UNIT 1 CONCEPTS AND DEFINITIONS

Structure

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1.1 INTRODUCTION

Trafficking in persons is the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or subtle inducements that take advantage of an individual’s vulnerability or the use of force or violence for the purpose of exploitation like prostitution, servitude, forced labour or services including begging, trade in organs, marriage, adoption and child soldiers.

Today, trafficking in persons, especially women and children, for commercial sexual exploitation accounts for more than half of human trafficking and is one of the most common forms of human trafficking. The second most common form is for forced labour (18%: ILO). Human trafficking also occurs for other purposes, such as domestic service; trade in organs; labour in sweatshops, small factories, establishments, plantations, military and construction sites; begging and sale of items like flowers, newspapers, books and other articles; marriage; mail-order brides; adoption and public sport, such as the use of male children between five and ten years as camel jockeys in camel races; forced labour or services like recruitment of children and women as soldiers.
Introduction to Human Trafficking

and combatants or recruitment of men as agents for illicit arms and drug trading. Children are also trafficked for purposes of pornography, paedophile activities and sex-tourism.

The United Nations Office on Drugs and Crime estimates that trafficking is now considered the third largest source of profits for organized crime, behind only illegal trade in arms and drugs, generating billions of dollars annually. Trafficking has strong links with other illegal activities, such as money laundering, forging of documents and smuggling.

1.2 OBJECTIVES

After reading this unit, you should be able to:

- describe the meaning and different definitions of trafficking;
- list milestones in efforts against slavery and trafficking;
- list out differences and similarities between old and contemporary forms of human trafficking;
- differentiate between trafficking, migration and smuggling;
- describe human trafficking in the Indian context; and
- list the links between human trafficking and prostitution.

1.3 EVOLUTION OF THE CONCEPT OF HUMAN TRAFFICKING

In today’s changing global scenario, “human trafficking” is the “new slave trade”. This analogy implies that people who are trafficked live under conditions similar to those experienced by slaves in former times. Human trafficking has thus become an important issue of concern transcending borders and affecting countries all over the world.

In common parlance, trafficking is defined as a trade in some things that should not be indulged into for various reasons — ethical, social, economic or political. Hence we have terms like drug trafficking, arms trafficking and human trafficking. The concept of human trafficking refers to criminal practice of exploiting human beings by treating them like commodities for profit. Let us examine how the concept of human trafficking has evolved.

The problem of human trafficking can be traced to the time of Greek City States. The Greek State and following it others trafficked girls and women mainly for prostitution. The term “traffic” was first used to refer to the so-called ‘white slave trade’ in women and the first known phase of trafficking occurred during the Middle Ages, when each year thousands of women and children from East Prussia, the Czech lands, Poland, Lithuania, Estonia and Latvia were sold in the slave markets of Italy and southern France. The second phase occurred during the latter part of the Middle Ages and the early Renaissance when Eastern European women and children were trafficked, mainly from Russia and the Ukraine, and sold as slaves in Italy and the Middle East. Others came from Bosnia, Albania and the Caucasian Mountains. They also ended up being slaves in Italy and France. This trafficking route into Western Europe ceased when the Ottoman Empire conquered Constantinople. Western European countries then turned their attention to West Africa as a source of slaves. The modern slaves from Serbia, Albania, Bosnia, Turkey, Russia and Eastern Europe modelled themselves on the slaves of the Middle Ages and the early Renaissance. Not much has changed, except that they
now wear expensive clothes, carry mobile phones and move around in swanky cars. Interestingly, respectable people are today involved in trafficking which makes its detection more difficult.

