THE SOVEREIGN, SUBJECT, AND COLONIAL JUSTICE

REVISITING THE TRIAL OF BAHADUR SHAH, 1858

Edited by
K. C. Yadav

ROUTLEDGE

THE SOVEREIGN, SUBJECT, AND COLONIAL JUSTICE

This volume analyzes the trial of Bahadur Shah, a watershed moment in the 19th-century colonial history of India. The trial of Bahadur Shah raises the contentious issue of sovereignty – trial of Emperor Bahadur Shah, *de jure* power by *de facto* claimant to power, the English East India Company. There has been a lot of confusion and controversy over the trial ever since the proceedings began – its main architects could not define if it really was a juristic trial, a court of enquiry, a court-martial, or a general enquiry? This book sheds light on this event through the original, unprinted manuscript of the *Trial* at the end of the uprising of the 1857. It critically investigates the trial, mainly its architecture, grammar, functioning, and findings from historical, political, and juridical perspectives to determine, as far as possible, the actual position of Emperor Bahadur Shah, his strengths, and his weaknesses. Further, it examines the Rebellion of 1857, particularly in Delhi, and Bahadur Shah's role therein.

A key reading on justice in colonial history, this volume will be of interest to researchers and scholars of colonial and imperial history, modern history, political theory, and South Asia studies. It will also be of great interest to general readers interested in learning about the colonization of India by the British and its commercial arm East India Company.

K.C. Yadav was former Professor of History and Dean Academic Affairs, Kurukshetra University, Haryana, India. He has authored/edited over a dozen research books published from India and abroad, and has contributed about 40 research papers and chapters to research journals and books.

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Revisiting the Trial of Bahadur Shah, 1858

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FOR
DR F.W. BUCKLER AND SIR PERCIVAL SPEAR
– MY TRAILBLAZERS

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Fig 0.1 Emperor Muhammad Bahadur Shah II (1775–1862; r. 1837–1858). *Source:* R. Montgomery Martin, *The Indian Empire*, London, 1859 (?).

Map 0.1 Map of Delhi before the Revolt. *Source: The illustrated London News*, 16 Jan. 1858.

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ABBREVIATIONS

ADJ.	Adjutant
BRIG.	Brigadier
BRIG. GEN.	Brigadier-General
CAPT.	Captain
C-IN-C.	Commander-in-Chief
COL.	Colonel
DA	Delhi Archives, New Delhi
DY	Deputy
IBID.	same (source) as quoted above (*Ibidem)*
LIEUT.	Lieutenant
LIEUT. COL.	Lieutenant-Colonel
LIEUT. GEN.	Lieutenant-General
MAJ.	Major
MAJ. GEN.	Major-General
NAI	National Archives of India, New Delhi
NI	Native Infantry
NAM	National Army Museum, London
OFFG.	officiating
OP. CIT.	book/journal already cited in the text
P./PP.	page/pages

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It took me over three years to do this work. I had initially thought that it was just a year's job at the most. But when I got into it, I began to feel as if I had entered a *cul-de-sac*. Honestly, it would have been very difficult to manage to move out of it effectually had I not been fortunate enough to get help, support, and encouragement from a large number of scholars, friends, well-wishers, and institutions. I am particularly grateful to military historian, Sqn. Ldr. (Retd.) Rana T.S. Chhina, MBE, CAFHR, USI, Delhi; my grandniece, Rishika Yadav, LSE, London; Dr Ashutosh Kumar, NMML, Delhi; Prof. Udayvir Singh, Ambala; and Dr Rajesh Kumar, Director, ICHR, Delhi, for giving scholarly suggestions and tips relating to their specialties which have gone a long way in improving the quality of the timber of the work. In the matter of collection of archival material from their repositories, especially in tracing the handwritten copies of the trial and other rare relevant material, I am beholden to Sanjay Garg, Officer-in-Charge, Delhi Archives, Ratnesh Mathur, Director, Prarang, Noida (U.P), and Dr Sanjay Garg, Deputy Director, National Archives of India, Delhi. My thanks are also due to Dr Jogender Singh, Librarian, HIPA, Gurgaon, and Vijya Jain, Prabhu Books, Gurgaon, who helped me in laying my hands on some rare pictures, illustrations, maps, and other material. The scholarly studies of Prof. K.N. Panikkar, Prof. Amar Farooqui, and Dr Aslam Parvez have been helpful in doing the 'Historical Perspective', and of L.D. Bell (the University of Melbourne) in clearing many an issue from the British and international law perspectives. Mufti A.R. Qasmi, Naseem Ahmad, and W.A. Saed provided copies of rare books and other material in Urdu and Virjanand in Hindi. Comdr. (Retd.) Vivek Yadav, Dr Surender Kumar, Bhupender Panghal, and Puneet Kumar were helpful in a number of ways in completing the project. I am thankful to all of them.

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K.C. Yadav

PREFACE

The trial of Bahadur Shah, the last Mughal Emperor, by the East India Company after cessation of the Rebellion 1857, in Delhi, is, plainly put, no simple trial. It is a tangled web of confusion, clutter, and controversy. Even its main architects could not define – even to each other's satisfaction – as to what it really was – a juristic trial, a court of enquiry, a court-martial, or a general inquiry? The legitimacy of the prosecutors' authority, power, and prerogative to try the Emperor, and the bona fides of the instruments, i.e., the court, the juratas, the jurisprudence, and all else they put to use there, were, and are even now, over a century and a half after the event, not consummately out of the cloud of dubiety and disingenuousness.

Unfortunately, the contemporary sources which should have been helpful in clearing this fog and showing the reality are, in most of the cases, if not all, problematic. They betray the colonialists' universal policy of showing 'the naked truth' in their colonies, in Jean Paul Sartre's words, 'with clothes on'.[1] They hide many a thing in the interest of the state or the concerned state actors,[2] and orchestrate many myths, a number of which still rule the roost as authentic stuff of history, and distort and disorient to an extent even our present discourse.

Aware of this complication, I have critically examined here every turn and twist, shade and glint, line and crease, of the trial proceedings from historical, political, and juridical perspectives to set the record straight, and determine, as far as possible, the actual position of Emperor Bahadur Shah, his strengths, and his weaknesses; the rise of the East India Company as a political power and its relation with the Mughal rulers, especially Bahadur Shah; the question of sovereignty, whether it was vested in the Emperor or

1 Jean-Paul Sartre, 'Preface' to Frantz Fanon's magnum opus, *The Wretched of the Earth*, Eng. tr. C. Farrington, New York, 1963, p. 7.
2 *Ibid.*

the Company; the Rebellion of 1857, particularly in Delhi and Bahadur Shah's role therein; and finally, the trial itself, mainly its architecture, grammar, functioning, and findings.

There are, as already indicated, many versions of the 'Proceedings' – handwritten, printed, and published.[3] I have used Delhi Archives' handwritten version of the *Trial*, duly authenticated with their signatures by Maj. F.J. Harriott, Deputy Judge Advocate-General, and Lieut. Col. M. Dawes, President of the Court[4] (see Illustration 1.1). Since it has been found in the Delhi Archives (earlier Commissioner/Chief Commissioner Office), it can be circumspectly presumed that this is the Officiating Commissioner of Delhi, C.B. Saunders's office copy. The printed version of the *Trial* tabled in the British Parliament for its members (1859) is perhaps its copy. Another handwritten copy, but neither signed nor written as steadily as the first copy, is there in the National Archives of India, in the Foreign Department Collection, Miscellaneous, vol. 376/376 A, 1858. A handwritten copy is, I have learnt, in the Punjab Archives, Lahore (perhaps John Lawrence's office copy), though I have not seen it. An Urdu translation of the chargesheet (official), a copy of which was supplied to the Emperor 20 days before the commencement of the trial,[5] is also found in the Delhi Archives (see Illustration 1.2). No Urdu version of the rest of the *Trial* is, however, traceable.

In the introduction, a detailed critique of the trial proceedings is provided which will be helpful, I think, in negotiating the complexities and ambiguities in the proceedings.

