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## LEGAL PERSONALITY IN THE AGE OF AI: CHALLENGES AND OPPORTUNITIES

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### **ABSTRACT:**

The concept of legal personality is a fundamental concept of law dealing with the question of who can act and who can be the subject of rights and duties. The rapid growth of artificial intelligence (AI) technologies has raised profound legal and ethical questions regarding the recognition of AI entities as legal persons. The traditional concept of legal personality, as defined under jurisprudence personhood, applies to human beings and certain entities like corporations capable of suing and being sued. However, the question of the application of legal personhood to AI introduces novel challenges and uncertainties that require careful consideration. In India, the legal development is towards accommodating science and technological innovations, and the question of whether AI should be granted legal personhood remains contentious in the absence of any specific legislation. In the Indian context, as laws and regulations strive to keep pace with technological advancements, the question of AI legal personhood remains untouched. The aim of this paper is to analyze the traditional concept of legal personhood and its applicability in deciding the liability of artificial intelligence. The paper seeks to analyze the challenges associated with attributing legal personhood to artificial intelligence in the sense of possessing rights and duties.

**KEYWORDS:** Artificial Intelligence, Personhood, Civil Liability, Criminal Liability.

### **INTRODUCTION:**

Artificial intelligence is one of the finest advancements of human civilization, making its presence in every aspect of life.<sup>1</sup> Considering its vast scope, the term cannot be reduced to a uniform definition including all its aspects. It is that branch of computer science that has the capacity to think, act, and have insights like human beings. It has its presence in justice

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<sup>1</sup> LinkedIn, [“THOREY OF LEGAL PERSONALITY UNDER JURISPRUDENCE”](#) (last visited April 5, 2025).

administration, policy implementation, environmental regulations, the health sector, finance, business, and so on. The inclusion of Artificial Intelligence into various facets of life, however, also raises fundamental questions about the legal status and rights of AI entities.<sup>2</sup> The primary purpose of law is to govern the relationships between individuals within a society. Whether a person's actions or omissions are considered valid is assessed based on their reasonableness. Actions that do not harm or interfere with the interests of others are generally deemed lawful. To safeguard the well-being of society, the law assigns certain responsibilities to individuals. In this way, rights and duties become the foundation for determining the legality of a person's behavior. When someone engages in actions that are deemed unreasonable or unlawful, the law imposes liability, which is enforced through legal penalties or sanctions. Since the law focuses on guiding human behavior, the idea of legal personality becomes a key element in jurisprudence. This is because the existence of rights and duties depends on the recognition of a person to whom they belong.<sup>3</sup> The law, therefore, recognizes two types of persons capable of bearing rights and duties. The first type is natural person's i.e., human beings, and the second type is artificial persons, like a company or corporation. Human beings are considered units of society as they exist prior to law and society. It is not only the corporation but the law that attributes legal personality to unborn children as well. A child in a mother's womb is, by fiction, treated as already born and regarded as a person for many reasons.<sup>4</sup> According to some jurists, law attributes legal personality to even a dead man, animals, idols, and mosques as they are capable of being recognized as persons under many circumstances. In India, the legal development is towards accommodating science and technological innovations, and the question of whether AI should be granted legal personhood remains contentious in the absence of any specific legislation. The present laws and regulations strive to keep pace with technological advancements; the question of AI legal personhood remains untouched.

### Research Objective:

1. To analyze the traditional concept of Artificial Intelligence in the Indian context.
2. To analyze the extent to which AI can be considered autonomous decision makers for civil and criminal liability.

<sup>2</sup> Brainly, [\[FREE\] is a branch of computer science that deals with the attempt to create computers that think like - brainly.com](https://www.brainly.com/question/10000000) (last visited April 5, 2025).

<sup>3</sup> N.V PARANJAPPE, STUDIES IN JURISPRUDENCE AND LEGAL THEORY 361, Scribd (April 5, 2025, 8:00 P.M.), <https://www.scribd.com/document/833527247/NV-Paranjape-Jurisprudence>.

<sup>4</sup> *Id.* at 2255

3. To evaluate the challenges and opportunities surrounding the legal status of Artificial intelligence.
4. To suggest recommendations or guidelines for policymakers and legal scholars to consider in addressing the legal status of AI and the necessary elements of criminal liability for crimes.

