

# **COVID-19, INDIA AND INDIRECT EXPROPRIATION: IS THE POLICE POWERS DOCTRINE A RELIABLE DEFENCE?**

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## **ABSTRACT**

*Like several countries, the global pandemic, COVID-19, has hit India quite badly. In order to stop the spread of the disease, India has imposed a stringent national lockdown. It may adopt several other regulatory measures in future. This paper examines that if foreign investors bring Investor-State Dispute Settlement (hereinafter "ISDS") claims against India under different bilateral investment treaties challenging Indian COVID-19 related regulatory measures as indirect expropriation, will India be able to defend its regulatory measures by invoking the police powers doctrine. The police powers doctrine is recognised by several ISDS tribunals. However, ISDS tribunals differ on the actual scope of this doctrine when assessed in relation to the effect a regulatory measure may have on foreign investment. This paper argues that while India can rely on the police powers doctrine, its actual working in a case will depend on arbitral discretion. To have a better chance at defending its COVID-19 related regulatory measures as part of State police powers doctrine, India should ensure that exercise of its regulatory measure is not excessive or disproportionate.*

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