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Research Article

Legal Personhood Of Artificial Intelligence: A Contemporary Perspective On Juristic & Electronic Personality

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ABSTRACT

What is artificial intelligence? Can AI be considered as an autonomous entity? What does it mean to be autonomous and how to regulate it? When we are considering regulation of an autonomous entity, can it be considered as a legal person for the purposes of law? Should a new category of personality be created for AI? The article addresses these issues by delving into the existing philosophies on legal personhood and examining how they can justify granting legal personhood to AI. The authors have also explored a relatively newer concept of electronic personality and its suitability in case of AI. Furthermore, the authors have tried to analyze the nature and extent of the rights and responsibilities that can be assigned to AI. The approach to this topic is predominantly based on existing literature, following a doctrinal methodology.

Keywords: Artificial Intelligence, Legal Personhood, Electronic Personhood, Jurisprudence.

INTRODUCTION

With the development of artificial intelligence, its legal regulations have become a challenge. One of the major discussions has been about whether artificial intelligence should be recognised as a legal person or not. The traditional concept of personhood recognises natural persons and juristic persons. This traditional concept is challenged by the autonomous nature of artificial intelligence as it resembles human ability to take autonomous decisions which can significantly affect rights and duties. This research paper analyzes the existing legal system on the concept of personhood and takes help of John Grey's idea of personhood to determine if artificial intelligence can be considered as a person or not. According to him, a legal person is an entity which is subjected to legal rights and obligations unlike a human. In the attempt to understand and define the personhood status of artificial intelligence, the lack of its common definition becomes a hurdle. (Grey, 1997, p. 67-110)

To determine whether AI can be considered as a legal person or not, the concept of legal subjectivity needs to be discussed. Legal subjectivity is the attribute which is recognised by law through determining rights and liability of an entity. (Dremliuga et al., 2019, p. 35) Juristic personality of a company, for example, consists of rights, liability and duties, which is not same to that assigned to a river or a deity. However, legal capacity to be subjected to rights and duties and the ability to perform legal acts is necessary for both legal subjectivity and legal personality. Therefore, many scholars oppose the idea of granting legal personality to artificial intelligence, becauseeven though it can take autonomous decisions, it is not sentient and cannot express its will. (Simmler & Markwalder, 2019,p. 5-16)

One of the primary reasons behind discussing personhood status for artificial intelligence is its autonomous nature. The ability to evolve based on the data processed, makes the content generated by artificial intelligence uncertain thereby, application of IP laws becomes challenging regarding vesting of rights. AI generated content poses legal challenges regarding ownership of copyright over the content, determining liability and situations where AI enters into contractual relations. This can pose legal challenges when the artificial intelligence has increased autonomy and can act like humans.

There have been conflicting opinions upon granting personhood status to artificial intelligence and few scholars suggest that an alternate legal doctrine designed specifically for artificial intelligence would be a better idea.

They suggest that AI should be considered as a mere tool or an agent when entering into a contractual relationship to determine rights and liabilities. However, one of the essential components of agency is the capacity to give legal consent which means that AI should be legally capable of mental capacity, which in turn requires legal personality. (van den Hoven van Genderen, 2018, p. 16-30) The issue of granting personhood status becomes of importance due to the benefits derived from the status. Along with the benefits derived, having the ability to be held responsible before the law i.e the ability to sue and be sued is also an important aspect of legal personhood. Even if law recognises AI as a legal person, the world might face regulatory challenges due to the lack of a uniform legal system across the globe. Apart from this, further challenges might also arise due to the unique technological structure of every AI. Due to the autonomous nature of AI, predicting a particular outcome might become difficult which may pose challenges in drafting specific regulations to ensure that they operate within a particular legal and ethical framework.

In a situation where the world is struggling to accept a common definition for artificial intelligence, the European Union, released a draft report on artificial intelligence where they have attempted to define artificial intelligence. The European Parliament defines an AI system as a system that displays intelligence behavior by analyzing certain inputs and acting, with some degree of autonomy to achieve specific goals. AI systems can be purely software based, acting in the virtual world, or can be embedded in hardware devices. (*REPORT With Recommendations to the Commission on a Civil Liability Regime for Artificial Intelligence | A9-0178/2020 | European Parliament*, 2020) The Parliament's resolution on civil liability regime for artificial intelligence (2020/2015(INI),2020 O.J.(C 338) and intellectual property rights for the development of artificial intelligence technologies (2020/ 2014 (INL), 2020 O.J. (C 338)1) states that no legal personality should be granted to AI since they do not possess human consciousness and their development was done to serve humanity. The parliament also states that AIs are capable of causing more harm because of human control and therefore, cannot be held liable. Parliament in this resolution also acknowledged that due to the autonomous nature of AI, creation of AI-generated content might result in intellectual property right issues which might potentially have adverse effects on human creators. This approach however, was not welcomed by the scholars and considered not at par with the developing technologies.

