

Zambia

## Mental Disorders Act, 1949

### Chapter 305

Legislation as at 31 December 1996

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# Mental Disorders Act, 1949

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# Zambia

## Mental Disorders Act, 1949

### Chapter 305

Not commenced

*[This is the version of this document at 31 December 1996.]*

*[21 of 1949; 22 of 1951; 50 of 1963; 69 of 1965; Federal Government Notice 90 of 1957; Government Notices 159 of 1964; 497 of 1964; Statutory Instrument 163 of 1965; Act No 13 of 1994]*

**An Act to provide for the care of persons suffering from mental disorder or mental defect; to provide for the custody of their persons and the administration of their estates; and to provide for matters incidental to or connected with the foregoing.**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Mental Disorders Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"**adjudication order**" means an order made under section eleven;

"**child**" means a person under the age of sixteen years;

"**control order**" means an order made under section thirteen;

"**Court**" means the High Court or a Judge sitting in chambers;

"**inquiry**" means an inquiry instituted under sections seven, eight, and Nine;

"**institution**" means any mental hospital or other place which has been or may hereafter be prescribed by the Minister as an institution or place for the reception, treatment, or detention of two or more persons suffering from any mental disorder or defect;

"**magistrate**" means a magistrate empowered to preside over a subordinate court of the first or second class;

"**medical practitioner**"<sup>\*</sup> means a medical practitioner registered under the Medical and Allied Professions Act;

*[Cap. 297]*

<sup>\*</sup>See section 56 of the Medical and Allied Professions Act (Cap. 297)

"**mentally disordered or defective person**" means any person who, in consequence of mental disorder or disease or permanent defect of reason or mind, congenital or acquired—

- (a) is incapable of managing himself or his affairs; or
- (b) is a danger to himself or others; or
- (c) is unable to conform to the ordinary usages of the society in which he moves; or
- (d) requires supervision, treatment or control; or

- (e) (if a child) appears by reason of such defect to be incapable of receiving proper benefit from the instruction in ordinary schools;

"**officer**" means an Administrative Officer, a police officer, a district messenger or any person or class of persons prescribed;

"**patient**" means a person—

- (a) concerning whom proceedings are considered necessary to determine whether or not he is suffering from mental disorder or defect; or
- (b) who has been found to be a mentally disordered or defective person;

"**permit**" means a permit issued under section twenty-one;

"**Registrar**" includes the Registrar, a deputy registrar, a district registrar, or an assistant registrar of the High Court;

"**subordinate court**" means a subordinate court of the first or second class;

"**superintendent**" means the officer or person in charge of an institution or other place, and includes a medical superintendent.

*[As amended by No. 50 of 1963, G.N. No. 159 of 1964, S.I. No. 163 of 1965 and No. 69 of 1965]*

### 3. Application of Act to persons detained under previous written laws

In addition to the persons in respect of whom provision is made herein, this Act shall apply to every person who is, at the commencement of this Act, subject to an adjudication order.

### 4. Application of Act to warrants issued under previous written laws

Every warrant or order for the removal or detention of any such person as is mentioned in the last preceding section, issued prior to such commencement, and in force at such commencement, shall be deemed to have been lawfully issued and shall remain in force until set aside or varied under this Act.

### 5. Classification of mentally disordered and defective persons

For the purposes of this Act and all proceedings thereunder, mentally disordered or defective persons may be divided into the following classes:

Class I.-A person suffering from mental disorder, that is to say, a person who owing to some form of mental disorder is incapable of managing himself or his affairs.

Class II.-A person mentally infirm, that is to say, a person who through mental infirmity arising from age or from its common disorders is incapable of managing himself or his affairs.

Class III.-An idiot, that is to say, a person in whose case there exists mental defectiveness of such a degree that he is unable to guard himself against common physical dangers.

Class IV.-An imbecile, that is to say, a person in whose case there exists mental defectiveness which, though not amounting to idiocy, is yet so pronounced that he is incapable of managing himself or his affairs, or, if he is a child, of being taught to do so.

Class V.-A feeble-minded person, that is to say, a person in whose case there exists mental defectiveness which, though not amounting to imbecility, is yet so pronounced that he requires care, supervision and control for his own protection or for the protection of others, or, if he is a child, appears by reason of such defectiveness to be permanently incapable of receiving proper benefit from the instruction in ordinary schools.

