of the panel, were required to deliver sentences against prisoners of war.

Subsequently, Act XI was endorsed by the Legislative Council on the 30th of May, 1857, to legitimize cases of treason. Two clauses were added to this act, addressing rebellion against the Kingdom of Great Britain or the Government of the East India Company, and the declaration of war against the Kingdom of Great Britain or the Government of the East India Company. In total, Act VIII, Act XI, Act XIV, Act XV, Act XVI, Act XVII, Act XXV, Act XXVIII, and Act XXXV were passed and enacted in 1857 to address the prosecution of mutiny and war-related crimes involving prisoners of war. In essence, eight distinct legislations were introduced and enacted within a single year, all aimed at penalizing those who participated in the War of Independence.

It is imperative to clarify a noteworthy aspect in this context. According to the Company's Charter Act of 1833, the Governor-General of India was not granted legal authority to enact laws providing for the establishment of courts for non-Europeans in territories under the dominion of Great Britain without the prior consent of the Court of Directors. Therefore, all the acts promulgated by the Governor-General in 1857 were devoid of legal validity, as were the powers conferred upon the Court-Martial under these acts or regulations.

The tribunal responsible for Bahadur Shah Zafar's trial operated independently from the existing judicial framework, which included the criminal courts established in 1772 by the East India Company and the Supreme Court of Calcutta founded in 1774 under the Royal Charter. Consequently, under the sedition laws, the prosecutor failed to substantiate that Bahadur Shah Zafar harbored loyalty toward the East India Company, rendering the military court's charges of sedition and disloyalty against the last Mughal emperor legally unsustainable<sup>xxi</sup>.

It is of paramount importance to expound upon a salient dimension in this context. As per the Company's Charter Act of 1833, the Governor-General of India was not vested with the legal authority to promulgate legislation for the establishment of courts catering to non-European populations within territories under the dominion of Great Britain, without prior endorsement from the Court of Directors. Consequently, all the enactments promulgated by the Governor-General in 1857 lacked legal legitimacy, as did the powers conferred upon the Court-Martial under these enactments or regulations.

The tribunal responsible for presiding over Bahadur Shah Zafar's trial operated autonomously, existing outside the established judicial framework, which encompassed the criminal courts instituted in 1772 by the East India Company and the Supreme Court of Calcutta, inaugurated in

1774 pursuant to the Royal Charter. In light of the sedition laws, the prosecuting party failed to establish that Bahadur Shah Zafar maintained allegiance to the East India Company, thus rendering the military court's accusations of sedition and disloyalty against the last Mughal emperor devoid of legal standing<sup>xxii</sup>.

It is pertinent to highlight that among the witnesses, Agent Lt. Governor C. B. Saunders was notably presented as a witness against the King, and interestingly, he happened to be the son-in-law of the Government Advocate General and Deputy Judge Major F. J. Harriet. After the demise of the last Mughal emperor's sons, Major Hudson, upon reaching the Red Fort's gate, gained entry with the permission of CB Sanders. It was Hudson who first conveyed the news of Bahadur Shah Zafar's capture to Sanders. Subsequently, this British officer appeared as a witness against Bahadur Shah Zafar in the military court. Notably, the British authorities permitted Ghulam Abbas to assume the role of the king's defense lawyer, marking a historic case where the same defense lawyer, Ghulam Abbas, was presented as a witness against the king. During the proceedings on the third day, as Ghulam Abbas arrived at the court, i.e., Diwan Khas, alongside his client Bahadur Shah Zafar, he was unexpectedly summoned as a credible witness. On the 29th and 30th of January 1858, only the statements of Ghulam Abbas were documented in the court proceedings for two consecutive days.<sup>xxiii</sup> (Garrett 81-90) One of the witness, Ghulam Abbas served as an employee of the King prior to the British occupation of the Red Fort. In accordance with British military laws, a lawyer or a associate of the accused who appeared in court was not subject to questioning during the proceedings. Demonstrating an understanding of these military rules, Ghulam Abbas remained unaffected by them.