Contemporary human trafficking has historical precursors. The old slave trade, the ‘white slave trade’ and the exploitation of men and women in slavery-like conditions after World War II exemplifies that the form of human trafficking has been constantly changing. Before the ban on slavery in the 19th century, Western Europe and the United States profited greatly from the trans-Atlantic slave trade. Slaves were shipped from Africa to the Americas to work in mines or on plantations. Britain was the main driving force behind the end of the trans-Atlantic slave trade. The British Parliament banned slavery in 1807. In 1833, slavery was abolished in the colonies of Britain, freeing more than three-quarters of a million slaves. At the same time, and for many decades thereafter, Britain, making use of its naval power, enforced its anti-slavery policy around the world. Britain “thus assumed many of the qualities of an international criminal police force, one that had had few successors since”.

The term ‘white slave trade’ had its origin in describing female factory workers in England, and was later used to describe slavery of white women in Europe for the purpose of prostitution. In United States, Chinese immigrants were seen as a ‘yellow peril’. In Europe, Arabs and Ottoman authorities were seen as ‘white slave traders’, forcing ‘white’ women into prostitution. In the late 19th and early 20th century, an increasing number of governments signed up to the cause against ‘white slavery’. The result was the formulation of an International Agreement for the Suppression of the ‘White Slave Trade’ in 1904 which was signed in Paris and later ratified by some 100 governments. The 1904 agreement was inapplicable to men and boys, and women and girls of races other than whites. Other than this, it had no provision which touched upon enhancement of law enforcement. The resultant outcome of all this was that trafficking continued to flourish.

This prompted the adoption of another treaty, the International Convention for the Suppression of the White Slave Traffic in 1910 (1910 Convention). The scope of application of this convention was same as that of the 1904 agreement, and the link between trafficking and prostitution and/or sexual exploitation of white women was maintained. The only major difference being that the 1910 Convention urged States to suppress the act and punish those responsible for it in stronger terms.

After World War I, the League of Nations looked upon the problem of trafficking as serious and decided to include a provision on trafficking in the text of the Covenant of the League of Nations. Under the auspices of the League of Nations, two more international agreements on trafficking were adopted. The first was the 1921 International Convention for the Suppression of the Traffic in Women and Children (1921 Convention). This convention endorsed the description of trafficking delineated by the 1910 Convention. Consequently, prostitution and sexual exploitation were treated as important adjuncts of trafficking though the term ‘white slave’ was omitted from the title of the convention. This, in a way, was an important recognition of the fact by the international community that women and children belonging to any class, creed or race could become victims of trafficking. Further, the 1921 Convention was applicable to children of both sexes, unlike the previous instruments which applied only to girls. The second instrument was the 1933 International Convention for the Suppression of the Traffic in Women of Full Age (1933 Convention). In this convention too, trafficking was described in a language similar to that of the 1910 and 1921 Conventions, as the focus once again was mainly placed on prostitution and sexual exploitation. In addition, the 1933
Convention retained the international character of trafficking, as it covered acts carried out in another States. However, the two treaties adopted by the League of Nations were ineffective, as it continued to treat prostitution as a matter of domestic concern, and therefore did not oblige States to abolish the practice.

Later, the United Nations adopted the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others in 1949 (1949 Convention). It was ratified by forty-nine countries. This instrument was a consolidated version of all the earlier treaties. Nonetheless, the 1949 Convention was different from the earlier treaties in some respects. For instance, it made an explicit connection between trafficking and prostitution, which it viewed as exploitation. This can be seen from the title of the Convention itself. Further, it is an instrument which is neutral in gender, and thus recognises that men and boys can also be trafficked for prostitution. In addition, the 1949 Convention covers trafficking that takes place both within and across national borders.

1.4 DEFINITION OF HUMAN TRAFFICKING

The term ‘human trafficking’ till the 1990s was defined in a very narrow way and used interchangeably with prostitution. The most commonly used definition was "the illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl-children into sexually or economically oppressive and exploitative situations for the profit of recruiters, traffickers and crime syndicates, as well as other legal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment and false adoption" (United Nations General Assembly: 1994). This definition too was found to be narrow in its scope and it was felt by governments, civil society organizations and other stakeholders across the globe that there was a need to evolve a comprehensive definition of human trafficking not limited to women and girl children only but also included men and male children. Concerns about the perceived rise of transnational organized crime and the plight of people living in slavery-like conditions gave rise to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2000. The Protocol supplements the United Nations Convention against Transnational Organized Crime, 2000. It was signed in Palermo, Italy, in December 2000. The Protocol obliges States to criminalize human trafficking. Besides, trafficking for the purpose of sexual exploitation, it also refers to other types of trafficking. The Protocol stipulates that the consent of a victim of trafficking in persons to the intended exploitation by the means set forth in the definition is irrelevant.
The UN Anti-Trafficking Protocol

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children is now the internationally agreed-upon definition of trafficking.

