The word abortion has been derived from Latin term 'abortus' means an object, which had been detached from its proper site. It is one of the most controversial issues in the world today. Abortion is said to occur when the life of the foetus or embryo is destroyed in the woman's womb or the pregnant uterus empties prematurely before the foetus has attained the stage of viability.

Various religions on the issue of abortion have displayed remarkable consistency and prohibit the practice of abortion strictly. However the only condition under which abortion seems to have been permitted in the religion is when the pregnancy is perceived to be dangerous to the life of mother and that there is no other alternatives to save the life of the pregnant woman. The mother's life is precious because the: (i) mother is the originator of the foetus; (ii) mother's life is well established; (iii) mother is bestowed with duties and responsibilities; (iv) mother is the part of the family; and (v) allowing the mother to die would also result in the death of foetus in most cases.

Socially abortion is discouraged and seems to advocate all plausible means to reduce the rate of abortion. Humanists do not approve abortion as a means of fertility control. Infact they are firm advocates of education for life from an early age, improving the social status of woman, with ready availability of all forms of family planning, emergency contraception etc., in order to reduce
the number of induced abortion.

Legislatively, till late half of the last centuries abortion was strictly prohibited and considered to be a crime, except when performed to save the life of the pregnant woman. However, ever since mankind got knowledge of its reproductive system and procreative capacity it has tried to control reproduction to regulate the births and to have children only when desired. With the stringent law on abortion and legal sanction for the aforesaid act not available, most of the women would go to back street abortionists; consequently the rate of maternal mortality resulting from such illegal abortions had been considerable as these abortions were being performed mostly by unqualified people under unhygienic conditions. These circumstances culminated into and became a driving force for a movement for abortion reform worldwide.

Against the above backdrop, it becomes imperative to address the certain issues and to suggest measures to make the subject more focused and meaningful. The aspects, which need to be dealt in a comprehensive manner, are: [a] is the liberalized abortion law competent enough to meet the challenges posed by the prevalent situation both in substantial as well as procedural way? [b] is woman really free from the bondage of unwanted pregnancy? [c] are the existing laws good enough to check the incidence and practice of sex-specific abortion? [d] are the prevailing medical pre-natal diagnostic technique/tests serving the
purpose for which they have been designed? and finally [e] what are the contemporary developments in the relevant case law in India, Ireland, U.K. and USA on this subject?

United Kingdom liberalized its abortion law through the Abortion Act, 1967 which generally permitted abortion if a pregnancy is unwanted due to the fear of malformed birth. In 1990 The Human Fertilization of Embryology Act, amended the shortcomings of Abortion Act of 1967 and allowed for the bypassing of two-doctor necessity in cases where the termination of a pregnancy is of an immediate expediency to save the life of, or prevent grave permanent injury to the health of the woman [Section 1(4) of the Act of 1990]. Thus the revised 1967 Act, places a much greater emphasis on the needs of a pregnant woman in making a decision concerning the termination of pregnancy.

The Irish Constitution; though prohibits the termination of pregnancy, except when it is established as a matter of probability that there was a real and substantial risk to the life as distinct from the health of the mother [Attorney General V. X and other].

The U.S. Supreme Court in its famous Roe and Doe decisions in 1973 establishes the basic law governing abortion in USA. The court held that abortion was a constitutional right that the state could only abridge after the first six months of pregnancy. The right to privacy includes the right to abortion. Since abortion is a fundamental right, State regulation must meet the "strict scrutiny" standard, which means the State must show that it has a "compelling interest" in having the law: the word "person" in the
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Fourteenth Amendment, does not apply to unborn. The State has an important interest in both preserving the health of the pregnant woman and in protecting foetal life. The States' interest in maternal health becomes compelling at three months whereas in foetal life it becomes compelling at viability i.e. six months. The State may not regulate abortion at all during the first trimester. The state may regulate abortion during the second three months, but only for the protection of the women's health. The State may regulate or ban abortion during the third trimester to protect foetal life.