Class VI.-A moral imbecile, that is to say, a person who displays mental defectiveness coupled with strongly vicious or criminal propensities and who requires care, supervision and control for his own protection or for the protection of others.

## Part II – Proceedings and detention

### 6. Authority for detention of patients

Subject to the exceptions expressly provided by this Act, no person shall be received or detained as a patient in an institution or other place except under the authority of a warrant or order of the \*Minister, a Judge or a magistrate in accordance with this Act the Criminal Procedure Code.

*[Cap. 88]*

\*See S.I. No. 406 of 1965.

*[As amended by G.N. No. 159 of 1964]*

### 7. Magistrate may order apprehension in certain cases

- (1) A magistrate having jurisdiction, if satisfied upon information on oath that a person is apparently mentally disordered or defective and is—
  - (a) dangerous to himself or to others; or
  - (b) wandering at large and unable to take care of himself:may by warrant require an officer to apprehend such person and bring him before the magistrate issuing such warrant.
- (2) The magistrate before whom a person is brought in accordance with the provisions of this section shall forthwith institute an inquiry.

### 8. Officer may apprehend without warrant in certain cases

- (1) An officer, if he has reason to believe that a person apparently mentally disordered or defective is—
  - (a) dangerous to himself or to others; or
  - (b) wandering at large and unable to take care of himself;and that it is necessary for the public safety or for the welfare of such person that, before other proceedings are taken under this Act, he should be placed under care and control forthwith, may, without warrant, apprehend and convey such person to any prescribed hospital, prison or other suitable place for observation, and the person in charge thereof shall receive and detain the persons so conveyed thereto:

Provided that such person shall not be conveyed to, or received in, a prison unless he cannot be otherwise controlled.
- (2) Such officer and the person in charge of any hospital, prison or other place, who has received a patient in terms of this section, shall forthwith notify a magistrate of the admission of such patient.
- (3) Upon receipt of notification as in subsection (2) provided, such magistrate shall forthwith institute an inquiry.

## 9. Inquiry into state of mind of patient

- (1) Where a magistrate has instituted an inquiry, at any time prior to the completion of that inquiry he may order the person in whose charge the suspected person is to produce the suspected person at such time and place as may be set out in such order.
- (2) For the purpose of this section the magistrate may, by warrant under his hand, authorise the apprehension of such person and his detention in a suitable place whether within or without the jurisdiction of such magistrate for a period not exceeding fourteen days.
- (3) If the magistrate considers it necessary or advisable to adjourn the inquiry, he may from time to time authorise the further detention of such person for a reasonable time not exceeding fourteen days at any one time.
- (4) Where it appears to a magistrate by whom an inquiry has been commenced that, owing to circumstances to be entered on the record of the inquiry, it is expedient for the inquiry to be continued by another magistrate, he shall adjourn the inquiry and refer the record to such other magistrate, and such other magistrate shall thereupon, subject to any directions in that behalf which may be given by the High Court, and which the High Court is hereby empowered to give, continue the inquiry and conclude the same in accordance with the provisions of this Act.

## 10. Magistrate may interrogate patient and must obtain certificate

The magistrate may, in his discretion, himself interrogate the patient at the patient's place of abode or elsewhere, and shall, whether or not he makes such interrogation, direct any two medical practitioners to examine the patient. Such medical practitioners shall each furnish a certificate in the prescribed form within fourteen days (or such further time as the magistrate directs) stating whether in the medical practitioners' opinion the patient is either—

- (a) mentally normal; or
- (b) a mentally disordered or defective person. If the medical practitioner considers that the patient is mentally disordered or defective, he shall further state his opinion of the category as set out in section five into which the patient falls.

## 11. Adjudication order

If, upon due consideration, the magistrate is satisfied that the patient is mentally disordered or defective and—

- (a) is not under proper care, treatment or control; or
- (b) is cruelly treated or neglected by any relative or other person having the care or charge of such patient; or
- (c) is of suicidal tendency or is in any way dangerous to himself or others; or
- (d) has committed or attempted to commit any crime or offence or has acted in a manner offensive to public decency; or
- (e) is an inebriate, that is to say, a person who habitually drinks to excess, or who habitually uses any narcotic to excess; or
- (f) if the person having the care, treatment or control of the patient consents;

the magistrate shall adjudge the patient to be a mentally disordered or defective person, and shall sign an adjudication order to that effect in the prescribed form.