India is a signatory to the Protocol

Article 3 of the Protocol states:

a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

d) "Child" shall mean any person under eighteen years of age.

In recognizing the wide and inclusive scope of the trafficking definition as well as the close relationship between prostitution and sex trafficking, the United Nations Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children has found that:

"Prostitution as practised in the world usually satisfies the elements of trafficking. It is rare that one finds a case in which the path to prostitution and/or a person's experiences within prostitution does not involve, at the very least, an abuse of power and/or an abuse of vulnerability. Power and vulnerability in this context must be understood to include power disparities based on gender, race, ethnicity and poverty. Put simply, the road to prostitution and the life within "the life" is rarely one marked by empowerment or adequate options.

The following 3 elements, one from each column — act, means and purpose combine to form 'human trafficking' as defined in the UN Protocol.

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<tr>
<th>Act</th>
<th>Means</th>
<th>Purpose Exploitation, which includes...</th>
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<tbody>
<tr>
<td>Recruitment</td>
<td>Threat</td>
<td>Prostitution</td>
</tr>
<tr>
<td>Transportation</td>
<td>Use of force</td>
<td>Other forms of sexual exploitation</td>
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<tr>
<td>Transfer</td>
<td>Coercion</td>
<td>Forced labour or services</td>
</tr>
<tr>
<td>Harbouring</td>
<td>Abduction</td>
<td>Slavery or practices similar to slavery</td>
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The UN Protocol removes 'consent' as a determinant to trafficking. In this way, the Protocol does not distinguish between innocent and guilty, or deserving and undeserving victims of trafficking, thereby obliging States to provide care for all those identified as victims of trafficking. The definition also removes a major burden on the victim that of proving lack of consent, which is a formidable hurdle in legal settings. The definition makes choice irrelevant in defining trafficking because it recognizes that the "choice" to succumb to exploitation is very often a Hobson’s choice, i.e. not a real choice but a forced circumstance.

**IMPORTANT ELEMENTS IN UN PROTOCOL**

Exploitation is the centre piece of this definition. The definition further explicitly states what constitutes exploitation under the legal mandate of the Protocol. It does not leave the definition of exploitation to differing perceptions.

It is also particularly important to note that the definition protects not only those victims who were forced, or where coercion, abduction, deception or abuse of power were used, but also those who were pushed into exploitation by less explicit means of “the abuse of power or of a position of vulnerability” of the victim. By abuse of a position of vulnerability is meant abuse of any situation in which the person involved has no real and acceptable alternative but to submit to the abuse. The vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited, such as illegal or uncertain immigration or residency status, past sexual abuse or prior exposure to violence or poverty.

Movement is not a necessary element in the trafficking process. There may be an overlap of source and destination points as in the case of children born in brothels who are pulled into prostitution when they grow older. They are trafficked within the same source, transit and destination points.

**CASE STUDY:** A child born in a plantation to a family of bonded labourers or a girl born in a brothel are exploited on the same spot where they are born, but they are considered trafficked because the element of harbouring, by abusing the child’s vulnerability for the purpose of exploitation takes place.

**Self Assessment Question**

2) List out elements that constitute trafficking according to 2000 UN Protocol.

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<tr>
<th>Receipt</th>
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<td>Trafficking</td>
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1.5 VARIOUS STAGES OF TRAFFICKING

There are only two stages in the trafficking process as mentioned below.