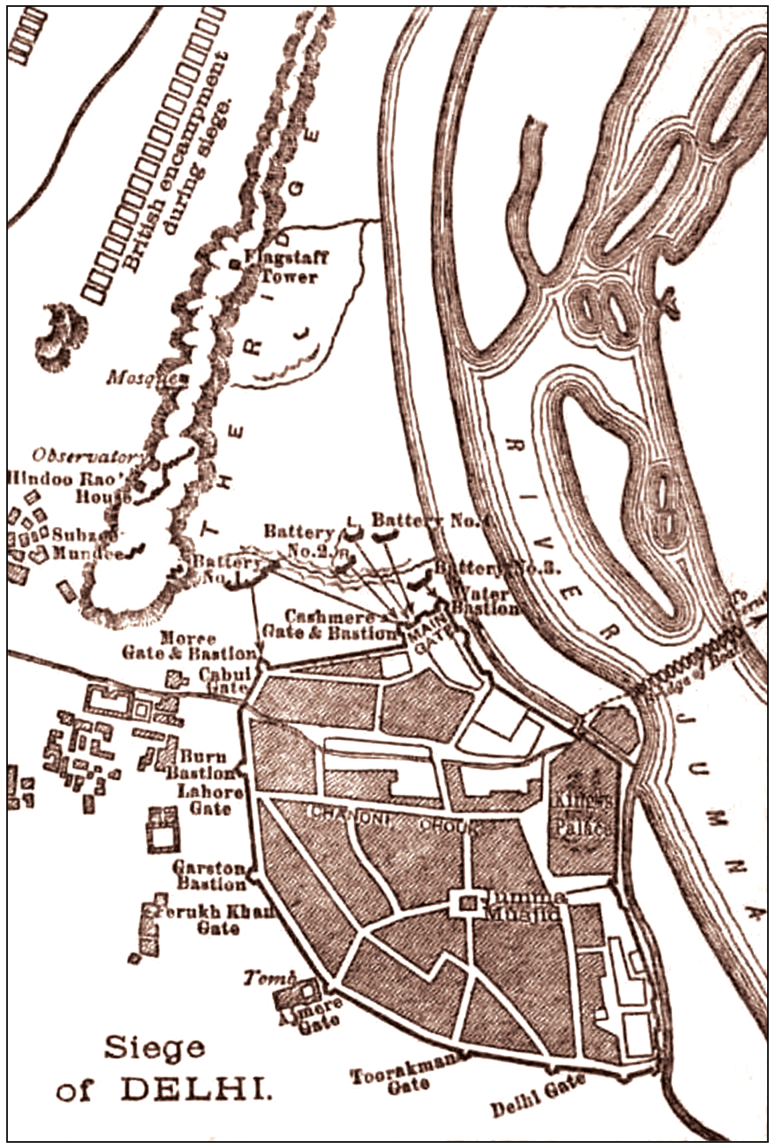
For the convenience of the readers unfamiliar with the Urdu/Persian languages, a glossary of Urdu and Persian words and technical terms is given in the glossary. Along with it, a detailed bibliography, comprising relevant books, monographs, dissertations, research papers, documents/records, etc., has also been provided for those who want to delve still deeper into the subject.

K.C. Yadav

3 See *Bibliography*.

4 The copy is preserved, as indicated above, in the Delhi Archives (DA), New Delhi, in the Residency Records, Trial of Bahadur Shah Series, File no. 30 A, 1858.

5 The document is there in the DA, Residency Records, Trial of Bahadur Shah Series, File no. 37, 8 January 1858 (see Illustration 1.2).



Map 0.2 Map of Delhi in 1857. Source: Evelyn Wood, *Our Fighting Services and How They Made the Empire*, London, 1916.

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1

INTRODUCTION

> Next to battlefields, it is in the courtrooms that some of the greatest acts of injustice in the history of the world have taken place.
>
> – Maulana Abul Kalam Azad[1]

On 11 May 1857, fortune smiled on the Timurid House after about 157 years.[2] At midnight, 21 salvos were fired from the ramparts of the historic Red Fort, Delhi, announcing the restoration of power, authority, and imperium to Bahadur Shah II, the 17th successor of Babur, the founder of the House, which the British had surreptitiously blotted out over the years. But, as ill luck would have it, the 'smile' did not last, as discussed below, for long. The British reoccupied the historic city after a bloody struggle, the like of which they had hardly seen before, for over four-and-a-half months – 133 days, to be exact – on 20 September 1857. A day later, Bahadur Shah was in the British custody.

1 From the written statement of Maulana Abul Kalam Azad (1888–1958), one of the tallest leaders of the Indian national movement for freedom, submitted before a British court trying him for 'sedition'. See A.G. Noorani, *Indian Political Trials*, Delhi, 2005, pp. 216–22.

2 The unworthies who occupied the throne of Akbar and Aurangzeb for about 150 years after the latter had closed his eyes in death (3 March 1707), namely, Bahadur Shah I (1707–1712), Jahandar Shah (1712–1713), Farrukhsiyar (1713–1719), Rafiuddarajat (1719), Shah Jahan II (1719), Muhammad Shah (1719–1748), Ahmad Shah Bahadur (1748–1754), Alamgir II (1754–1759), Shah Alam II (1760–1806), Akbar II (1806–1837), and Bahadur Shah II (1837–1857), not only proved unequal to the task of checking the decline and downfall of their great empire, but also made substantial contribution to its dissolution. See W. Irwin, *The Later Mughals*, 2 vols., rep. Delhi, 2006; H.G. Keene, *The Fall of the Mughal Empire*, London, 1876; Jadunath Sarkar, *The Fall of the Mughal Empire*, 4 vols., Delhi, rep. 1991–97, Percival Spear, *The Twilight of the Mughal Empire*, Delhi, rep. 1991.

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A can of controversies

There are three antipodal views on how the Emperor reached the British custody. Lieut. W.S.R. Hodson, commandant, Hodson's Horse, and head of the Intelligence Department (at Delhi), says that he had 'captured the King' on 21 September 1857 from the Humayun's Tomb, where he was then temporarily stationed. The task was difficult, and also dangerous, he says, but, thanks to his Indian deputy in the Intelligence Department, the one-eyed Maulavi Rajab Ali, and the Emperor's confidants – Hakim Ahsanullah Khan and his physician and prime minister, Mirza Ilahi Bakhsh, his close relative – he accomplished it after assuring the Emperor that his life and honour would be absolutely safe, and 'a dish of *pillau* alone was in store for him'.[3]

An equally informed person on the scene, Capt. F.C. Massey, the then Deputy Judge Advocate-General, however, gives a different version:

> All the stories that have appeared about the capture of the king (by Hodson), he says, are so much bosh. It was all an arranged thing under the advice of the Hakeem (Ahsanullah). One of the Royal family (Mirza Ilahi Bakhsh) came to our Meer Moonshi or native head of the Intelligence Department, named Rujjub Ali, a precious scoundrel, but clever and useful, as an emissary, at the instigation of the Hakeem and the Begum Zeenat Mahal and said that the King wanted to surrender himself and he was at Durgah or shrine.

On getting the message, Massey adds, Rajab Ali went with 100 cavalry men to the *Durgah*, met the Emperor, and assured him on behalf of his boss, Lieut. Hodson, of his safety and other things, and brought him to Delhi. About that time, Massey further adds, Hodson, who was on some expedition with some cavalry contingent, heard what had happened, rushed back, and 'met Emperor's cavalcade in the immediate vicinity of the city'. On Emperor's asking, after Hodson was introduced to him, he wanted Hodson to repeat the 'assurance' that his deputy and others had given on his behalf,[4] which he

3 W.S.R. Hodson, *Twelve Years of a Soldier's Life in India*, ed. by his brother, London, 1859, pp. 297, 304–8. Hodson's pledge was as follows: 'The King of Delhi gave himself up to me on a distinct pledge given to him that his life should be spared and that he should be subjected to no personal indignity (*be-izzat at the hands of the goral logue nahin hone pqaoge*). This promise was made in the first instance to Begum Zinat Mahal and her father through Mirza Ilahee Bakhsh and again on the day of King's arrest by Moulvee Rujjab Alee in my name. It was subsequently repeated by myself personally to the King at his request'. See Delhi Archives (DA), Residency Records, Bahadur Shah Trial Series, File no. 10, 30 October 1857. For 'a dish of *pillau*', see C.T. Metcalf, ed., *Two Native Narratives of the Mutiny in Delhi* (hereafter *Two Narratives*), Westminister, 1898, p. 71.

4 The account is based on a write-up titled 'Account by an eye-witness (Capt. F.C. Massey) of taking of Delhi Palace', in the *Journal of the USI*, vol. 60, 1930, pp. 169–81. Massey seems

did. Hodson took charge of the Cavalcade and went to the Fort. On reaching the destination, he told the world that he had 'captured the King'.[5]

Standing here, one may be curious to know as to what the official dispatches say in this regard. Maj. Gen. Wilson, commanding the Delhi Field Force, says in his dispatch of 22 September that 'the king, who accompanied the troops some short distance last night, gave himself up to a party of Irregular Cavalry whom I sent out in the direction of the fugitives and he is now prisoner under a guard of European soldiers'.[6]

On 23 September, Hodson went to Humayun's Tomb and arrested three princes – Mirza Mughal, Mirza Khair Sultan, Emperor's sons, and Mirza Abu Bakr, son of the late Prince Fakhruddin (commonly called Fakhru) and grandson of the Emperor. About a kilometre away from the Red Fort, he shot them most brutally in cold blood after stripping them naked near Delhi Gate.[7] To the civilized world, it seemed as if he had stripped the British justice and committed a murder most foul.

A question, arises here: why did Hodson tell a lie that he had 'captured' the King when he himself had surrendered on his own? And why did he murder the princes so savagely? The a*nswer* lie in Hodson's persona: a vainglorious swagger, he was obsessed with the 'I-have-done-it' complex, and would do and say anything, true or false, to gain name and fame. Well versed in the art of selling his false timber as genuine, he played the same trick here and became famous overnight. Everybody had nothing but a word of praise for the daredevil. Robert Montgomery, Judicial Commissioner, Punjab, for instance, wrote to him:

> My dear Hodson: All honours to you (and to your horse) for catching the King and slaying his sons. I hope you will bag many more! – In haste, ever yours: R. Montgomery.

---

to have confused Humayun's Tomb with the *Durgah*. The Emperor's stay at the *Durgah* was very short and secret, and no armed troops went there with him.

5 P.J.O. Taylor says, on the authority of a handwritten note of Capt. Massey, that Hodson's boast that he had captured the Emperor from Humayun's Tomb is a lie. See Taylor, *Chronicle of the Mutiny*, Delhi, 1992, pp. 67–71.

