

Legal Personality for Artificial Intelligence with Special Reference to Robot: A Critical Appraisal

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Abstract

Awarding legal personhood on purely synthetic entities is a very genuine possibility in future as human interface increases with the machines it will consequently give rise to legal issues. Such legal personhood may be the next big challenge for our legal systems; therefore there is a need to deal with the new forms of intricacy commenced by the Artificial intelligence (AI), Such as who will be held accountable for any criminal liability arising from the actions of AI. Because the reasoning is applied to these legal personhood is the same acknowledged for corporations and other nonhuman entities including AIs. It is argued that AI legal personhood may have some emotional or economic appeal and many superficially desirable hazards against which law guards us. Therefore, our legal system needs to be prepared for these upcoming challenges. In this order here is an appraisal of the concept, utility and history of legal fictions of personhood by exploring other aspects of such Artificial intelligence entities which may result in abuse or incoherence by its creators.

Keywords: Legal personality; Artificial intelligence; Robots in legal system.

Introduction

The idea of legal personality in the sense of the capacity to be the subject of rights and obligations and to establish one's own legal situation has been expanded to cover entities grouping together individuals sharing common interests, such as states and commercial entities. These are "artificial" persons, recognized as "legal persons," formed by the humans at the rear them. The detachment of legal persons from the natural persons standing behind them such as authorities and entrepreneurs aroused over a long practice, with the development of abstract legal concepts. The general lexicon meaning of the term "person" is that, it includes the "personhood of living persons only". But it's legal meaning is "legal personhood is not necessarily synonymous with or confined to human beings".¹

When any entity is conferred with personality then this personality comes along with certain rights and obligations. One of the most essential characteristics of a legal personality is its ability "to sue and be sued", "to hold property in its name" and at the same time enjoys "various immunities and protection" given to it by the court of law.

The word "person" has been interpreted time and again by different theorists and experts. In this regard John Locke has defined "person" as: "a thinking intelligent Being, that has reason and reflection, and can consider it self as it self, the same thinking thing in different times and places; which it does only by that consciousness, which is inseparable from thinking, and as it seems to me essential to it".²

In "Lockean definition" what we find that the *prima facie* definition or the cursory reading of the

definition in no way gives any clue regarding its applicability as far as non-natural or legal persons are concerned. However on analysis what follows is that there are two types of legal personalities: "dependent" and "independent" and it is the first category under which Locke's definition would fall.

Origin and Concept of Legal Personality

The expression "person" is originally derived from the Latin word "persona" which means "mask worn by actors playing different roles in the drama". What is significant to note here is that until 6th century the expression "person" was used to actually signify "the part played by man in life".³ And then it was started being utilized referring to a living being who has this ability to acquire rights and duties. This was solely the reason that primitive experts confined their understanding to persons to living beings. But this was a narrow interpretation of the expression because today it is given a much wider meaning as the ambit of expression "persons" not only natural beings but also "corporations", "idols" etc., in its ambit despite the fact that they are non-natural things. In contrast to this in the primitive times there were slaves who were not considered as persons because they were not equipped with rights and obligations and that perhaps was the reason that it is almost completely abolished from every society.

In this regard various jurists have given their own version and interpretation of the expression "persons". To quote few:

Salmond: According to Salmond expression "person" means "any being to whom the law regards as capable of rights and duties. Any being that is so capable, is a person, whether human being or not and nothing that is not so capable is a person even though he be a man".⁴

Salmond's definition is in line with what we today understand as the meaning of the expression 'person' i.e., it includes both natural and artificial beings.

Paton: His version of the definition treated the concept as a mere device to arrange the obligations as rights and duties.⁵

Gray: His definition of "person" includes "an entity to which rights and duties may be attributed".⁶

Salmond has correctly pointed that "*Personality is wider and vaguer term than humanity. In law there may be men who are not persons and persons who are not men*". In law slaves though human beings in earlier society were not considered as persons. Also

lunatics, infants are granted limited personality in law. That perhaps is the reason that "not all human beings are persons in the eyes of law".