## 12. Procedure when no adjudication order made

- (1) When an inquiry is held and no adjudication order is made, the magistrate shall discharge the patient and revoke any warrant of detention and so inform any person in whose care the patient may have been detained.
- (2) On discharging the patient, the magistrate shall have power to take all necessary steps to assist the patient to return to the place from which he was brought or to his home and may defray from public funds all or part of the necessary expenses of such journey.

## 13. Control orders

- (1) After an adjudication order has been made, the magistrate shall make a control order, for the control, care or detention of the patient, specifying either that the patient be—
  - (a) detained in a prescribed place; or
  - (b) handed over to the care and control of his friends or relatives, or to a chief or village headman.
- (2) A control order shall be of effect even though the prescribed place, or the friend, relative, chief or village headman is not within the area over which the magistrate has jurisdiction.
- (3) Before making a control order under paragraph (b) of subsection (1), the magistrate shall satisfy himself, by such means as he thinks fit, that such friend, relative, chief or village headman is a fit and proper person to exercise care and supervision over the patient.
- (4) A control order may from time to time be varied by—
  - (a) the magistrate for the time being of the subordinate court which made the control order in the first instance; or
  - (b) a magistrate within whose jurisdiction the patient is at the time of the variation:  
  
Provided that such magistrate shall not vary the control order unless it is impracticable for the order to be varied under paragraph (a);  
  
if the magistrate is satisfied that such varied order is in the best interests of the patient.
- (5) An adjudication order in force at the commencement of this Act may be varied by a control order under this section.

*[As amended by No. 68 of 1965]*

## 14. Removal out of Zambia

- (1) Every patient in respect of whom an adjudication order and a control order is in force may be removed to a specified place outside Zambia by a warrant signed by the \*Minister.  
  
\*Powers delegated to Director of Medical Services by S.I. No. 57 of 1964.
- (2) Where any patient is removed from Zambia by virtue of the provisions of subsection (1), then—
  - (a) the adjudication order in respect of such patient shall continue in force until such order is discharged; and
  - (b) the control order in respect of such patient shall be suspended while the patient is absent from Zambia.

*[As amended by G.N. No. 159 of 1964]*

### 15. Detention during removal

Any patient in course of removal under a warrant signed by virtue of section fourteen shall be deemed to be lawfully detained.

### 16. Patient to remain in place to which removed

- (1) Any patient removed by virtue of a warrant signed under section fourteen shall remain in the place to which he has been removed until the Minister shall otherwise direct, or until the patient's release or discharge as in this section or, as the case may be, in section twenty-two is provided.
- (2) A patient removed by virtue of a warrant signed under section fourteen who does not re-enter Zambia shall be released or discharged in the manner specified in subsections (3) and (4).
- (3) If, in accordance with the law relating to mental disorders in force in the country to which the patient is removed by warrant signed under section fourteen, the patient is discharged from the institution in which he is detained in that country, the adjudicating magistrate shall, on receipt of a notice or a copy of the notice of discharge, grant the person discharged an order of discharge and shall furnish him with a certified copy thereof.
- (4) On the grant by an adjudicating magistrate of an order of discharge referred to in subsection (3), any warrant, adjudication order or control order made previously in respect of the person discharged shall thereupon cease to have effect

*[As amended by F.G.N. No. 90 of 1957 and G.N. No. 159 of 1964]*

## Part III – Estates

### 17. High Court jurisdiction

- (1) There shall be vested in the High Court jurisdiction to administer and control the estates and property of patients, including the power to appoint committees and receivers, in substantial conformity with the law and practice for the time being in force in the High Court of Justice in England.
- (2) The Chief Justice may, by statutory instrument, make rules for the due administration and efficient working of this Part.

### 18. Investigation into estate

After making an adjudication order, the magistrate shall make an investigation into the estate of the patient and shall report to the Registrar in the prescribed form:

Provided that where it appears to the magistrate that, owing to circumstances to be entered on the record, it is expedient that such investigation be continued by another magistrate, he shall adjourn the investigation and refer the record to such other magistrate, and such other magistrate shall thereupon, subject to any directions in that behalf which may be issued by the High Court, and which the High Court is hereby empowered to give, continue the investigation and conclude the same.