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<tr>
<th>Stage One</th>
<th>Stage Two</th>
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<tbody>
<tr>
<td>Recruitment</td>
<td>Exploitation</td>
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<tr>
<td>Transportation</td>
<td>Exploitation</td>
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<tr>
<td>Transfer</td>
<td>Exploitation</td>
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<tr>
<td>Harbouring</td>
<td>Exploitation</td>
</tr>
<tr>
<td>Receipt</td>
<td>Exploitation</td>
</tr>
</tbody>
</table>

1.6 HUMAN TRAFFICKING, SMUGGLING AND MIGRATION

Smuggling, trafficking and migration of human beings are three different phenomena.

Smuggling

Smuggling of human beings refers to the manner in which a person enters a country. Smuggling always implies movement and does not imply exploitation. Trafficking, on the other hand, may or may not entail movement and is always for the purpose of exploitation.

As per Article 3 of the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000, the ‘smuggling of migrants’ is defined as:

".....the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident".

The following key elements of trafficking can be identified while comparing the above definition of smuggling with the definition of human trafficking described under the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. First, unlike trafficking, smuggling does not entail coercion or deception, indicating that smuggling is a voluntary act on the part of those smuggled. Second, the services of smugglers end when those smuggled have reached their destination, while trafficking can result in people being subsequently exploited. Third, smuggling involves international movements, whereas trafficking can take place both within and across national borders. Fourth, smuggling requires illegal entry into a given State, while in the case of trafficking entry can be both legal and illegal.

Migration

Migration is simply the movement of people. It is not for the purpose of exploitation and unlike trafficking always implies movement. Migrants may end up being exploited after the process of migration but are not moved for the purpose of exploitation.

The key factor in distinguishing trafficking and migration is the intention of the agency involved in facilitating the overall movement. It is also important to remember that it is
not only the migrants who are trafficked as majority of the persons trafficked are non-migrants.

Illegal migration has many variants and generally refers to people who live without a legal status in the country of their residence. This could happen either if they are smuggled into the country or if they extend their stay beyond the valid visa dates. Misunderstanding about trafficking and migration arise mainly due to the possible human rights abuses of people in smuggling, the lack of sufficient and reliable data caused by the illicit nature of migration and the trafficker's ability to manipulate these processes.

**Self Assessment Question**

3) List out the different stages of human trafficking.

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1.7 TRAFFICKING IN INDIAN SCENARIO

The Constitution of India expressly prohibits trafficking in human beings.

- **Article 14**
  Equality before the law and equal protection of the laws
- **Article 21**
  Protection of life and personal liberty
- **Article 23**
  Prohibition of traffic in human beings and other similar forms of forced labour
- **Article 24**
  Prohibition of employment of children in any factory, mine or any other hazardous work

**Definition of Human Trafficking in India**

The special law in India dealing with trafficking is ‘The Immoral Traffic (Prevention) Act, 1956’ (ITPA). It punishes acts by third parties facilitating prostitution like brothel keeping; living on the earnings of somebody selling her body for sex; procuring, inducing or taking a person for the purpose of prostitution; and detaining a person in premises where prostitution is carried on.

Prostitution and trafficking are inter-linked in Indian law to the extent that ITPA deals with trafficking for commercial sexual exploitation. ITPA provides punishment even for attempt to traffic a person. Therefore, even before a person is physically trafficked the law comes into operation. Section 5 of ITPA speaks of procuring, taking and even inducing a person for the sake of prostitution. According to this section, even attempts to procure and attempts to take or cause a person to carry on prostitution amounts to trafficking.
The Goa Children’s Act, 2003, is the only Indian statute, which covers all aspects of trafficking and is even child specific. According to the said Act, ‘Child trafficking means the procurement, recruitment, transportation, transfer, harbouring or receipt of persons, legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise’.