Abortion in India was exclusively governed by the restrictive law of the Indian Penal Code upto 1971. The same was liberalized by the Parliament with the enactment of Medical Termination of Pregnancy Act 1971. This liberalized abortion law is unique in the sense that it is the only legislation in the world where the failure of contraceptive has been legally accepted as valid ground [to control the menace of population explosion in India] for abortion apart from medical, eugenic, humanitarian and socio-economic grounds. The MTPA is a landmark legislation in the history of social legislation in India and will go a long way in encouraging a woman to decide for herself whether she wishes to bear and rear the child or not. Thus the Act has played a vital role in emancipation of women from the age-old fear of abortion being declared as a sinful and criminal act.

The medical advancement and scientific developments like ultrasonography, amniocentesis and chorionic villus sampling
developed to detect the genetic abnormalities in the foetus at sufficiently early stage in pregnancy. So that if required the foetus can be aborted. Incidentally apart from detecting the serious mental and physical defects in the unborn these techniques could also reveal the sex of the foetus. The dowry system, hatred against women and sons’ preference in society paved the way to use or rather misuse these sophisticated techniques to get rid of female even before birth within the permissive limits of liberalized abortion law. Viewed, female foeticide as the ultimate cruel step in tragic drama of female life, the Government of India enacted the PNDT Act 1994 to regulate and prevent the pre-natal diagnostic techniques to curb the evil of female foeticide.

However, the mechanical reading of the Act, of 1994 which though does not expressly prohibits pre-conceptual sex-selections because it is not technically defined in the Act, as pre-natal. The doctors with the help of modern techniques destroy the female chromosomes and allow only the male chromosomes to fertilize without any fear of law as they insists that their act is pre-conceptual and not pre-natal, hence do not violate the provisions of PNDT, Act 1994. To meet this challenge, the Parliament on 20th December 2002, amended the Act of 1994 in the form of P.C & PNDT (Prohibition of sex selection) Act 2002 to prevent these evils against female gender.

The liberalized abortion laws permit the termination of pregnancy before viability for mere asking. The Constitution of every country that liberalized abortion law guarantees the
protection to every person against the deprivation of life, liberty or property without regular procedure. The Fifth Amendments' due process clause was intended to guarantee that no one be deprived by the Federal Government of life, liberty, or property without regular procedure. The Fourteenth Amendment made that guarantee applicable against the States. But these guarantees of fair and regular procedure did not apply to unborn, since when the two amendments were proposed and ratified, abortion was known, and there had been arguments about whether life began at quickening or some other stage prior to birth. So if they intended to protect all human life, they would have known that the amendment did, or very probably would, prohibit some category of abortion. So those who adopted these amendments addressed only the rights of person who had been born.

According to the Human Life Bill 1981 of America, the life of each human being begins at conception and that Fourteenth Amendment of the U.S. Constitution protects all human being. However, the judiciary had a different attitude so much so that in 1973 the U.S. Supreme Court in Roe, held that an unborn child is not a 'person' within the fourteenth amendment of the American constitution and term 'person' had been used only postnatally. In 1989 the Supreme Court in Webster held that "the life of each human being begins at conception and that "unborn children have protect able interest in life health and well being. Again in 1992 in Casey like in Webster the Supreme Court upheld State's 'concern for life of the unborn' and that too from the 'outset of pregnancy'
thus lending assurance to the view that foetus has life from the outset of pregnancy. So the controversy is whether or not the Fourteenth Amendment of the American Constitution considers an 'unborn child' a 'person' and thus extends the protection as guaranteed by the constitution against deprivation of life, liberty and property to every person, without due procedure of law.

