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Research Article

Civil Liability for Damages Arising from the Use of Artificial Intelligence: A Comparative Study between Islamic Jurisprudence and Positive Law

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Abstract: This research attempts to elucidate the extent of civil responsibility for damages by artificial intelligence (AI), directly or indirectly. It investigates the legal capacity of AI and its characterization within jurisprudence, preparatory to establishing how its damage should be determined, and by whom. The discussion considers various possible legal perceptions of AI, as a juridical persona, a mere machine, or like an irrational animal, within both Islamic jurisprudence and positive law. The research utilized an analytical approach by integration of induction, interpretation, reasoning, and critique. The research results showed that, within the realm of Islamic jurisprudence, the majority opinion holds that AI has no legal personality and should be considered similarly to irrational animals with regards to responsibility. Under positive law, the same is most likely to hold, unless the state steps in and gives AI juridical personality, whereby rules of liability and guarantor will then respectively follow. The research advises against the formation of specific standards for redefining responsibility with regards to AI, with stress on the necessity of specific details owing to the characteristics of AI, whereby defects, errors, and linkages to damage cause difficulty.

Keywords: Legal capacity, artificial intelligence, liability for harm, analogy of branches upon branches.

1. Introduction

The extremely fast rate of technological evolution that has been coupled with increased usage and extensive proliferation of technical devices throughout various aspects of life has been matched by extraordinary developments within computer programs. The programs have increasingly been able to mimic human actions and carry out various chores on behalf of individuals, due to their ability to make automated decision-making and reasoning within several arenas. The evolution has left considerable influence on legal relations, having generated various problems that owe their origin to the intersection between actions taken by artificial intelligence (AI) programs and those taken by human individuals.

Artificial intelligence systems can specifically be defined through the capability to function with autonomy. Through programmed inputs by human individuals, they can function on their own, make reasoning, and even provide suggestions and respond to the user's demands. The systems have been able to attain the ability to communicate through speech that aligns to human-like interactivity, as asserted by [1]. Even though the new AI technologies present numerous advantages, they create intricate problems, particularly by virtue of being able to ascertain the sufficiency of the available legislation to control and respond to their implications. This necessitates an immediate review of the activities conducted by the systems, the prospective damages that are likely to arise from them, and their resultant legal repercussions. In addition, clarifying the stance of the Islamic jurisprudence on the new developments and its ability to respond to emerging questions is imperative.

1.1 Significance of the Study

The study is of crucial importance because it clarifies the stance of Islamic jurisprudence while addressing the repercussions of the rapid integration of the systems of artificial intelligence with various spheres of life. It also assesses the sufficiency of legal norms available while addressing controversies and conflicts that arise during the application of such systems, particularly with respect to damages that they can cause to individuals and to public life. The paper clarifies the stance of the European Union and investigates various diverging positions of various countries.

1.2 Problem of the Study

The present research seeks to answer the following questions:

1. What are AI systems, and what are their principal functions?
2. To what extent can AI systems possess juridical personality under Islamic jurisprudence and positive law? If recognized, would such personality entail rights and obligations like those of human persons?
3. How should AI systems be classified within Islamic jurisprudence regarding liability for damages caused by or resulting from them?
4. Have the rules governing the use of these systems been specifically regulated by legislative provisions?
5. Are the current jurisprudential and legal texts sufficient to address the challenges arising from the use of such systems?
6. Who is responsible for the damages resulting from the use of AI systems, and on what basis is such liability established?

1.3 Methodology of the Study

The research adopts a descriptive-analytical research design that involves induction, interpretation, reasoning, and criticism. Within this design, the research studies the definition of AI and its qualities, investigates the ruling that is applied by Islamic jurisprudence on harm liability based on its principle, and studies legal rules that regulate civil liability within the Jordanian Civil Law. The study also considers comparative opinions, including that of the European Union and foreign countries, while critically addressing some of the opinions of academics on legal capacity of AI.

