

**ACT 117**  
**VISITING FORCES ACT, 1962**

**ARRANGEMENT OF SECTIONS**

**SECTION**

1. Exercise of powers by service courts and authorities.
2. Primary right of civil courts to exercise jurisdiction.
3. Restriction of jurisdiction of civil courts and service courts.
4. Waiver of primary right to exercise jurisdiction.
5. Summoning of witness.
6. Offences liable to be committed by witnesses.
7. Privileges of members of service courts.
8. Effect of certificate of service authority.
9. Due constitution of service courts.
10. Assistance by home force to service courts and authorities.
11. Detention of sentenced members of visiting forces.
12. Application of Criminal Offences Act, 1960 to visiting forces.
13. Rank of members of visiting forces.
14. Regulations
15. Interpretation.

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**ACT 117**  
**VISITING FORCES ACT, 1962<sup>1</sup>**

**AN ACT to enable service courts and authorities of sending states to which visiting forces belong to exercise jurisdiction and other powers over members of those forces, to provide for certain matters relating to the administration of those forces and to provide for related matters.**

**1. Exercise of powers by service courts and authorities**

When a visiting force is present in the Republic or on board a ship or an aircraft of the Republic, the service courts and service authorities of the sending state may exercise within the Republic, or on board that ship or aircraft, in relation to members of that force, the powers that are conferred on them by the law of the sending state.

**2. Primary right of civil courts to exercise jurisdiction**

(1) Except in respect of offences mentioned in subsection (2), the civil courts have the primary right to exercise jurisdiction in respect of an act of omission constituting an offence against a law in force in the Republic alleged to have been committed by a member of a visiting force.

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1. The Act was assented to on 12th June, 1962.

(2) With respect to the alleged commission by a member of a visiting force of an offence relating to

- (a) the property or security of the sending state,
- (b) the person or property of another member of the visiting force,
- (c) the person or property of a dependent of another member of the visiting force, or
- (d) an act done or anything omitted by the discharge of an official duty,

the service courts of the visiting force shall have the primary right to exercise jurisdiction.

(3) Where the offence of a member of a visiting force relates to paragraph (d) of subsection (2), and has been committed against a civilian, the Minister responsible for Defence shall decide whether a service court or civil court shall have the primary right to exercise jurisdiction in the trial of the offence, and the court selected by the Minister shall have the primary right to exercise that jurisdiction.

(4) This section shall have effect subject to an agreement between the Republic in respect of a visiting force and the sending state to which the force belongs.<sup>2</sup>

### **3. Restriction of jurisdiction of civil courts and service courts**

(1) Where a member of a visiting force is tried by a service court of that visiting force and is convicted or acquitted, that member shall not be tried again by a civil court for the same offence.

(2) Where a member of a visiting force is tried by a civil court and is convicted or acquitted, that member shall not be tried again within the Republic for the same offence by a service court of that visiting force.

(3) Subsection (2) does not prevent the service court from trying within the Republic a member of the visiting force for a violation of rules of discipline arising from an act or omission that constituted an offence for which that member was tried by the civil court.

### **4. Waiver of primary right to exercise jurisdiction**

(1) Where under section 2 a civil court or a service court of a visiting force has the primary right to exercise jurisdiction, the court having the primary right has the right to deal with charges against the alleged offender in the first instance, but that right may be waived.

(2) Whether or not that right is to be waived and any other matter relating to the waiver of that right shall be determined in accordance with the Regulations.<sup>3</sup>

### **5. Summoning of witnesses**

(1) A person required to give evidence before a service court shall be summoned only by a District Magistrate.

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2. Added to by section 1 of the Visiting Forces (Amendment) Act, (Act 233) as subsection (3).

3. Added to by section 2 of the Visiting Forces (Amendment) Act, 1964 (Act 233).

(2) A District Magistrate shall summon, in the manner prescribed by the President or any other person authorised in that behalf by the President, a witness to appear before a service court when requested so to do by

- (a) the authority by whom the service court was convened,
- (b) the officer presiding at the service court, or
- (c) an officer designated by the presiding officer referred to in paragraph (b).

(3) A person summoned under subsection (2) may be required to bring and produce at a service court the documents in the possession or under the control of that person relating to the matters in issue before the service court but that person shall not be required to bring and produce a document in respect of which privilege could have been claimed if the court which issued the summons was a civil court.

(4) A witness summoned or attending to give evidence before a service court is entitled to receive from the visiting force the fees and allowances for expenses of attendance that the witness would have received if the evidence had been given in a civil court.

## 6. Offences liable to be committed by witnesses

(1) A person who

- (a) on being duly summoned as a witness under section 5 and after payment or tender of the fees and expenses of attendance, makes default in attending, or
- (b) being in attendance as a witness before a service court, refuses to
  - (i) take the oath or affirmation legally required, or
  - (ii) produce the documents in that person's power or control legally required to be produced, or
  - (iii) answer a question that legally requires an answer, or
- (c) uses insulting or threatening language before a service court, or causes an interference or a disturbance in its proceedings, or prints observations or uses words likely to influence improperly the members of, or witnesses before, that service court, or to bring that service court into disrepute, or in any other manner displays contempt of that court, or
- (d) being in attendance as counsel before a service court, commits an act which if committed before a civil court would constitute a contempt of the civil court,

commits an offence and the service court may, by a certificate setting forth the facts of the offence, refer the offence to a civil court that has power to punish witnesses and counsel for an offence of that nature if committed in that civil court.

(2) A civil court to which an offence mentioned in subsection (1) is referred shall cause to be brought before it the person certified to have committed that offence, and

- (a) shall enquire into the facts set forth in the certificate mentioned in subsection (1), and

- (b) after examination of the witnesses who may be produced for or against the person so accused and after hearing the statement that may be offered in defence, shall, if it seems just, punish that person in a like manner as if the offence was committed in a proceeding in that civil court.

