

## ISPS CODE AND MARITIME SECURITY OF INDIA PART – I

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*The International Ship and Port Facility (ISPS) Code is of utmost importance for the safety and security of India's maritime sector, as it safeguards international trade relations and this, in turn, ensures the growth of the Indian economy. The ISPS Code incorporates different levels of security, obligations of government, the responsibility of ports, the shipping industry, and other stakeholders. This two-part article will demonstrate the implementation of salient features of the ISPS Code in India through the Merchant Shipping Act, 1958, as amended in 2004, and DGS circulars. In the first part, it will demonstrate the administration of the ISPS Code in India and the major obligation of Indian government to set up security levels. Part-II will explain the ship and port security of India in compliance with ISPS Code. It will also examine whether the implementation of ISPS Code in India has fulfilled the core principles of the Code and will also evaluate whether any gaps remain to be filled.*

This article has been written to provide fundamental baseline information about the 'International Ship and Port Facility Code' (ISPS Code) to the lay public, including academia. As such, while it has not been written for professionals within the shipping sector, it nevertheless seeks to provide a useful framework for the further and more-detailed research.

The ISPS Code was introduced as part of Chapter XI-2 (as amended from time to time) of the International Convention on Safety of Life at Sea 1974 (SOLAS),<sup>1</sup> in 2002, by the International Maritime Organization (IMO), and came into force in the year 2004. SOLAS Chapter XI-2 has been periodically amended to include special measures designed to enhance maritime security on board vessels, within ports and particularly when a port-ship interface takes place. These regulations

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<sup>1</sup> 1184 UNTS 2, [1983] ATS 29, 14 ILM 959.

Also see: Centre for international Law, Download, <https://cil.nus.edu.sg/databasecil/1974-international-convention-for-the-safety-of-life-at-sea/>

are supported by the ISPS Code, so as to establish an international framework for maritime security measures designed to enhance the security of ships and port facilities.<sup>2</sup> Part A of the ISPS Code<sup>3</sup> specifies a list of mandatory requirements, while Part B<sup>4</sup> provides recommendations on how best to accomplish the obligations set out in Part A.

The objectives of the ISPS Code are:

*“...establishment of an international framework that fosters cooperation between Contracting Governments, Government agencies, local administrations and the shipping and port industries, in assessing and detecting potential security threats to ships or port facilities used for international trade, so as to implement preventive security measures against such threats;*

*determining the respective roles and responsibilities of all parties concerned with safeguarding maritime security in ports and on board ships, at the national, regional and international levels;*

*to ensure that there is early and efficient collation and exchange of maritime security-related information, at national, regional and international levels;*

*to provide a methodology for ship and port security assessments, which facilitates the development of ship, company and port facility security plans and procedures, which must be utilised to respond to ships' or ports' varying security levels; and*

*to ensure that adequate and proportionate maritime security measures are in place on board ships and ports.”<sup>5</sup>*

The ISPS Code currently applies to 167 States that are contracting parties to SOLAS.<sup>6</sup> India, being a signatory to the IMO Convention, has ratified the ISPS Code and implemented its provisions through the *Merchant Shipping Act 1958* as amended in 2004 (MS Act).<sup>7</sup> By the stipulations of this

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<sup>2</sup> IMO, “Maritime Security,” <https://www.imo.org/en/OurWork/Security/Pages/SOLAS-XI-2%20ISPS%20Code.aspx>

<sup>3</sup> ISPS Code, Part A, Mandatory requirements regarding the provisions of chapter XI-2 of the Annex to the International convention for the Safety of life At Sea, 1974, as amended [https://www.classnk.or.jp/hp/pdf/activities/statutory/isps/code/ISPS\\_CodeA.pdf](https://www.classnk.or.jp/hp/pdf/activities/statutory/isps/code/ISPS_CodeA.pdf)

<sup>4</sup> Ibid, , Part B, Guidance regarding the provisions of chapter XI-2 of the Annex to the International Convention for the Safety of Life at Sea, 1974 as amended and part A of this Code, [https://www.classnk.or.jp/hp/pdf/activities/statutory/isps/code/ISPS\\_CodeB.pdf](https://www.classnk.or.jp/hp/pdf/activities/statutory/isps/code/ISPS_CodeB.pdf)