Corporate Personhood in India

Before pointing personality to AIs it is important to understand the nature of a corporation which itself in the beginning was not included within the definition of persons. A corporation is essentially a group of people that have been incorporated for carrying out certain activity (not essentially business). For incorporating people there may be different legal instruments, for instance, by way of Companies Act, 2013. The minimum number in the law for the incorporation of a company the minimum number of persons required two. But once a company is formed it has a distinct identity all together and all corporations whether incorporated under Companies Act, Trust Act or by way of Parliamentary Legislation they would be legal persons. Once two individual entities are joined they no longer remain individual entities only, there is a third entity as well which has also been conferred with legal personality. Only difference is that if A & B are natural persons but once incorporated ABCo. Ltd., is a legal person.

Industrial Revolution that took place in England and also other Continental European Countries that gave rise to the phenomena of people joining together and getting formally incorporated for the purpose of doing business. Only idea behind the incorporation of people to make carrying out that business relatively easy and limit liability in case of loss. But the question is if this third entity does something which qualifies as crime that would be responsible. Issue was brought through *Salomon's*⁷ case. The fact of the case is simple. There was a family shoe business and Salomon formed a company. They were doing it without formally incorporating it. If it's not incorporated it's not considered as a corporate body and the moment it is incorporated they assume a different identity all together. Salomon argued that he's not liable for any fault of the company because company has a different entity all together. So lifting the corporate veil was evolved. It was then held that a *Company has no mind of its own and you'll have to identify the controlling limb, mind and those who are at the helm of affairs*.⁸

Criminal Liability of Corporations in India

In India it was never in dispute that corporations are criminally liable. Some argue that corporate

criminal liability is not vicarious liability but imputed liability. Section 11 of Indian Penal Code 1860 defines “persons” which includes both natural and legal persons. What was most contentious in India was how to punish especially in those cases where a company is found guilty of serious offence that carries mandatory prison term. If we analyze the scheme of Indian Penal Code we’ll find two categories of Punishment:

- (i) Imprisonment or Fine or Both.
- (ii) Imprisonment and Fine (Discretion is limited).

What is evident in the second category is that the term of imprisonment is integral part of punishment. For instance Section 417⁹ of Indian Penal Code too makes term of imprisonment as integral part of punishment. In this regard we have two important decisions rendered by Indian Courts famously known as “Velliappa Textiles Case”¹⁰ and “Standard Chartered Case”.¹¹ In *Velliappa* case it was held that if a company is found guilty for which punishment is mandatory prison term then company cannot be punished because it cannot be imprisoned. Consequence of the judgment was very damaging in the sense that for simple act of cheating a company would be held liable and for aggravated form of cheating (Section 420) the company would not be held liable. The Court further said let the Parliament remedy this anomaly by amending Code of Criminal Procedure.

The Apex Court in *Standard Chartered Case* overruled the decision in *Velliappa* case. The Supreme Court (herein after referred as SC) held that the decision of the SC in *Velliappa* has not been delivered on correct principles of law. Court pointed out that the legal foundation of that judgment is not correct and were of this view that even in those cases of mandatory prison sentencing Courts would have an option to choose fine’s part as punishment. It was also made clear that whenever a company would be punished the Court must also punish those individuals at the affairs of the company.

Furthermore recent position is also clarified by the statutes. For instance, “The Food Safety and Standards Act, 2006”¹² clarifies the position that where a company is found guilty then each member of the company who were responsible for the affairs of the company would also be held liable.

Attributing Legal Personality to Robots

The Committee on Legal affairs of the European Parliament on 20 January 2015 established a

Working Group for legal questions related to the development of Robotics and Artificial Intelligence. On 27 January 2017, the Committee put forward a Motion for a European Parliament Resolution in respect of robotics and artificial intelligence. On 16 February 2017, this Motion was adopted as the Civil Law Rules on Robotics.¹³ Thus Legal personality results from a legal system. Under U.S. federal law, the term person is defined to include corporations.¹⁴ “The corporate personality is a fiction, although a fiction intended to be acted upon as though it were a fact.”¹⁵ Creating a fictional discourse according to which corporations are people was a useful shorthand for conferring on them the legal rights and obligations possessed by human people within the legal system.