*Article 21 of Indian Constitution* guarantees protection to every person against deprivation of right to life and personal liberty without due procedure of law. The unborn child possesses all the characteristics of life, so it can rightly be deduced that the same is included within the definition of person as used under Article 21 of the Indian Constitution. *Section 3 of the MTPA, 1971,* gives exclusive right to the mother to get her pregnancy terminated, without any reasons, till the foetus becomes viable, which is in contravention of the provisions of Article 21. Thus, there is an immediate need of either an Amendment in Article 21 or a separate legislation declaring that unborn child is not included within the definition of person in order to save the MTPA of being declared unconstitutional.

The abortion law always recognizes that where a choice must be made between life of the pregnant woman and the life of the unborn child, it falls within the general rationale of self-defence, if the mother seeks an abortion to preserve her own life. Similarly, even if the foetus is a *human being,* it still would not have right to force the mother to use her body to keep it alive against her will. If she decides to give birth, then “life” is a “beautiful choice”. But
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it is her choice; she cannot legally be forced into it, as abortion is an issue of woman, and so it should be the woman’s right to choose.

After exhaustive critical study of the relevant materials on the subject a modest but sincere attempt has been made by the present researcher to put forward the following suggestions for the kind appraisal of the reader.

❖ A decentralized safe abortion service should be established. A proper dissemination of community level education about the availability of safe, legal abortion by adopting updated safe, easy and simple technologies eliminating cumbersome registration of centers and establishment of additional Training Centres to achieve the desired objectives of National Population Policy.

❖ Female foeticide is caused by a deep rooted neglect and devaluation of women in our society. The pre-natal sex determination on commercial basis followed by sex selective abortion (female foeticide) under the permissible limit of Medical Termination of Pregnancy Act, cannot be checked unless the concerted efforts are made to:
  - break the existing caste system;
  - abolish the dowry menace;
  - bring the cultural consciousness highlighting the importance of females as equal partners;
- educate the individual woman as well as the general public;

- Efforts should be made to stop the medievalisation of the present generation’s desire for male child, otherwise female foeticide would continue to perpetuate in India. So there has to be an immediate redress of misery by creating public opinion against rituals promoting son preference.

- With regard to Medical Termination of Pregnancy Act, 1971, the pregnancy that is caused as a result of such sexual intercourse, not resulting from rape and thus disentitles the woman to get the pregnancy terminated under section 3 of the MTP Act, 1971. Since consent of the woman for such intercourse is implicit in the Act to remove such a difficulty a provision as suggested below (explanation III) may be added:

"Where any pregnancy is alleged by the pregnant woman to have been caused by sexual intercourse not amounting to rape but as a result of sexual intercourse falling under sections 376-A, 376-B, 376-C and 376-D, the anguish caused by such pregnancy shall be presumed to constitute grave injury to the mental health of the pregnant woman".

- Sections 493, 496 and 494, 495 and 497 of the Indian Penal Code comprise yet another group of sections that create a new category of sexual offence which do not amount to the offence of rape. Where the pregnancy is caused due to the sexual intercourse falling under the above mentioned
sections of the IPC, since in such sexual intercourse, the woman have consented, consequently the same cannot be said to have been caused due to the offence of rape. Therefore, the pregnant woman will not be entitled to get her pregnancy terminated under Section 3 of MTP Act. Accordingly, to meet out such a circumstance an other explanation clause (as explanation IV) may be added in section 3 of the MTP Act, legalizing abortions caused as a result of sexual intercourse other than rape as: “Where any pregnancy is alleged by the pregnant woman to have been caused by deceiving her into believing that she is legally married to the man concerned and makes her to live as wife and husband is either by adultery or by bigamy, the anguish caused by such pregnancy shall be presumed to constitute grave strain to the mental health of the pregnant woman.

- Persons in need of undergoing the use of Pre-Conception or Pre-natal Diagnostic Techniques must first make an application in the manner to be prescribed by the appropriate authority, seeking grant of permission which should include, inter alia, the name, address and specialization of the doctor/hospital/diagnostic center/clinic laboratory etc., where that person is going to have such a treatment.
- No doctor/hospital/diagnostic center/clinic/laboratory etc; should undertake any such use of pre-conception or pre-
natal techniques without the production of the certificate of grant or approval for so undergoing issued by the appropriate authority under the Act.