Accordingly, the study is structured as follows:

- The concept of AI systems and the scope of their functions.
- The extent to which AI systems may enjoy legal personality and the resulting implications.
- The position of Islamic jurisprudence on granting AI juridical personality and its consequences.
- Liability arising from the use of AI systems under positive law.
- Conclusion and recommendations.

2. The Concept of Artificial Intelligence Systems and Their Scope of Application

The phrase artificial intelligence (AI) is quite new, but its influence has swiftly spread to many spheres of human life. It has emerged as one of the vibrant new sciences of the twenty-first century with the goal of causing a qualitative shift in the human being's relationship with life's information and developing ways of enhancing them creatively [2]. Hence, AI is a technically intricate notion that defies a single, unifying definition. As a result, divergent academic opinions and various efforts to define its essence have ensued. We proceed to summarize some of the attempted definitions by scholars in pursuit of a suitable understanding of AI and then sketch its coverage and utilization.

2.1 The Concept of AI Systems

Different researchers and academicians have given various definitions of AI to this day, commensurating with its multi-aspect context. One of the best and one of the earliest among these is the definition of Law and Artificial Intelligence that defines AI as "a set of systems or software capable of performing tasks that normally require human intelligence, such as learning, reasoning, and problem-solving". Additionally, Data and Artificial Intelligence Glossary released by the Saudi Data and Artificial Intelligence Authority (SDAIA) clarifies that AI is "the power of simulating human intelligence through the use of computer systems, including machine learning, natural language processing, and computer vision" [3]. Another important definition is that of Merriam-Webster Dictionary, which clarifies that AI is "a subdivision of computer science that is concerned with the computer simulation of intelligent behavior and that gives machines the ability to simulate human intelligent behavior" [4].

The European Union Artificial Intelligence Act gives a legal definition within Article 3, stating that AI is "a machine-based system designed to function with various levels of autonomy and once deployed, able to generate outputs such as predictions, recommendations or decisions that can act on the physical or virtual worlds with which it interacts." Under Jordanian law, the Jordanian AI Policy categorizes AI as "the utilization of digital technology to develop systems that can accomplish tasks that simulate human cognitive capabilities and action patterns, examine their immediate surrounding environment, and learn to correct errors to make assumptions, suggestions, choices, or actions that influence real or virtual environments with a level of autonomy" [5]. Regardless of variations of wording, all of these definition lead to a single sense: systems of artificial intelligence represent software programs with the capability of thinking, of analysis and of simulation of human behaviour. We can derive from this definition that systems of artificial intelligence possess a set of specific features:

- Autonomy, reflected in their ability to make decisions independently of human intervention.
- Cognitive capacity, enabling them to reason, learn, and perceive.
- Predictive ability, allowing them to learn from past errors to improve performance and efficiency.
- Analytical capacity, which equips them to assess and process incomplete or conflicting data.

These traits have effectively led to their integration into day-to-day life being the standard, to the extent that human dependability on such systems now encompasses nearly all aspects of day-to-day life.

2.2 The Scope of AI Systems Applications

These technologies of AI can be found in nearly all areas. They have been ingrained within day-to-day life, with people now turning to search engines like Google or to virtual sites like Facebook to carry out day-today interactions. AI technologies can be found to be heavily utilized in video games, speech recognition, and virtual assistants (like Siri on iPhones). The inclusion of AI within the health sector has now been applied to medical diagnostic processes, diseases identification, planning of treatment, and even robot-assisted surgeries. Aside from these, artificial intelligence technologies are utilized in various areas like warfare technology, law, engineering, transport, and commerce, and many others. Although this research is not undertaking an exhaustive review of uses, these instances are enough to show how broad-based the impact of AI technologies really is.