This is as true of the legal personhood of human beings as it is for non-human legal persons. Every legal system has had, and continues to have, some human legal persons with fewer legal rights and different obligations than others. When *Norving* and *Russel* came up with certain parameters which provided for characteristics common to all AIs viz., “acting humanly”, “acting rationally”, “knowledge about outside world”, “creativity” etc., then some experts started arguing for the legal personality for Artificial Intelligences i. e. AIs. In 2007 *Peter M. Asaro* proposed a concept attributing “quasi-person” status to Robots providing for enjoyment of “only partial rights and duties”.¹⁶ Another Commentator *LB Solum* has argued for attributing “borderline status” to these AIs.¹⁷ His analysis is more particularly based on two tests:

- (i) Whether these AI agents like robots can act as a “Trustee”; and
- (ii) Whether these AI can be granted the rights of “Constitutional Personhood”.

Solum further highlights that “*thinking about personhood for a AI forces us to acknowledge that we currently lack the resources to develop a fully satisfactory theory of legal and moral personhood*”.¹⁸ It is evident that *Solum* while contending for a “borderline status” alludes to the behavioral and conduct aspects of these AIs. He argued that if Cognitive Science affirmed that the processes involved for generating these behaviors if were similar to those that of human brain, then there is no wrong in attributing personality to these AIs.

On the other hand *Gabriel Hallevy*¹⁹ in his essay has argued for attributing the same status on robots as that of corporations as far as criminal liability is concerned. Though he advocated for punishing robots he overlooked the fact it will be ultimately be the humans who’d be punished if we’ll attribute

the same status to AIs as that to corporations. G. Hallevy has argued that these robots should alone be held criminally liable because they have the capacity to commit an act with requisite mens rea. Those who criticize Hallevy argue that “the substitution of intelligent machine for humans in creative tasks is very far away”.²⁰ This fact is further substantiated by Solum who does agree with this fact that these AIs do lack certain elements of personhood like “desires”, “intentions” etc., which are essential for attributing criminal liability. The major issue again would be regarding the infliction of punishment on these AI entities. Also the effectiveness of infliction of human punishment on these entities is also questionable.

Therefore this area is flooded with conflicting opinion and therefore till this point what is available at this juncture that robots are yet to achieve the attributes of legal personality. The stand as suggested by Ugo Pagallo²¹ is praiseworthy in this regard. He argues that we need to understand the difference between “legal agent hood of these AI” from that of granting “legal personhood” to these AIs. He therefore highlights that the policy makers are often confused with these two terminologies.²² Now when you attribute legal personhood on any entity it ultimately boils down to one question as to whether as to whether these “AI entities can be made subject of legal rights and duties”. Now corporations are granted this status and the fact that these corporations are being granted this status of personhood is often taken as the basis of granting personality to AI entities. But what we need to keep in mind is that there is difference between AIs and Corporations in the sense that while corporations are “fictitiously independent” and still held liable for their actions through its regulating minds, the AIs on the other hand may “actually be independent”. Since there are no laws granting legal personality to AI entities what at the most can be done is to adopt a middle path and grant these entities certain bundle of rights as are available to legal persons.

Where to Draw the Line

The experts are divided on this question as to whether these AI entities should be granted legal rights as are available to humans. To understand this we need to appreciate the debate surrounding this issue.

Arguments in Favour Granting Personhood

In a poll conducted online²³ there was only a slight difference between those who’ve favored and argued against granting these rights. These grounds include:

Human Rights can be attributed to these AI entities particularly Robots

Human rights are inalienable rights which are available to all human beings by virtue of the fact that they are humans. These rights are attached to an individual by birth. There are certain attributes that are attached to these rights which include consciousness, free will, rationality etc. It is said that all human beings are conscious of their existence, exercises autonomy in their decisions and are considered to be most rational being. Those who argue in favor of attributing personality to AI entities argues that these above mentioned attributes are possessed by AI entities too (here robots in our case).

