

GOVERNMENT OF WEST BENGAL
HOME AND HILL AFFAIRS DEPARTMENT
Commissions of Inquiry cell
Nabanna, 325 Sarat Chatterjee Road, Shibpore, Howrah-71102

NOTIFICATION

No 91-COI/PL/O/44C-7/21

Dated 26 th day of July, 2021

WHEREAS it is being widely reported that the mobile telephones of various police officials; politicians; Members of the Legislative Assembly; journalists; activists; members of judiciary; members associated with judicial services and other eminent personalities in the State of West Bengal have been illegally hacked into and/or monitored and/or put under surveillance and/or tracked and/or spied and/or traced and/or snooped and/or accessed and/or recorded and/or hooked (hereinafter referred to as "**Interception**") by use of highly sophisticated surveillance tool since 2017, having a potential threat of breach of State secrets, jeopardising law and order situation of the State, and breach of privacy of the above class of persons;

AND WHEREAS the reported Interception is being conducted using technology and/ or mechanism and/or software and/or malware and/or spyware of private Companies and/or Government agencies and/or sovereign countries such as Pegasus of NSO Group Technologies located at Herzliya, Israel;

AND WHEREAS the reported Interception, if found to be true, shall result in grave interference with the privacy of the aforesaid individuals and the public at large;

AND WHEREAS reported Interception may have landed in the hands of State and/or non-State actors, as being currently reported, which if found to be true can lead to a total breakdown of public order of the State and the same is serious criminal offence;

AND WHEREAS the reported Interception, if found to be true, shall cause a complete demoralisation of the police force and other security services in the State of West Bengal;

AND WHEREAS the reported Interception, if found to be true, shall cause a total loss of public confidence on the police force;

AND WHEREAS the reported Interception, if found to be true, shall impinge upon the right of the public especially journalists to discuss and report sensitive information and exercise their right of freedom of speech and expression;

AND WHEREAS the reported Interception, if found true, shall impinge upon the rights of the judiciary and or its officers in process of delivery of justice to the public at large;

AND WHEREAS the reported Interception, if found to be true, shall cause a loss of public confidence on the rights guaranteed to the public under the Constitution of India;

AND WHEREAS the reported Interception, if found to be true, shall be in violation of the rights of public at large including politicians, journalists, activists, and Members of the Legislative Assembly as envisaged under the Constitution of India and law of the land;

AND WHEREAS there has been widespread public concern about reported Interception;

AND WHEREAS the reported Interception, if found to be true, has widespread ramifications on public order and the police which are Subjects covered under Entry 1 - Public Order - and Entry 2 - Police - in List II- State List under Schedule VII of the Constitution of India respectively;

AND WHEREAS the reported Interception, if found to be true, has also vital ramifications on Local Government covered under Entry 5 of List-II under Schedule VII of the Constitution of India; Powers, privileges, and immunities of

the members of the West Bengal Legislative Assembly as contemplated in Entry 39 of List-II under Schedule VII of the Constitution of India ; and Criminal law as envisaged under Entry 1 of List-III under Schedule VII of the Constitution of India;

AND WHEREAS the above being a definite matter of public importance and with a view to instituting an independent public inquiry to credibly enquire into the reported Interceptions and with the object to set up and maintain high standard of moral conduct, purity and integrity in State administration, and to prevent interference with the privacy of the aforesaid class of individuals, to repair public trust, and in view of the gravity of the situation the Governor is of the opinion that it is necessary to appoint a Commission of Inquiry under the Commissions of Inquiry Act, 1952 (60 of 1952) to enquire into and report on *inter alia* the reported Interception and the possession, storage and use of such information collected through such Interception, in the hands of State actors and non-State actors;

AND WHEREAS no Commission of Inquiry has been appointed by the Central Government to enquire into the aforesaid matter;

NOW THEREFORE, in exercise of the power conferred by section 3 of the Commissions of Inquiry Act, 1952 (60 of 1952), the Governor is pleased hereby to appoint a Commission of Inquiry consisting of Hon'ble Justice Madan Bhimarao Lokur, retired Judge, Hon'ble Supreme Court of India and Hon'ble Justice Jyotirmay Bhattacharya, retired Chief Justice, Hon'ble High Court at Calcutta (hereinafter referred to as, "**the Commission**") to enquire into such incidences.

The terms of reference of the Commission shall be as follows:

- (a) To enquire into whether any incidences of reported Interception have occurred;
- (b) To enquire into the State and non-State actors who were involved in such reported Interception;

- (c) To enquire into mechanism and/or spyware and/or malware that were being used to effectuate such reported Interception;
- (d) To enquire into whether any software such as Pegasus of NSO Group Technologies located at Herzliya, Israel, and/or any spyware and/or malware of any other organisation had been in use and/or currently being used to conduct such reported Interception;
- (e) To enquire into the events leading to the occurrence of the incidences of Interception of the aforesaid category of individuals or public at large, and the information that has been collected, altered, stored, or used and the possession, storage, and further collection and use, of such information pertaining to such Interception in the hands of State actors and non-State actors;
- (f) To investigate into the circumstances including provocations, instigations from any persons/group of persons, if any, leading to the reported Interception;
- (g) To enquire into the details of the victims and /or persons affected;
- (h) To enquire into the role of other authorities and/or State and /or non-State actors in such Interception;
- (i) If such reported Interception is found to be true, to enquire into whether State/non-State actors can, without any express legal provision and/or judicial oversight, carry out the reported Interception;
- (j) If such reported Interception is found to be true, to enquire into the reasons and/or legality and/or authority and/or raison d'etre provided by such State and/or non-State actors for such reported Interception;
- (k) If such reported Interception is found to be true whether such right to privacy of the category of individuals has been affected;
- (l) To examine any other matter or facts relevant to, ancillary or incidental or connected with its subject of inquiry including the above questions

which the Commission may deem fit and proper to investigate.

The Commission may submit its report embodying the findings and its recommendations thereon to the State Government within a period of 6 (six) months from the date of this notification.

The Commission shall formulate its own procedure, select venue or venues of sittings and may give to all concerned such notice of the Inquiry and all the procedures formulated by it as it may consider necessary and proper.

The Commission may be assisted by such officials, experts, staff and any other persons or entities or bodies as it may require in connection with the inquiry.

All the powers provided to the Commission under the Commissions of Inquiry Act, 1952 (60 of 1952) shall be available to the Commission.

The Governor being further of the opinion that, having regard to the nature of the inquiry to be made and other circumstances of the case, all the provisions of sub-sections (2) to (5) of section 5 of the Commissions of Inquiry Act, 1952 (60 of 1952), should be made applicable to the Commission, is pleased hereby to direct, in exercise of the powers conferred by sub-section (1) of section 5 of the said Act, that all the aforesaid provisions shall apply to the Commission.

The Governor, being also of the opinion that, having regard to the nature of inquiry to be made and other circumstances of the case, the provisions of section 5A of the Commissions of Inquiry Act, 1952 (60 of 1952), should be made applicable to the Commission, is pleased to direct in exercise of the powers conferred by sub-section (1) of Section 5A of the said Act that all the aforesaid provisions shall apply to the Commission.

By order of the Governor



(B. P. Gopalika)
Additional Chief Secretary
to the Government of West Bengal