<sup>5</sup> Supra note, 2

<sup>6</sup> IMO, “Status of Conventions,” accessed on March 28, 2022, p 17 <https://wwwcdn.imo.org/localresources/en/About/Conventions/StatusOfConventions/Status%20-%202022.pdf>

<sup>7</sup> Ministry of Law and Justice, Legislative Department, <https://legislative.gov.in/sites/default/files/A1958-44.pdf>

Act, for the ‘maritime security of India’,<sup>8</sup> the Indian Government must set ‘security levels’<sup>9</sup> and provide relevant information to port facilities within India, as also to every ship entering an Indian port. The Indian government must carry out port-facility assessments. Every ‘company’,<sup>10</sup> ship or ‘port facility’<sup>11</sup> must comply with the relevant requirements under the MS Act,<sup>12</sup> in compliance with SOLAS and the ISPS Code. The MS Act grants the Indian government the power to make rules for the carrying-out of such activities.<sup>13</sup>

### **Administration of the ISPS Code in India**

To facilitate the implementation of the ISPS Code, the Indian government, as also port authorities and shipping companies within India are required to appoint suitable security officers and staff on each ship, port facility and shipping company. These officers, include a ‘Port Facility Security Officer’ (PFSO), a ‘Ship Security Officer’ (SSO), and a ‘Company Security Officer’ (CSO). They are assigned with the duties of evaluating, organising and implementing effective security plans that are prepared to handle every probable security threat.<sup>14</sup>

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<sup>8</sup> Maritime security of India includes a range of measures employed by those in the maritime industry to address terrorism, sabotage, stowaways, illegal migrants, asylum seekers, piracy, armed robbery, seizure or pilferage; and any other hostile act or influence which threatens the security in the maritime transport sector. Merchant Shipping Act, 1958 as amended in 2004, (Ms Act) Section 44A

<sup>9</sup> Security level” means the qualification of the degree of risk associated with the threat or an unlawful act against a ship, or against a port facility or any other area connected therewith. Ibid, Section 344 K (g)

<sup>10</sup> “Company” means the owner of the ship who, or any organisation which has assumed the responsibility of operation of the ship from the owner of such ship and who or which has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code; Ibid, Section 344 K (a)

<sup>11</sup> “Port facility” means any location or area including anchorages or waiting berths or approaches from seaward and determined by the Central Government or the designated authority, as the case may be, where interface between ships or a ship and a port takes place; Ibid, Section 344 K (e)

<sup>12</sup> A port facility in India shall comply with all the requirements contained in Chapter IBO of the Merchant Shipping Act, 1958 (44 of 1958) or the rules made there under so far as they are not inconsistent with the provisions of this Act. Indian Ports Act, 1908, Section 68 D

<sup>13</sup> MS Act, Section 344 T

<sup>14</sup> IMO, SOLAS XI-2 and the ISPS Code, <https://www.imo.org/en/OurWork/Security/Pages/SOLAS-XI-2%20ISPS%20Code.aspx>

The Indian government is required to nominate a “Designated Authority”<sup>15</sup> and a “Recognized Security Organization” (RSO)<sup>16</sup> to implement the ship and port facility security plans designed under ISPS Code. The Directorate General of Shipping (DGS) has been nominated as the ‘designated authority’, while the Indian Register of Shipping (IRS) has been nominated as the RSO.<sup>17</sup> DGS deals with the approval of ship-security plans, and is responsible for the verification of prerequisites of plans, and also for issuing a standardised ‘International Ship Security Certificate’ (ISSC),<sup>18</sup> and a ‘Continuous Synopsis Record’ (CSR).<sup>19</sup> Whenever necessary, DGS issues circulars with the aim of providing guidance to the maritime sector on the application of the MS Act, 1958 (amended in 2004) and the ISPS Code. The DGS is vested with statutory powers under Section 7 of the MS Act, 1958.