3. The Extent to Which AI Systems Possess Legal Personality and Its Implications

Artificial intelligence (AI) systems have refined abilities to comprehend, perceive, analyse, and make inferences, and the capability to evolve indefinitely. As they carry out numerous functions akin to human activity—and sometimes possibly even exceeding human ability—an overarching legal concern emerges: should they enjoy legal personality? Most legal regimes already provide for juridical personality of legal persons. For that reason, some authors hold that artificial intelligence systems should equally be endowed with legal personality to safeguard what they create and, by the same token, to hold them accountable for any harm triggered by their actions. The consequence of this reflection is that many jurists have engaged in considerable debate, split between those advocating that artificial intelligence should enjoy legal personality and those actively opposing this. The key to these controversies consists of the question of whether personality is attributed to pragmatic or intrinsic purposes.

3.1 The View Supporting Legal Personality for AI Systems

Legal personality is the basis of any legal order. Questions of who can act and who can be bound by rights and obligations represent preconditions of all the rest. As rapidly emerging artificial intelligence systems play a growing role within societal life, some of the lawers argue that they should be endowed with legal personality. The thesis is based on the necessity to fill gaps of accountability caused by the speed, autonomy, and secrecy of activity of AI [6]. Its advocates argue that granting legal personality to artificial intelligence systems would engender culpability for damages that stem from their acts and products and hence offer a simple foundation of responsibility. It would similarly relieve designers and programmers of individual responsibility. Others have additionally argued that granting legal personality would make artificial intelligence systems bear independent financial responsibility, funded by those who contribute to their make [4].

In practice, legal order recognizes only two kinds of persons: natural and juridical persons. Natural persons identify themselves by being human beings, whereas juridical persons are legal non-humans to which the law assigns rights and obligations, and the corporation is the perfect example of that. There isn't any legal obstacle that would prevent a state not to extend a similar recognition to systems of artificial intelligence. There actually are significant precedents: Saudi Arabia granted citizenry to the humanoid robot Sophia in 2017, and in Tokyo residency with legal personality of a seven-year-old boy was given to an electronic system [6]. Additionally, a few European scholars and policymakers have argued that "electronic personality" should be endowed on extremely advanced autonomous robots. The European Parliament, in 2017, pondered over such a thesis when applied to AI entities with very high autonomy levels [7].

3.2 The View Opposing Legal Personality for AI Systems

The second school of thought rejects giving legal personality to AI systems because they lack full conscious will, rational power, and actual autonomy. However, shocking the breakthroughs of AI might have been, contemporary AI ultimately results from human programming and is driven by algorithms that feed out output based on acquired data. For this reason, therefore, AI cannot be regarded as having free will and therefore cannot qualify to be a legal person or to have independent liability for its errors [8]. Its critics argue that AI cannot have that degree of autonomy to experience and enjoy rights and obligations. Recognizing otherwise avails opportunities to the owners of the system to avoid accountability. Most of the legislatures thus resist the idea of granting legal personality to AI. At the American and European levels, the European Robotics Association among other organizations opposed the acknowledgment of AI legal personality [9]. Commentators also caution that bestowing legal personality on AI would provide fertile ground for difficulty in practice. It would confer rights of human status, including citizenship and separate patrimony, potentially with unforeseen effects. It would relieve the human actors who control AI systems of accountability, with potential erosive effects on victim protection. Lastly, AI cannot be analogized to juridical persons like companies, as juridical persons always enjoy management by natural persons and independent assets—criteria not met by AI systems [10].

In the European Union, while some voices were in its favor, the trend was to refuse to attribute legal personality to AI. A European Parliament decision to that effect was challenged by scholars, tech firms, and the International Federation of Robotics [11]. In 2018, an open letter to the European Commission signed by over 150 European and international experts in AI and robotics was unanimous in its rejection [12; 13]. The French parliament went to the extent of drawing parallels between animals and AI systems. Thus, legal personality has not been conferred on AI, and French jurists have been of the view that otherwise the mistake of the AI system itself and that of its creator would be hard to distinguish [7].