RESEARCH METHODOLOGY

This research paper adopts a comparative and deductive approach to answer the questions raised. It involves an in depth study and analysis of existing jurisprudence and theories on legal personhood and their applicability in case of artificial intelligence. The authors have analyzed research papers, guidelines and scholarly articles to understand various perspectives and viewpoints. In this regard, the research paper attempts at finding and highlighting the loopholes and shortcomings in the existing jurisprudential theories. Through this, the authors have attempted to contribute through a comprehensive and balanced approach in the ongoing debate around personhood status of artificial intelligence. The aim is to identify the loopholes and provide possible solutions to fill in the existing gaps.

The research however has some limitations. The constant evolving nature of artificial intelligence and law might result in not covering all of the aspects. The researchers acknowledge this limitation and attempt to address it.

LEGAL PERSONHOOD AND ARTIFICIAL INTELLIGENCE

According to Dyschkant, the concept of legal personhood is an anthropocentric philosophical approach which plays an important role in determining the personhood status of non-human entities. (Dyschkant, 2015,p. 2080-2110) Anthropocentric philosophy focuses on human experience in determining what counts as a person because it gets difficult to assign a personality when the entity is not sufficiently like a human. Contrary to this, Grey puts forth capacity, accountability and humanity of AI as determinant factors for personhood status. (Koops et al., 2010, p. 501)

In legal jurisprudence, the concept of person ficta and juristic person are different from natural person. These ancient concepts can be traced back to the Roman era where person ficta i.e. an imaginary person, could only exist if the State recognised it through a legislation. Compared to the existing concept of juristic personality, person dicta did not have a separate identity from that of its members and was dependent on human will to own any rights. Subsequently, the concept of persona ficta was replaced with the idea of juristic personality by using a priori notion of law. (Brown, 2021, p. 2010-2015) The fundamental difference between both these concepts is the conferring of legal rights. Juristic person attaches legal rights to a subject, and that can be either an individual or a group of individuals. An individual/ group of individuals having a definite set of legal rights is a fiction exactly like the legal personality of a human being.

This difference in personalities has been followed by many countries. The United States for example, follows the concept of persona ficta wherein a corporation is legally recognised as a fictitious person whereas, in European countries like Germany, France etc. the corporations are considered as a real person. Deiser, in his work, terms this as a broad generic human existence recognised by law as a juristic person. The difference lies in the will of a person. A juristic person is legally not capable of having or expressing its will since it has abandoned the fictional premise under the persona ficta approach. Will is required to confer right and not to

impose duty. (Deiser, 1908) Therefore, artificial intelligence can be considered as a persona dicta with duties without a will, or as a persona ficta with recognized rights and will, or as a juristic person without a will.
The question whether artificial intelligence has a will or not is dependent on its status as a persona ficta. (Brown, 2021, p. 210) If artificial intelligence is recognised as a legal person, the issue would be whether the rights are conferred through its programmers or owners or whether the law should recognise personhood and impose legal duties even in absence of a will. These are some major challenges that need to be addressed and are dependent on the public policy of the nation. (*Matter of Nonhuman Rights Project Inc. V Stanley*, 2015)
According to Gray, rights and duties of a legal person are alternate and not concurrent. Even though law recognises certain rights in favor of a legal person, no concurrent duties are imposed on them. He draws analogy from recognised legal persons like temples and churches which are considered as legal persons but have no corresponding duties. In his opinion, duty does not require will but to have a right and exercise it, one needs to have a will. (Grey, 1997, p. 67-110)
However, to determine these policy questions, we need to address a couple of fundamental ideas- whether to grant rights and duties to AI or not. Many scholars are of the opinion that no rights should be conferred on artificial intelligence since rights are granted to an agency which has the capacity to contribute to the society as rights come along with their set of co-related duties. (*Matter of Nonhuman Rights Project, Inc. V Lavery*, 2018) Legal status granted to temples etc. is dependent on the human intervention to enforce the legal rights on their behalf. (Chesterman, 2020, p.830) However, the ability to make autonomous decisions is what makes artificial intelligence unique and different from already existing legal personalities. Solaiman takes an anthropocentric approach and states that since artificial intelligence does not rely on human intervention, they should not be granted personhood status. (*Byrn V. New York City Health & Hospitals Corp., 31 N.Y.2d 194*, 1972) However, the programmer of AI or its owner can be considered to confer rights to artificial intelligence.
Another fundamental question that runs parallel with conferring rights is imposition of duties on artificial intelligence. The two arguments against imposition of duties on AI are the lack of any mental element and the challenges in enforcement and determining the liability. However, it can be argued that artificial intelligence is designed and programmed to perform a particular task which can be considered as intention for the purposes of bestowing duties. (Solaiman, 2017, p. 161) To illustrate, AI that are designed to collect data to learn and develop itself and predict behaviors can be considered for the purposes of imposing duties. However, if the law is unable to enforce these rights, duties and fixation of liability, the legal obligations are meaningless. One of the primary concerns in enforcement of liabilities is its effectiveness against non- human entities since the humans would eventually bear the responsibility for infringing actions.
The question whether an artificial intelligence can be granted rights and duties depends on whether they can own the rights and duties derived from property ownership. (Davis, 2011, p. 610) Since the ability to legally hold property in one's name has been the foundation of legal personality; it is necessary to enquire that to what extent can an artificial intelligence be entitled.