6 See Hodson, *Twelve Years*, p. 308 (f.n.).

7 Hodson had two blackest spots in his otherwise daring soldierly career: one, corruption, and the other, cold-blood murder of the princes. The nature and history punished him for the crimes squarely. Says Richard Collier, 'Six months would pass (the murder of princes) before he died as violently as the princes, a rebel bullet smashing through him (at Lucknow) as he charged sword in hand. 'Oh, my mother', he cried, then blood choked all further speech. Later his trunk (box) would be opened and the loot came to light, and the file (proof of his corruption in Punjab) of which he had sworn ignorance and the whole tarnished story became one to be whispered. But only the simulacrum of Hodson died that day. All that was redeemable died near the walls of Delhi, on the spot where the princes died'. See Collier, *The Great Indian Mutiny*, New York, 1964, p. 264.

Montgomery's boss, Chief Commissioner John Lawrence, called him 'grand captor'. Delhi Commissioner C.B. Saunders's reaction was laughable: '*By Jove! Hodson*', he bruited, '*they ought to make you the Commander-in-Chief for this*'.[8] Maj. Gen. Wilson's reaction was, however, not so enthusiastic. When Hodson went to report his 'great deed' to him, he simply said, says Hodson, 'Well, I'm glad you have got him (King): but I never expected either him or you again!' while other officers in the room were loud in their congratulations and applause.[9]

C.J. Griffths, Hodson's Ridge-fellow, excels all of them. In his book, the *Siege of Delhi*, which is rated as an 'authoritative' eyewitness account, he does not mind using false colours and a bit of fiction to the story to give a larger-than-life image to his hero:

> On the afternoon of the 21st, he says, a most important capture was affected by Hodson. Shah Bahadur Shah, the old King of Delhi, was taken by the officer near the city while endeavouring of escape down country. Hodson with his accustomed daring and accompanied by 100 only of his own troopers, seized the person of the King from amongst thousands of armed dependents and rabble, who awed by his stern demeanour, did not raise a hand in resisting the capture.[10]

That's what is called a pinchbeck praise!

Anyway with two 'feathers' (capture of the king and murder of the princes) in his cap, Hodson was, understandably, on cloud nine. His hopes of getting something great –Queen's medal (Victoria Cross) or something else – rose still higher. But everything – his hopes, and his castle in Spain – dashed to ground soon after the conditions on which the King had elected to choose to surrender became known. He was accused of having 'played foul' and flouted, with impulse and impetuosity, as seen below, the orders of the Governor-General in Council.

This was not, let me clarify, the first incident of its kind, i.e., making overtures to the Emperor to surrender on the condition of 'protection of

8 R. Montgomery Martin, *The Indian Empire*, London, n.d., vol. 3, p. 449; for Saunders' remark, see Hodson, *op. cit.*, p. 307.

9 Hodson, *op. cit.*, pp. 307–8. What else he received from there, in Hodson's own words was this: 'I, and most other people, considered that I and my party had a right to all we found on the king and princes; but the General to whom I referred the question, thought otherwise, so I gave up all except some of the personal possessions of the princes (those of the King were taken by the General). The swords which I secured … are historically most valuable. One was worn by, and bears the name of Jahangire, and the other is stamped with the seal of Nadir Shah! They are singular and interesting trophies, or rather relics, of the house of Timur the Tartar'. *Ibid.*, p. 326. The weapons are now with the Imperial War Museum, London.

10 C.J. Griffths, *A Narrative of the Siege of Delhi* …., Delhi, rep. 2015, p. 201.

his life and honour without authority to do so'. It was Hodson's old game, which he had begun to play in the beginning of June, through his one-eyed deputy, Rajab Ali, and the Emperor's 'kitchen cabinet', also called a bunch of traitors – his Prime Minister, his relatives, and his Queen. On getting some positive signals from these persons, not directly from the Emperor, Hodson approached Sir Charles Reid, the then Officer Commanding, Delhi Field Force, to permit him to do the job. But instead of coming back to Hodson, Reid went to John Lawrence, Chief Commissioner, Punjab, who was the *de facto* Governor-General in North India insofar as the Rebellion matters were concerned. Sir John, realizing the seriousness of the matter, took prompt action, telling Reid telegraphically that the King's life and pension could be guaranteed, if he had no European blood on his hands, and he (King) 'placed the British in possession of the city in which he could not be suffered'.[11]

However, when the issue reached the Governor-General's ears, he laid the whole thing to rest once and for all: he issued clear instructions to the Lieutenant-Governor of the North-Western Provinces (the then overall in charge of Delhi civil administration) on 20 June to tell everybody to desist from making '*any promises to the King of Delhi and the royal family … as might be seized. They should be kept in close confinement and report to the Governor-General for further orders*' (emphasis added). A little later (9 July), another notification was issued by his office expressly declaring that

> *no authority whatever, other than the Governor-General in Council, should exercise the power of pardoning any State stipendiary or Native Chief who had joined in anyway whatever, or assisted mutineers or rebels, or any person belonging to the family of any such State stipendiary or Native chief*. (emphasis added)[12]

But even before the ink could get dry of the notifications, rumours reached Calcutta 'that overtures have been made by the King of Delhi to the officer commanding the troops' for surrender on some terms, and some people were inclined to oblige him. The Governor-General's office immediately wrote to the Lieutenant-Governor, NWP, and the Offg. Commissioner, Delhi, that

> *Should any negotiation of the sort be contemplated, a full report of all the circumstances must be submitted to the Governor-General in Council before the Government is committed to anything*' (emphasis added).[13]

11 Martin, *op. cit.*, vol. 3, pp. 434–35.

12 See G.F. Edmonstone, Secretary to the Government of India, Foreign Department, to H. Tucker, Secretary to the Lieutenant-Governor, NWP, DA, Residency Records, Mutiny Papers Series, File no. 1, 25 June 1857.

13 Edmonstone to C.B. Saunders, Offg. Commissioner, Delhi, 9 July 1857, *PMR*, *Correspondence*, pt. 2, pp. 301–2, 326.

Although all the instructions mentioned above were, according to the Secretary to the Governor-General, delivered to the concerned officials, those were, however, followed more in breach than in adherence, the most serious being the one committed by Hodson in netting the King by guaranteeing not only his life and honour, but also of his wife, son, his relatives, and others as well.[14]

Being a serious matter, especially when viewed in the light of the Governor-General's repeated warnings to one and all not to do any such thing without taking him into confidence, Hodson was asked to explain his conduct. To prove his innocence, Hodson, as was his wont, told a long story, the crux of which was that whatever he did was with the permission of Maj. Gen. Wilson, the then officer commanding the (Delhi) Field Force.[15] The higher authorities, who had little trust in Hodson, turned to Gen. Wilson for his views in the matter. The General played smart, and shifting the responsibility of the 'guarantee' upon the Delhi Commissioners, he stated that

> the late Mr. Greathed, Commissioner (Delhi) previous to the assault of the city, having reason to believe that the King had a wish to give himself up recommended to me to guarantee his life. On his doing so, Mr. Saunders, successor to Mr. Greathed, also made a similar recommendation to me after the city fell. To both these recommendations, I gave my consent. I also gave the same guarantee to Zeenat Mahal, but to none other.[16]

Now Greathed having died (16 September 1857), the ball went to the court of Saunders, who, in a frank communication to the Secretary to the Governor-General, said in a terse tone: *'I refuse to bear any responsibility with regard to my participation in the guarantee'* (emphasis added).[17] Thus cornered, the General retreated: 'I had Mr. Greathed's recommendation to guarantee the King's life', he wrote to Saunders. 'I have been mistaken in supposing I had yours also'.[18] The controversy, however, went on for some time, but after the death of Lieut. (then Capt.) Hodson (at Lucknow), and departure of Maj. Gen. Wilson from India, the case was literally closed.[19]

14 Queen Zinat Mahal and her son, Mirza Jawan Bakht, Mirz Ilahi Bakhsh, father-in-law of Prince Fakhru, and the Emperor's physician, Ahsanullah.

15 Hodson to Saunders, 28 November 1857, *PMR, Correspondence*, pt. 2, p. 323.

16 Maj. Gen. Wilson to Edmonstone, 23 October 1857, *ibid*., pp. 334–35.

17 Saunders to Edmonstone, 31 December 1857, *ibid*., pp. 335–36.

18 Wilson to Saunders, 28 December 1857, *ibid*., p. 342.

19 Edmonstone to Saunders, 4 December 1858, *ibid*., pp. 355–56. Though the case was closed, a small stricture was passed against Capt. Hodson. 'He had', the Governor-General recorded, 'no authority from Sir A. Wilson for guaranteeing the life of Zeenat Mahal and of her son Jawan Bakht, her father Ahmad Kooli Khan'.

No matter how it happened, the saving grace for the victors was that the Emperor was in their custody. It resolved, contextually, most of their problems, except one, that is, how to handle the prisoner-Emperor and his dominions? There were, simply put, two courses available to them: one, to treat him as a hostile, vanquished ruler and secure his person and his dominions on the principle of *juris gladii* (the right of the sword); and two, to claim his person and his dominions on the grounds of legality.[20] The first course was simple, the second problematic. Yet the victors chose the second. The reason behind their unusual decision, we are told, was 'image-building' – just to show to the world that they were civilized people who believed in justice, fair play, and rule of law.