### **Origin of the Concept of Legal Personality under Indian Jurisprudence:**

The word person is derived from the Latin term 'persona', which means a mask worn by actors playing different roles in drama. Generally, there are two types of persons that the law recognizes, namely, natural and artificial persons. There are generally two categories of persons recognized by law: natural persons and artificial persons. Natural persons are human beings, while artificial persons are entities other than human beings that the law acknowledges as having rights and responsibilities. Human beings are regarded as fundamental units of society, as their existence precedes both law and society.<sup>5</sup> However, with the development of society, it was realized that it is not sufficient to only treat human beings as recognized legal persons. Thus, the concept of artificial personality or legal personality emerged in the realm of jurisprudence. Artificial personality is a legal fiction conferring certain rights and duties to nonliving entities such as corporations and companies, making them capable of suing and being sued. The legal personality of a corporation is recognized both under English as well as Indian Laws.<sup>6</sup> It has its perpetual existence, which is not lost even after the death of its individual members. The legal personality of a corporation is distinct from its members. In India, the concept of corporate personality has existed from ancient times when Karta used to be the head of the family in a coparcenary property. He used to manage the entire property and could sue and be sued on behalf of the family members. Since he was having a dual personality, i.e., as a natural person as well as the Karta of the family. Similarly, the Hindu Idols and the Union of India and States have also been considered as legal persons under the Constitution of India.

### **Liability of Corporations:**

In India, the corporations are governed under the Companies Act, 2013, which is a comprehensive Act governing both listed and unlisted companies in the country. The

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<sup>5</sup> *Id* at 2256

<sup>4</sup> *Id.* at 2256.

<sup>6</sup> GB Times, <https://gbtimes.com/what-did-john-mccarthy-define-ai-as/> (last visited April 5, 2025).



companies can do only those acts which are mentioned in the Memorandum of Association of the Companies, and beyond that, if they do anything, it will be considered as ultra vires.<sup>7</sup> Since a company is not a natural person, it does not have a body or soul of its own, so defining its liability for both civil and criminal acts is a challenging task. A company may be held responsible in civil law under the principle of vicarious liability. The principle of vicarious liability makes the master responsible for the acts of its servants. In fact, the position is such that a company may be held responsible even for the acts for which intention is an essential ingredient to make someone responsible. However, the liability is only limited to the acts which are authorized under the Articles of Association of the companies. A company may be held criminally liable under the Companies Act as well as other statutes. According to the Companies Act, if a company commits any offence, then the responsibility would fall on every such person who was in charge and responsible for the company for the conduct of the business of the Company. It is an established principle that a corporation can be held criminally liable, but its liability may be inevitably limited to a fine or forfeiture, or burdening the property in any other way. For heinous offences committed under the orders of the corporation, only the members responsible for issuing such orders can be prosecuted and individually punished.<sup>8</sup>

### **Artificial Intelligence--- Meaning and scope:**

Artificial intelligence is the new field of study making its way towards business and economics of the world. There is no single definition of the term Artificial Intelligence. It refers to the branch of computer science that is concerned with making machines behave intelligently.<sup>9</sup> The term AI was coined for the first time by John McCarthy in the year 1956 at Dartmouth 1956 to advance the use of machines to emulate human thought. From the 1980's AI has begun to rebound with interest in applications using expert system approaches, where computers were supplied with rules to make decisions that mimic what an expert would do. As it is obvious that in today's era, AI has become omnipresent in every aspect of life, the question related to its legal recognition is still not clear under the Indian Legal system. The question revolves around its capacity to possess certain rights and duties like other legal entities. The law is also silent on the point of criminal liability of AI.

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<sup>7</sup> POONAM GANDHI, Criminal liability on officers arises only when offence is committed by company, Tax Guru Scribd (April 5, 2025, 8:00 P.M.), [Criminal liability on officers arises only when offence is committed by company](#).

<sup>8</sup> *Id* at 2257

<sup>9</sup> Legal Service India, [Meaning and Kind of Person](#) (last visited April 5, 2025).