As far as the first attribute of “consciousness” is concerned experts argue that though AI entities are non-living entities and are not “self-aware” but such awareness may arise in the future. For instance the infants even without advanced consciousness possess these rights. Also some higher animals like apes, chimpanzees even if they are conscious are not attributed these rights.

With regard to second attribute of exercising “autonomy and free will” in their actions it is argued that though certain AI entities are controlled by their developers but then again there are certain AIs that are built on “machine-learning” platform and can on the basis of their interactions with its audiences is capable of forming opinion and can act of its own in certain situations. For instance, military drones and automated cars etc., are capable of acting on its own without any instructions from their developers.

The third attribute of “rationality” is most debatable. It is strange to think of machines capable of distinguishing between what is right and wrong. Our instincts, encounters and convictions shape our decision and judgment of what is the ‘right’ strategy in a specific circumstance. Now with the introduction of “deep learning” technology it is not absurd to anticipate a circumstance wherein we can allow machines to learn from a box containing good and bad standards and watch and observe the machines learning and identifying as to what is right and what is wrong. Just as the machines can be made to learn and identify that a particular thing is ‘flower’ after being fed with huge number of pictures. Therefore it can be rightly argued that this domain of rationality does not exclusively belong to humans.

Turing Test

Alan Turing in 1950s proposed Turing Test where he argued that if a machine passes this test then a conclusion can be drawn that the machine was intelligent and has the capability to think. The test is interesting and involves three entities one judge asking set of questions to a human being and a computer. If the judge through series of questions consistently fails to distinguish between the computer and the human then it can be said that the machine has acquired the intelligence and passed the test.

Eugene Goostman,²⁴ a machine oriented chatbot is said to be the first chatbot that successfully passed Turing's test. These inventions clearly reflects the advancements we have made in the field of technology particularly, the intelligence. Though it is quite difficult to imagine that robots are more intelligent than that of humans for we cannot imagine robots as capable of discovering laws of evolution, physics etc., but at the same time it cannot be denied that these machines do have acquired certain intelligence otherwise they would not have been able to pass tests like Turing's test and fool human judges. Therefore at this juncture what is practical is to grant these entities these "extensive rights".

These entities are human creations

It is argued that if these entities are human creations and are created through human intelligence and sentience then there is no harm in granting all those attributes that comes alongwith "being human and intelligent".²⁵ Thus if these entities possess such attributes as that possessed by humans then we should also treat them as humans.

The Fictionality Thesis

It relies on the idea that "Legal personhood is a social fiction, i.e. an artifact of the legal system. It should not be confused with moral or metaphysical personhood".²⁶ Legal personhood is one of the most common debatable topic amongst Philosophers. The actual problem lies in understanding the difference between "legal personhood" and "moral or metaphysical personhood". When Philosophers tries to study as to what constitutes legal personhood they in reality compare with an entity with that of characteristics of human. Now in doing so they'd be taking certain attributes of humans as basis and then they would be making comparisons. These attributes would be "rationality", "self awareness", "consciousness", etc., because according to these philosophers all these attributes contribute to

"true personhood".²⁷ What we here need to keep in mind is that "Their inquiry has moral significance because being a person (in this philosophical sense) is commonly held to be what makes an entity a legitimate object of moral concern, a bearer of moral duties, and a responsible moral agent".²⁸

There are certain things available only to legal persons in the form of legal rights and duties viz., "right to enter into contract", "right to sue for damages", "right to own property" etc. We do have evidences where legal status has been conferred on corporations, rivers etc., that in no case can be claimed by these Philosophers to be "ethical or metaphysical persons". This fact helps us in establishing this proposition that legal status can too be conferred on AI entities particularly robots.

The Divisibility Thesis

The thesis argues that "Legal personhood is not a binary property; it is, rather, a scalar property. Legal personhood consists of a bundle of rights and obligations, each of which can be separated from the other. To put it another way, legal personhood can come in degrees".²⁹ The legal personhood is the result of collection of various rights and duties. But it is very difficult to draw up a list of these rights and duties on a piece of paper. However we can divide up these collection of rights and duties in whatever manner we like. Now to some entities we can give these rights and to some we can discard these rights. This is what historically was done with "women and slaves" who were denied some of the rights and duties. This gives us idea that we can actually grant some rights and duties to these AI entities and deny some. It can therefore be a complete mix of rights and duties we choose to grant or deny them.

