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The Legal Personality of Artificial Intelligence: Moving Beyond the Concept of ‘Electronic Persons’

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Artificial Intelligence (AI) has transitioned from a futuristic concept to an integral part of modern life, raising critical legal questions regarding its role and accountability. This article delves into the debate on whether AI should be granted legal personality, particularly in light of the European Parliament’s 2017 proposal to classify certain autonomous AI systems as “electronic persons.”¹ While this approach seeks to address issues of liability, it faces significant limitations due to AI’s lack of consciousness, moral agency, and intentionality. Instead, the article advocates for alternative models, such as treating AI as digital agents, where human owners remain accountable for AI actions, or establishing AI as limited liability entities, providing a balanced approach to responsibility and legal recourse. The article also explores the Indian context, emphasising the need for a tailored legal framework that adapts to AI’s growth and discusses global perspectives on AI regulation. The importance of ethics, transparency, and fairness in AI regulation is underscored, urging India to align with international standards while leading in responsible AI innovation.

Keywords: *artificial intelligence, legal personality, AI regulation, electronic persons.*

¹ European Parliament, *Report with recommendations to the Commission on Civil Law Rules on Robotics* (2015/2103(INL)) (2017)

INTRODUCTION

Humanity is currently undergoing a period of significant social change as we transition from one technological era to another. 'Smart' machines and software are rapidly advancing, and artificial intelligence (AI) systems are increasingly capable of taking over tasks traditionally performed by humans.² As AI technologies improve and become more capable of making independent decisions, there is a growing debate about whether AI should be recognised as having legal rights and responsibilities, just like humans. This idea was considered theoretically as far back as the 20th century. Still, it has gained more attention in recent years, with advancements like self-driving cars and robots being given more complex roles. Recently, AI has advanced from science fiction to a practical component of daily life, altering industries, increasing productivity, and transforming human interactions.

The legal problem of defining the status of artificial intelligence is of general theoretical character, which is due to the objective inability to forecast all possible results of developing new models of artificial intelligence. However, artificial intelligence systems are already factual participants of certain social relations, which requires setting the 'benchmarks' i.e. solving the fundamental issues in this sphere in order to legislatively stipulate, hence, reduce the share of uncertainty in forecasting the development of relations involving artificial intelligence systems, in the future.³ As AI systems become more autonomous, the subject of whether they should be awarded legal personality has become a serious point of contention.

The European Parliament's 2017 proposal to establish a legal status for 'electronic persons' aroused substantial concern and debate about the need for a legal framework to handle the particular difficulties brought by AI. While providing legal personality to AI has been offered as a solution to liability and accountability concerns, this simplistic approach ignores the intricacies at hand.⁴

² I A Filipova and VD Koroteev, 'Future of the Artificial Intelligence: Object of Law or Legal Personality?' (2023) 1(2) Journal of Digital Technologies and Law <<https://doi.org/10.21202/jdtl.2023.15>> accessed 08 September 2024

³ DaaJ Gunkel, *Robot Rights* (MIT Press 2019)

⁴ European Parliament (n 1)

The US Parliament's Algorithmic Accountability Bill of 2019 purposefully avoided defining the term artificial intelligence in favour of defining the term automated decision system (u/sec 2(1)) as follows:

Automated Decision System: A computational process that decides or assists humans in making a decision that impacts consumers is referred to as an 'automated decision system'. Machine learning, statistics, and other data processing or artificial intelligence techniques can all be applied to this computational process.⁵

This article advocates for a sophisticated framework that acknowledges AI's distinct character and investigates alternative models such as limited liability companies, digital agents, and sui generis legal categories while also considering the Indian context, namely how India's legal system may adapt to the emergence of AI.

WHAT IS LEGAL PERSONALITY?

Philosophically speaking, personality is a person's base of knowledge. In law, it refers to a unit that has rights and obligations. It's critical to separate personality from humanity. Though, technically speaking, personality also relates to inanimate objects, only naturally arising individuals are thought to be human. Thus, personality is not limited to humankind. Personality and humanity can coexist or separate at different points in time. In a similar vein, there are legal beings that are not people, such as companies or idols.⁶

Thus, legal personality is a characteristic of a person to hold rights and obligations, which includes some entities besides human beings like corporations as juridical persons. In legal theory, personhood has two causes:

- It is presumed to originate either in re (Latin for 'in the thing') or,
- By transference of these causal attributes.

