

6. Detention Of Adult Trafficking Victim – Polity

The Bombay High Court quashed a one-year detention order of an adult woman rescued during a police raid under the Immoral Traffic (Prevention) Act, 1956 (PITA)

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1) Purpose, Philosophy, and Scope of PITA

Core objective– PITA is intended to prevent trafficking and sexual exploitation and to regulate state intervention in rescue, rehabilitation, and prosecution.

Victim–offender separation (conceptual core)

1. The law distinguishes between victims/survivors who require protection and rehabilitation, and
2. Offenders who profit from or facilitate exploitation (brothel-keepers, pimps, procurers, those living on earnings, etc.).

Constitutional lens – PITA's rehabilitation provisions must be implemented in a manner consistent with Articles 14, 19, and 21, especially personal liberty and freedom of movement/occupation for adults.

2) Section 17– Rescue, Production Before Magistrate, and Custody Timelines

Section 17 is important – It acts as a procedural safeguard to ensure that rescue operations do not morph into indefinite or arbitrary detention of the rescued person.

Key steps under Section 17 (as reflected in your notes)

Immediately after rescue

1. A rescued person may be kept in temporary safe custody for a limited time when immediate production before a Magistrate is not possible.
2. Maximum temporary custody– up to 10 days in such situations.

After production before Magistrate

1. The Magistrate must conduct an inquiry (a mandatory judicial assessment).
2. During this inquiry, interim custody can continue, but only up to about three weeks (as per the strict timeline approach).

Long-term placement (institutional)

1. 1–3 years placement is permissible only if the Magistrate records a reasoned finding that the person is “in need of care and protection.”
2. This requires an individualised assessment, not a blanket assumption.

“Rescue ≠ Detention”

“Rescue” is a protective intervention, but any continued institutional stay must satisfy–

1. Legality (under the statute),
2. Necessity and proportionality (constitutional standards),
3. Procedural safeguards (judicial oversight, recorded reasons, time limits).

3) Protective Home vs Corrective Institution

Protective Home (Section 2(g))

Who it is for– Victims/survivors needing care, protection, rehabilitation.

Nature– Welfare-oriented; should not function like jail.

Services expected (practically)

1. Medical care, trauma counselling,
2. Legal aid and case support,
3. Safe housing and food,
4. Education/skill training,

5. Reintegration support (family tracing where appropriate, community rehabilitation, livelihood linkages).

Corrective Institution (Section 2(b) read with Section 10A)

Who it is for– Offenders convicted under PITA.

Nature– Custodial detention after guilt is established; aimed at “correction.”

Key principle– Victims cannot be housed/treated like offenders. Mixing frameworks risks criminalising survivors. Protective homes are rehabilitative, corrective institutions are penological; confusing the two violates the victim-centric purpose of the Act.

4) Key Constitutional and Jurisprudential Observations

A) PITA is not punitive towards victims – The Court’s approach (as you noted) clarifies–

1. The statute targets exploiters, not survivors.
2. Victims should not face “protective incarceration.”

B) Primacy of personal liberty (Articles 19 and 21) – Any restraint on an adult’s liberty must satisfy

1. Due process/fair procedure,
2. Reasonableness (Article 19),
3. Non-arbitrariness (Article 14),
4. Proportionality and least restrictive measures.

C) Fundamental freedoms do not vanish post-trafficking – Being trafficked does not extinguish

1. Freedom of movement,
2. Choice of residence,
3. Choice of occupation,
4. Autonomy and dignity (Article 21).

D) Poverty and lack of family support cannot justify detention – The state may provide Shelter, care, rehabilitation, and assistance. But it cannot use poverty/absence of family as a legal ground to confine an adult against her will.

E) Consent and autonomy are central for adults – If an adult clearly expresses the wish to leave a protective home

1. Continued confinement becomes detention, not care.
2. The state’s role shifts to facilitating informed choice, safe exit, and support—not coercion.

5) Key Legal Principle Established

Doctrinal core– PITA cannot be interpreted to punish a victim or keep them confined based on speculative fears like “she may return to immoral acts.”

What the Court is rejecting

1. Moralistic assumptions,
2. Paternalistic control,
3. Risk-based preventive confinement without strong legal basis.

What the Court is affirming

1. Individual autonomy,
2. Dignity and liberty,
3. Reasoned judicial decision-making,
4. Time-bound, rights-compliant rehabilitation.

6) Implementation Gaps

Institutional bias– Protective homes sometimes function like custodial facilities due to

1. Security-first approach,
2. Lack of staff, counsellors, and reintegration programs,

3. Overcrowding and poor living conditions.

Weak rehabilitation ecosystem

1. Limited community shelters, halfway homes,
2. Stigma and social rejection,
3. Poor livelihood integration.

Secondary victimisation

1. Intrusive questioning, moral policing,
2. Pressure to “stay for safety,”
3. Delay in inquiries and production before magistrate.

Coordination failures–

1. Police–NGO–prosecution–district administration silos,
2. Lack of standard operating procedures and follow-up.

7) Way Forward

Strengthening non-custodial, rights-based support – Scale up **community-based rehabilitation** as the default

1. Short-stay shelters with voluntary residence,
2. Trauma-informed counselling and mental health support,
3. Legal aid clinics and victim compensation facilitation,
4. Livelihood pathways- skilling, apprenticeships, job placement,
5. Safe relocation assistance and identity/document support.

Capacity building of police and judiciary (victim-centric approach) – Train officials on

1. Trauma-informed interviewing and survivor dignity,
2. Legal distinction between victim/offender,
3. Constitutional standards (Articles 14/19/21),
4. Strict compliance with Section 17 timelines and reasoned orders.

Legal awareness and empowerment of survivors – Ensure survivors receive

1. Clear communication of rights and choices,
2. Assistance to record voluntary statements,
3. Access to lawyers and support persons,
4. Safe and informed exit planning.

Strengthen oversight and accountability – Regular inspection of homes and audits

1. Living conditions, services delivered, duration of stays,
2. Complaint mechanisms and ombudsman-style oversight,
3. Digitised case tracking to prevent “invisible detention.”

Build rehabilitation infrastructure and partnerships – Formalise linkages with

1. NGOs, women’s commissions, legal services authorities,
2. Health department and mental health services,
3. Skill India and local industry for placements,
4. Housing and social welfare schemes for reintegration.

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