

## Catalonian Conundrum

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(I)

The images beamed live across the world last week looked more like scenes from a movie rather than real life scenes playing out in the heart of a modern bustling European city: Hundreds of thousands of furious citizens, their fists raised in anger, literally chocking and taking over Barcelona's streets, riot police in frightening black gear and helmets, their faces covered with black masks, firing rubber bullets into uncontrollable crowds and mercilessly beating people with truncheons, men, women and elderly alike – these gruesome images are unlikely to fade away from memory anytime soon. They remind us of the complex, tempestuous, and often violent history one thought Spain has left behind. The Spanish police unleashed this terror on unarmed citizens of the far north-eastern province of Catalonia who were casting their votes in a referendum the Constitutional Court and the Central Government had stubbornly refused to recognize. The referendum was to decide whether the wealthy Catalonia should proclaim independence from Spain. As the Government tried its utmost to shut down the vote, sending riot police to break into polling stations and confiscate ballot boxes, as Catalans shouted "Out with the occupying forces!" and sang the anthem of Catalonia. More than 900 people got injured in clashes with the police, while the King Felipe IV, in a rare TV appearance, accused Catalan leaders of shattering democratic principles and dividing society by disrespecting "the powers of the state", and putting "at risk the economy of Catalonia and even of Spain", and for their "unacceptable disloyalty".

Separatist sentiments and protests are not confined to Jammu & Kashmir alone. The Independent last week published a map showing separatist movements with secessionist tendencies all over Europe, from Provence in France to Bavaria in Germany and Corsica in Italy, in Scotland, Crimea, and elsewhere. They will likely draw inspiration and momentum from Catalonia. The European Commission is naturally weary, and has called for "unity and stability" in the fourth largest Eurozone country. Spain's federal model and the right to self-determination have already created a divide across the political parties and given rise to demands for Constitutional reforms to make Spain into a "plurinational state".

The referendum which has thrown the country into its worst constitutional crisis in decades has been rejected by the Federal Government as illegal and unconstitutional. Spain's Constitutional Court had ordered suspension of the vote, which irrespective of the outcome will have no legality. Though only a minority of 40% Catalonia's population were expected to vote in the referendum, the brutal crackdown has angered all Catalonians who rose in protest in a scale unprecedented in its turbulent history. The Catalan President Carles Puigdemont has already announced that 90% of almost 2.3 million voters had voted "Yes" to secede from Spain and he might as well proceed to declare independence.

Complex societies are the products of their complex histories, and Spain has one of the most complex societies among European nations, often described as 'a federation all but in name' - a federation without federalism. Spain was a dictatorship under General Francisco Franco from 1939 till his death in 1975. The present Constitution of Spain came into force in 1978, when Spain became an Autonomic State - *Estado*

*de las Autonomias* – comprising 17 Autonomous Communities (AC) that enjoyed varying degrees of autonomy through an extensive decentralization of powers and responsibilities which are called ‘competences’. It was a constitutionally constructed ‘shared rule’, based on a concept of a ‘sub-state *nacionalidade*’ that was shaped by historical realities as well as identity politics to keep the federation somehow together.

During its long history, Spain has been a dominant colonial power in Europe, along with Britain and France. Like France, it has experimented with republicanism, dictatorship, democracy and had to contend with anarchy, violence, civil war and periods of prolonged political instability. It has a multilingual population which is widely divergent - economically, territorially, demographically, ethnically as well as culturally. A strong Castilian majority exists with a number of minority nationalities – Catalonia, Galicia and the Basque Country – each with its distinctive history, culture and language. The four largest ACs – Andalusia, Catalonia, Madrid and Valencia – share among themselves about 58 percent of the national population of 46 million, and nearly 60 percent of Spain’s GDP. Catalonia and the Basque Country are regions with histories dating back to several centuries to the middle ages regard themselves as ‘historical nations’ more than a part of Spain, and demand recognition as such. In particular, Catalonia has a population of 7.5 million; it accounts for 6.3% of Spain’s territory and 16% of its population. It is the richest AC of Spain, and contributes almost 19% to Spain’s GDP. It is also one of Spain’s most highly indebted regions, with an accumulated debt of 75.4 billion euros, constituting 35% of its GDP. Barcelona, the second city of Spain, is the vibrant capital of Catalonia where most of its population live; it is also its major economic hub. Incidentally, Catalonia also contributes a number of players to Spain's national football team.

The secessionist sentiments have been fuelled in recent times by Catalonia’s resentment that it pays much more to the federal government in Madrid in taxes than it receives from the federal budget through investments and transfers– in 2014, it paid about 10 billion billions euros– about 5% of its GDP - more than it received from the federal government. Catalonia’s share in federal investments has also systematically declined from 16% in 2003 to only 9.5% in 2015 budget. Spain's economic collapse at the height of Eurozone crisis and the consequent austerity measures had also stoked separatist sentiments, with many Catalans blaming Madrid for the economic morass. But the underlying reasons for its secessionism go far deeper into history.