For effective implementation of the above decision, again two measures were expedient: one, safe custody of the Emperor, and two, the mode of his trial. His presence in Delhi, they believed, could incite 'the dangerous classes' to rescue him. For ruling out this possibility, the man at the immediate helm in Delhi, C.B. Sunders, the Officiating Commissioner, tipped off Sir John Lawrence 'to deport the Emperor to Govindgarh (dist. Amritsar, Punjab) where he would be more safe'. He also sought his views on the nature of trial.[21] Agreeing with Saunders on the question of station, Maj. Gen. Wilson wanted the Chief Commissioner to clarify whether he would 'wish the Emperor to be tried previously to his departure from Delhi'.[22] Cecil Beadon, Secretary, Government of India, suggested his banishment to Hong Kong.[23] Surprisingly, when these suggestions were flying around, the Governor-General was not even aware of the terms on which the King had surrendered. It was for this reason that he gave vague instructions to the Punjab Chief Commissioner to send the King to Allahabad,

> if he had received from any British officer a promise that his life will be spared, to be tried under Act XIV of 1857. In case, there was no promise, then he should be tried in Delhi itself, under the same Act by a special commission consisting of Robert Montgomery, Judicial Commissioner, Punjab, G. C. Barnes, Commissioner, Cis-Sutlej States, and Lake, Commissioner, Trans-Sutlej States. C. B. Saunders was to act as the Prosecutor and collect the evidence and frame the charges.[24]

20 See Spear, *op. cit.*, p. 226.

21 Saunders to the Chief Commissioner, Punjab, DA, Residency Records, Trial of Bahadur Shah Series, File no. 4, 29 September 1857.

22 Telegram from Maj. Gen. Wilson to Chief Commissioner Punjab, 29 September 1857, *PMR*, *Correspondence*, pt. 2, p. 358.

23 S.N. Sen, *Eighteen Fifty-Seven*, Delhi, 1957, p. 108.

24 DA, Residency Records, Trial of Bahadur Shah Series, File no. 7, 17 October 1857.

Like his juniors, the Governor-General was also not playing a fair game with his subordinates here. Almost at the same time when he was issuing the above instructions on the subject to the Punjab Chief Commissioner, he was actually working, most secretly, without taking anybody into confidence, on a most sinister plot to 'banish' the King to the Cape Colony. On 11 October 1857, he wrote to George Grey, the Governor there:

> There is no place in India where his (Bahadur Shah's) presence, however well he might be guarded, would not produce excitement and constant uneasiness amongst large and dangerous classes. … This mischief which lies in the mere name of the dynasty of Timour had been thoroughly established during the late events. *The people would infallibly cling to the wreck of the House, so long as a fragment of it remained in sight or in mind*. (emphasis added)[25]

'In that circumstance, the solution of the problem lay', he added, 'in the banishment of the "dangerous state-prisoner" to the Cape, a safe place'. Grey agreed 'to help him'.[26]

Thus assured, Canning sent the proposal to the Board of Control for necessary action. But the proposal, to his surprise and dismay, got jettisoned by no less a person than Lord Ellenborough, President of the Board of Control and a former Governor-General of India. 'Lord Canning had no power to transport the King of Delhi to the Cape', he said, and sharing his views with Ross Mangles, Chairman, Board of Directors, he cited his own example as to how his proposal 'to exile the King of Oude to the Cape was turned down'.[27] Canning was 'privately' informed to keep away from getting into 'a scrape'.[28] A wise man as he was, Canning at once gave up the Cape Plan and returned to his old plan – Allahabad/Delhi.

In those typically strange days, however, nobody seemed to have been listening to the Governor-General or caring for, as they ought to have, his orders. The Punjab Chief Commissioner, for instance, ignored his instructions 'to send the King to Allahabad if his life was guaranteed'. Maj. Gen. Penny, commanding of the Meerut Division, who also held the command of the Delhi Field Force, brought in a Military Commission in the place of a civilian one recommended by him. The Officiating Commissioner of Delhi asked

25 The account relative to the plot to banish Bahadur Shah to the Cape Colony is based, for the most part, on an informative article on the subject by Donovan Williams of the University of Calgary, entitled 'An echo of the Indian Mutiny: The proposed banishment of Bahadur Shah II to the Cape Colony, 1857', *Historia*, vol. 17, no. 4, 1972, pp. 265–68.

26 *Ibid*.

27 The Government of India could transport people to 'certain Crown Colonies' only. The Cape Colony could therefore 'invite action if they took the Indian King'. See *ibid*., p. 267.

28 *Ibid*.

on his own the General to appoint a Deputy Judge Advocate-General who would frame charges against the King and place them 'before a court especially selected by you'.[29] The Punjab supremo, however, negated his proposal: 'I do not think it would be expedient', he told the Officiating Commissioner:

> to prepare any specific charges against the King of Delhi on which to try him, I would propose that the Commission be at liberty to hear and place on record all evidence bearing against the King and connected with the late insurrection. This is simply for record. He is not being tried for his life.[30]

Thus directed, Saunders tipped off the General to cancel the move to frame charges against the King. The Selected Military Commission should sit, he added, as a Court of Inquiry, which should hear and place on record all evidence 'bearing against the King and connected with the late insurrection'.[31] The military authorities were, however, not convinced with either his or the Chief Commissioner's logic.[32] The investigation can only be conducted satisfactorily, said the Deputy Judge Advocate-General, if the proceedings 'assume the form of a direct trial, *viz*. that charges should be framed and the ex-King be called upon to plead to them'.[33]

Gen. Penny concurred in the 'opinion expressed by the Deputy Judge Advocate-General'.[34]

A crisis of serious magnitude had thus arrived at a delicate moment. The military authorities had challenged their civilian counterpart – our way or no way. The Delhi Commissioner, however, rose to the occasion to save the situation. Half standing and half bent, he pleaded with Maj. Gen. Penny:

> I do not feel prepared to offer any opposition to the views expressed by the authorities so much better qualified to decide on questions relating to the forms of procedure which it is advisable to adopt in investigations or trials held before a Military Commission. … I do not, however, consider it advisable to delay any further postponing of the trial, as the members of the Court are now assembled at Delhi and considerable inconvenience would be entailed by having to refer the matter to the Chief Commissioner at Mooltan or to the Supreme Government at Calcutta; and I am, therefore, prepared to take the responsibility of requesting you to issue such orders as

29 Saunders to Maj. Gen. Penny, 26 November 1857, *PMR*, *Correspondence*, pt. 2, p. 2.
30 John Lawrence to Maj. Gen. Penny and Saunders, 1 December 1857, *ibid*., p. 364.
31 Saunders to Maj. Gen. Penny, 1 December 1857, *ibid*., p. 365.
32 Maj. F.J. Harriott to Maj. Gen. Penny, 5 January 1858, *ibid*., pp. 366–67.
33 *Ibid*.
34 *Ibid*.

> you may deem advisable to the Deputy Judge Advocate with reference to the framing of charges against the *ex*-King and the mode of conducting the trial, being confident that Sir John Lawrence will readily acquiesce in the views taken by the military authorities.[35]

The Delhi Commissioner was right, but in part – Sir John did acquiesce in the views taken by the military authorities as regards framing of charges, but he still clung to his old views, and again trumpeted their expediency and worthiness. His Secretary wrote to the Delhi Commissioner, for being conveyed to the military authorities that

> the object of the enquiry is really rather with the view of elucidating important facts connected with the rebellion than to determine the precise nature and extent of the *ex*-King's complicity. *From the moment that his life was guaranteed there ceased, in the Chief Commissioner's judgment, to be any advantage in bringing him individually to trial. His complicity in the rebellion was open and notorious and under no circumstances could he ever obtain his liberty or be resorted to his former status*. (emphasis added)[36]

'Sir John', his Secretary added,

> *can only hope that you will lay before the Court every document of importance connected in anyway with the ex-King's conduct during the rebellion. All weighty circumstances explanatory of the origin and progress of the rebellion should also be placed on record*. (emphasis added)[37]

The military authorities knew their limits, and as such effected a climb down in an unmilitary manner, in order to accommodate the views of the Chief Commissioner as the following statement that the Deputy Judge Advocate-General made before the Commission would show:

> Evidence will be submitted to you which may not bear strictly on the charges (against the king). It is desired that all the circumstances connected with the late rebellion, even though not in direct relation to the indictment may be appropriately recorded.[38]

The Chief Commissioner approved the chargesheet and the trial procedure. Soon after, the Governor-General also affixed his seal of approval on both.

35 Saunders to Maj. Gen. Penny, 5 January 1858, *ibid*., pp. 367–68.
36 Secretary to Chief Commissioner, Punjab, to Saunders, 15 January1858, *ibid*., p. 369.
37 *Ibid*.
38 *Ibid*., pp. 374–75.

Thus, the over four-month-old squabble came to an end. The substantive trial began in Delhi on 27 January 1858. The following middle-rung army officers constituted the Court:

President
Lieunt-Col. Dawes,[39] Artillery
Members
Maj. Palmer, HM's 60th Regiment
Maj. Redmond, HM's 61st Regiment
Maj. Sawyers, HM's 6th Carabineers
Capt. Rothney, 4th Sikh Infantry
Interpreter
James Murphy

Prosecutor for Government
Maj. F. J. Harriott,[40]
Deputy Judge Advocate-General

The Court (Military) tried the Emperor under Act XIV of 1857.[41] He was criminated on 5 January 1858 of the following charges:

(i) Being a Pensioner of the British Government in India, encouraged, aided and abetted, Muhammad Bakht Khan, and soldiers of the East India Company's Army in the crimes of mutiny and rebellion against the State;
(ii) encouraged, aided and abetted Mirza Mughul and others to rebel and wage war against the State;
(iii) being a subject of the British Government in India, became a false traitor against the State, proclaiming and declaring himself the reigning King and Sovereign of India; and
(iv) encouraged and abetted soldiers and others in murdering 49 persons of European descent on 16 May, and thus committed a heinous offence under Act XIV of 1857.