*[As amended by No. 22 of 1951]*

### 19. Powers of Registrar and Administrator-General

- (1) For the purposes of this Act, in default of any prescribed rules, the Registrar shall exercise all the powers and duties of the Master in Lunacy or of the Court of Protection in England, and the Administrator-General shall exercise all the powers and duties of the Official Solicitor, with regard to the estates and property of patients.

- (2) For the purposes of this Act, the Administrator-General shall have and exercise all the privileges, duties and powers conferred on him by the Administrator-General's Act.

*[Cap. 58]*

- (3) In default of any rules made by the Chief Justice, such powers and duties referred to in subsection (1) shall be exercised in substantial conformity with the law and practice for the time being observed in the High Court of Justice in England.
- (4) The Registrar or Administrator-General may depute any person by name, or the person for the time being holding a specified office, to exercise such powers or perform such duties on his behalf, subject to such conditions, exceptions and qualifications as the Chief Justice may prescribe. Thereupon or from the date specified by the Registrar or the Administrator-General, the person so deputed shall have and exercise such powers and perform such duties as he may think necessary.

## **Part IV – Discharge**

### **20. Discharge on certificate of sanity**

- (1) Where an adjudication order has been made and any two medical practitioners have each issued a certificate of sanity in the prescribed form, a magistrate shall grant the patient an order of discharge in the prescribed form and furnish him with a certified copy thereof.
- (2) On receipt of such order, the person in whose control the patient is shall discharge him in accordance with such order.
- (3) Where such an order is granted, any adjudication order, control order or permit under section twenty-one made previously with respect to that patient shall thereupon cease to have effect.

### **21. Conditional release permit**

- (1) A magistrate may, on being satisfied that—
  - (a) it is in the interest of the patient so to do; and
  - (b) there is no likelihood of danger to the public;grant a permit in the prescribed form to any patient in respect of whom an adjudication order and control order is in force, to be at large on trial for such period not exceeding twelve months and subject to such conditions as the magistrate thinks fit. During such period, any control order in respect of the patient shall be deemed to be suspended. It shall be a condition of such permit that the patient shall report at specified periods to a specified magistrate or to the magistrate of a specified court. A copy of such permit shall be given to the patient and another copy shall be sent by the magistrate granting such permit to the magistrate to whom the patient is required to report.
- (2) Such permit may be extended (subject to subsection (3)), revoked or varied by the magistrate by whom it was made or by any magistrate to whom the patient is required to report.
- (3) An adjudication order and a control order in respect of a patient who has been at large for a continuous period of twelve months under a permit made by virtue of this section shall no longer be in force. Thereupon the patient shall be deemed to be discharged, and may, on application to the Registrar, obtain a declaration to that effect.

### **22. Re-entry into Zambia of patient removed by warrant**

- (1) A patient who has been removed from Zambia by virtue of a warrant issued under section fourteen shall, on re-entering Zambia, report within twenty-four hours to the District Secretary at the place of re entry into Zambia.

- (2) Such District Secretary shall forthwith—
  - (a) convey the patient to a hospital and give him into the care of the superintendent of such hospital; and
  - (b) notify a magistrate in writing that he has done so.
- (3) Such magistrate shall thereupon order two medical practitioners, one at least of whom shall be a Government Medical Officer, to examine the patient, and report to the magistrate.
- (4) For the purpose of such examination, the magistrate may exercise the powers conferred by subsections (1), (2) and (3) of section nine.
- (5) On receipt of such reports the magistrate shall hold an inquiry and shall either—
  - (a) discharge the patient in accordance with the provisions of section twenty; or
  - (b) grant a permit in accordance with section twenty-one; or
  - (c) vary the control order in accordance with subsection (4) of section thirteen.
- (6) Notwithstanding the provisions of subsections (2), (3), (4) and (5), if the District Secretary to whom a patient has reported in accordance with subsection (1) is satisfied that a certificate of discharge in the prescribed form has been issued within the past fourteen days to the patient by the superintendent of the institution in which the patient has been confined, such District Secretary shall forthwith grant the patient an order of discharge in the prescribed form and furnish him with a certified copy thereof.

