Internet Content Regulation: Is a Global Community Standard a Fallacy or the Only Way Out?
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Abstract
The Internet has evolved as a borderless medium that transcends all geographical boundaries of States. It is not to say that the Internet is a totally unregulated virtual environment that is inherently anarchic as there are many spheres and layers of effective regulation already in place on the Internet. However, content regulation still remains a sensitive area that sparks controversy at the very mention of the word ‘regulation’. One of the major factors that renders it difficult to regulate content is the borderless nature of the Internet, i.e., any regulation would have global implications that sometimes interfere with the positive legal rights of citizens of other societies that have more liberal community standards. Protection of children from pornographic and other inappropriate content is the one of the major reasons cited by proponents of regulation, but while there is consensus and universal agreement in combating child pornography there is little agreement on the need to regulate adult pornography for the protection of children.

The concept of ‘contemporary community standards’ was initially seen as unworkable in the Internet context. While the line of argument that if a publisher chooses to send its material into a particular community, it is the publisher’s responsibility to abide by that community’s standards was the accepted norm in the traditional forms of media, was considered too harsh an approach to be applied for the Internet. There has been a shift in this rigid position over the years, which was reflected in the U.S. Supreme Court decision in Ashcroft v. ACLU when the court held that reliance on community standards to identify material that is harmful to minors does not by itself render a statute substantially overbroad for purposes of the First Amendment. There have been suggestions that a global community standard can be established for effective internet content regulation. Protection of children is at the core of all arguments for regulating content, so there have been no dearth for analogies drawn to the considerable uniform standard already achieved in the areas of regulating child pornography, money laundering etc. The paper will examine the strength of different arguments in favour of establishing a global community standard for the Internet, and in particular will analyse this in the context of sovereignty of states, the international obligation to protect world culture and diversity, free expression rights and the rights of children under various international instruments. It is argued that while a global standard is difficult to achieve, it is not impossible and there are factors that are worthy of consideration that should prompt us in looking towards this direction.