Ever since its effection, the trial has been, as seen above, a subject of considerable debate, discussion, and controversy, mainly around such questions as:

39 It was a flawed appointment. See constitution of the Court discussed below in detail.
40 His appointment was also not in order. This has also been discussed at length below.
41 A full version of the chargesheet is given below. Despite my best efforts, I could not find the original version (English) of the chargesheet. Fortunately, I could lay my hands on, as stated above, a copy of the Urdu translation (original) of the chargesheet (see Figure 1.2) which was supplied to the Emperor about 20 days before the trial started, in the DA, Delhi Residency Records, Trial of Bahadur Shah Series, File no. 37, 8 January 1858.

(i) Was Bahadur Shah a 'sovereign ruler' or an 'ex-titular King' or a 'protected vassal', or a 'pensioner', a 'subject' of the British?
(ii) Where did both, Bahadur Shah and the East India Company, stand in the eyes of the *jus gentium* (the law of the nations), the British law, the Islamic (Mughal) law, and the local law (the so-called 'Mutiny law') of the times?
(iii) Was Bahadur Shah not, on a higher plane, ethically, politically, and licitly well within his rights to wage war, or, in the words of the great Chartist leader, Charles Ernest Jones, 'rise in the holy right of insurrection', along with his countrymen, against a foreign power that had unlawfully and amorally usurped their country?
(iv) Was the East India Company legitimately competent to try Bahadur Shah?

The discussants have, no doubt, provided answers to these questions in their own ways, but still many a complexity remains to be simplified for a clearer understanding of things. An effort is being made here to look at the quandary from historical, political, and juridical perspectives through a wider aperture.

Historical perspective

In the calendar of the present problem, 3 March 1707 is an important date when the last of the great Mughals, Aurangzeb, as indicated above, closed his eyes in death, marking the beginning of the end of the biggest and the greatest Empire of its time in the world. Aurangzeb was succeeded by his son Bahadur Shah I. Unlike his predecessors, 'rivalling the magnificence and the power of the mighty Alexander, before whom nations were bowed as reeds bow before the tempest',[42] the new ruler was a pigmy, unworthy to manage the affairs of his great bequest. And, as ill luck would have it, his 16 successors[43] were no different. As a result of their misrule, mismanagement, and moral bankruptcy, the Empire broke like a rotten reed into pieces – literally. To take advantage of the situation, many political powers rushed in to try their luck.[44] An English trading company, popularly called the East India Company,[45] which had received a charter by Queen Elizabeth I of England on 31 December 1600 'to trade with all parts of Asia not in possession of a

42 Martin, *op. cit.*, vol. 3, p. 155.
43 For their names and other details, see f.n. 2 above.
44 They were Marathas, Afghans, Rohillas, Sikhs, Jats, and so forth.
45 There are many stories on the Company's origins, progress, and fall. For a critical study, however, see Nick Robins, *The Corporation that Changed the World: How the East India Company Shaped the Modern Multinational*, Delhi, 2006.

Christian Prince',[46] also begun to mark, through small gestures, its presence in the arena. But for about a century and a half, its chief concern remained by and large trading.[47] But not after that. Taking a serious stock of happenings around them, they jumped into the whirlpool of politics. Although the Pitt's India Act, 1784, Article 39, had clearly instructed that 'to pursue schemes of conquest and extension of dominion in India are measures repugnant to the wish, the honour, and the policy of the nation (England)',[48] they increased their armies manifold,[49] and went on doing what they were asked not to do.

On 11 September 1803, they knocked at the door of the Mughal capital, the historic city of Delhi.[50] The Maratha chief Daulatrao Sindhia, the *Vakil-i-Mutaliq* (Imperial Regent) who looked after the person and dominions of Emperor Shah Alam (r. 1760–1806), the blind old man,[51] sitting on the throne of Akbar and Aurangzeb, tried to defend it, but failed. The Governor-General, Lord Wellesley (1798–1805), rushed to have the Emperor under the Company's aegis, for he knew well enough that

> notwithstanding his Majesty's total deprivation of real power, dominion and authority, almost every state and every class of people in India continue to acknowledge his nominal sovereignty. The current coin of every established power is struck in the name of Shah Aulum. Princes and persons of the highest rank and family

46 See Jon Wilson, *Britain's Raj and the Chaos of Empire: India Conquered*, London, 2006, p. 33.

47 Robins, *op. cit.*, p. 143.

48 *Ibid.*

49 In 1763, the Company armies were estimated to be 18,000 strong, but in 1880s, their numbers increased about tenfold – 154,500, to be precise. See *ibid.*

50 During the last days of the Second Anglo-Maratha War.

51 Shah Alam was blinded by Ghulam Qadir Rohilla, son of Zabita Khan, Chief of Rohilkhand in 1788. There was a special reason why he perpetrated this crassest cruelty. During the course of the Maratha–Rohilla War (1773–74), the Marathas captured the wife and children of Zabita Khan, and handed them over to Shah Alam. Ghulam Qadir, son of Zabita, was one of them. Aged about 9–10 years, Ghulam was exceptionally handsome. Shah Alam liked him very much and got him castrated. Not only that, he was even asked to don female attires whenever he came to him. Qadir avenged his humiliation and loss by gouging out Shah Alam's eyes. See Aslam Parvez, *Bahadur Shah*, Delhi, 1986, p. 31.

The role of British in his blinding is also not unsubstantial. Historian F.W. Buckler says that 'the blinding of Shah Alam by Ghulam Qadir need never have taken place but for the betrayal of Sindhia's plans by Cornwallis. Sindhia had ordered his troops to remain in the Doab and Maj. Palmer was sent to meet Sindhia. When Ghulam Qadir had reached the ghats of Bareilly, three regiments were sent to watch him', but Lord Cornwallis, in his anxiety to be doubtlessly friendly with Rohillas, 'apprised Ghulam Qadir of intended march of the Detachment. Ghulam Qadir thanked Cornwallis and blinded Shah Alam'. 'F. W. Buckler's reply' to D. Dewar and H.L. Garret's rejoinder to his essay, 'Theory of Indian Mutiny', *Transactions of the Royal Historical Society*, vol. 7, 1924, p. 164.

> still bear the titles, and display the insignia of rank which they or their ancestors derived from the throne of Delhi, under the acknowledged authority of Shah Aulum, and his majesty is still considered to be the only legitimate fountain of similar honours.[52]

If left alone, the Governor-General feared, the Emperor 'could form a dangerous instrument in the hands of anyone possessing sufficient power, energy and judgment to employ it in prosecuting views of aggrandizement and ambition'.[53]

To ward off such an eventuality, the Governor-General kept sending tall promises and guarantees to the Emperor through his agent even before the war came to end. The crux of these promises was that should the Emperor accept the British protection,

> every demonstration of respect and every degree of attention which can contribute to the ease and comfort of your Majesty and the Royal family, will be manifested on the part of the British government, and adequate provision will be made for the support of your Majesty and your family and household.[54]

After the war had resulted in their favour, the Governor-General made, through General Lake, the following offer to His Majesty, which he, after a little vacillation, accepted:

> Rs. 90,000 per month as *peshkash* (present or tribute) plus a territory, called Assigned Territory, with the river Yamuna in the east, Najafgarh in the west, Bawana in the north and Faridabad in the south. In addition to that, the Emperor, was promised an increase to the extent of one lakh rupees per month for the Private expenses if the produce of assigned territory hereafter permits of.[55]

As was their wont, the Company authorities did not make any increase in the *peshkash*, even after much water had flowed under the bridges, despite being told several times to fulfil the promise. Wellesley responded with all kinds of excuses to justify his dereliction. He even went to the extent of interpreting the monthly payment of Rs. 90,000, the *peshkash*, as His

52 See NAI, Governor-General in Council to the Secret Committee of the Court of Directors, 13 July 1804.

53 NAI, Governor-General in Council to the Court of Directors, 13 July 1804.

54 Quoted in S.M. Burke and Salamuddin Quraishi, *Bahadur Shah, the Last Mughal Emperor of India*, Lahore, 1995, p. 22.

55 See Amar Farooqui, *Zafar and the Raj: Anglo-Mughal Delhi, c. 1800–1850*, Delhi, n.d., pp. 37–38.

Majesty's 'pension'/'stipend' to show himself, as Sir Percival Spear says, 'not his Majesty's 'minister but his protector; not as his agent but as his overlord'.[56] But what he proposed, his Commander-in-Chief innocently disposed. While forwarding the Governor-General's communication to the Emperor, General Lake wrote in his accompanying note just the opposite of what Wellesley wished him to convey.[57] He had spoiled Wellesley's game by assuming *'the tone of a subject instead of that of a friendly protector'* (emphasis added).[58]

Small wonder then, the Emperor came to believe that 'the status-quo between him and the British had been restored and that the Company had returned to its vassalage'[59] – i.e., the 1765 status as his *Diwan*, authorized by him to collect the revenues of the richest province of the Empire, Bengal, on the condition of making a yearly payment of Rs. 26 lakhs to him from out of the revenue they collected 'regularly'. The Company had paid the amount (revenue) till 1772, but stopped after that on the excuse that the Emperor had gone to the side of the Marathas. This had no sense, for servant had no right to ask his master to go according to his wishes. The non-payment of the agreed amount was thus a breach of agreement. The Emperor, however, thought that since the British 'had again come back to him', they will pay the due amount which was huge – as huge as £ 14.5 million, which Buckler says, 'greatly exceeded the Company's moveable capital'. According to Elphinston, Buckler further adds, the ravages of Nadir Shah cost the Mughal Emperor only 'eight or nine million sterling'.[60]

Thus, taking things at their face value, the Emperor came into his old self. He began to address the Governor-General, in all his correspondence, as 'his favoured son and devoted servant'. He called the Company officials as 'faithful servants'.[61] Though detestable, the Governor-General accepted the bitter pill. But he neither swallowed it nor threw it away, but followed instead the colonial strategy – always create confusion in such situations. As a result of their befuddled action, Company's historian, John W. Kaye, found Shah Alam in a typical position – he was 'a king, and yet not a king – something, and yet nothing – a reality and a sham at the same time'. Their

56 See Spear, *op. cit.*, p. 58.

57 *Ibid.*, p. 35.