**Liability of AI Entities:**

The concept of criminal liability in India is largely dependent upon the Mens Rea principle.<sup>10</sup> The absence of Mens Rea in AI-driven crimes makes it more confusing about its criminal liability. Under such circumstances, granting Legal personality to AI would also need to confront many legal questions across different dimensions of law. The questions include whether AI can own property, enter into contracts, sue or be sued, or own intellectual property. Legal personhood for AI remains a contentious topic with equally compelling arguments on both sides of the debate, with unresolved ethical and legal dilemmas. Some commentators have argued for a customized version of restricted legal personhood for AI systems that is analogous to their specific characteristics. On the other hand, it could be argued that the questions of legal personhood should be relegated to when artificial general intelligence or sentient AI becomes a matter of reality.<sup>11</sup> Artificial intelligence is the creation of humans, and it operates according to the instructions of the program assigned to it to do a particular duty at a particular time. But there is the possibility that AI may do certain acts due to a breakdown or incorrect programming, resulting in criminal liability when the creator of such AI may not have any intention of doing it. The law is still unclear on this point of fact, and it is when the role of the judiciary comes into play, guiding through judicial precedents. In India, the criminal liability of a person is dependent mainly on two factors, i.e., Mens Rea(mental element) and Actus Rea (physical element). Mens rea means guilty intention, and actus reus means act or omission to commit a crime. If any entity, be it a human being or a corporation if fulfills the conditions would be held guilty under criminal law.<sup>12</sup> The question is how far Artificial Intelligence can be considered as capable of possessing these essential elements of crime to determine their liability. To answer this question, we would have to consider three situations. In the first situation, AI may be considered as an agent working innocently under the instructions of the user. Here, criminal liability may arise due to intentional programming by the creator to commit the crime according to the principle of vicarious liability. In the second situation, the producer

<sup>10</sup> S.N. MISHRA , THE INDIAN PENAL CODE 56 Scribd (April 5, 2025, 8:00 P.M.), <https://www.scribd.com/document/330843877/Allahabad-Law-Agency-Book-Name>.

<sup>11</sup> Anulekha Nandi, *Artificial Intelligence and personhood: Interplay of Agency and Liability*, OBSERVER R. FOUNDATION (April 5, 2025, 8:00 P.M.), <https://www.orfonline.org/expert-speak/artificial-intelligence-and-personhood-interplay-of-agency-and-liability>

<sup>12</sup> Ankit Kumar Padhy and Amit Kumar Padhy ,*Criminal liability of the Artificial Intelligence Entities* , 8 N. University Law Journal , (April 5, 2025, 8:00 P.M.), <https://journals.nirmauni.ac.in/index.php/law/issue/view/13/13>

or creator of AI may not have bad intentions to commit the crime. In this type of situation, the liability may arise due to two reasons: one, because of the recklessness or the negligence of the creator in programming the AI entity, and another due to probable or natural consequences of the act instructed by the user or creator. In this situation, liability may fall upon the person who is negligent in either creating or using AI. The third situation may be slightly complicated when AI is working independently of any instruction or programming and commits an act fully on an autonomous manner without depending upon AI algorithms. It is important to note here that such an AI would have cognitive capabilities, such as the capability to choose between alternative possible solutions to a problem. If an AI commits a crime under such circumstances, then the entity may be held criminally liable here.<sup>13</sup> The Indian criminal law is based on inflicting punishments on persons who commit any crime. These punishments include imprisonment, which may be rigorous or simple, fine, forfeiture of property, and also a death sentence in case of rarest to rare offence. The principle of community service has also been introduced by the new criminal laws in India as another form of punishment. These punishments, with certain modifications, may be applied even in the case of AI entities. For example, in the place of a death sentence, permanent deletion of the software entities may be considered. And temporary deletion of AI software may be equated with imprisonment. Community service may be another way of making the AI entity criminally liable.<sup>14</sup>

### **Legal Provisions governing AI in India:**

#### **1. The Information Technology Act, 2000**

- It is a fundamental legislation governing e-transaction and digital governance.
- Though the Act doesn't specifically mention AI but there are certain provisions that are applicable to AI-related activities.
- Examples are Section 43A and Section 73A, which deal with breach of data privacy resulting from negligent handling of sensitive personal information.<sup>15</sup>

#### **2. Digital Personal Data Protection Act, 2023**

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<sup>13</sup> *Id* at 2259

<sup>14</sup> *Id.* at 2259

<sup>15</sup> Information Technology Act, 2000, 43A, No. 21, Acts of Parliament 2000 (India)



- The Act applies fully or partly to the automated processing of personal data, covering AI-based personal data collection, disclosure, and other forms of processing. The new Act represents a significant step towards comprehensive data protection in India, potentially covering AI ecosystems.<sup>16</sup>
- The Digital Personal Data Protection Act 2023 (Act) has been touted as a more comprehensive data protection framework as compared IT Act, 2000.
- It could serve as a stepping stone for more targeted regulations that directly address AI-related data protection concerns. However, these regulations must strike a balance between addressing data protection concerns and recognizing the transformative power of AI for businesses.
- The Act excludes publicly available personal data from its ambit. This would mean that AI-entities scraping publicly available personal data for self-training may not be required to comply with the data fiduciary obligations (e.g., obtaining prior consent).