The evidence presented during the military court proceedings did not pertain directly to the conviction of Bahadur Shah Zafar; rather, these documents were utilized for extrajudicial purposes. Hakeem Ehsanullah Khan stood as the initial witness in the court proceedings, and the Advocate General introduced 34 documents, with much of the trial dedicated to the reading of these materials. Prosecutor Harriet submitted 158 documents in Hindi and Urdu, subsequently translated into English. These numerous documents encompassed various aspects of Bahadur Shah Zafar's life, including his sons, military officers, an alleged letter from the king to his son Mirza Mughal, and excerpts from local Persian and Urdu newspapers. A total of 50 clippings from four newspapers published in Delhi were presented during the court proceedings, including Sadiq-ul-Akhbar (edited by Jameeluddin Khan), Urdu Delhi News, The Delhi Urdu Newspaper, and The Urdu News. The court also incorporated an eight-page weekly Persian newspaper, "Siraj-ul-Akhbar," of which five pages were dedicated to detailing the king's daily activities. Notably, Jawan Bakht was not provided with evidence related to the charges. Initially accompanying the king to court, Jawan Bakht was later prohibited from attending the proceedings.<sup>xxiv</sup> (Bell 179-180)

Throughout the court proceedings against Bahadur Shah Zafar, the witnesses underwent no cross-examination by the legal counsel. Advocate Harriet asserted that certain documents presented in court bore the king's signature or seal, but Bahadur Shah Zafar contested the authenticity of these signatures. Spanning twenty-one days, the proceedings did not afford the king an opportunity for self-presentation; instead, Bahadur Shah Zafar was merely symbolically positioned in the court. Despite the challenge to the legal jurisdiction of the commission on the final day of proceedings, March 9, 1858, Martin documented it in his report as;

"... (Advocate) proclaimed on behalf of his regal sovereign that he did not acknowledge the jurisdiction of the tribunal to which he had been summoned.

Consequently, he (Bahadur Shah Zafar) voluntarily refrained from responding to the accusations leveled against him." <sup>xxv</sup>

The military court convened 21 sessions over a span of 27 days. On March 9, the prosecutor commenced a narrative recounting the events in Delhi, attributing the riots between May 9 and May 11, as well as the killings of the British at the Lahori Gate of the Red Fort, to Bahadur Shah Zafar. Harriet stated:

It is indeed peculiar that those under our subjugation label us as accursed infidels, perpetrating the initial transgressions in an attempt to portray a predisposition toward rebellion. They engage in heinous acts that evoke horror even from the standpoint of basic humanity. Yet, when they rise in revolt against the British, the issue of greased cartridges becomes a secondary concern.

Harriet, acting as the prosecutor, articulated the charges as follows:

- (i) Alleged betrayal of the State, breaching the oath of allegiance as a citizen and subject of the British Government of India, dated approximately on the eleventh day of May 1857, asserting the role of a traitor, sovereign, and claimant to the rulership of India.
- (ii) Unlawful occupation of the city of Delhi through acts of treason and rebellion.
- (iii) Participation in a conspiratorial and treacherous rebellion alongside his son Mirza Mughal, Muhammad Bakht Khan, Subedar of the Regiment of Artillery, and other unidentified traitors against the State.
- (iv) Assembly of armed forces in Delhi, dispatched to engage in warfare against the British Government, with the aim of realizing seditious aspirations to overthrow the British rule in India.
- (v) Accusation of the prisoner as a pensioner of the British Government in India, alleged traitor actively seeking to subvert and dismantle the government of his benefactors at the earliest opportunity.

Regarding the charges presented, I leave it to your judgment to determine whether the prisoner should be reinstated to his royal position or marked as one of history's significant criminals. The decision is yours to make – whether to depose today the last king of the esteemed line of Timur, vanquished by the passage of time and fate, or to uphold the grand and honorable throne of justice. May the decision rendered today stand as a testament throughout history, proclaiming that the fates of kings guilty of crimes are inscribed with disgrace, and inevitably, the decline of the splendor of an empire shall transpire sooner or later. <sup>xxvi</sup>

The Court suspended its proceedings to deliberate on its decision following the pronouncements of the Advocate-General and M. Davies, the President of the Court-Martial.

*The military court, based on the presented evidence, deems the accused, Muhammad Bahadur Shah, former King of Delhi, to be guilty of all the charges levied against him.*

The accused was denied the right to appeal against the verdict, rendering the military court's decision final. General Nicholas Penny, the commanding officer, officially endorsed this decision on April 2, 1858. Subsequently, on June 15, 1859, the Court of Directors of the East India Company also ratified the court's judgment. Queen Victoria of Great Britain affirmed the conviction of Bahadur Shah Zafar. At the age of 82, Bahadur Shah Zafar, accompanied by his wife Zeenat Mahal, son Mirza Jawan Bakht, Shah Abbas, and eleven servants, was exiled to Burma in the early hours of the morning. Later, on November 7, 1862, he was further exiled to Rangoon under the directive



of Great Britain. There, in British imperial custody, he passed away five years later at the age of 87.