58 *Ibid.* The old General was perhaps charmed by Emperor's humility, mannerism, and above all, the honour – *Khilat* – and the grand titles *Samas-ud-Daula*, *Asgar-al-Mulk*, *Khan Duran Khan Bahadur*, *Sipahsalar Fateh Jung* (the Sword of the Sate, the Hero of the Land, the Lord of the Age, the Victorious in War), bestowed upon him.

59 See Burke and Quraishi, *op. cit.*, pp. 25–26.

60 See F.W. Buckler, 'The political theory of the Indian Mutiny', *Transactions of Royal Historical Society* (4th Series), vol. 5, 1922, pp. 93–94; and his reply to his critics, in *ibid.*, vol. 7, 1924, p. 163.

61 Surprisingly, there is no evidence to the effect that the British ever expressed the displeasure over this development.

only 'solace' in the ball game here could be, Kaye adds, 'that we held the king'. But even that, he says in the next breath, was not adequate enough, because it was a 'puzzle to us how to play the card'.[62]

Surprisingly, in that confusing situation, there was only one man – the old, blind Emperor – who 'saw' things clearly, cracked the puzzle, and saved the situation for himself and his descendants, as Spear tells us:

> Mughal policy was to retain the nominal sovereignty of India by the utmost complaisance to the actual possessors of power. Behind this apparent pusillanimity lay the hope that the wheel of fortune might yet turn to make possible the reunion of actual to nominal authority.[63]

Spear is absolutely right. Even in his worst days, Shah Alam never gave up hope of regaining, one day, his lost world:

Aftab aj falak imroz tabahi didi
Bajfarda dehad ejan sar-o-sardari maa.[64]

[O Aftab (his pen name), unfortunately, what we see today is ruination. But tomorrow God would again give us our imperium.]

Hoping against hope, Shah Alam, surprisingly, kept the old baggage of sovereignty, rights, and privileges, however tardy, intact as long as he lived. The Governor-General wanted to pluck the cherry, but the home authorities would not agree.[65]

Leavening things in the womb of confusion and uncertainty, Shah Alam passed away on 19 November 1806. He was succeeded by his son Akbar II (earlier Akbar Shah). During his long reign – 1806–1837 – Akbar was mostly busy fighting three cases: one, to stop the nasty game of nibbling at his sovereignty; two, enhancement of his *peshkash*; and the third, the question of appointment of his heir-apparent. Going by chronological order, I would take up the third issue first. The Emperor wanted to appoint, under petticoat influence, his third son, Mirza Jahangir from his favourite wife Begum Mumtaz Mahal in place of the eldest one – Mirza Abu Zafar. According to the Islamic law, and the Mughal tradition, the Emperor had a right to choose his successor. But in British practice, the law of (male) primogeniture prevailed. The Emperor used every trick, to have his way. But to no avail. In desperation, he did not hesitate to be so mean as to blame

62 See John W. Kaye and George Malleson, *History of the Indian Mutiny*, London, 1889, vol. 2, p. 4; Spear, *op. cit.*, p. 34.

63 Spear, *op. cit.*, p. 34.

64 See Mahadi Husain, *Bahadur Shah II and the War of 1857 in Delhi with Its Unforgettable Scenes*, Delhi, 1958, p. 84.

65 Wellesley spoke in two voices: aggression here and passivity there (home).

Abu Zafar of having seduced his Begam (stepmother).[66] After a long tug of war, the Emperor agreed to have Mirza Abu Zafar as his heir-apparent (10 January 1810).

The second matter, i.e., nibbling at the sovereignty, which had actually started in Wellesley's time itself, took a harsher turn in the time of his successor, Minto (1807–1813). For instance, Minto told the Emperor in so many words that his Government's relation with him was 'only a complimentary recognition of a nominal sovereignty'.[67] He took several measures to prove the point. In June 1808, for instance, he refused to accept *Khilat*, robe of honour, which was conferred on their vassals/servants by the Mughal Emperors for centuries as a special favour.[68] Soon after, he hurled another blow by asking the Emperor not to bestow any title on any Company subject to avoid facing 'disappointment, degradation, and expense'.[69] The Emperor swallowed the bitter pills, but he did not sit idle on bended knees, crushing his fate: he took desperate measures to get his *peshkash* enhanced as per their promise made in the time of his father, Shah Alam, and royal prerogatives, sovereign authority, 'tribute', etc. He sent two missions, one of Raja Prem Krishan and the other of Raja Ram Mohan Roy, for presenting his case, first to the Governor-General in Calcutta and later to the King of England in London. The former failed almost completely, but the latter secured some success – not substantial, though.[70] Neither the *peshkash* was enhanced nor was the nibbling stopped – rather, it was continued with greater zeal.

Governor-General Minto's successor, Hastings (the Earl of Moira) (1813–1823), who derided the Emperor as 'mock majesty', was still more keen 'to make the British assertion of suzerainty perfect' in all respects. He gave a title to Nawab Faiz Mohammad Khan of Kanod (1813), *Khilats* to Nawab Samsuddin Khan of Feroze-Jhirka and Loharu (1815), and Raja of Bikaner (1828) much to the chagrin of the Emperor. Not only that, he even dissuaded the princess of Travancore to receive from the Emperor a *Khilat* for her son.[71] In 1818, he abolished the Imperial Mint at Delhi; and broke the bond of loyalty that existed between the Emperor and the rulers of Lucknow, prompting Nawab-Vazir Ghaziuddin Hyder to declare himself an 'independent' ruler – a *Badshah*. Three years later, he brought round the Raja of Jalor not to accept the Mughal Emperor as his sovereign, and enjoy the British patronage instead. The Raja presented *Nazar*

66 See NAI, Foreign secret consultation, no. 25, 26 February 1807.

67 Husain, *op. cit.*, p. 86.

68 It was later accepted by the Governor-General's Persian Secretary. But an indirect message was thus sent to the Emperor that the British were not his vassal/servant.

69 K.N. Panikkar, *British Diplomacy in North India*, Delhi, 1968, p. 121.

70 For details relating to the two missions, see *ibid.*, pp. 119–32; Farooqui, *op. cit.*, pp. 60–67.

71 See Panikkar, *op. cit.*, pp. 19–32.

to the Governor-General, ignoring the Emperor, which his ancestors took pride in doing. He removed the words *Fidwi Khas* (special servant) from the Governor-General's seal, and asked Indian ruling houses to do the same. In short, he made every effort to chop off as many branches of the tree of Mughal sovereignty as possible.[72]

Hasting's successor, Amherst (1823–1828), also followed his policy. But it seems that constant strikes had, by then, demoralized the old Emperor, and we find him agreeing to meet Amherst (1827) without any ceremonials, without which he had refused to meet his predecessor (Hastings). They met as equals. He also began to entertain 'letters from the Governor-General, bearing no signs of his (Emperor's) superiority in addresses'.[73] He also repeated Minto's statement that 'Your Kingship is but nominal; it is merely out of courtesy that you are addressed as King'.[74]

Bentinck (1828–1835), Amherst's successor, also followed his path. He replaced the Mughal coinage, which was in circulation till his time, by Company's own rupee, 'bearing the image of their own sovereign, the King of England in place of the Mughals'. Another equally damaging measure, if not more, was his insertion of the phrase *Hukam Company Bahadur* in public announcements.[75] The Emperor opposed these, and almost every other move that curtailed his Royal prerogatives and impaired his sovereignty as best as he could, till he reached his earthly extremity on 28 September 1837.

The Emperor's eldest son and heir-apparent, Mirza Abu Zafar, succeeded him at the ripe age of 62, with the title '*Abul Muzaffar Sirajuddin Muhammad Bahadur Shah Badsha Ghazi*', conveniently called Bahadur Shah II or simply Bahadur Shah Zafar[76] (1837–1857). The new Emperor as a prince was a favourite of the British who had, as seen before, made him heir-apparent in the teeth of stout opposition from his father and others. It was, thus, hoped that he would, unlike his predecessors who were always on quarrel, if not on war path, with them, pull on well. But no sooner had he touched the throne, winds began to blow in a different direction. The reason of friction between him and the Company was the appointment of Mirza Dara Bakht as heir-apparent. Though his eldest son, the Emperor did not like him to be his successor; his choice was his second son, Mirza

72 Gauri Shankar Mukherjee, 'Controversy over the question of sovereignty: A study of Mughal–British political relations', *The Quarterly Review of Historical Studies*, vol. 18, no. 1, 1978–79, pp. 178–79.

