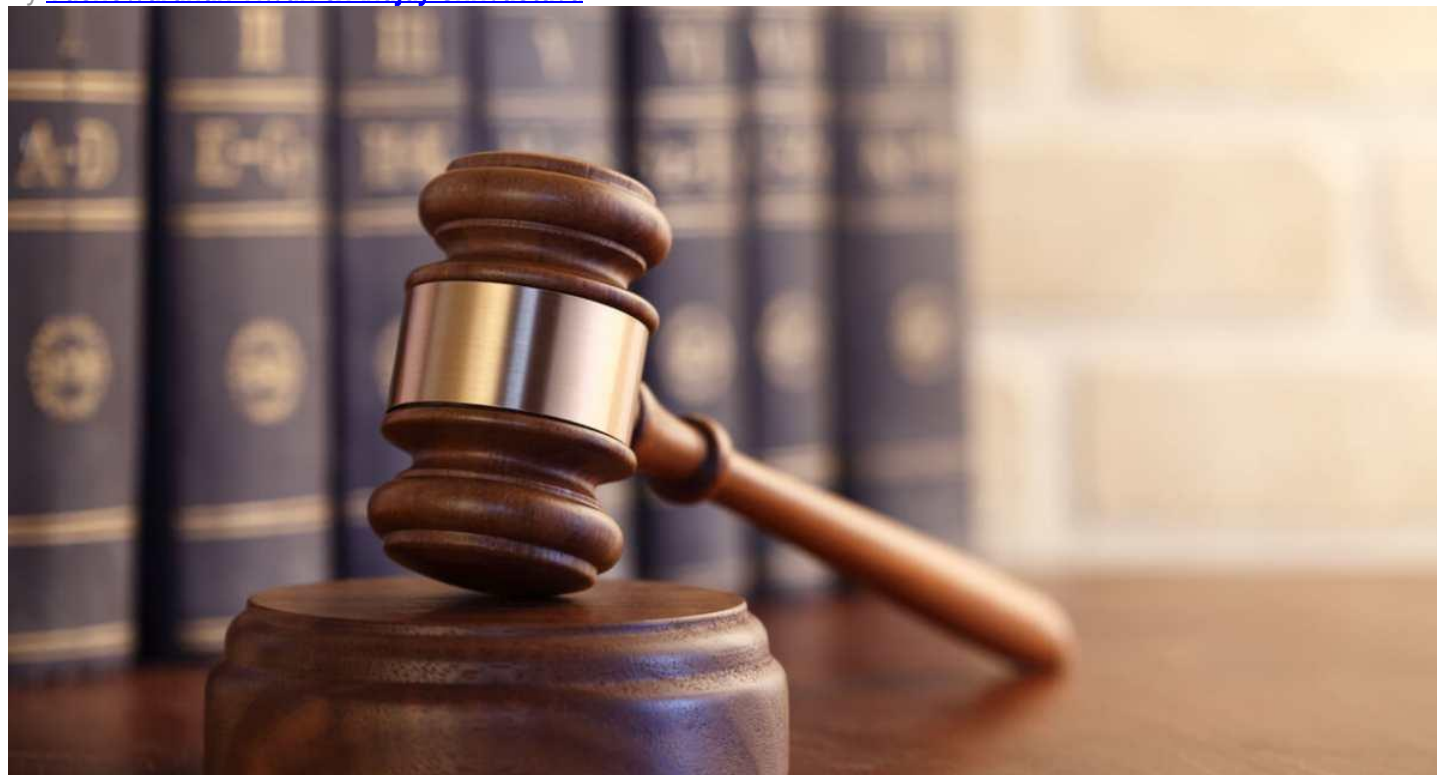


KASHI VISHWANATH VS GYANVAPI MOSQUE: RESOLVING BATTLES OVER 'SACRED SPACES'

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A glimmer of hope has arisen towards the beginning of a resolution of the centuries-old Kashi Vishwanath Temple-Gyanvapi Mosque dispute. Recently, a district court in Varanasi has directed the Archaeological Survey of India (ASI) to constitute a five-member committee to conduct “a comprehensive archaeological survey” of the disputed site in order to ascertain whether the mosque is a superimposition, alteration or addition over any other religious structure, or structurally overlapped with such other structure.