The other major substantive law in India is the Indian Penal Code, 1860 (IPC). The IPC contains several sections under which a person can be charge sheeted for offences committed by the trafficker. Though a pre-independence enactment, pertinent sections of IPC can be used against traffickers, pimps and those involved in commercializing prostitution and living off the earnings of victims of prostitution or begging, etcetera. In addition, existing rape, assault, and abduction laws can also be used to address the abuse of women and girls in brothels. The Juvenile Justice (Care and Protection of Children) Act, 2000, as amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 is another Act that is being used to protect children in need of care and protection.

The offence of trafficking has the following ingredients:

| Exploitation of the trafficked person | The displacement can be from one country, state, village, community or home to another or from one situation to another. For e.g., when a daughter of a woman in prostitution is also pulled into prostitution by the brothel keeper, she is considered trafficked as she has been displaced from the safety of her mother’s community to the brothel community, though geographically it may happen in the same room. |
| Displacement (physical or situational) | The exploitation may be manifest as in a brothel or latent as in massage parlours, dance bars or beer bars. |
| Commercialization of the exploitation | The exploiter generates revenue in cash or kind from the exploitation even if the victim gets a share of the revenue. The trafficked victim can never be treated as an accomplice, even if she gets a share of the income. |

Self Assessment Question
4) List five examples of exploitation in the context of trafficking in India.

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1.8 TRAFFICKING AND PROSTITUTION

Trafficking is the process and prostitution is one of its outcomes. Section 2 (f) of ITPA defines prostitution as the sexual exploitation or abuse of persons for commercial purposes, and the expression “prostitute” shall be construed accordingly. Thus, if a person is sexually exploited or abused and a second person gains from the exploitation/abuse commercially, then the first person is considered prostituted.

Trafficking is the whole (or any point of the) process of recruiting, contracting, procuring or hiring of a person for commercial sexual exploitation (CSE) or for any other purpose. Trafficking could also be a means for other types of violations such as for developing pornographic material, for promoting sex tourism, for sexual exploitation under the facade of bar tending, massage parlours etcetera, or even for exploitative labour where sexual abuse may or may not coexist. ITPA does not limit the place of prostitution to a brothel alone. As commercial activity need not be only in a brothel, but could also occur in places including a residential dwelling, a vehicle, etcetera.

- Prostitution has been very clearly defined as sexual exploitation in the India law.
- It can also be abuse of a person for commercial purposes. The consent of the victim is irrelevant to her/his exploitation according to ITPA.
- The definition very clearly focuses the crime on the abuser/exploiter and not on the victim.
- There is no blame or stigma attached to the person prostituted.

Self Assessment Question

5) Distinguish between Trafficking and Prostitution.

1.9 SUMMARY

- Human trafficking is a contemporary form of slavery.
- The 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children defines human trafficking by focusing on the elements of act, means and purpose.
- Smuggling and migration of human beings is different from human trafficking.
- In the Indian context, human trafficking is defined under the Immoral Traffic (Prevention) Act, 1956 and Goa Children's Act 2003. The Indian laws define human trafficking as acts by third parties facilitating prostitution or other kinds of nefarious activities.
- Trafficking is the means/process while prostitution is the result/end of trafficking.
1.10 TERMINAL QUESTIONS

1) Describe the evolution of the concept of human trafficking?
2) Define human trafficking and describe the different elements of human trafficking outlined in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children?
3) How smuggling, migration and trafficking in human beings can be distinguished?
4) How is human trafficking defined in the Indian context?

1.11 ANSWERS AND HINTS

Self Assessment Questions

1) Refer to Section 1.3.
2) Refer to Section 1.4.
3) Refer to Section 1.6.
4) Refer to Section 1.7.
5) Refer to Section 1.8.

Terminal Questions

1) Refer to Section 1.3.
2) Refer to Section 1.4.
3) Refer to Section 1.6.
4) Refer to Section 1.7.

1.12 REFERENCES AND SUGGESTED READINGS

2) Government of India (GoI), The Immoral Traffic (Prevention) Act, 1956.
8) Hyperlink to: <http://www.catwinternational.org/> Coalition Against Trafficking in Women (CATW).