کتنا بے بد نصیب ظفر، دفن کے لیے  
دو گز زمین بھی نہ ملی، کوئے یار میں  
(بیہادر شاہ ظفر)

It is noteworthy that British imperialism played a pivotal role in shaping the political destiny of India. The political landscape of India was being molded in accordance with colonial objectives and economic interests. The British Parliament included representatives who were both salaried employees and shareholders of the East India Company. These parliamentarians assumed a leading role in safeguarding the company's interests. In his book "The English Empress," Miles Taylor illustrates this dynamic in the following manner:

"The formation of the new government in India took place in England, but its announcement was crucial in India. Lord Derby and his cabinet colleagues initiated the finalization of a draft declaration. Derby emphasized the use of language consistent with the Kingdom of Great Britain for the declaration, which underwent parliamentary scrutiny before being announced. The Queen of Great Britain was poised to assume direct authority, superseding the East India Company. The Governor General was designated as the Viceroy, and pre-existing treaties with local rulers were slated for acceptance. Equality in employment opportunities for Europeans and natives, impartial protection of subjects' religious practices and property rights, and the assurance of amnesty were integral components. The principle of religious neutrality would persist for issue resolution. The official title of the Queen of Great Britain was accompanied by the phrase 'Queen who defends the Faith.'"<sup>xxvii</sup> (Tylor 79)

News of the war imposed on India reached Britain and European countries. In response, the Queen of Great Britain, attributing responsibility for the conflict to the East India Company, revoked its trading license. On August 2, 1858, a new law was implemented in India. This Act declared the entirety of India as a vassal of the Queen of Great Britain, who assumed the imperial title of Empress of India for the country. The Government of India Act 1858 laid the foundation for India's new political structure. Under the 75 provisions of this Act, Queen Victoria established the Minister of India, the Governor-General, the Council of Ministers of India, the Civil Service, the expenditure of the Government of India, the Indian Army, and other key aspects of governance in India.<sup>xxviii</sup> (*An Act for the Better Government of India, 2nd August 1858, 386-398*)

The guidelines for composing the annual economic report of British colonialism transferred political and governmental authority over India to the Secretary of State, i.e., the Minister of India. This secretary was established within the British Parliament's cabinet. The role of the Viceroy of India, alongside the Governor-General, was instituted under this arrangement, with the Viceroy serving as the appointed head of the Indian government. According to the Act, the Viceroy of India was made subordinate to the Queen of Great Britain, and the British Parliament delegated the authority to appoint the Viceroy of India to the Queen. Britain hailed this law as the Indian Magna Carta, the Great Constitution of India, though, in reality, the Constitution affirmed the subjugation of Indians. Under this charter, British colonialists assumed control over all of the company's properties, trading ports, and assets in India. Article 39 of the Constitution vested all assets in India in the Queen of Great Britain, as outlined in the mentioned article.

"All lands, assets, legal inheritances, currency, supplies, commodities, moveable and immovable property, as well as other tangible and intangible possessions of the aforementioned company, are hereby transferred, contingent upon existing

debts and obligations, as well as all agreements, pacts, and commitments. This includes the rights and benefits of all fines, possession rights, and any other sums that the said company held or is entitled to at the initiation of this Act, excluding the capital stock of the company and its corresponding dividends. These assets shall, for the administration of the Government of India, be deemed the property of the United Kingdom, subject to the provisions outlined in this Act, for the purposes of application and disposition thereof."<sup>xxix</sup>

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<sup>i</sup> In 1603, John Mildenhall assumed the role of the East India Company's envoy at the Mughal court during the rule of Emperor Akbar. Subsequently, in 1608, a delegation led by Lieutenant General William Hawkins arrived at the Mughal court with the purpose of securing a trade license. Regrettably, this mission ended in failure. Over the following years, from 1611, the East India Company dispatched a total of eleven delegations to the Mughal court, yet the company

continued to encounter obstacles in its endeavors to engage in trade within India. However, a significant breakthrough occurred in January 1613 when Thomas Roe successfully obtained a trade decree from Emperor Jahangir. This pivotal development marked the establishment of the British's inaugural trading post in Surat, laying the foundation for the company's future trade operations in India.

ii Constitutional Law & History of Government of India, by Prof. C.L Anand, Universal Law Publishing Company, Delhi.

iii The Acts of the Legislative Council passed in 1857 are reproduced in House of Commons, Parliamentary Papers, 1857. The laws passed in 1857 authorized the establishment of temporary military and civil commissions to try non-European for conduct constituting, inter alia, 'rebellion' and 'waging war'. The General Court Martial (GCM) trying Bahadur Shah was convened under Act XIV of 1857 and he was charged with crimes under Acts XI, XIV, and XVI of 1857.