73 Panikkar, *op. cit.*, pp. 142–48.

74 Husain, *op. cit.*, p. 86.

75 Mukherjee, *op. cit.*, pp. 179–80. Earlier the mode of public announcement was *Khalq Khuda Ki/Mulk Badshah Ka*. See Husain, *op. cit.*, p. 86 f.n.

76 Bahadur Shah was also a well-known Urdu poet. He wrote his poetry as Zafar. Some critics find his poetry very ordinary. Ghalib, however, rates it pretty high. See Husain, *op. cit.*, p. 50.

Shah Rukh. This, and Company's arrogant behaviour in arranging the heir-apparent's investiture ceremony, without even informing the Emperor, on the day of his own accession against the Mughal tradition, made him bitter against the British.[77]

Unlike Bentinck's tenure, the Governor-Generalship of Auckland (1836–1842) was free of any tension; not because there was any change in the British policy vis-à-vis the Emperor, but because the Governor-General was awfully busy with the Afghan affairs. However, when his successor, Ellenborough (1842–1844), 'an enthusiast for the direct Government of India by the crown',[78] came, the situation began to boil again. To reach his set bourne, the Governor-General ordered his men to stop offering N*azar* to the Emperor and other practices that enhanced his sovereign image. He had the peacock throne (replica) removed from the *Diwan-i-Khas* to an underground cell. *Diwan-i-Am* was also closed (1844) and the practice of holding durbars there was discontinued. Worse, the Governor-General wanted the Emperor to leave his royal title and palace before long.[79]

When the truth reached the Emperor, he protested and charged the Company authorities of violating the *Iqrarnama* (Agreement) between Emperor Shah Alam and General Lake at the behest of the then Governor-General, Wellesley. He sent his Royal *Vakeel* to the Governor-General (1843) to change his new policy and stick to the *Iqrarnama*.[80] But to no avail. Anguished and enraged, he engaged as his 'ambassador' an Englishman, George Thompson,[81] a social activist and founder of the 'Edinburgh Society for the Abolition of Slavery throughout the World' and the 'British India Society', to present his case to Queen Victoria. Thompson left for London on 7 November 1843, carrying the official 'letter from His Imperial Majesty, the Emperor of Delhi to her Most Gracious Majesty Victoria, the Queen of Great Britain and Ireland and all their Dependencies'. The letter contained three salient points:

(i) From the times of Akbar and Elizabeth to the present times (1840s) the two ruling Houses of India and England stood on *friendly footings* – never ever as master and servant;

77 Farooqui, o*p. cit*., p. 95.

78 Ellenborough, says historian of the 'British dominions', H.H. Dodwell, 'wanted the Emperor to resign the title …, to be offered to the Queen (of England) despite the oddity – had his ideas been carried into effect – of her figuring as *Patshah Ghazi*, the Imperial Champion of Islam, which would have made a queer pedant to the *fider defensor*'. See H.H. Dodwell, ed., *The Cambridge History of India*, vol. 6, Delhi, rep. 1963, p. 606.

79 For details, see *ibid*.; Husain, *op. cit*., pp. 84–90; Panikkar, *op. cit*., pp. 162–64.

80 Mukherjee, *op. cit*., p. 179.

81 For more details on the life and work of this distinguished Englishman, and the letter, see A. Parel, 'A letter of Bahadur Shah to Queen Victoria', *Journal of India History*, vol. 47, pt. 1, no. 139, April 1969, pp. 283–84.

(ii) The servants of the ruling House of England who came to govern their possessions here (except those at the helms now) always showed 'loyalty and respect' to the Indian (Mughal) ruling House; and

(iii) The relation between the Company and the Mughal ruling House was determined by the *Iqrarnama* (Agreement), 1803, between Emperor Shah Alam and General Lake (on behalf of the Governor-General Wellesley) where the former stood, as a sovereign, and the latter had the status of more or less a vassal.

In the end, the Emperor asked the British sovereign 'to command your servants (Company) … to give prompt and just consideration to the representations and claims I have laid before them'.[82]

The Board of Control and the Court of Directors in London thwarted Thompson's every move to meet the Queen, deliver the 'letter, and seek justice from her'. In fact, 'the labyrinth of procedural technicalities, built into the administrative system in India' failed his mission. The saving grace, however, was that perhaps in the weather created by Thompson's public debate,[83] newspaper reports, etc., the proposals of Ellenborough were also not considered favourably by the Court of Directors. He was asked to wait till Bahadur Shah's death, which was, according to their estimate, not long in coming.[84]

Meantime, Ellenborough was succeeded by Dalhousie (1848–1856). Dalhousie shared Ellenborough's views, but not his philosophy. According to him, imperial interest was more sacrosanct than any law, convention, or tradition. It is appropriate, he used to declare every now and then, 'that we should appear before India … as being paramount in name as also in authority and right'. He wanted to put 'an end to the Royal privileges of the House of Timur' on the passing away of Bahadur Shah, and deny the use of the Royal title (*Badshah*) and the Royal Palace (Red Fort) to his successor. He would be addressed simply as Prince and reside at Qutb, he explained.[85]

When Dalhousie sent his proposal to London for approval, it generated a serious controversy. The Court of Directors opposed the proposal by a huge majority (19 to 4). Its Chairman, Gelloway, told Dalhousie that no good would come out of his move. The Prince, he added, 'if he has one drop of

82 *Ibid.*, p. 300; Mukherjee, *op. cit.*, pp. 177–83. The full text of the letter is given in Parel, 'A letter of Bahadur Shah to Queen Victoria', *Journal of Indian History*, vol. 47, pt. 1, no. 139, April 1969, pp. 299–301.

83 The debate was held in the India Office on 18 December 1844 before the Proprietors of the East India Company. Though Thompson put up his case stoutly, the motion was, for obvious reason, negated. The content of the debate was reported in the British press. Parel, *op. cit.*, p. 294.

84 Panikkar, *op. cit.*, pp. 165–66.

85 *Ibid.*, pp. 168–71.

the blood of Timur rather sacrifice his life than quit the palace of his ancestors by compulsion'.[86] There was disagreement in Dalhousie's Council also. Only the Board of Control supported him. In that confused situation, he avoided taking any action for some time.

Meantime, the question of appointment of heir-apparent came to the fore. Mirza Fakhru being the eldest surviving son of the Emperor was Dalhousie's choice. But the Emperor, under the influence of his favourite Queen Zinat Mahal, favoured Mirza Jawan Bakht. Mirza Fakhru was not eligible to be his successor, the Emperor said, 'on grounds of illegitimacy and mutilation'.[87] The Company overruled both the objections, and he remained their choice. The Prince felt obliged to Dalhousie.

Dalhousie put his old scheme in a slightly modified manner before the grateful Prince. He offered 'an addition of Rs 25,000 to his income' should he agree to live at Qutb. He would be called-Emperor, he added, and have equal standing in dealings with the Governor-General. He employed Mirza Ilahi Bakhsh,[88] the self-serving 'traitor' who played a vital role in destroying the name, fame, and whatever standing was left of the Mughals during their last days, to make his son-in-law agreeable to the proposal. Fakhru proved to be devoid of any 'drop of Timur's blood': he agreed to shift to Qutb.[89] The grateful Governor-General 'appointed' him heir-apparent in an impressive investiture ceremony on 24 September 1852. The Prince was, however, not destined to enjoy his new assignment for long – he died soon (10 July 1856).[90] The Emperor, under the influence of Begum Zinat Mahal, again pressed the case of their son Mirza Jawan Bakht for heir-apprenticeship. However, before any action could be taken, Dalhousie's tenure came to end.

Dalhousie's successor, Canning (1856–1862) was more keen and determined not to give any 'solemn sanction to a sham'. But before he could give

86 *Ibid.* It may, however, be added here that Gelloway perhaps did not know that there was so much admixing of blood in the Royal dynasty over the years that not only in the Prince under reference, but even in most of others, there was hardly any trace of Timur's blood.

87 According to Bahadur Shah, none of the Mughal princes was circumcised since Humayun's times. Mirza Fakhru was an exception, which rendered him unfit to be a King. *Ibid.*, pp. 172–73.

88 Ilahi Bakhsh was, as indicated above, father-in-law of Mirza Fakhru. He was instrumental in making Fakhru to change his mind, as indicated above, and oblige the Governor-General. Later, he played the same game again to make his grandson, Fakhru's son, Prince Abu Bakr to surrender with his two uncles before Hodson in September 1857. Hodson killed all the three Princes in cold blood, and threw their dead bodies to rot for the whole day and night. Prince Abu Bakr was his daughter's son. Ilahi Baksh did not care to collect even his dead body and give him at least a proper burial.

89 A formal agreement to this effect was executed by the Prince on 23 January 1852. The Board of Directors and the Governor-General in Council had approved the modified proposal that the Prince would be called Emperor and will not be forced to quit Red Fort.

90 For details, see Panikkar, *op. cit.*, pp. 171–75; Farooqui, *op. cit.*, pp. 98–101.

effect to his intent, the Rebellion broke out, 10 May 1857, effecting, as Shah Alam and his successors had hoped,[91] 'reunion of actual and nominal authority'. Now Bahadur Shah was both *de jure* and *de facto* sovereign ruler of Hindustan.[92]

The above account shows that Delhi had, from 1803 through 1857, technically, two governments: one, of the Mughals, who had sovereignty but not power; the other, of the East India Company that had power but not sovereignty. As things stood then, the Company could have easily possessed both the things in 1803, either on the *de facto* ground of the right of conquest by deposing Shah Alam or through a treaty with him according to local/international law. They did neither, but tried to acquire, like a sneak-thief, the prized thing through indirect means. However, the Mughal Emperors, it must be said to their credit, though weak and effete, came out to oppose their every move in that direction as best they could in their worst days. As a result, despite their great efforts, the traders-turned-rulers could only divest the Emperors of the external trappings of sovereignty but not the soul, the sovereignty itself. It remained vested in the Emperors till the Rebellion 1857.