*[As amended by No. 50 of 1963]*

## **23. Patients discharged in Southern Rhodesia**

Any person who was—

- (a) adjudicated a lunatic under the provisions of the Lunacy Act, Chapter 28 of the 1950 Edition of the Laws;
- (b) removed from Zambia and confined in the Ingutsheni Mental Hospital of Southern Rhodesia; and
- (c) discharged, before the commencement of this Act, from such hospital in accordance with the law for the time being in force in Southern Rhodesia;

shall be deemed to have been granted, at the date of such discharge, an order of discharge under the provisions of the Lunacy Act, Chapter 28 of the 1950 Edition of the Laws:

Provided that this section shall not apply to persons who have been confined in accordance with the provisions of the Criminal Procedure Code.

*[Cap. 88]*

*[No. 22 of 1951]*

## **Part V – Miscellaneous**

## **24. Amendment of orders and certificates**

- (1) If an application for an order or an order is found to be in any respect incorrect or deficient, the magistrate who made it, or his successor in office, or a magistrate lawfully acting for him or for his successor, may permit the application to be amended, or may, as the case may be, amend the order.

- (2) If a medical certificate given under this Act is found, in respect of any matter not dealing with the patient's mental condition, to be incorrect or deficient, the certifying medical practitioner may, with the consent of a magistrate, amend such certificate.
- (3) Every application, order or certificate amended under this section shall take effect as if the amendment had been contained therein when it was originally issued and signed, as the case may be.

## **25. False statements, entries and wilful obstruction**

Every person shall be guilty of an offence if he—

- (a) makes any wilful misstatement of any material fact in any report, certificate, statement or document made in pursuance of this Act;
- (b) makes a wilful misstatement of any material fact in any medical certificate, recommendation or other certificate or in any statement or report of bodily or mental condition under this Act;
- (c) wilfully obstructs any magistrate, medical practitioner, officer or other person specifically or generally authorised under this Act or under any order of the Court or of a magistrate in the exercise of any of the powers conferred by this Act.

## **26. Conniving at escape of patient**

Any person who wilfully assists or permits or connives at the escape or attempted escape of any patient, or who secretes or harbours a patient who has escaped, shall be guilty of an offence.

## **27. Failure to report on re-entering Zambia**

Any patient who has been removed from Zambia by virtue of a warrant issued under section fourteen and who shall, on re-entering Zambia, fail to report as provided by section twenty-two, shall be guilty of an offence.

## **28. Failure to comply with order**

Any person who fails to comply with any order or carry out any conditions contained in an order shall be guilty of an offence.

## **29. Penalties**

- (1) Any person who commits an offence against this Act in respect of which no penalty is by this Act expressly provided shall be liable to a fine not exceeding six hundred penalty units or to imprisonment for a period not exceeding three months, or to both
- (2) Any person who is guilty of any act or omission which is declared to be an offence under sections twenty-five to twenty-eight inclusive shall be liable to a fine not exceeding one thousand five hundred penalty units or to imprisonment for a period not exceeding six months, or to both

*[As amended by Act [No. 13 of 1994](#)]*

## **30. Appeals**

An appeal shall lie to the High Court against any order made by a magistrate under this Act at the suit of any person aggrieved by such order, in accordance with the practice and procedure for the time being in force for criminal appeals from the subordinate courts to the High Court.

### **31. Husband, wife or relative may apply to Court for inquiry**

Nothing in this Act contained shall prevent any husband, wife or other relative of any person alleged to be mentally disordered or defective, or any friend of such person who has no husband, wife or near relative at or near the place where such person is residing, from applying by petition directly to the Court for an inquiry into such person's mental condition, and the Court may make such order as it thinks fit.