iv Twelve Years of a Soldier's Life in India: Being Extracts from the letters of the late Major W.S. R. Hodson, P # 339-341, Ticknor & Fields

v Ibid. P#343-346

vi Ibid. P# 352

vii Proceedings of the Military Commission as Conducted by Major Penny. C. Pursuant to directives from the Commanding Officer of the Division, and under the guidance of Sir John Lawrence, the Chief Commissioner of the Punjab, the Military Commission was convened on January 27, 1858. This commission was established with the primary objective of adjudicating upon the case of the last Mughal emperor and several other detainees. The military court was presided over by Lt. Col. Davis, with its membership comprising Major Palmer, Major Redmond, Major Swires, and Government Advocate General, along with Deputy Judge Major F. J. Harriet, who played a pivotal role. Furthermore, the services of Mr. James Murphy were enlisted as a translator to facilitate the proceedings.

viii The Great Uprising, India 1857, by Pramod K. Nayar, pp. 201-203, published by Penguin Books, India, 2007.

ix The Last Mughal, the Fall of a Dynasty, Delhi, 1857, by William Dalrymple, page no. 432, published by Penguin Books, India, 2006.

x Ibid. P#432

xi The 1858 Trial of the Mughal Emperor Bahadur Shah II 'Zafar' for 'Crimes Against the State', by Lucinda Downes Bell, pp. 179-180, Doctoral Thesis, Faculty of Law, University of Melbourne, December 2004.

xii The Forgotten Mughals, A History of the Later Emperors of the House of Babar (1707-1857), by G. S. Cheema, pp. 466 to 467, published by Manohar Publishers, Delhi, 2002.

xiii The Asiatic Journal and Monthly Miscellany, Vol. IV. Third series, November-April, 1845, pp. 305 to 306, published by H. Allen & Co, Leadenhall street, London.

- I. The territories encompassing all the districts situated on the right bank of the Yamuna River and to the northwest of Mouza Khaboolpoor are designated as the sovereign lands of His Majesty.
- II. The collection of revenues from the aforementioned districts shall continue, overseen by the British Resident at the court of Delhi.
- III. The officers of the royal treasury, or mootsuddies, shall be present at the kutchary, or office of the revenue collector, for the specified crown lands. They will maintain a detailed account of the financial transactions within these lands, ensuring satisfaction and tranquility for His Majesty.
- IV. A sum of ten thousand rupees, offered as nuzzurs, shall be presented by the British Resident to His Majesty during each of the seven major annual festivals.
- V. Two Qazis and a Mufti, selected from the most learned individuals of Delhi, shall be appointed to administer justice.
- VI. In cases where a death sentence is pronounced by the criminal courts of Delhi, prior to execution, it shall be submitted to His Majesty for approval or disapproval.
- VII. Coinage bearing His Majesty's name shall remain in circulation within the city of Delhi and the sovereign lands.

- VIII. If there is an increase in revenue due to expanded cultivation and improved conditions of the cultivators in the specified districts, a corresponding increment will be made to the King's peshkush (tribute).
- IX. The Resident will annually present 10,000 rupees during each of the seven festivals, including the two Eids, the accession anniversary, Now Roze, Holy Ramzan, Holi, and Basant.
- X. The Honorable Company shall bear the expenses for the jagheers (estates) of the heir-apparent and Mirza Izad Bakhsh, located in the Doab.

xiv The Board of Control was created by an Act of the British Parliament in 1784, the purpose of the Company's Board of Control was to monitor the Company's governance in India.

xv The Forgotten Mughals, A History of the Later Emperors of the House of Babar (1707-1857), by G. S. Cheema, Page No. 468, Published by Manohar Publishers, Delhi, 2002. King William IV received him (Raja Ram Mohan Roy) and readily accepted his credentials on the recommendation of Charles Grant, but in the end, nothing came of the mission. The Raja presented two options to the Company: either the emperor should be allowed to take over the direct administration of the assigned territory and bear its cost out of the gross receipts; or, if that was not agreeable, he was willing to compound all his claims for a final settlement of Rs. 30 lakh per annum, thus implicitly, accepting the pensionary status. The Company offered Rs. 15 lakhs but this was at first refused as being too paltry. Later, the Emperor accepted it.

