

Kanika Sharma and Zuleikha Chaudhari

# Re: Staging the Trial of Bahadur Shah Zafar (1858)



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**Left:** Robert Tytler and Charles Shepherd, *The Last King of Delhi, Bahadur Shah Zafar in Delhi*, Salt Print, May 1858, 109 x 185 mm, Image Courtesy: Alkazi Collection of Photography

The legal trial has a complex relationship with memory: It relies on the memory of victims, perpetrators, and witnesses to agree on a legal record that is facilitated by the judge and jurors and seeks to serve as the historic record or archive of the event in question. *Re: Staging the Trial of Bahadur Shah Zafar (1858)* seeks to analyse and disrupt legal memory by juxtaposing against it the cultural memory<sup>1</sup> maintained in - and through - poetry in relation to the trial of the last Mughal ruler of India.

In 1857, in a popular Uprising several regiments of the East India Company (EIC) rebelled against the Company and installed the aged Mughal poet-king Bahadur Shah Zafar as their ruler. While the Uprising still swirled in other parts of India, Zafar was swiftly captured and subsequently put on trial at his own imperial palace, the Red Fort in Delhi. The trial paved the way for India to be officially placed directly under the British Crown a few months later. Denied proper legal counsel, Zafar was soon found guilty of heading an international 'Mussulman [Muslim] conspiracy' to wage war against the state and commit treason against the British Government in India and was exiled to Burma (now Myanmar).

Zafar's trial was 'political' insofar as it was aimed at the elimination of the 'politically obnoxious'<sup>2</sup> and, as a result, was 'partisan'<sup>3</sup> from the very start: It was staged to portray a commitment to ideas of rule of law and due process when neither were actually followed. Though the legitimacy of Zafar's trial has been heavily questioned and criticised, not least because the EIC had been formally operating in India as vassals of the Mughal State, the trial's guilty verdict and the subsequent banishment of the old Emperor ushered in a new sovereign in India and, thus, created a new constituent power which ex post facto legitimised the trial itself. This trial, then, can be viewed as the foundational moment of formal colonial Indian legal history.

Historically trials have been staged events. They employ dramaturgic elements and theatrical devices: they have their peculiar scenography, their scripts and roles assigned to each specific actor. Trials also have their audience composed of the public, the media and their critics. Here disputing stories are told - the defendant and the plaintiff each tell a story, but the narrative accepted as the "real" version is the one based upon the court's perception of the truth of past events which is rooted in the organisation and interpretation

<sup>1</sup> Jan Assmann, 'Collective Memory and Cultural Identity' 1995 *New German Critique*, p. 65: 125.

<sup>2</sup> Judith Shklar, *Legalism: Law, Morals and Political Trials*, Massachusetts: Harvard University Press, 1986, p. 150.

<sup>3</sup> Ron Christenson, *Political Trials: Gordian Knots in the Law* (2nd edn), New Brunswick: Transaction Publishers, 1999, p. 8-10.

of evidence - an accumulation of documents, witness testimonies and other texts - which together form the legal archive or the official historical record. While all legal trials, from the most mundane to the most sensational, create the "legitimate" historical record of the disputed event by giving it the sanction of law, political trials are political theatre, which not only seeks to have a legal impact but also an emotional one shaping the memory of the intended audience. The legal event of Zafar's trial is, therefore, useful for thinking about the relationship between theater, law, politics and historiography. The prosecutor, Major F.J. Harriott's, opening and closing statements in Bahadur Shah Zafar's trial hold as central pivots to a series of intertwined questions: How does a trial help a new state demonstrate both its authority and its commitment to an idea of rule of law, thus allowing it to secure for itself political and legal legitimacy? In what ways did this trial help to construct the continuing political idea of the Muslim 'other' who came to be personified by Zafar, casting this 'Other' at once as the citizen of the state and thus amenable to stand trial, but also at all times the treacherous outsider intrinsically disloyal to the same state?