Catalonia’s history dates back to the 9<sup>th</sup> century to the time of Charlemagne, but Catalonia has been part of Spain ever since the Kingdom of Spain had come into existence in the 15<sup>th</sup> century, when King Ferdinand of Catalonia’s neighbouring kingdom Aragon had married Queen Isabella of Castile and united their territories. But Catalonia never bowed completely to the authority of Madrid, it revolted repeatedly against the House of Habsburgs. After the discovery of America, Catalonia’s importance increased with the growth of trans-Atlantic navigation and trade. The 19<sup>th</sup> century industrialisation of Spain was pioneered by Catalonia, simultaneously with a cultural renaissance that saw the revival of Catalan language and culture and renewed sense of a national identity leading to demands for the right to self-determination. It was then that the seeds of secession were sown in the Catalan soil.

In 1931, Spain became a republic and Catalonia got a regional government with substantial autonomy, which lasted till the civil war broke out in 1936. Catalonia became a key Republican stronghold, but fell finally to Gen Francisco Franco's right-wing forces in 1939. Under Franco's ruthless dictatorship, its

autonomy was revoked, and both Catalan language and nationalism were ruthlessly suppressed. Thousands of Catalan activists put to death or forced into exile. The memory of Franco's repression still fires the fierce football rivalry between FC Barcelona and Real Madrid, Spain's top football clubs.

The autonomy could be restored only after Franco's death in 1975. Under the new king, Juan Carlos, in 1978, a new democratic Spanish Constitution was adopted that recognized the existence of distinct "national communities" within Spain which displayed remarkable diversity and asymmetry, in terms of history, language, culture and economic development. While asserting the 'indissoluble unity of the Spanish nation', the Constitution recognised multiple nationalities and their right to self-govern. But all the regions were not treated in identical manner; Spain became an asymmetric federation based on uneven distribution of power and autonomy between different regions, some 'with common historic, cultural and economic characteristics', some 'insular territories' and some 'provinces with a historic regional status'. For enjoying autonomy, a region needed first to become an Autonomous Community (Comunidades Autónomas) and adopt a "Statute of Autonomy" that defined the contours of its autonomy, following a prescribed procedure that includes a referendum. In 1979, Catalonia was given a Statute of Autonomy and was recognised as a 'nationality', with Catalan as its official language along with Spanish (Castilian). Catalonia and Basque Country were deemed as 'historical nationalities', and described as such in their respective Statutes of Autonomy.

## (II)

Section 2 of the Spanish Constitution, read with Section 143, guarantees the fundamental rights of Autonomous Communities (AC) to self-governance, while Section 151 outlines the procedures for implementation of this right by laying down two major routes to regional autonomy: a fast track route for 'historic regions' that already have their Statutes of Autonomy; the Basque Country, Catalonia and Galicia became ACs through this route. The other is a slow route applicable to other regions which need at least five years following the procedure described in the Section. But a homogenous standard is applied to governance in all 17 ACs: each AC has a legislative assembly, elected directly through proportional representation; the Government Council is headed by a President with legislative and executive powers and each AC has a Supreme Court of Justice under the jurisdiction of Spain's Supreme Court. Castilian is the official language, but Section 3 of the Constitution recognises the existence of, and accords co-official status to, other Spanish languages in their respective Statutes. However, as regards financial autonomy, two ACs, Navarre and the Basque Country, have additional competencies not enjoyed by the other ACs - they can collect some of the State taxes like the income tax and pay to the State for the services they receive from it, while the other communities follow a uniform tax regime based on collection by the State and their redistribution and devolution to the Communities.

Distributing legislative competencies between the centre and the ACs is rather complicated and ambiguous. Sections 148 and 149 of the Spanish constitution lay down separate lists of competencies for the centre (Constitution uses the word State) and the regions (ACs), much like the Seventh Schedule of the Indian Constitution, but what is special is that such allocation of powers and responsibilities remain open to negotiation, and this renders the federal dynamics highly flexible. As the political scientist Wilfred Swenden says, "Such complexity stems in part from the lack of agreement on where the Spanish state should be heading: a federal, a regionalized or unitary decentralized state?" Here a fragile Central

authority tries to hold together diverse nationalities which are in themselves powerful enough to demand additional competencies to serve their respective interests. The conflicts and clashes of interests which are bound to arise from such an ambiguous arrangement are to be addressed by the Spanish Constitutional Court.