## Security Levels

Part A of the ISPS code contains detailed, mandatory requirements of ship security,<sup>20</sup> port-facility security,<sup>21</sup> and specifies the responsibilities of the Indian government.<sup>22</sup> Part B, which is advisory in nature rather than being mandatory, provides guidelines and recommendations on how to meet requirements in Part A. However, the Indian government is required to give these recommendations due consideration. A major responsibility of the Indian government, as stipulated in Part A, is the setting of security levels; and Indian-flag ships as well as Indian port facilities must act upon these security levels set by the Indian government.<sup>23</sup> Apart from setting these security

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<sup>15</sup> Designated Authority means the organization(s) or the administration(s) identified, within the Contracting Government, as responsible for ensuring the implementation of the provisions of this chapter pertaining to port facility security and ship/port interface, from the point of view of the port facility. Chapter XI-2, Special measures to enhance Maritime Security, Regulation 1.11

<https://www.classnk.or.jp/hp/pdf/activities/statutory/isps/code/SOLAS-XI-2-e.pdf>

Also under Section 344 K (c) of MS Act, “designated authority” means such authority as the Central Government may, by notification in the Official Gazette

<sup>16</sup> ISPS Code, Part A, Section 15.2

<sup>17</sup> In accordance with the Ministry of Shipping Directive No. SR-20013/2/2003-AG dated 4<sup>th</sup> July 2003, ISPS Circular: NT/ISPS/PFSP/02/2004, <https://www.dgshipping.gov.in> > Shipping Notices

<sup>18</sup> MS Act, Section 344 Q

<sup>19</sup> According to SOLAS Chapter, IX-1, Regulation 5 all passenger and cargo ships of 500 gross tonnages and above must have a continuous synopsis record on the board. The CSR is a procedure in the onboard record of the history of the ship with respect to the information recorded therein.

<sup>20</sup> ISPS Code Part A, Section 6-12

<sup>21</sup> Ibid, Section 14-16

<sup>22</sup> Ibid, Section 4

<sup>23</sup> Ibid, Sections 7.1 and 14.1

levels, the Indian government has also to provide guidance for protection from security incidents, and is required to approve port facility assessments and port facility security plans.<sup>24</sup>

At ‘Security Level 1’, basic preventive security measures must be carried out.<sup>25</sup> Security Level 2 provides for appropriate additional protective security measures to be maintained, usually for a longer period of time, due to the increased risk of a security incident.<sup>26</sup> Security Level 3 invokes further specific security measures to be maintained for a limited period of time when a security incident is probable and imminent, even though it may not always be possible to identify the possible target.<sup>27</sup> At Security Levels 1 and 2, additional measures must be put in place with the approved security plans. In addition, at Security Level 3, the Indian government may issue security instructions to which the ship and port facility must respond, and which they must implement.<sup>28</sup> Ships must acknowledge instructions on the various security levels in force.<sup>29</sup>

‘Part B’, which is, as has already been mentioned, recommendatory in nature, stipulates more detailed regulations in respect of ‘Part A’. In particular, ‘Part B’ stipulates the precise security measures of ship and port facilities under Security Levels 1, 2 and 3, respectively.<sup>30</sup> In the case of India, some portions of ‘Part B’ have been made mandatory through the circulars issued by DGS. For instance, the security levels of some major ports such as Mumbai Port Trust, Kolkata Port Trust, Jawaharlal Nehru Port Trust, Deendayal Port Trust, and some other non-major ports, are retained at ‘Level 2’, in preparation for possible terrorist attacks.<sup>31</sup>

Prior to the promulgation of the ISPS Code, there was no consensus within the international community on how exactly to cooperate on issues of maritime security. The provisions of ISPS Code, on the other hand, now direct the Indian government and all stakeholders of the maritime sector on how exactly to enhance their security measures. If the ISPS Code is not implemented, it

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<sup>24</sup> Ibid, Sections 4.1 and 4.2

<sup>25</sup> Ibid, Sections 7.2 and 14.2

<sup>26</sup> Ibid, Section 7.3 and 14.3

<sup>27</sup> Ibid, Section 7.4 and 14.4

<sup>28</sup> Ibid, Section 4.2

<sup>29</sup> Ibid, Section 7.5

<sup>30</sup> Ibid, Part B, Section 4

<sup>31</sup> Security Level as on 31 December 2018,

<https://www.dgshipping.gov.in/writereaddata/ShippingNotices//ShippingNotices/201904260432028982272securitylevelistntbr.pdf>

will be difficult for Indian-flagged ships to secure entry in the ports of other maritime nations, and also for foreign-flag merchant ships to call at Indian ports. Consequently, the MS Act was amended in 2004 so as to incorporate the provisions of ISPS Code relating to security measures to be adopted by ships and port facilities. These measures in connection with ship security and port facility will be explained in the second part of this article.

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