CRITICAL ANALYSIS OF IMPLICATIONS OF GRANTINGLEGAL PERSONALITY TO AI (ARTIFICIAL INTELLIGENCE)

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ABSTRACT

The entry of Artificial Intelligence into industry and society is revolutionizing the current social structures and is posing a number of regulatory concerns, which the current legal frameworks are unprepared to give a direct response to. In simple words, AI refers to a machine's ability to mimic intelligent human behavior. The need and necessity for automation is the driving force behind the development of AI. In order to determine whether legal personality should be attributed to AI or not, a number of factors have to be taken into consideration. For example, we need to consider whether granting of such status to AI is in the interest of the society and is there a proper and efficient way to hold these AI systems liable/ accountable for their unlawful acts if such legal status is granted to them. The answer to the question of who shall be held liable for the acts of the AI systems in the absence of such legal status also needs to be ascertained. This research paper aims to critically analyze the implications of granting legal status to Artificial Intelligence. Moreover, just like every coin has two sides, this paper also takes into consideration the contentions of philosophers and jurists who argue in favour of granting such legal status to Artificial Intelligence and along with some recent case laws where certain countries have attributed some degree of legal status to AI. However, creating a proper regulatory framework for AI to regulate their rights and liabilities and at the same time ensuring proper balance between the rights of AI systems against those of existing natural legal persons is quite difficult and as of now appears to be a far- fetched dream.

KEYWORDS: Artificial Intelligence, Legal Personality, Legal Status, Accountable, Regulatory framework.

INTRODUCTION

John McCarthy, an American computer scientist who is often known as the founder of AI, coined the term Artificial Intelligence (AI) in 19561. In simple words, AI refers to a machine's ability to mimic intelligent human behavior. The need and necessity for automation is the driving force behind the development of AI. In India, artificial intelligence is still in its infancy,

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and we are yet to fully embrace technological advancements. Now, before dealing with the question of whether legal personality should be attributed to AI systems, it's important to understand the meaning of legal personality. According to Salmond, an entity is said to have legal personality if it is capable of having rights and duties. Hence, legal personality can be defined as the ability to hold and exercise rights as well as to perform duties. It denotes the ability to sue and be sued. There can be two types of legal persons. Natural- Refers to those who are attributed legal personality just because of the fact that they are humans.

Judicial- Refers to those who are not human beings but have been attributed legal personality by law. Example: Idols, corporations, etc. The concept of judicial personality is mainly based on following theories. Aggregate theory talks about how individuals in a group function as a single entity (for example, a corporation) and hence legal personality is attributed to such groups. Fiction and Concession theory talk about how legal personality is granted to certain non- living entities only because the legal system chooses to attribute legal personhood to them. Realist theory suggests that legal personality must be conferred to non-human entities as a matter of their right. While aggregate theory is clearly not applicable to AI systems, there is still an ongoing debate regarding whether or not 'Fiction and Concession theory' can be extended to AI systems, thereby granting legal personality to them.

RESEARCH PROBLEM

The current problem due to which this topic has been chosen for research is that some countries have chosen to grant legal status to AI and have created special laws regarding the same while on the other hand, some countries are completely opposed to this. Hence, in order to determine whether legal personality should be attributed to AI or not, a number of factors have to be taken into consideration. For example, we need to consider whether granting of such status to AI in the interest of the society and is there a proper and efficient way to hold these AI systems liable/ accountable for their unlawful acts if such legal status is granted to them. The answer to the question of who shall be held liable for the acts of the AI systems in the absence of such legal status also needs to be ascertained. This research paper not only aims to answers all these questions but also analyses the implications of granting such legal status to AI. In order to find amicable answers to these questions, the author will employ an analytical technique in which both sides of the arguments will be thoroughly examined and the most amicable solution will

be chosen.[1]

GRANTING LEGAL PERSONALITY TO AI

Artificial Intelligence, or AI, has the ability to interact, attain recognized goals, demonstrate creativity, and learn about oneself and the environment around it. The features and powers of AI are the result of human-created codes and programs. Artificial Intelligence performs cognitive functions in order to achieve predetermined objects/goals. However, this is not a sufficient reason to attribute legal personality to them because it should be kept in mind that they are controlled by human beings. Hence, a robot (AI) will not perform an illegal/wrongful act unless a human intention is behind it. Therefore, the robot (AI) should not be held responsible for the loss/damage caused. The major difference between a human being and AI is that humans have the ability to feel emotions and a tendency to understand and follow societal laws. However, AI is neither capable of possessing emotions nor of understanding the meaning of rights, duties, societal norms/ rules, etc. Hence, the concept of morals, accountability, etc. falls beyond the scope of AI. Granting legal status to AI would create a lot of unnecessary problems and is hence not in the interest of the society at large. For example, if robots are attributed legal personality, then sooner or later, the question of attributing legal status to other AI might also come up. This will lead to a lot of confusion as to which AI should be granted legal status and on what basis should this be decided. Moreover, if AI is granted legal personality, then we i.e., human beings would no longer have the option of lawfully destroying these systems. This can prove to be very dangerous for the existence of human beings in the long run. Furthermore, attributing legal personality to robots (AI) will pose a serious threat to the system's human owner as it will result in the development of a Principal-agent/ Master-servant relationship between the owner and the system thereby making the owner liable for the machine's actions under 'strict liability'2 [2]. Various scientists also believe that if and when AI systems finally match human intellect, they will not stop there but might even go over and above in doing things which they were not morally/legally supposed to. In many such circumstances, there might be no way to tell whether the AI system operated in accordance with the owner's instructions or according to its own recoding of those instructions. This will obviously be detrimental to the owner's interest because the owner will also be held

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[1] Priya Barua, Artificial Intelligence and Law, LAWTIMES JOURNAL, (Apr. 22, 2022, 8:05 PM), https://lawtimesjournal.in/artificial-intelligence-and-law/

[2] Ryan Abbott & Alex Sarch, 'Punishing Artificial Intelligence: Legal Fiction or Science Fiction',53 UC Davis Law Review 1, 323 (2019).

accountable/ liable (as Principal/Master) for such unauthorized acts of the AI system if these systems are given legal personality. It is further speculated that there is a high probability that the concept of "Separate legal entity" might be misused by the owners of AI systems if AI systems are attributed legal status. This is because it will enable owners of such systems to escape liability by conferring all liabilities and responsibilities on the AI system itself which will obviously not be in the interest of the society. Moreover, conferring legal status to AI systems would also result in conferring Intellectual Property rights to them. This would not only undermine the owner's effort in developing the AI system, but it would also mean that the AI system would retain credit for all of its work, and the owner would lose all rights over that work. This will ultimately lead to loss of incentive/motivation to come up with new and advanced technologies which would subsequently impede the technological development of the country.