The high degree of asymmetry in its political arrangements was subsequently sought to be reduced through the so-called policy of '*cafe para todos*' – coffee for everyone instead of 'champagne for the *nacionalidades*', through two agreements. The first one called LOAPA (Law for the Harmonisation of Autonomous Process) was signed between the State and the major national parties in 1981 challenging the preferential status of some ACs even though these were ratified earlier by the Spanish Congress, which naturally brought these ACs, especially Catalonia and the Basque Country, into conflict with the State. The Constitutional Court finally nullified a large number of its provisions as unconstitutional reinforcing the autonomy of the ACs, but the agreement still managed to bring in more uniformity and symmetry in the process. A second agreement, *Pacto Autonómico*, was signed in 1992 by the State with the two largest national parties for removing the asymmetry between the fast-track and slow-track ACs, by equalisation of their competences through an Organic Law that was passed in December 1992 and followed by necessary reforms of the Statutes of the disadvantaged ACs. This allowed major competences in education health and some social services to be transferred to them. The progressive transfer of competences to the ACs enabled the Spanish system to reduce the extensive asymmetry in the original constitutional arrangement.

Demands for renegotiation of the Statutes were subsequently raised by the Basque Country and Catalonia, driven by their nationalistic movements. While the Basque country wanted to be 'a free state associated with Spain', a demand that was rejected by the Spanish Congress in 2004, Catalonia demanded recognition as 'a nation' and higher levels of competences reflected in its Statute of Autonomy in 2006 which was passed by its legislature. Most of these demands met with the approval of the Spanish Congress and later ratified in a referendum by Catalan voters. However, Spain's Constitutional Court ruled in 2010 that parts of Catalonia's revamped statute of autonomy were unconstitutional; it also did not recognise Catalonia as a nation - a ruling that had fired up nationalist sentiments in Catalonia demanding independence from Spain. Catalans looked at the judgment as "an act of contempt against the will of the Catalan people expressed by its Parliament and a referendum".

In January 2013, Catalonia's parliament approved a "declaration of sovereignty" through independence from Spain to be ratified by a referendum to be held in late 2014, but in March 2014, the Constitutional Court declared it unconstitutional. But Artur Mas, the then president of Catalonia, still went ahead with the referendum, already made non-binding by the Court, in November 2014. Though the turnout was estimated at around 37 percent (2million out of total 5.4 million voters), about 80 percent of voters voted for independent. Catalonia of course has the economic means to survive independently, it has a language of its own and it conforms to the definition of a nation in every sense.

In September 2015, separatist parties secured an absolute majority in the regional Parliament and in November, they voted for a resolution to support independence, which was again struck down by the Constitutional Court in December. In January 2016, the staunch separatist Carles Puigdemont was chosen as the successor to Mas, who vowed to carry out a binding independence vote. He pushed the legislation

authorising another referendum whose results would be binding through the Catalan Parliament with a narrow majority. Before the referendum took place, opinion polls had suggested that only 41% of Catalans wanted to break away, while the majority still wanted to stay with Spain. The Constitutional Court ruled the proposed referendum as illegal and the federal government under Prime Minister Mr Mariano Rajoy stubbornly opposed it, and tried to prevent it with all its might - using disproportionate force to crack down on those who dared to vote, and to stop the referendum from going ahead. But all he succeeded was to anger most Catalans beyond measure, including many of the 59 percent who were opposed to the referendum and favoured national unity over attempts at self-determination by subnational groups. Clearly, the people who had voted for independence did not represent the majority of Catalans. But now, thanks to Mr Rajoy's high handed techniques, majority may actually be turning against Spain.

As the Economist has commented, a well-run democracy must abide by the rule of law to protect democratic liberties and not to curb the freedom of minorities to express dissent and discontent. Puigdemont may not have a strong case for independence or a claim for majority mandate. But democracy rests on the consent of the governed, and Constitutions exist to serve citizens, not the other way around. Rather than upholding the rule of law, Mr Rajoy ended up tarnishing the legitimacy of the Spanish state, and Spain may have to have to pay a price for it. The case for unity must be won by argument and persuasion, not by the use of brute force and display of coercive state power, which instead of preventing might actually be precipitating a break up of Spain.

Mr Puigdemont seems all set to declare independence, which will obviously be a reckless and irresponsible act that might prompt Mr Rajoy to unleash even more repression but that will only compound the imbroglio. Negotiation is the only way out, and some give and some take should take place, giving Catalans more political and financial autonomy.

If the foundation of belief of an autonomous society is threatened, it may unravel the federation, just as an overabundant use of asymmetrical federalism may result in secession. Multiple identities are natural in large and complex societies. The essence of a cohesive federation is to capture the complexity of society as a whole, to integrate unity with diversity while allowing distinct identities to flourish, and to provide an inbuilt mechanism to deal with the tension and conflicts which are parts of the natural order of things in every society. Only in doing so, a common identity is evolved which does not subsume the individual identities of the constituent units, but helps them blossom further.