- Before granting or issuing any of the said certificates, the appropriate authority may take expert advice so as to verify the genuiness in the requirement of such grant or approval.

- A deeming provision should be enacted empowering the court to presume use of Pre-natal or Pre-Conception Technique, especially in respect of female persons up to the age of twenty years, as a cognizable offence within the meaning of the Act as against doctor or hospital or diagnostic center or clinic, as the case may be, where any such technique is used without the requisite grant by the appropriate authority.

- The PC and PNDT (Prohibition of Sex Selection) Act, 2002 should have a provision for stringent implementation machinery. Because mere making the law stringent and prescribing severe punishment to violators will not serve the purpose and thus cannot achieve the desired objectives.

- It is the responsibility of the State, the Medical Profession NGOs, Women Organizations, Journalists and Media to come together to see that the provisions of the Act are implemented to its fullest extent.

- There should be a proper dissemination of information regarding the provisions of the Act and should be strictly
implemented by ensuring a registration of the clinic and punishment to the offenders.

- The institutions which are given licences for Pre-natal Diagnostic Tests should be closely monitored and those who violate the law should be severely punished.

- The Government should remove gender discrimination in the school curriculum.

- Steps be taken to sensitize society towards the concept of equality of sexes and the female child’s right to life and survival.

- The Government should take steps to empower women in the area of education employment and decision making and to take stringent measures to eliminate sexual abuse and the dowry system.

- Under Article 21 of the Indian Constitution the term life may include ‘potential human life’ and as life begins at or near conception, the term ‘person’ may be interpreted to include ‘unborn person’ also. Therefore, at no stage of pregnancy, a mother can be allowed to terminate pregnancy for the mere asking, unless Article 21 of the Constitution is suitably amended to provide clearly that ‘person’ does not include an ‘unborn child’ in the mother’s womb.

- In order to save the MTPA, 1971 from being unconstitutional what is needed is an amendment of Article 21 to the following effect:
Article 21(2): "Nothing in this Article shall prevent the Parliament from making any law or shall affect the operation of any existing law depriving an 'unborn person' of its life by termination of pregnancy by a woman if the continuance of pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health or if there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Thus the effect of clause (2) would be to save the MTPA, 1971 from being unconstitutional as it would operate as an exception to Article 21 (1) and thus the constitutional validity of the MTPA, 1971 would not be jeopardized in any way.

- Reference to mother’s right to destroy any foetus of her own without the consent (even of her husband) of others, it is suggested that once a woman wishes to abort the foetus then the consent of all those (at least husband) who are directly affected by such act of her may be considered. There are numerous cases where doctors will be anxious to ascertain the husband’s wish and to obtain his consent to an abortion being carried out, so that the discontent may be avoided.

- The right to privacy of a woman should be recognized, which inter alia must include the right to space, limit or reject pregnancy, the right to decide about her own body
and a free choice to decide whether and when she can terminate her pregnancy and guardian’s consent irrelevant, provided she is of the age of eighteen years.

- Woman should have ‘personal liberty’ to destroy any foetus of her own if she finds it intolerant. It is far more important to consider her life and health than that of an early foetus, representing a child (would be) who has not entered the human community. Woman should have control over her own body and to force a woman to continue an unwanted pregnancy is to impose a kind of slavery upon her, at least to infringe her sense of self respect and dignity.

- Abortion is an issue of woman, so it should be the woman’s right to choose. She should have the free will to consider other’s views and opinions but it must be her ultimate decision and be guaranteed by law.

- After the point of viability, that is the point when the foetus is capable of survival, the state is free to prohibit abortion but only when it is necessary, i.e., as the woman’s health and life interests are not at stake. But when the woman’s health interest is in conflict with those of State’s interest and potential life, the woman’s interest in health should take precedence. Hence mother’s life should gets precedence over the life of the foetus.