⁵ Algorithmic Accountability Bill 2019

⁶ *Ibid*

Extending such status to AI raises several foundational questions: Can non-human entities own rights and responsibilities? Can AI own or sell property, make contracts, or be liable for damages?⁷

The European Parliament's suggestion to classify robots that act independently upon our world as being 'electronic persons' was mainly a matter of liability. An autonomous AI system that causes harm or breaks a contract can be particularly problematic, especially when said actions of the AI are not being directly controlled using a human operator. It suggested that creating a new legal status for AI would make the responsibility clear and standardise dispute resolution. Nevertheless, this form of categorisation has been criticised for being oversimplified and not considering the intricate interplay between AI systems themselves and their human designers as agents or owners within larger socio-technical networks.

THE LIMITATIONS OF THE 'ELECTRONIC PERSON' MODEL

However, the notion of 'electronic persons' has several limitations. Unlike a corporation, which is an organisation made up of human shareholders making decisions guided mostly by self-interest and desire to grow profits, AI systems are unconscious entities (aside from the humans programming them). The devices work off of algorithms and data entered into them, with no comprehension of ethics or morality.

Legal personhood to AI: If granted legal personhood, it could muddy the waters in accountability and liability by potentially providing creators or users with an escape from responsibility for the actions of their AI system (for example, only applying liability solely on a third party / sole owner which is now the 'AI').⁸ This could create a legal gap or shrink the bearer of responsibility for any possible damage caused by AI.

Additionally, being a legal person usually carries with it some or all of the following rights and others: AI cannot comprehend nor act upon- let alone be held accountable for violating (or

⁷ Dr. Amit Singh and Nidhi Shanker, 'Interplay between Artificial Intelligence and Copyright laws in India' 19(1) (2024) Tec Empresarial <<https://revistastecac.cr/index.php/TEC/article/view/55/56>> accessed 08 September 2024

⁸ MA Boden, *Artificial Intelligence: A Very Short Introduction* (Oxford University Press 2018)

redeeming) by invoking as a defence - rights and duties in the manner human actors or even corporations can. Artificial intelligence systems lack a will, goals, and moral bearings. Holding them to account in the same way we would human agents or corporations may not only be indefensible but potentially pose problems now and further into the future as far as its ethics/operative paradigm goes. But what if an AI turns out to be legally guilty of causing harm, would it then go about 'sentencing' the AI?⁹

ALTERNATIVE MODELS FOR REGULATING AI

Due to the limitations of the electronic person paradigm, it is important to explore other models that can recognise the unique attributes of AI. One of these is the concept of treating it as a digital agent instead of a person. This concept states that AI is a tool that can perform on behalf of its owner. This model aligns with existing legal frameworks where principals are held accountable for the actions of their agents, including corporate employees. By framing AI as a digital agent, the law can ensure that accountability remains with humans, thus preserving the moral and ethical foundation of liability.

Another possible approach is treating AI systems as a form of '**limited liability entity**'. Under this model, AI systems could be assigned a limited form of liability, similar to that of corporations, but without full legal personhood. This could involve creating a separate category of legal entity that recognises AI's unique status – allowing for liability to be capped or shared with the AI's developers or operators, depending on the level of control and foreseeability involved in the AI's actions. This model would protect AI developers and operators from excessive liability while ensuring that victims of harm caused by AI have a means of recourse.

Another possibility is to set up a distinct legal category for AI, which has been described as '*sui generis*'. In this case, new legal standards would have to be created which correspond to the potentials and threats of AI systems. Such a category could, for instance, provide for applicable rules on liability, copyright ownership of AI-created works, and guidelines on the application of AI. Such a *sui generis* system would permit a system that is much more dynamic and is better

⁹ Joanna J. Bryson et. al., 'Of, for, and by the people: the legal lacuna of synthetic persons' 25(3) *Artificial Intelligence and Law* <<https://doi.org/10.1007/s10506-017-9214-9>> accessed 15 September 2024

suited to the evolution of AI systems.¹⁰ This approach also recognises that AI poses problems that cannot be catered for within the existing legal structure.

THE ROLE OF ETHICS AND ACCOUNTABILITY IN AI REGULATION

Ethics play a very important in the development of laws on AI. When the AI system is involved in making decisions that affect people in several sectors, including legal systems and health programs, such systems need to be ethical in their operations. Ethical in this context means always being ethical in the use of AI technologies, which involves openness of operation, responsibility, and justice. Such a legal regime should instil such characteristics enabling the people to have confidence in the use of Artificial Intelligence.

These reasons justify the need for an even greater focus on accountability. This responsibility management becomes more complicated as systems of machines become more self-sufficient. For instance, developers, users, and operators contribute differently towards the functionalities of the AI systems. Hence, there is a need to have a strategy that defines the level of culpability among the three categories. This may consist of outlining procedures on how to socially design and use AI, for example, decreasing and informing about AI decisions, using the regular monitoring approach on the AI systems' desired outcomes, and the consequences of misuse of AIs.