xvi Considerations on Indian Affairs; Particularly respecting the Present State of Bengal & its dependencies, by William Bolts, page number 36, London, 1772. The Nabob Najim al Dowlah agrees to pay to his Majesty out of the revenues of Bengal, Bahar, and Orissa, the sum of 26 lacks of rupees a year, without deduction for batta, on bills of exchange, by regular monthly payments, amounting to Rs. 216,666 per month; the first payment to commence from the 1st of September of the present year; and the English Company, in consideration of his Majesty's having been graciously pleased to grant them the dewanee of Bengal &c. do engage themselves to be security for the regular payment of the Rajah Shetab Roy, or whomsoever his Majesty may think proper to nominate, that it may be forwarded by him to the court; but in case the territories of the aforesaid Nabob should be invaded by any foreign enemy, a deduction is then to be made out the stipulated revenue, proportionably to the damage that may be sustained.

xvii The 1858 Trial of the Mughal Emperor Bahadur Shah II 'Zafar' for 'Crimes Against the State', by Lucinda Downes Bell, Doctoral Thesis, pp. 66-67 Faculty of Law, University of Melbourne, December 2004.

xviii Ibid. Pp. 183-184

xix The 1858 Trial of the Mughal Emperor Bahadur Shah II 'Zafar' for 'Crimes Against the State', by Lucinda Downes Bell, Doctoral Thesis, page 154, Faculty of Law, University of Melbourne, December 2004. Regulation X introduced a novel offense labeled as 'rebellion'. This regulation represented an amendment to the Sharia law's concept of rebellion, known as bughawat, as outlined in The Hedaya. According to Harrington, the primary objective behind Regulation X was to impose more severe penalties on rebels in comparison to the sanctions available under bughawat. Under Regulation X, the penalty for rebellion was specified as capital punishment through hanging, whereas bughawat had merely stipulated imprisonment until repentance as a punitive measure. Regulation X, however, preserved certain facets of the Sharia. In the context of bughawat, an individual could be held liable only when actively raising troops or participating in open insurrection. Analogously, the liability under Regulation X was contingent upon an individual being apprehended while actively engaged in the act of rebellion.

xx Ibid. Pp.158

xxi Ibid. Pp. 168

xxii The above witnesses appeared in the military court. 1. Hakeem Ehsanullah Khan (Physician Bahadur Shah Zafar), 2. Ghulam Abbas (Council for the Defence), 3. Jat Mall (Journalist Correspondent of Lieutenant Governor Agra), 4. Captain Forrest (Assistant Commissioner of Ordnance), 5. Makhan (A mace bearer of Captain Douglas), 6. Sir Theophilus Metcalfe (Chief Magistrate of Delhi), 7. Hasan Askari (Pirzada), 8. Bakhtawar Singh (Chapardasi Government of India), 9. Kishan Singh (Chapardasi Government of India), 10. Chunni (News Writer for the Public), 11.



Chunilal (Beldar), 12. Rose (messenger), 13. Mrs. Aldwell (widow and pensioner of Alexander Aldwell), 14. C. B. Saunders (Commissioner, Agent Lt. Governor), 15. Major Peterson (54th Native Infantry), 16. Makandlal (Secretary Bahadur Shah Zafar), 17. Captain Tytler (38th Native Infantry), 18. Captain Martino (10th Native Infantry), 19. Mrs. Fleming (sergeant's wife), 20. John Everett (constable), 21. Sergeant Fleming (Delhi Bazar Sergeant)

xxiii The Case of Muhammad Bahadur Shah, by HLO Garrett, pp. 81-90, published by Jamhoori Publications, 2017.

xxiv The 1858 Trial of the Mughal Emperor Bahadur Shah II 'Zafar' for 'Crimes Against the State', by Lucinda Downes Bell, Doctoral Thesis, page 41, Faculty of Law, University of Melbourne, December 2004.

xxv Ibid. Pp. 46

xxvi The Case of Muhammad Bahadur Shah, by HLO Garrett, pp. 299 to 329, published by Jamhoori Publications, 2017.

xxvii The English Empress: Queen Victoria and India, by Myles Tylor, page 79, Yale University Press, 2018

xxviii An Act for the better Government of India, 2nd August 1858 published in " A Collection of the Public General Statutes, passed in the Twenty-first and Twenty-second Years of the reign of Her Majesty Queen Victoria", Published by George Edward Eyre and William Spottis woode, 1858. P#386-398.

The Government of the Territories now in the possession or under the Government of the East India Company, and all powers in relations to Government vested in or exercised by the said company in trust for Her Majesty, shall cease to be vested in or exercised by the said company, and all Territories in the Possession or under the Government of the said company, and all Rights vested in or which if this act had not been passed might have been exercised by the said company in relation to any Territories, shall become vested in Her Majesty, and be exercised in Her Name; and for the purpose of this Act India shall mean the Territories vested in Her Majesty as aforesaid , and all Territories which may become vested in Her Majesty by virtue of any such rights as aforesaid.

xxix Ibid. Pp 392