ARTIFICIAL INTELLIGENCE AND PROPERTY OWNERSHIP

Property ownership and legal personality are interrelated concepts. The status of personhood largely depends on the fact that an entity can hold property in its name. In the existing legal system, the property ownership by a non- human entity depends upon a human agent, acting on its behalf to protect and enforce the rights. (Bisoyi, 2022, p.379) This relationship can be understood from the principle that which the law recognizes as a property will not have personality rights and to own property, one must have legal personality. Upon grant of personal status, the non- human entity transitions into a legal being, vested with rights and duties, however, this change is dependent on the public policy of the nation. Artificial intelligence, if given this status, would go through this change too.
There are many non-human entities which are recognised by law as a person. Rivers (O'Donnell & Jones, 2018, p.4), idols etc. are considered as legal persons and can own property. (Yuille, 2020, p. 560) The interesting thing to be considered is that these rights and property are managed by their human agent, on their behalf.. For example, the shareholders, board of directors work and manage things on behalf of a corporation. Similarly, the High Court of Uttarakhand have declared river Ganga and Yamuna as legal person under the parens patriae principle while making the State loco parentis for the rivers. (*Mohd. Salim V State of Uttarakhand, 2017*, n.d.) It is doubtful if the same concept can be applied to artificial Intelligence to recognise personhood status, since they are capable of taking the decisions on their own and have the autonomous ability to think. The principle behind allowing human agents to act on behalf of non- human entities is to ensure enforceability of the rights conferred.
However, we need to keep in perspective the fact that not all artificial intelligence relies on human agency to act. The existing machine learning technology behind artificial intelligence has not yet become a strong AI, independent of human interference. Machine learning can be categorized as supervised and unsupervised learning, depending upon the human assistance required in functioning. A supervised machine learning would be more suitable for application of parens patriae principle for property ownership since it requires human intervention to provide the required results. (Zenor, 2018, p. 119) In other words, a weak AI can be conferred the right to own property provided there is a human agent acting on its behalf, in the same manner as a corporation, river, or an idol. However, a strong AI, capable of taking the decision, if granted the right to own

property, can exercise these rights beyond the controls of law and human beings which could result in legal issues and compromised social order.

Should Artificial Intelligence own property ?

D. Rothenberg, to address the issue whether an AI can own property or not, mentions three scenarios wherein property can be owned: 1. in the capacity of an agent, 2. like a corporation, and 3. like a natural person. (Rothenberg, 2016, p. 453-458) He points out that since AI are used by humans, they already act like an agent and therefore possess and control property in that regard. However, the legislative requirement for regulation of agency can only be altered by way of law. Regarding the second suggestion, an AI can hold a property like a corporation since it meets all the requirements of a corporation- it is a legal entity, separate from its shareholders and has the capacity to continue even after its shareholders. Apart from this, AI also reflects the ability to enter a contract. Like a corporation cannot act apart from its shareholders, an AI too can act through humans, someone who can be held responsible and liable for the actions of a non-human entity. (Rothenberg, 2016, p. 453-458) This proposition however rests on the presumption that AI be granted legal personhood. However, regarding the third suggestion, making AI legally capable to hold property like a natural person would require a drastic paradigm shift in public policy and morality of a nation.