Now all above mentioned attributes must be kept in mind while deliberating upon the question as to whether these AI entities should be given personality for the purposes of law. We are aware that rights and duties can be attributed to these personalities but to what extent these can be made available must be decided wisely by policymakers. Also while deciding all these its important to see that the execution of those rights and duties is not practically impossible.

Arguments Against Granting Personhood

It is often argued that several practical difficulties might arise while enforcing personhood on these AI entities. To add to this it is argued that legal personality should only be conferred if it is consistent with the legal system. Following are the

arguments that can be advanced against granting personhood to AI entities particularly robots:

Abuse of Legal Personhood by AI entities as well as Developers

It has already been settled through judicial decisions that that entity on which legal personality has been conferred with is endowed with corresponding legal rights and obligations.³⁰ We need to appreciate this fact that if these AI entities are conferred with legal personhood with corresponding rights and obligations they'd obviously be interfering with the rights of human beings and other legal entities. In this case the only viable solution experts argue that is to impose legal obligations on these entities. But at the same time these obligations would have no meaning if these entities cannot be held accountable for their actions. For instance, "The US Department of Defence itself has acknowledged this fact that robotic weapons are never responsible legal agents".³¹

To quote: "Law of War Obligations of Distinction and Proportionality Apply to Persons Rather Than the Weapons Themselves. The law of war rules on conducting attacks (such as the rules relating to discrimination and proportionality) impose obligations on persons. These rules do not impose obligations on the weapons themselves. The law of war does not require weapons to make legal determinations, even if the weapon (e.g., through computers, software, and sensors) may be characterized as capable of making factual determinations, such as whether to fire the weapon or to select and engage a target rather, it is persons who must comply with the law of war In the situation in which a person is using a weapon that selects and engages targets autonomously, that person must refrain from using that weapon where it is expected to result in incidental harm that is excessive in relation to the concrete and direct military advantage expected to be gained The obligation may be more significant when the person uses weapon systems with more sophisticated autonomous functions"³²

The major concern at this juncture is to understand the abuse the conferment of personhood brings along with it. Those using AI entities might take these entities as shield in order to avoid any liability.

AI entities as Shields

Humans may use the personality of these AI entities for meeting selfish ends and at the same time get successful in avoiding liability. Though law has the mechanism to deal with it and reach to the actual

persons involved through lifting the veil but the solutions like this are not always available. For instance, in Cayuga Indians³³ case "The arbitrators in the Cayuga case had an express invitation to apply equitable principles, the jurisdictional instrument (a treaty) having stipulated equity to be part of the applicable law. Where equity or a similar principle is not part of the applicable law, a judge or arbitrator well might not be able to look behind the legal person. In a situation like that, the human individuals who were meant to answer for injury done remain out of the picture".³⁴

Another judgment in this regard is "*International Tin Council Case*".³⁵ This case is instrumental in highlighting the hazards that these AI entities create i.e., these entities would be acting as a veil in saving certain humans from violating the rights of the others. In the instant case an organization constituted by group of states named "International Tin Council" was involved in the market relating to tin. The organization was acting on behalf of leading producers and consumers of tin in the international market related to tin activities. It was acting in the same way as "International Bank of Settlements" act. In order to ensure its proper functioning an international agreement was entered between the member States. The States aimed to acquire the world market for tin by using the Council and in order to realize this Council contracted debts. But with the advent and increased used of aluminum in the world market there was sudden decrease in the prices of tin. As a consequence of this the Council suffered huge losses and turned insolvent. Creditors of the company were left empty handed when they sued the Council on debts because what they could find was only an "empty shell and no procedural recourse". Also it was useless to sue the Council in anyway. Thus in order to get their debts clear the creditors of the Council sought compensation not from the Council but obviously from the member States. But this was also in vain because the actual contractual relationship of the creditors was with the Council and of course not with those who brought into existence this Council. The only way by which the creditors could have got back their money was through certain diplomatic solutions wherein "the states agreeing *ex gratia* to replenish the Council or pay the creditors".³⁶