The Company's rule during this period was, as such, legitimate only till such time that it worked on behalf of the Emperors, but not after they discarded the practice. Some critics (like Dewer and Garret mentioned above), however, believed that such was not the case. Sovereignty without power to enforce its dictates was no sovereignty. The Company was sovereign because it had such power. Maybe so elsewhere, but in the East, especially India, sovereignty without power was also recognized as sovereignty. There are many such examples that prove the point. In Maharashtra, the Peshwas, for instance, ruled from Poona as a great power, but always looked towards almost 'a vanishing Kingdom of Satara', where the weak and effete descendant of Shivaji ruled, as their master: 'Each Peshwa solemnly sought investure from the King, although the King could only do as he was directed'. In Mysore, Hyder Ali and his son Tipu Sultan carved out a big *Raj*, but they preserved the 'old Hindu kingly family and showed its representative periodically to the people to draw legitimacy from him'. At Nagpur, the Bhonsles 'did not take the title of *Raja*, they gave it to a Gond Prince, the hereditary ruler of the region, and issued their orders in his name'.[93] Before 1857, the case of Bahadur Shah also belonged, as seen above, to this category. But after 10 May 1857, his position changed; he was sovereign even according to the Company's definition of the term. Besides *de jure* status, he had an army and power to enforce his orders, and was, thanks to the great

91 Even Shah Alam who was in most wretched condition cultivated hope that their better days would come someday. See Husain, *op. cit.*, p. 84.

92 Spear, *op. cit.*, p. 34.

93 See Dodwell, *op. cit.*, vol. 5, p. 608.

Rebellion, no more what the British called him '*a sham*', '*a shadow*', '*a puppet king*', and so forth.

En passant, a question arises here: Who brought about this situation in 1857? Let us look for the answer, in the mirror of history, i.e., the Rebellion in Delhi and Bahadur Shah's role therein.

The rebellion: role of Bahadur Shah

The Rebellion 1857 is perhaps the most written about event in the history of modern India.[94] A careful perusal of this voluminous literature shows, however, that many questions relating to Bahadur Shah's role which are, as indicated above, central to our understanding of the charges against him have not been answered satisfactorily. Take, for instance, his assumption of the leadership of the Rebellion on 11 May 1857. With a little difference in inconsequential details here and there, almost all the writers, who have touched Delhi, both British and Indians, tell us that on 11 May 1857, a few rebel sepoys from Meerut came to Delhi, perpetrated violence, along with local rabble, and installed Bahadur Shah on his paternal throne as the Emperor of Hindustan, which changed instantaneously a local mutiny of the sepoys into a pan- Indian political movement of great scope and significance.[95] The developments, they say, took the Emperor and others by surprise which goes to show that there was no prior contact with, and understanding (conspiracy) between the Meerut Sepoys and others in Delhi.

The oft-repeated above tale is straight and simple. But it provokes some complex questions like, for instance, how a few sepoys from Meerut – one at 7 a.m., 5–6 at 8 a.m., 30–40 a little later, some more at 11 a.m.,[96] 300 in all – could dare to think of 'storming' an unknown, well-fortified city, well-guarded Red Fort,[97] and approach the Emperor with such a high degree of confidence, if they had no earlier understanding with their counterparts and others in Delhi? Secondly, how could the sepoys, who had no political ingenuity to understand the complexities of high-level politics, take

94 *The Rough Bibliography of Indian Mutiny, 1857–1859* by H.E. Rough, Solihull, 2015, a most comprehensive and authoritative work on the subject, lists over 7,700 contemporary and current English and foreign language books, journals, and articles. There are about 300 books, articles, etc. in Indian languages also which have not been listed there.

95 Especially, S.N. Sen, *Eighteen Fifty-Seven*, Delhi, 1957, p. 411.

96 See the statement of the Emperor's counsel, Ghulam Abbas, who was almost all the while with the Emperor on 11 May. Martin, *op. cit.*, pp. 161–62.

97 The Red Fort was surrounded by 'walls a mile and a half in circumference and 100 feet high' with a moat 75 feet wide and 30 feet deep on the three sides and the Yamuna River on the other. The walls had loop holes on the top. 'No known engine of war could cross this great moat', says James Leasor *The Red Fort: An Account of Siege of Delhi in 1857*, London, 1956, pp. 48–49.

such a statesman-like decision of installing Bahadur Shah on the throne, and transforming their local mutiny into a political movement of all-India standing? And thirdly, it has remained unexplained so far as to how those sepoys – strangers – could make the people of Delhi – sepoys and civilians from the city, its suburbs, and villages[98] – in large numbers, eat out of their hands in no time and take them along to demolish the steely, awesome administrative structure so assiduously built by the British in over half a century (1803-1857), and destroy every vestige of their existence in about half a day?

These are no doubt complex and difficult-to-answer questions. But fortunately there are some meaningful clues in the contemporary literature that can be helpful in tackling them. Take, for instance, the following excerpt from the evidence of a most knowledgeable person then at the scene, Ahasanullah Khan, physician and prime minister of Bahadur Shah, and, at the same time, a well-wisher of the British:

> The Volunteer Regiment (38 NI) of Delhi had said that before the break out of mutiny, they had leagued with troops at Meerut, and that the latter had corresponded with the troops in all other places, so that from every cantonment troops would come to Delhi.[99]

Another equally knowledgeable person, the Emperor's Secretary, Mukand Lal, gives some more information. Deposing before the Court, he said:

> Some twenty days before the commencement of the late rebellion intelligence was received here (the Palace) that the troops at Meerut were about breaking out in open mutiny. … I do not know whether any direct proposals came to the prisoner, but the King's personal attendants, sitting about the entrance to his private apartments, used to converse among themselves, and say that very soon, almost immediately, the army would revolt and come to the palace, when the Government of the King would be re-established and all the old servants would greatly promoted and advanced in position and emoluments.[100]

In view of this, it would not be wide of the mark to guess that during the 20 days, i.e., 21 April to 11 May, some understanding had developed between the Palace and the Meerut troops/leaders which made them enter into the Palace without any hesitation (on 11 May). There is also a direct hint of

98 Most of the writers, old as well as recent, call them without any evidence 'rabble', 'ruffians', 'badmashes', and so forth.

99 See Hakim Ahsanullah's evidence, supplement to the proceedings.

100 Mukand Lal's evidence, *The Trial*, 12 February 1858.

this in the following statement of Zakaullah, a trustworthy contemporary historian,[101] as far as Delhi affairs to which he was an eyewitness went:

> On the same Sunday (10 May) when the British blood was spilled (at Meerut), a carriage (*gaari*) full of Hindustanis had come to Delhi cantonment in the afternoon. What did they discuss among themselves and what did they do is not known in precise terms, but a guess can be made in the light of the fact that the next morning every regiment was ready for revolt.[102]

Not only the Delhi soldiery, but even the civil populace of Delhi knew well before the mutiny broke out as to what was going to happen in Meerut and Delhi soon. Zakaullah is again our source. He says that about 10 May, Mr F. Taylor, Principal, Delhi College, asked the senior Arabic teacher, Maulavi Sayed Muhammad, what is the news about the city ? He replied:

> This city is abuzz with the news that mutiny has happened in Meerut and the entire Bengal Army is opposed to the British. … This shows that the delinquent *badmashs* in the city are waiting for the Rebellion, and they are cock sure that it would come.[103]

As in Meerut, so in Delhi, the people from the city, its suburbs and villages, as indicated above, joined the sepoys in large numbers, and two together killed all 'the enemies of the State' – Europeans,[104] Christians,[105] and their supporters, and pulled down, as indicated above, the entire (British) administrative structure that they had built over the years.

Lamentably, the narrative again lands into no tip-off zone, and we are hard put to answer the questions like, for instance, if there was a conspiracy between the Delhi and Meerut rebels, then who were its thread-holders?

101 For his qualities and qualifications as a historian, see C.F. Andrews, *Zakaullah of Delhi*, Cambridge, 1924, pp. 19–21.

102 Zakaullah, *Tarikh-i-uruj-i-saltanat-i-Englishia*, Delhi, 1904, vol. 2, p. 416. Its English translation from Urdu used here is done by the present Editor throughout.

103 *Ibid*., vol. 2, p. 407.

104 The number of Europeans killed in Delhi in the first week of the Rebellion was about 154. For their names, etc., see Martin, *op. cit*., vol. 3, pp. 158–59, 171–73.

105 There were about 330 Christians in Delhi in 1857. Not all of them were killed as several contemporary writers tell us, and even recent historians, otherwise eminent, like S.N. Sen, accept their versions (Sen, *op. cit*., p. 7). In fact, those killed were active supporters of the British. We have references in the 'Mutiny Papers' that some Christians were given *parwanahs* by the Commander-in-Chief to the effect that nobody would interfere with them (Collection 103, no. 40, 24 June 1857); in another case, the C-in-C orders Kotwal to release four Christians detained in the Kotwali (Collection 103, 386, n.d.); in another case, the Kotwal releases two ladies (Christians ?) (Collection 101, no. 1, 21 May). There is no evidence that workaday people were ever touched.