Based on the work of Rothenberg, a weak AI can be granted the status of a legal person, capable of owning property like other non-human entities recognized under law. The human owner/ programmer will be an essential element to such ownership and exercising of rights and fixing liability. However, a strong AI on the other hand, does not depend on its humans to work, should ideally not be granted the status of legal personality. (Schuster, 2019, p. 1952-1959) Autonomous nature of the strong AI would not only pose risk to the legal system, but it would also be contrary to the morality of the nation. Moreover, making an autonomous machine, owner of a right, would lead to serious legal challenges in enforcing the rights and fixing liabilities and obligations. (Dyschkant, 2015, p. 2080- 2092)

ELECTRONIC PERSONALITY: A POSSIBLE SOLUTION?

Due to the ongoing dilemma and approach followed by the European Parliament through its resolutions, an alternate solution to legal personality seems a plausible solution. Granting AI an electronic or alternative personality rather than legal personhood under the existing legal regime was suggested by European Parliament Resolution in 2017, which was subsequently dropped in 2021. (Bertolini, 2020,p.33-47) Creating a separate identity for AI would not only specify the general legal approach, including rights, liability and duties, towards them, it would also determine the relationship between AI and its programmer and users.

Bertolini, in the report states that electronic personality can be considered yet another type of legal entity which can be held liable for its actions and is capable of entering into legal agreements. This type of personality will be associated with entities which are capable of carrying out their activities independently and therefore would impose responsibility on the natural persons like programmers or users under different circumstances. (Ziemianin, 2021, p.9) Given the above analysis and the potential legal complications, it seems plausible to create a separate category to address rights, liability and IP issues of AI. Since AI does not seem to fit in either of the existing personalities: natural and juristic, recognising and incorporating the uniqueness of AI within the existing legal framework becomes all the more necessary and creation of electronic personality seems to be the solution.

Another reason why electronic personality can be considered as a good alternative is that it would define the risk and responsibilities of AI with its programmer and users. This legal clarity would not only make people invest more in this field, it would also provide them with clear rights and liabilities. This system resembles the system developed for corporations where the investors and shareholders are liable for the actions of the corporation within a set of defined rules and regulations. (Chesterman, 2020, p. 824-825)

This proposal of electronic personality was revoked by the European Parliament in its Resolution on civil liability regime, 2020 and Proposal for the Artificial Intelligence Act, 2021. Amidst challenges posed by evolving technologies we cannot deny the fact that this decision might be reconsidered. If no liability or responsibility can be fixed for the actions of AI, why should the benefits arising from AI generated output be received?

CONCLUSION & SUGGESTIONS

This article aimed at analyzing the changing dimensions of legal personality with the changing technology of artificial intelligence. The primary focus of the author was to understand how rights and duties were affected with this evolution. Ownership of property is one of many rights which comes along with the status of being a legal person, but it becomes even more relevant in artificial intelligence because it relies mainly on the data it gathers from the public.

There have been a lot of debate going around recognizing artificial intelligence as a legal person but expecting the government and legislature to suddenly recognize AI would be a farfetched thought. However, as AI will develop over the years, its autonomous ability will also increase, making it capable of creating things on its own. Gradual recognition of AI and its legal personality, as of a corporation will not only boost innovation and

development of technology but also bring law at par with the technological changes. Granting rights and duties on weak AI, recognizing it as a legal person can be done even without a recognized will. The human interference in making an AI work form the crucial element in recognition and enforcement of right. To overcome these challenges, the approach of creating a new personality, suggested by the European Union, seems like a silver lining. Even Though this suggestion was later revoked, we believe that this type of personality will ultimately be the solution. Electronic personality will not only be specific but also flexible to the changing nature and dynamics of technology.

However, the question of legal personhood has its own challenges- both at policy making level and at enforcement stage . Any form of legal attribution of personhood should not enable the developer or employer of artificial intelligence as their agents to outsource and escape the liabilities and risk. These risks can be avoided by using financial autonomy of the entity to bind its actions. Another possible solution to ensuring liability of AI is to provide for mandatory insurance on AI activity which would depend upon the failure rate of the AI. Apart from this, attributing liability for AI failure on those legally obligated to maintain can be another solution.

In our opinion, it would be reasonable if AI are granted rights according to the practical needs and granting rights and duties that are adequate, advantageous, and safe. For example, if an AI creates an original content, on its own, capable of copyright protection, then the law should acknowledge the AI as an author but in a narrow, limited, and conditionally adjusted right.

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