#### Challenges in Attributing Liability in AI:

- Attributing liability to AI for their civil and criminal wrong is a challenging task. The traditional concept of criminal liability is based upon Mens rea, and the AI entities may lack consciousness or intention for a particular wrong.
- When there are situations involving multiple acts and complex chains of events, such as developers, users, etc, pinpointing the primary cause becomes a significant hurdle.<sup>17</sup>
- The legal system is still grappling with AI, and established legal principles may not fully apply to these new technologies.<sup>18</sup>
- There is the possibility of producing biased data and discrimination by AI trained on particular algorithms, which will be harmful to society.

<sup>16</sup> Abhinav Prem & Dr. Vinit Kumar Sharma, Artificial Intelligence and Legal Personhood: Defining Accountability and Responsibility, IJRPR (April 5, 2025, 8:00 P.M.), [Artificial Intelligence and Legal Personhood: Defining Accountability and Responsibility](#).

<sup>17</sup> Jyoti Dharm1 , Anuradha Girme2 , Utpal Gharde3 , *Artificial intelligence: Challenges in criminal and civil liability*, 10 INTERNATIONAL J. OF LAW 52, (April 5, 2025, 8:00 P.M.), [https://www.researchgate.net/publication/381007079\\_International\\_Journal\\_of\\_Law\\_wwwlawjournalsorg\\_Artificial\\_intelligence\\_Challenges\\_in\\_criminal\\_and\\_civil\\_liability](https://www.researchgate.net/publication/381007079_International_Journal_of_Law_wwwlawjournalsorg_Artificial_intelligence_Challenges_in_criminal_and_civil_liability)

<sup>18</sup> Id. at 2260.



- There is a lack of transparency in AI's inner workings, making it difficult to trust a decision.

### Recommendations:

- While fixing the criminal liability of the programmers or developers, or users of AI, the principle of deliberate action may be an important point to consider. If an AI system is deliberately created to commit a crime, then the creator may be held liable for it. If there is no bad intention in creating the AI system, but the user uses it with a malicious intention, then the responsibility may fall on them. However, in both cases, proving deliberate intention may be a hard task.
- Applying the strict liability principle to the companies irrespective of the intention would make them more responsible while creating safety measures with an AI system.<sup>19</sup>
- Making policies which is in line with the recent complexities of Science and technology may be a better solution.
- Integrating AI ethics education into computer science and technology with a strong foundation in ethical considerations may also be considered.<sup>20</sup>

### CONCLUSION:

In today's technology-driven and innovation-oriented world, the use of artificial intelligence (AI) is rapidly expanding. Due to its adaptability and ability to provide swift, effective solutions, individuals and organizations increasingly rely on AI systems. However, this growing integration of AI into various aspects of life also presents significant challenges. The legal framework concerning the civil and criminal liability of AI remains underdeveloped. The absence of legal personhood for AI systems complicates the attribution of accountability for AI-driven actions. Moreover, the unique characteristics of AI, such as the lack of intent and the capacity of certain decision-making processes, make it difficult to establish causation and

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<sup>19</sup> Abishanth B. S and Jyotirmoy Banerjee, A Study of Emerging Legal and Ethical Issues of Governing Artificial Intelligence, IJHRLR (April 5, 2025, 8:00 P.M.), <https://humanrightlawreview.in/wp-content/uploads/2025/01/A-Study-of-Emerging-Legal-and-Ethical-Issues-of-Governing-Artificial-Intelligence.pdf>.

<sup>20</sup> Jyoti Dharm1 , Anuradha Girme2 , Utpal Gharde3 , *Artificial intelligence: Challenges in criminal and civil liability*, 10 INTERNATIONAL J. OF LAW 52 , (April 5, 2025, 8:00 P.M.), [https://www.researchgate.net/publication/381007079\\_International\\_Journal\\_of\\_Law\\_wwwlawjournalsorg\\_Artificial\\_intelligence\\_Challenges\\_in\\_criminal\\_and\\_civil\\_liability](https://www.researchgate.net/publication/381007079_International_Journal_of_Law_wwwlawjournalsorg_Artificial_intelligence_Challenges_in_criminal_and_civil_liability).

assign responsibility. As a result, victims of AI-related harm may face uncertainty in seeking compensation and justice. Nonetheless, this analysis is not intended to advocate for limiting the use of AI. Rather, it emphasizes the need for responsible development and regulation, which can help mitigate risks while harnessing the considerable benefits AI has to offer.