THE INDIAN CONTEXT: ADAPTING LEGAL FRAMEWORKS FOR AI

As one of the world's largest technology hubs, India is playing a key role in the development of AI. However, the country's legal framework for AI is still in its early stages and mainly emphasises data protection and privacy issues. The Information Technology Act of 2000 lays the groundwork for regulating digital activities in India, but it fails to specifically address the unique challenges posed by AI.¹¹ With the recent introduction of the Digital Personal Data

¹⁰ Ugo Pagallo, *The Laws of Robots: Crimes, Contracts, and Torts* (Springer Netherlands 2013)

¹¹ Information Technology Act 2000

Protection Bill in 2022, India is beginning to establish a more comprehensive data protection strategy. Despite this progress, the issue of AI regulation remains largely uncharted territory.¹²

Owing to the web-centred advancing economy in India, lawmakers in the region cannot afford to sidestep the question of AI legal personality. Rather than adopting the ‘electronic person’ concept, India may seek to evolve an appropriate model that is consistent with its legal culture as well as its socio-economic matrix. This may also entail the setting up of adequate legal and institutional frameworks for AI herd management, enforcement of regulations on AI and its usage on people, as well as amending consumer protection laws to include these emerging technologies.

India may as well use its regulations on its companies. As corporations are recognised with a separate legal personality and limited liability, ‘Artificial’ systems can be treated as legal departments or limited companies. This means that accountability would still be placed on human beings who operate them to settle any matters concerning them. Moreover, India can also champion the development of ethical principles relating to justice, compassion, consequences, and fairness regarding AI systems and processes. Such guidelines may enhance the image of other nations, making India their president where the destructive development of AI solutions is concerned.

INTERNATIONAL PERSPECTIVES AND HARMONIZATION

The question of AI’s legal personality is not limited to India. It is a global issue that requires international cooperation and harmonisation. Different countries have taken varied approaches to AI regulation, reflecting their legal traditions and societal values. For example, the European Union has been proactive in considering the legal status of AI, with proposals for a comprehensive AI Act that aims to regulate AI based on risk assessment. In contrast, the United States has taken a more market-driven approach, with less emphasis on regulation and more on innovation.

¹² Digital Personal Data Protection Bill 2022

For India, engaging in international dialogue and aligning its AI regulations with global standards will be crucial. This will not only facilitate cross-border cooperation but also ensure that Indian AI companies can compete in the global market. International harmonisation could involve developing common standards for AI ethics, liability, and accountability, as well as establishing mechanisms for resolving cross-border disputes involving AI. In the context of an international conversation on AI regulation, India hopes to play its part in the fine-tuning of a judicial system enhancing and regulating the growth of AI.

FUTURE DIRECTIONS: AI AND THE EVOLUTION OF LEGAL NORMS

There is no doubt that as new technologies emerge in the field of Artificial Intelligence (AI), the surrounding legal standards and framework must also evolve in that direction. It is no longer a question of whether AI will be acknowledged as a legal person; it is now a matter of when and how it will happen. The law has always changed with the times, be it the steam engine, electricity, or even the World Wide Web. The difficulty with AIs is that they can act independently of human beings in making certain determinative decisions that, in the past, only human beings could undertake. That comes with the need to rethink legal issues such as liability and accountability as well as personhood.¹³

Future development legal academics and practitioners in tertiary must devise different legal strategies that seek to encompass the different problems that AI brings. This will involve not merely changing existing ones but also introducing new legal concepts that relate to the effects of AI. Public participation in this process will be of great significance as the legal certification of an AI would affect society in different ways. This will ensure that legal debates on the regulation of AI include the public in law-making processes and that policymakers create legal frameworks that match the socio-cultural structure of society.

¹³ Sergio M. C. Avila Negri, 'Robot as Legal Person: Electronic Personhood in Robotics and Artificial Intelligence' (2021) 8 *Frontiers in Robotics and AI* <<https://www.frontiersin.org/journals/robotics-and-ai#editorial-board>> accessed 15 September 2024

CONCLUSION

The question of whether an AI can have a legal personality provokes contestations with the established systems of law and pleads for ingenious approaches within the law. Moving beyond the simplistic notion of 'electronic persons,' this essay has advocated for a more prudent approach that appreciates the inherent peculiarities of artificial intelligence systems. Using frameworks like digital agency, limited liability entities, and sui generis, the legal development in a matter of AI shall protect the core elements of human accountability and responsibility towards society and professionalism.

In the case of India, it will become very important to construct a legal strategy of artificial intelligence that is consistent with the Indian legal order and its social and economic reality. By looking at and learning from other countries and actively participating in global dialogue, India shall help in the creation of legal mechanisms that are more conducive to technological progress while serving the needs of society. Technology is rapidly changing the future and so is the way the legal system has been utilised; technology is enhanced to foster justice, equity, and accountability in the new digital world and so the law must change.