In his opening statement, Harriott asserts in relation to the evidence that had been gathered: "The documentary evidence is of great extent, and to render it as intelligible as possible I have arranged it under 5 different heads, viz., 1st- Miscellaneous Papers; 2nd - Those which refer to a loan; 3rd - Those which refer to the pay of the soldiery; 4th - Relating to all Military matters; and 5th - those which relate to murders committed, and which bear special reference to the 4th charge(....). In such cases the Court will keep in mind that a full investigation is the great desideratum."<sup>4</sup>

Harriott posited the evidence as an archive of signs of Muslim conspiracy against the British state, of the supposed Muslim aversion towards Europeans, of Zafar's alleged complicity in the murder of Europeans, and other related concerns, all of which came to be narrativised as evidence of "mutiny" against the state. The trial is available to us only in

the form of this narrative and its transcript commits an interpretation of events to memory for retrieval at a future date.

"The trial, whether it be considered in reference to the once exalted rank of the Prisoner, to the position which his birth and descent still give him in a political point of view, to the magnitude of the crimes imputed to him, or to his connection with events which will forever remain recorded in the pages of history, must be of no ordinary interest. The trial, indeed, will be an unusual one, for, under all circumstances, it will close with the Verdict; but still that Verdict will be looked for by thousands with feelings such as are seldom awakened by the proceedings of a Court of Criminal jurisdiction."<sup>5</sup>

Harriott emphasises the power of the legal trial to form historic records and influence memory when he states that Zafar's complicity will "forever remain recorded in the pages of history". He suggests that the trial will speak to a future and an audience of "thousands". But an archive whose authority will not be questioned since it has been arrived at through the "due" process of the law. The court constructs a reasoned, seemingly logical and rationalised, and official record of history to be consumed by the future; whose "openness" by virtue of being a public record works to place its version of history outside of scrutiny.

Occurring at the juncture of pre-colonial and colonial law in India, the trial of Zafar continues to be particularly relevant to the nature of the Indian penal structure as it paved the way for the colonial Indian Penal Code to be introduced in 1860, most of whose provisions remain in place in post-Independent India even today. The themes discussed by the prosecution and the defence in the original trial remain relevant to our understanding of the current politico-legal discourses in the region today. As claims of "Muslim conspiracy" return to the public discourse through charges of terrorism, "love-jihad", sedition and undocumented immigration, does the legal memory of Zafar's trial, where such a "conspiracy" was first articulated, remain present continuous? While

these laws consciously replicate the defenses that were established by the colonial state, their use also unconsciously and sometimes explicitly resonate the fears which led to their establishment in the first place.

*Re: Staging the Trial of Bahadur Shah Zafar* is imagined as part re-enactment and part retrial. Slipping between actors and real lawyers, a judge and a series of expert witnesses, the project proposes Zafar's poetry as a counter narrative to the prosecution's case exploring questions related to allegiance: Was the EIC right in trying Zafar as a 'subject of the British Government in India' or as his vassals did they, in fact, owe allegiance to him? Did allegiance mean the same thing to the Indians as it did to the British? Can official memory as mediated by the state be challenged or disrupted through 'collective memory'<sup>6</sup> that circulates through the communities? Can Zafar's poetry allow us to imagine and give voice to visions of alternative sovereignties? At the heart of these questions is the idea of belonging, of claiming a home, establishing subjectivity and, thus, claiming citizenship.

Following Minou Arjomand's analysis of theater's relation to show trials,<sup>7</sup> we ask, what can theater uncover about the theatricality that is always present in courts and is integral to political life? What role can theatre play as a means of knowledge and memory production, especially in the case of historical knowledge? Can theatre help us arrive at different forms of justice and judgement that remain outside the reach of the courtroom? If court records can be considered a public archive where the scrutiny of documentation is a matter of justice and politics - can theatre be considered a 'counter-archival' practice which allows us to read legal texts against the grain, revealing lacunae, silences and omissions in the archive and exposing layers of hidden meaning within?

<sup>4</sup> *Proceedings on the Trial of Muhammad Bahadur Shah, Titular King of Delhi, before a Military Commission, upon a charge of Rebellion, Treason, and Murder*, held at Delhi, on the 27th day of January 1858, and following days, Calcutta: Government Printing, India 1895, p. 3-4.

<sup>5</sup> *Ibid.*

<sup>6</sup> Maurice Halbwachs, *On Collective Memory*, trans. L.A.Coser, Chicago: University of Chicago Press, 1992.

<sup>7</sup> Minou Arjomand, *Staged: Show Trials, Political Theater, and the Aesthetics of Judgment*, New York: Columbia University Press, 2018.