### **7. Privileges of members of service courts**

The members of a service court exercising jurisdiction under this Act and witnesses appearing before that court shall enjoy the like immunities and privileges as are enjoyed by members of, and witnesses before, a court-martial exercising jurisdiction under the law relating to the Armed Forces of the Republic.

### **8. Effect of certificate of service authority**

A certificate of a service authority of a sending state, stating that anything alleged to have been done or omitted by a member of a visiting force of that state was or was not done in the discharge of an official duty is receivable in evidence in a civil court and is a prima facie evidence of that fact.

### **9. Due constitution of service courts**

(1) For the purposes of legal proceedings within the Republic, where a sentence has, whether within or without the Republic, been passed on a member of a visiting force by a service court,

- (a) the court shall be deemed to have been properly constituted,
- (b) the proceedings of the court shall be deemed to have been regularly conducted, and
- (c) the sentence shall be deemed to be within the jurisdiction of the court and in accordance with the law of the sending state and, if executed according to its tenor shall be deemed to have been lawfully executed.

(2) A member of a visiting force who is detained in custody

- (a) under a sentence mentioned in subsection (1), or
- (b) pending the determination by a service court of a charge brought against that member,

is for the purposes of legal proceedings within the Republic, in lawful custody.

(3) For the purposes of legal proceedings within the Republic, a certificate signed personally by the officer commanding a visiting force that a member of that force is being detained in either of the circumstances described in subsection (2), is conclusive evidence of the cause of that detention, but not of the status as a member, and a certificate personally signed by that officer that the persons specified in the certificate sat at a service court of the sending state is conclusive evidence of that fact.

**10. Assistance by home force to service courts and authorities**

For the purposes of enabling the service courts and service authorities of the sending state to exercise more effectively the powers conferred on them by this Act, the President, if so requested by the sending state, may by general or special orders to a home force, direct the members of the home force to arrest members of the visiting force alleged to have committed an offence against the law of the sending state, and to hand over a person so arrested to the appropriate authorities of the visiting force.

**11. Detention of sentenced members of visiting forces**

(1) A member of a visiting force, if sentenced by a service court of the sending state to imprisonment or detention may, under the authority of the President, given at the request of the sending state, be temporarily detained in custody in a detention barrack in the Republic.

(2) Where a member of a visiting force is in custody in a detention barrack in the Republic under subsection (1), the laws relating to the reception of prisoners from their return to the service authorities of the home forces, their treatment while in custody in the detention barrack, and the circumstances in which they are to be released, shall, with the necessary modifications, apply in relation to the member of the visiting force in like manner as those laws apply to a member of a home force.

**12. Application of Criminal Offences Act, 1960 to visiting forces**

The provisions of the Criminal Offences Act, 1960 (Act 29) relating to military training and exercises and to the carrying of offensive weapons shall not apply to a member of a visiting force acting in the course of official duty.

**13. Rank of members of visiting forces**

(1) In so far as powers of command depend on rank, a member of a visiting force who

- (a) is acting with a part of a home force, or
- (b) is a member of a body or a visiting force which is acting with a part of a home force,

shall have the same powers as a member of the home force of like rank.

(2) Where the whole or a part of a home force is required to act with any other military, naval or air force, the President may place the home force, or a part of the home force under the command of the officer commanding a visiting force, if that officer is senior in rank to the other officers of the home force or of that part.

(3) Where a part of a home force is acting in co-operation with any other force, the commander of that part of the home force may, in agreement with the commander of the other force, define the powers of command and the order of precedence of the officers, warrant officers, non-commissioned officers, chief petty officers, petty officers and leading seamen of the home force in relation to an officer, warrant officer, non-commissioned officer, chief petty officer, petty officer or leading seaman of the other force who is of the same or equivalent rank.

#### 14. Regulations

The Minister responsible for Defence may, by legislative instrument, make Regulations for

- (a) the matters that are required to be made by Regulations under this Act,
- (b) the modification, adaptation or amendment in any other manner of an enactment relating to inquests, in operation in the Republic in so far as the enactment is to be applicable to a visiting force, and
- (c) giving effect to an agreement referred to in subsection (3) of section 2 and carrying out the principles and provisions of this Act.<sup>4</sup>

#### 15. Interpretation

In this Act, unless the context otherwise requires,

“**civil court**” means a court in the Republic having jurisdiction in criminal matters;

“**home force**” means the Army, Navy or Air Force of the Republic or a part of any of them;

“**Regulations**” means the Regulations made under this Act;

“**sending state**” means the state to which a visiting force belongs;

“**service authority**” means an army, a navy or an air force authority;

“**service court**” includes an army, a navy or an air force court and a service court of inquiry, and an officer of a visiting force who is empowered by the sending state to review the proceedings of a service court of the sending state or to investigate charges or personally dispose of charges;

“**visiting force**” means any or all of the following:

- (a) a body, contingent, detachment or member of the army, navy or air force of a state which, with the consent of the President, is lawfully present in the Republic or board any ship or aircraft of the Republic;
- (b) a civilian
  - (i) accompanying that body, contingent or detachment,
  - (ii) in the employment of, or performing a service for that body, contingent or detachment, and
  - (iii) who is not a stateless person nor a citizen of, nor ordinarily resident in, the Republic; and
- (c) a dependent of a member or civilian accompanying that member.<sup>5</sup>

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4. Inserted by section 3 of the Visiting Forces (Amendment) Act, 1964 (Act 233).

5. Amended by section 4 of the Visiting Forces (Amendment) Act, 1964 (Act 233).