Moreover, it directed that the ASI committee shall trace whether any hindu temple ever existed before the mosque was built, added or superimposed on the disputed site. Further, if the committee finds that a hindu temple existed, the committee is to determine which hindu deity or deities did the temple belong to.

As per the Places of Worship Act, 1991 ('POW Act'), courts have to maintain a 'status-quo' over disputes relating to places of religious worship before the year 1947, except the Ayodhya dispute. On October 18, 1997, a civil court in Varanasi had ruled that the suit was not barred under Section 4 of the POW Act. However, a revisional court on September 23, 1998, had remanded the suit back to this court with a direction to re-adjudicate whether the suit was barred under the said legislation only after considering the evidence forwarded by all the parties.

Assuming that the ASI does discover the existence of a hindu temple belonging to a deity and the court accepts the ASI's findings, and consequently, the court finds that the suit is not barred under the POW Act, a legal analysis leads one to conclude that the entire disputed site should be handed over to the presiding deity under the management of its custodians or its next friends by the court.

The Indic civilizational matrix is a large network of sacred spaces, inter-weaved together into a lively and “intricately connected” landscape. Harvard professor Diana L. Eck coins this network of holy pilgrimages as a “sacred geography”, which is imprinted across the length and breadth of Bharat as living manifestations of the deities of the Hindu pantheon. These sacred spaces, referred as Kshetras

or Tirthas, are reverential symbols for the devotees who repose their faith in the existence of their deities therein. These devotees may be regarded as what the Cambridge scholar Rajat Kanta Ray calls “felt communities”, groups who rest their beliefs and link their dignity with that of the deities. An act of remedial hermeneutics begins with the acknowledgement of this socio-cultural reality. It must be stated to the credit of the Hon’ble Supreme Court that it has evolved the jurisprudence on legal identity and rights of deities which can be read largely in consonance with the idea of sacred geography. The deities’ rights over their sacred spaces have been recognized by the Supreme Court, as we shall discuss below.

As noted by the Supreme Court in Ayodhya decision ((2020) 1 SCC 1), evolution of legal personality such as a hindu deity/hindu idol was recognized by the courts for over three-centuries in both colonial and post-independence India, in order to respect and give effect to the rights of religious devotees. By recognizing a hindu deity, the pious purpose of dedication of prayers or property to the deity by its devotees is fulfilled. The fundamental right to religion of a devotee is also protected by enabling the deity’s custodian or next friend, to conduct prayers, practices and perform rituals which are associated with the deity.

In context of the Kashi Viswanath dispute, assuming that there did in fact exist a temple before the mosque was established, the hindu devotees are being unconstitutionally deprived of their right to worship the hindu deity. Alternatively, there also exists the possibility that there is no hindu temple beneath the mosque, and therefore, the mosque committee should continue to exercise their rights over the land. However, it is impossible to conclude whether a hindu temple or structure existed before the mosque, unless and until a court of law makes a determination on this point. As long as this uncertainty persists, there will always be communal tensions over the disputed site.

The Ayodhya decision shows a harmonious way out of this quarrel over history. It has held that the formlessness, absence or desecration of the hindu idol would not deprive the deity of its juridical identity. Even if the deity has been present intermittently, that of itself would not create a hindrance in the recognition of the deity’s legal personality. In Shiromani Gurdwara case ((2000) 4 SCC 146), the Supreme Court pertinently observed that judicial scrutiny of religious faith is untenable and that the juristic personality of deities isn’t meant to be restricted “in any defined circle”. It even went on to observe that “with the changing thoughts, changing needs of the society, fresh juristic personalities were created from time to time”. In a catena of judicial precedents, the faith of devotees has been a crucial factor in the conferment of a legal personality upon the deity.

The idea of sacred spaces amalgamates well with the existing jurisprudence on legal identity of deities, and makes a compelling case for the success of claims brought on behalf of the deities to reclaim their lost possessions. The present legal tussle could be adjudicated by the court in line with the Ayodhya decision, by recognizing and allowing the claims of the hindu deity, i.e., Lord Vishveshwar or Lord Shiva, over the disputed land and providing adequate compensation and an alternate land for the building of a mosque for the representatives of Gyanvapi Mosque in accordance with the precedent set by the Ayodhya judgment. Just as the Ayodhya judgment was well received by most sections of the Indian society, this would also ensure that the law of the land is upheld while maintaining communal harmony within our social fabric.

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