The case therefore posed a great difficulty for ascertaining the "creditor's rights". To quote;

None of the authorities cited by the appellants [the creditors] were of any assistance in construing the effect of the grant by Parliament of the legal capacities of a body corporate to an international

organization pursuant to a treaty obligation to confer legal personality on that organization.³⁷

The Court also remarked that the creditors also did not adduce any judicial precedent or any principle which would have helped the Court in lifting the veil impose liability upon the member States which constituted this Council.³⁸

It is therefore quite evident how these AI entities may be misused to carry out hazards and that too at the expense of legal interests of humans.

AI Entities as Themselves Unaccountable Rights Violators

The advanced automatic and semi-automatic AI entities having self-learning abilities have also posed great challenges. Conferring legal rights on AI entities without adjusting and balancing its obligations would just exacerbate the issue. There would always be conflict between humans and AI entities as far as legal rights are concerned. However this would never be an issue if the following things are taken care of:

- a. The other problems of legal personality like standing and availability of dispute settlement procedures were solved. also;
- b. The electronic legal person were solvent or otherwise answerable for rights violations.³⁹

But then again the problem still persists as to how to bring in to operation the above mentioned steps. In this regard *Bryson and others* have argued that “who will represent the robot in the dispute? With the right AI, the robot might be able to represent itself. But we may encounter this problem well before AI capable of effective court advocacy is developed. Conceivably, the robot could hire its own legal counsel, but this brings us to the second step robot solvency”.⁴⁰

It is also unclear and difficult to imagine as to how AI entities would hold and acquire assets. It may be possible through the mechanism by providing ways where it would enable AI entities to “own property or hold accounts” in the same way as it provides for the Corporations. To realize this goal the lawmakers could provide for the initial deposition of funds by the developers in these accounts and that “once the account is depleted, the robot would effectively be unanswerable for violating human legal rights”.⁴¹ Also in the cases of insolvency the scene is all together a different one. When there is a human being that violates the legal rights of the other then we have a structured

mechanism at the place wherein the liability can vary from offering apology to undergoing prison term. However in the cases of AI entities all these proved to be ineffective.

At this juncture even designing AI entities with all good intentions to avoid legal rights vested in humans would not solve all the problems either. In this regard Brysons and Others have remarked: “A machine made to endeavour to avoid breaches of legal obligation still would present risks. Any actor in society will encounter frictions and mischances resulting in legal incident. This is an unavoidable feature of the complex legal and social space that proponents of robot legal personhood would have robots enter”.⁴²

Conclusions and Determinations

From the above arguments it is clear that it is possible to declare AI entities as legal persons. But the problem is ‘conferring legal personality’ on AI entities is “morally unnecessary and legally troublesome”. The most basic concern is exploitation of AI entities for protecting humans. The legal position would be “the investor under investment treaties who can hold a respondent party to account but under the same treaties is not itself accountable. Future claimants, if they were to sue an electronic person, likely would confront the accountable but empty, like the International Tin Council; the fully-financed but unaccountable, like the United Nations; and sui generis arrangements like the Bank for International Settlements that novel legal persons tend to instigate”.⁴³

The AI entities have been compared with “legal black hole” i.e., an entity which would in the end be shadowing legal responsibilities of humans from which no traces of liability and accountability would be observed. It could be in principle that the advantages legitimize the expenses of presenting simply artificial entities to a lawful framework. Both should be considered with appropriate consideration before pushing further toward such a development. Be that as it may, in examination, “we find the idea could easily lead to abuse at the expense of the legal rights of extant legal persons”. We have at present the legal system which is completely devised by, for and of the people. Also, what is problematic is that the way natural persons are being defended raises the concern that AI entities would never be able to achieve the status of personhood “either in law or fact”.⁴⁴

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43. *Artificial Intelligence and Law*, Joanna J. Bryson, September 2017;25(3):273–91.
44. *Ibid*.