3.3 Balancing the Divergent Views

An open-ended solution is necessary to determine the likelihood of AI obtaining legal personality, especially with the lack of effective regulation. Contrary views confirm that the legislator should step in to provide express legal rules outlining the circumstances whereby AI can gain legal personality. Such personality cannot be granted blanket-wise to any and all AI systems. Instead, only those that possess sophisticated intelligence, problem-solving capacity, reasoning power, decision-making, and human-like performance of a task may be qualified. Even then, personality should be tied to the system possessing separate financial holdings to provide coverage of liabilities that the system causes [14]. Therefore, its determinability to grant legal personality to AI systems should stem from an evident legal code appropriate to their specific features. Analogous general legal rules or analogies will not suffice, since AI qualifies to represent a new and separate category of entities. The legislators will thus have to set special rules that keep pace with technological evolution while safeguarding the stability of existing legal doctrine.

Table 1: Comparative Overview

Point of Comparison	Natural Person	Juridical Person	AI Systems
Nature	Human beings only	May consist of one or more individuals or assets forming an independent legal entity	Computer programs and systems
Existence	Physical existence begins at birth and ends at death	Legal existence depends on legislative recognition	No physical existence like humans; most laws do not yet recognize legal existence
Patrimony	Holds patrimony linked to the individual	Possesses independent patrimony separate from partners	Some states have recognized limited independent patrimony for certain AI systems
Domicile	Every human has a personal domicile	Recognized domicile based on principal place of management	No legal domicile of its own; domicile attributed to operating company
Capacity	Possesses legal capacity varying with age and mental ability	Acquires capacity by law and constitutive act	Lacks legal capacity

From this comparison, we can see that today's AI systems lack inherent qualities that would qualify legal personality to be accorded to them. They cannot be bracketed with natural or juridical persons. It takes explicit legislative action with specific, objective standards that will not negate long-established legal principles and evolutionally allow accommodation of advances in technology.

4. The Position of Islamic Jurisprudence on Granting AI Systems Juridical Personality and Its Implications

4.1 Jurisprudential Classification of AI and Its Capacity

The jurisprudencial definition of AI and its legal capacity dictate the basis on which to ground liability for damages by, or to, such systems. If AI is to be given an independent juridical personality with full capacity or derivative juridical personality with partial capacity—as a kind of "electronic person," distinct and apart from natural and juridical persons—then liability for its damages will cease against its separate patrimony. But if AI is not given separate or derivative juridical personality but rather is considered or analogized as a material object or irrational animals (which have and lack capacity and patrimony, respectively), then liability for its damages will cease against its owner, its programmer or operator, by rules of liability pursuant to either the law of torts or contractual obligations.

Most contemporary scholars of Islamic law hold that AI cannot possess legal capacity and patrimony and thus cannot be granted juridical personality, independent or derivative. Rather, AI stands as a material object or like an irrational animal—without perception, will, or intention. This position has been argued by, inter alios, [15; 16; 17; 18]. Their position aligns with older jurists who held the owner, manufacturer, programmer, or operator of AI liable, or who analogized AI to animals to determine liability. Yet some have been the authors that affirm that to afford AI independent juridical personality isn't jurisprudentially ruled out, should future conditions demand. Such is the position followed by [15; 17]. They, however, hold that withholding AI juridical personality is the position best suited to the legal sources of Islam, due to capacity and patrimony being qualities that pertain to human beings. Its detractors put forward some of the following points:

1. A capacity within Islamic jurisprudence is subject to humanity. The source of legal capacity of being bound (ahliyyat al-wujūb) is life, whereas the source of capacity of doing (ahliyyat al-adāʾ) is discernment and perception. Neither life, nor discernment exists in AI. Additionally, whereas juridical personality has been notably acclaimed only for entities like waqf, mosques, and public coffer—since they don't have a single owner—AI cannot be included among these, given that it always represents an ascertainable owner [19].
2. Even juridical persons have no will and perception. That's why they can always only be represented by natural persons and prosecuted by court. The same principle is true of AI; thus, complaints about AI can only be raised against its owner, programmer, or operator, who have actual control [20].
3. The legal personality of AI may diminish responsibility. Developers, coders, and operators may not bother about quality and safety and rather trust that the artificial intelligence itself will be responsible. Such lack of concern can have drastic effects on safeguarded lives and property [18].
4. Recognition would enable evasion of responsibility. Assigning personality to AI would provide a legal escape for those responsible for its harms [16; 18; 19].
5. There already exist appropriate liability frameworks. The already-established principles of liability within Islamic jurisprudence—transgression-based, actio frangtori, tortious liability, and contractual liability—suffice to provide for damages by virtue of AI. There is thus no necessity to design new legislation or to coin juridical personality of AI just to accommodate liability [15].
6. The capacities and intelligence of AI are programmed and not innate. Everything that is possible of AI depends on human programming and data fed into it [19]. It is not comparable to innate human agency. Additionally, animals such as birds and bees have perfect natural behaviors, and that can only compared to being programmed, but nobody ever argued that they should have juridical personality.

4.2 Implications of Denying AI Juridical Personality for Liability

Treating AI as a mechanical object rather than as a juridical person entails that liability for damages it causes is governed by the same rules as those applied to irrational animals, slaves (historically), or inanimate objects. The party responsible is determined according to the cause of the damage.

AI as autonomous vehicles: If harm occurs by virtue of self-driven cars, then liability is taken analogously to that of an animal being ridden or driven. Liability falls on the owner, driver, or programmer—whether harm occurs intentionally or unintentionally, and whether the car is moving or standing [16; 21]. If the car has an operator who may have prevented the harm but failed to act, then the liability falls on that operator. If the occupant is not in control of the car, then both the occupant and programmer are liable. If there is not any human being to attend to, then the programmer is solely liable, just like the action of a trained dog on its owner.

AI as robots: If a robot malfunctions and cannot get the service right because of some error during programming, then the programmer is liable. If the robot is utilized within medical applications (e.g., surgery or diagnosis), then the programmer, physician, or medical institution might be liable depending on standards of professions and the extent of negligence. Very frequently, medical facilities insure this equipment, and insurance companies indemnify consequential damages [16; 20; 21].

If damage cannot be traced to any responsible human agent (such as programmer or operator), then the analogue to animals: no liability arises and the damage is ignored by law [16; 18]. The exception being if AI were to possess juridical personality. Liability would then attach to its patrimony and payment would be made by its owner (in its place) or out of its sale, by the equivalent of rules applying to slaves causing damage in classical Islamic law [15; 16].

5. Liability Arising from the Use of AI Systems in Positive Law

In essence, civil liability signifies the bearing of consequences; it is “the obligation of a person to bear the consequences of an act or omission contrary to law” [22]. The general rule is that any harm done to others requires the doer to compensate for the damage. This rule does not require the human cause of harm to be a person with legal discernment, nor does it require the harm to originate from a human act. Legislation has long regulated liability for harm caused by animals, buildings, and machines. The question, then, is the extent to which these rules apply to damages

resulting from AI systems. Can AI itself be held liable for harms it causes? Or does liability fall upon the responsible human (or entity), such that AI is treated like a machine? How, in practice, is the responsible party identified—manufacturer, operator, or end user? These questions are addressed in this section.

With the new developments of technologies of artificial intelligence, real or prospective damages have proliferated, and thus, civil actions of liability have increased. Artificial intelligence technologies can cause new, unforeseen damages, and this poses issues of identifying the type of liability, the culpable entity, and damages [23]. Therefore, legal systems now have difficulty apportioning liability in such intricate scenarios, not least when AI is integral to high-risk technologies, such as driverless cars, robots, and other decision-enabled technologies (e.g., machine learning systems based on artificial intelligence). Liability is determined by appeal to general rules of liability, to legislation and regulation specifically of AI systems, and to their interpretation of applicable positive-law rules by virtue of constitutional objectives, rules, and standards—along with ratified international treaties [24].