### **32. Limitations of actions by patients**

- (1) Where a person has done anything in pursuance or in intended pursuance of any of the provisions of this Act, he shall not be liable to any civil or criminal proceedings, whether on the ground of want of jurisdiction or on any other ground, unless he has acted in bad faith or without reasonable care.
- (2) In any proceedings taken against any such person for any such act, the burden of proving that he has acted in bad faith or without reasonable care shall lie upon the person bringing the proceedings.
- (3) No proceedings, civil or criminal, shall be brought against any such person for any such act in any court without the leave of the Court, and such leave shall not be given unless the Court is satisfied that there is substantial ground for the contention that the person against whom it is sought to bring the proceedings has acted in bad faith or without reasonable care.
- (4) Notice of any application under subsection (3) shall be given to the person against whom it is sought to bring the proceedings and that person shall be entitled to be heard against this application.
- (5) No such proceedings shall be commenced after the expiration of three months from the date of the act complained of, or, in the case of the continuance of injury or damage, after the expiration of three months from the date of the cessation thereof:

Provided that in estimating the said period of three months, no account shall be taken of any time or times during which the person alleged to be injured was under detention, lawfully or unlawfully, as a mentally disordered or defective person or was ignorant of the facts which constitute the cause of action.

- (6) Nothing in this section shall be construed as depriving any person of any defence which he would have independently of this section.
- (7) No proceedings shall be taken against any person on the ground merely that any mentally disordered or defective person was certified or detained as belonging to any one class instead of another class.

### **33. Return of records to Court**

The record of every proceeding under this Act before a magistrate and a certified copy thereof shall be transmitted with all convenient despatch to the Court, and the magistrate shall at the same time transmit a certified copy to the Director of Public Prosecutions.

*[As amended by S.I. No. 163 of 1965]*

### **34. Place of admittance to and powers of hearing**

- (1) A magistrate, in his discretion, may hold an inquiry in a room or place other than that in which the subordinate court normally sits.
- (2) At an inquiry no person other than the members and officers of a subordinate court, the parties to the inquiry, their solicitors and counsel and other persons directly concerned in the inquiry, shall, except by leave of the magistrate, be allowed to attend.

- (3) When conducting proceedings under this Act, a magistrate may exercise all the powers and authority vested in him by virtue of his office of magistrate.

### **35. Cost of maintenance of patients**

- (1) When any person is detained under the provisions of this Act in any place, the maintenance and other costs and expenses of such person shall, until further provision therefor is made, be defrayed out of the general revenues of the Republic.
- (2) The cost of his maintenance and all other sums so paid may be recovered from the estate of any such detained person or from any person or persons liable by law to contribute towards the maintenance of such detained person.

*[As amended by S.I. No. 163 of 1965]*

### **36. Medical certificates evidence of certain facts**

Every medical certificate or report made under and for the purposes of this Act shall be *prima facie* evidence of the facts stated so far as they are within the knowledge of the person giving the certificate or making the report, and shall be evidence also of the opinion therein expressed by the certifying medical practitioner on such facts to the same extent as if the matter therein appearing had been verified on oath.

### **37. Visitation of patients**

Every person detained under the provisions of this Act may be visited at any reasonable time by any person specially or generally authorised in writing by a Judge or magistrate.

### **38. Reference in written laws to lunatics**

Whenever in any written law any reference to a lunatic or to lunacy or to an asylum is contained, that reference shall be read and construed as a reference to a patient or to a mentally disordered or defective person within the meaning of this Act, or, as the case may be, to mental disorder or defect or to a mental hospital.

### **39. Regulations**

- (1) The Minister may, by statutory instrument, make regulations for the due administration and efficient working of this Act.
- (2) Without prejudice to the generality of the foregoing, the Minister may make regulations concerning —
  - (a) the discharge of patients on recovery, or on application of relatives or friends, or on probation;
  - (b) the removal or transfer of patients from one institution or place to another institution or place, including the temporary transfer of patients to a specified place for such periods as may be deemed expedient;
  - (c) the terms of payment and accommodation for paying patients in any place;
  - (d) the visitation of institutions or other places where patients are detained;
  - (e) the forms which shall be used for the purposes of this Act;
  - (f) mechanical means of restraint;
  - (g) the utilisation of the voluntary services of charitable societies for the welfare of patients, whether during the period of their detention and treatment or after discharge on probation or otherwise;

- (h) the method and procedure by which any control order is to be carried out;
- (i) the payment of fees, allowances and expenses to witnesses and medical practitioners;
- (j) the prescribing of anything to be prescribed under this Act; and
- (k) the types of treatment to be given and consents necessary to be obtained before such treatments are carried out.

*[As amended by No. 50 of 1963 and G.N. No. 159 of 1964]*