

# Police and politicians

By A.G. Noorani

Law & Order - Police.

NO one was surprised or sorry that Hansraj Bhardwaj, former law minister in Dr Manmohan Singh's cabinet was dropped from the new cabinet on May 28.

He had earned deservedly a bad name for his stewardship of certain sensitive prosecutions. So had the central police force, the Central Bureau of Investigation (CBI).

In 1998 the Supreme Court of India directed "the constitution of an able and impartial agency comprising persons of unimpeachable integrity to perform functions akin to those of the director of prosecutions in the UK". Prime Minister Manmohan Singh is in favour of the proposal. The CBI's director Ashwani Kumar opposed it, predictably. So did the enforcement directorate in

charge of prosecutions under the Prevention of Money Laundering Act; i.e. cases involving the politically influential. The office of the attorney general has been highly politicised over the years. Since 1998 it reached the very nadir, thanks to the last two attorneys general. A former chief justice of India, Justice J.S. Verma remarked, "You have seen how independent the attorney-general is."

The CBI director's plea is typical of the police. "The separation of the investigative division from the prosecuting division would lead to a drop in the conviction rate as happened in different states of the country and this would grossly undermine the performance of the CBI and adversely affect the image and reputation of the organisation."

This is absurd. The prosecuting agency must be separate from the investigating agency and both must be independent of the men in power. The police is a creature of a statute, the Police Act. Its duties, functions and powers are defined by law and it is open to any citizen to ask the courts to direct the police to enforce the law and perform its duties whether of investigation or prosecution.

Significantly, while almost every textbook on British constitutional law has a whole chapter on the police, Pakistani and Indian works treat the police at best as a topic in centre-state relations. Basically it is a provin-

cial subject in Pakistan and a state subject in India. But the integrity and independence of the police are the very foundation of government according to law.

Since Indian and Pakistani courts rely on English cases the great Lord Denning's classic on the police bears recalling. An MP Raymond Blackburn had moved the court for an order to the police force to enforce the gaming laws. Lord Denning upheld his right to do so saying:

"I have no hesitation however in holding that, like every constable in the land, he should be and is independent of the executive. He is not subject to the orders of the secretary of state, save that under the Police Act 1964 the secretary of state can call on him to give a report, or to retire in the interests of

Mohammad Ali Jinnah, said, "If the minister ordered arrests of person on reports, that would be the end of law and order in the country." He was home minister of the huge Bombay Presidency in 1937-39.

Munshi was deposing before a commission of inquiry into the assassination of Gandhiji. The issue was whether on receipt of certain information the minister could himself order arrests or pass the information to the police for it to act in its professional judgment. The commission was headed by Justice Jeevan Lal Kapur, a distinguished member of the Lahore bar before partition. He drew a distinction between the administrative authority of the government over the police and its power to interfere in the duties of the police.

"In the opinion of the commission, although a home minister is in charge of the police and police administration and answerable to parliament about it still he has no power to direct the police how they should exercise their statutory powers, duties or discretion.

"Both under the Criminal Procedure Code and under the

Bombay City Police Act, the statutory duty of the police is both to prevent crime and bring criminals to justice. Therefore, the minister can and could only pass on the information of the commission of an offence to the police to investigate, so also in regard to the threats of the commission of an offence."

He added: "It is the constitutional duty of the minister, as head of the departments in charge of the police, who are instruments of maintenance of public order and enforcement of criminal law, to ensure that the police discharge their functions and exercise their powers properly and diligently. But beyond that the minister cannot go and issue specific instructions as to the manner of exercise of their statutory powers." Matters have gone very far. What is now needed is constitutional protection for the independence of the police. The law can set out the details such as the governments' administrative control, and the duties, functions and powers of the police. ■

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efficiency. I hold it to be the duty of the commissioner of police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and the honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought. But in all these things he is not the servant of anyone, save of the law itself. No minister of the Crown can tell him that he must, or must not, keep observation on this place or not; or that he must, or must not, prosecute this man or that man. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone."

I make no apology for quoting Lord Denning *in extenso* because his words run counter to the notion entertained in our part of the world. I can speak of India where ministers' interference in police investigations is a norm in some states. K.M. Munshi, a brilliant lawyer and once close associate of