5.1 Contractual Liability for Damages Caused by AI Systems

Contractual liability arises when its conditions are met: a valid contractual link between parties; breach of contractual duty; and compensable damage that flows from the breach. Can AI systems be subjected to contractual liability for damages that they cause? Placing these conditions presumes that the source of damage is the immediate AI. A litany of scenarios can then emerge. If the damage arises by virtue of a latent defect within the AI system itself, the seller can be liable on the basis of defect liability for latent defects, presumed that all of its conditions have been met [25].

Artificial intelligence systems, such as service robots, can similarly be licensed to make their own contracts within those licensed to act for specific purposes. Could contractual liability then not accrue to the system by way of breach? In practice, however, since the legislature will not have adopted AI as legal personality, the system cannot be liable per se; the liability accrues to the ownership company. Therefore, by virtue of absence of legal personality of the systems of artificial intelligence, contractual responsibility lies with natural (or juridical) persons that draft the contract; its repercussions impinge on them.

5.2 Tort Liability for Damages Caused by AI Systems

Tort liability (liability for a harmful act) arises with the occurrence of damage; damage forms the basis of tort. Its traditional constituents are a harmful act, damage, and a causal connection between them. Regardless of its quality, harm carries with it liability of its creator. In the context of AI, various possibilities emerge. If the harm is that of a defect-in-programming, then the programmer (or the company that programmed) is liable. If the harm is of breaking rules of usage, then the user is liable by virtue of having failed to obey the rules of usage. Harms can similarly flow directly from higher-order AI systems themselves—like robots and driverless cars—under the scenarios depicted above. Applying traditional liability rules to highly autonomous AI may mean that users and developers do not neatly satisfy the elements of personal fault for the system's acts, rendering traditional frameworks hard to apply. The European Union has therefore moved—through recently adopted AI-related liability instruments—to adapt liability to these challenges by introducing stricter regimes for certain AI systems in lieu of purely fault-based models. The aim is to make it easier to hold AI developers, producers, and users to account, including obligations to explain how systems were built and trained, thereby facilitating claims by injured individuals and entities. However, critics note that such measures risk unfairness if producers and developers are held liable for AI-driven events they neither anticipated nor could control [26].

Where stricter regimes may afford pragmatic benefits to claimants set against redress for damage relating to AI, they may unfairly burden developers and producers by holding them responsible for matters outside their control or foreseeability—potentially discouraging innovation with regards to AI. Or others argue that limited (derivative) legal personality should be granted to individual AI systems that function effectively within defined criteria (e.g., to make legally significant acts). Such derivative personality, equivalent to that of companies, would not exempt developers or producers where their liability is otherwise engaged, but would keep to a minimum the risk of unfairly burdening all responsibility with regards to system action by autonomous systems [26]. Additionally, the projected increase in AI-related damages claimants—particularly in cases of severe personal harm or massive losses—could make operators facing commercially unrealistic liabilities. This, again, can deter investment, restrict access by small companies, and induce excessively defensive deployment of AI with adverse implications on safety, basic rights, and the economy. Thus, the urgency of legislative action to fine-tune the rules of liability to balance adverse interests.

6. Conclusion

At the end of this research, authors made a set of results and recommendations that were determined to be the following:

6.1 Results

AI programs lack legal personality in the majority of jurisdictions due to the absence of fundamental qualities that would manifest into legal personality.

The applications of artificial intelligence represent unique difficulties with defect and error identification and with establishing cause, and thus with attributing responsibility to claim compensation.

Absent custom-made regulation, responsibility for damages resulting from the deployment of AI is based on general principles of liability—an area of convergence between positive law and Jurisprudence of Islam.

It is the responsible human: the developer, manufacturer, distributor, or consumer that is responsible, depending on each of the players' roles to inflict the damage.

6.2 Recommendations

The legislator should step in with specific, accurate provisions relating to when (and to what extent) AI systems can be accorded legal personality. Such recognition cannot be global; it should bear the mark of the abilities and stage of sophistication of the systems in question.

Standards should be set to redefine liability pertaining to artificial intelligence and should be very carefully drafted due to the unique traits of technology.

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