

Ramifications of the Varanasi Mosque Litigation

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Summary

The legal dispute over the Gyanvapi mosque in Varanasi throws the spotlight on the re-opening of historical wrongs and the relationship between religion and politics in India.

The dispute over the site of the Babri Masjid in Ayodhya in the north Indian state of Uttar Pradesh, which goes back to the 19th century, was decided [as recently as 2019](#). The agitation around the site is also thought to be one of the key factors in propelling the rise of the Bharatiya Janata Party (BJP) in the 1990s. A similar controversy is brewing around another religious site – the Gyanvapi mosque, located next to the Kashi Vishwanath temple – in Varanasi, Uttar Pradesh. On 12 September 2021, [a Varanasi court ruled](#) that a suit filed by five Hindu women to pray inside the mosque – where a Hindu sacred site is said to have been discovered -- was “maintainable”, possibly setting in motion a lengthy process of litigation.

The stage had been set for the district court’s ruling by earlier court orders, including those by the Supreme Court. Earlier this year, a civil judge in Varanasi had ordered a survey of the disputed site, something that had been contested by the Anjuman Intezamia Masjid Committee, which manages the Gyanvapi mosque. When the Allahabad High Court refused to stay the survey, the masjid committee went to the Supreme Court. The committee’s key argument was that the mosque is protected under the [Places of Worship Act, 1991](#).

One of the crucial provisions of the 1991 Act, which was passed against the backdrop of the Babri Masjid agitation, states that “the religious character of a place of worship existing on the 15th day of August 1947, shall continue to be the same as it existed on that day”. The Act, however, made an exception for the disputed Ram Janambhumi-Babri Masjid site.

Importantly, even as the Supreme Court on 20 May 2022 transferred the case from a civil judge to a district judge, it also said a survey of the Gyanvapi site did not contravene the Places of Worship Act. In its interim order, the court said while the area where the Hindu sacred object had been found was to be protected, there must also not be any restrictions on the movement and prayer of Muslims. The district court’s ruling on the suit by the Hindu litigants paves the way for it to begin hearings on the merits of the case. On 14 October 2022, the district court ruled that it would not permit carbon dating of the Hindu sacred object found inside the mosque on the ground that it was following the Supreme Court’s directives. However, the masjid committee has also decided to [challenge the 12 September 2021 ruling](#) in the Allahabad High Court.

While the Gyanvapi case will now make its way through India’s labyrinthine legal system, the challenge to the Places of Worship Act has serious ramifications. One of the aims of the Act was to prevent the re-opening of historical controversies since it prohibits any “change

of character” to places of worship. The Supreme Court has, at various times, also linked the Act to the secular nature of the Indian Constitution. The [2019 Babri Masjid ruling](#) said that the Act was “a legislative instrument designed to protect the secular features of the Indian polity, which is one of the Constitution’s basic features”.

However, the Supreme Court’s nod to the lower court that the current litigation does not infringe on the Places of Worship Act could potentially pave the way for similar legal challenges to disputed sites. This is already happening with another disputed site at Mathura, also in Uttar Pradesh, where a mosque shares space with a Hindu temple. A suit had been filed in 2020 in a Mathura court seeking the removal of the mosque. Even as the specific cases related to Gyanvapi and Mathura are being heard by courts at various levels, a challenge to the Places of Worship Act is also being taken up by the Supreme Court. A three-judge bench, headed by Chief Justice U U Lalit, is likely to begin hearings soon with the possibility of the matter being later referred to a Constitution Bench.

The dispute is, of course, not restricted to the courts. The Places of Worship Act was legislated by the Narasimha Rao government when the Ram Janambhumi movement was at its peak. Notably, the BJP, which was then in opposition, had opposed the legislation. Despite an exception for the Ram Janambhumi-Babri Masjid structure, the Babri Masjid was brought down a year later. Since then, the BJP has only gained in strength and the 2019 court ruling has handed the Ram Janambhumi to the Hindu litigants to build a temple and ordered a mosque to be constructed elsewhere.

Despite the similarities of Gyanvapi with Babri Masjid, there are important differences. With the BJP in a dominant position and its goals achieved in Ayodhya, it does not necessarily need to make a political capital out of Gyanvapi or Mathura. However, several BJP leaders, including ministers, have [welcomed the 12 September 2021 court order](#). Prime Minister Narendra Modi, who represents the Varanasi constituency in parliament, has been silent on the issue. The Rashtriya Swayamsevak Sangh chief, Mohan Bhagwat, has said that the courts should decide the issue, a stand that the BJP had taken post-1992, with regard to Ayodhya.

Irrespective of the outcome of the multiple litigations, the re-opening of historical wrongs poses serious challenges to India’s constitutional secularism. It also raises the likelihood of the issue being used for electoral purposes.

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