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Can Machines be Guilty? A Study on Criminal Liability of AI with respect to Mens Rea and Actus Reus

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ABSTRACT

The rapid proliferation of Artificial Intelligence (AI), particularly self-driven and autonomous systems, has outpaced the existing legal frameworks governing liability and accountability. As AI systems gain the capacity to make decisions independently of human intervention, traditional criminal law—anchored in human intent, consciousness, and moral blameworthiness—faces profound challenges. This paper critically examines the possibility and practicality of imposing criminal liability on AI systems, with a specific focus on self-driven machines capable of causing harm or violating legal norms.

The discussion begins with an exploration of the theoretical limitations of existing doctrines of criminal liability when applied to non-human agents. It then analyzes the potential for adapting legal frameworks, including the "Adaptive Regulatory Framework Theory," to bridge the accountability gap. This theory suggests a dynamic legal approach that evolves with the capabilities and integration of AI, enabling regulators to respond proportionately to emerging risks and responsibilities.

Additionally, the paper evaluates the relevance of product liability under civil law and its intersection with criminal accountability. In the Indian context, the Consumer Protection Act, 2019 is examined as a legislative tool that addresses harm caused by defective AI products, especially in terms of consumer safety, service deficiencies, and unfair trade practices. However, the Act's civil remedies raise critical questions about the adequacy of penal consequences in cases involving gross negligence or autonomous misconduct by AI systems.

The study concludes by proposing a hybrid liability model, where human actors—manufacturers, programmers, or users—could face penal consequences under specific circumstances, while simultaneously exploring the need for new categories of liability uniquely tailored to AI. Ultimately, the research argues for a forward-looking legal framework that upholds justice, ensures deterrence, and preserves accountability in an age of intelligent machines.

***Keywords**: Criminal Liability, AI, Product liability.*

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 [ISSN 2581-5369]

I. INTRODUCTION

Change is a natural law; therefore, society changes with the advancement in technology. Technology helps in social change which ensures advancement in the living standard of society at large. It further ensures better governance and better democracy. However, this advancement has open new doors for the evolvement of criminal law jurisprudence. The technological advancement has led to let machine work with assistance of human intervention and even without human assistance that makes them self-driven. The advancement in technology in the contemporary scenario is a cause of concern under criminal law as upon whom the criminal liability would lie if there were an offence committed by an AI driven machine.

As Artificial Intelligence becomes more integrated into criminal justice systems, it challenges the foundational principles of criminal law jurisprudence. Traditionally centered on human intent, fairness, and procedural justice, criminal law now faces a new landscape shaped by algorithmic tools. Technologies like predictive policing and automated sentencing raise concerns about transparency, bias, and the erosion of due process. Yet, if governed by constitutional values and ethical safeguards, AI can also support more consistent and efficient outcomes. The future of criminal jurisprudence lies in harmonizing human discretion with intelligent systems, ensuring justice remains both technologically advanced and fundamentally humane.[3]

The very essence of criminal law lies in the guilty act coupled with guilty intention. The basic premises of criminal law is *actus non facit nisi mens sit rea*. Actus reus means the resultant act and mens rea means the wrongful or guilty intention. The term offence includes both act and omission. Criminal law penalises an act or omission due to which an injury or loss is caused to person or his property. The injury or loss could be bodily injury or harm to his mind, property and reputation. Criminal law prescribes different form of punishment under section 4 of Bhartiya Nyaya Sanhita, 2023 that include death penalty, life imprisonment, imprisonment, forfeiture of property, fine and community service.

Use of technology is very much required in this fast-growing work, but it requires certain regulatory framework. The Adoptive Regulatory framework is the best suited framework in this situation. This framework advocates the idea that law should adopt technology. Law and technology should evolve at same pace. There has to be quick reaction of law with the advancement of technology. However, this is an idealistic theory as the present criminal law is not adequate enough to adjudicate the liability of AI driven machines specifically without

[3] **Naim Osmani,** *The Complexity of Criminal Liability of AI Systems*, 14 **Masaryk U. J.L. & Tech.** 53 (2020).

 [ISSN 2581-5369]

human intervention.

With respect to AI driven machines with human assistance, the concept of product liability or manufacturer's liability is evolving. The idea of product liability is rising as there is no other principle for liability in cases of default at the end of AI. Therefore, someone is required to pay compensation to the victim for the loss or injury sustained. This is the reason behind the enactment of section 84, 85 and 86 of Consumer Protection Act, 2019 to make manufacturer, owner liable in cases of negligence by the machine if the machine requires human intervention or assistance. However, if the assistance is complementary then the liability will be apportioned between the operator and manufacturer depending upon the facts and circumstances of the case. The next head of the work will discuss the criminal liability of AI driven machines which does not require human intervention or assistance at all, who is to be held liable; to whom to inflict punishment.

II. CRIMINAL LIABILITY: SELF DRIVEN AI MACHINES

Artificial Intelligence has become a reality now after centuries. There is a substantial increase in the dependence of humans on artificial intelligence.[4] The extent of dependence is unexplainable as we depend on AI from cars to computer science to medical science to phones, etc. The dependence is quite large. Human life has become easier, better and efficient with the introduction of AI.[5]

In today's world, where data drives decisions and digital systems increasingly shape human interactions, Artificial Intelligence (AI) has moved beyond the realm of futuristic speculation. It now plays an active role in influencing everything from governance and commerce to everyday social behaviour. Whether it's biometric surveillance at public spaces or algorithmic tools guiding judicial and law enforcement practices, AI is steadily integrating into both governmental and private operations. However, this rapid technological evolution presents a serious challenge: traditional legal and constitutional norms are often unprepared to address the complex and fast-moving implications of AI's expanding influence.

Ankit Kumar Padhy & Amit Kumar Padhy in their paper has given a definition of AI

"It is the ability to adapt or improvise according to the feedback received in order to solve problems and address situation that go beyond the predefined set of queries and instructions that the AI was programmed with."

[4] G. Chaudhary, *Artificial Intelligence: The Liability Paradox*, 20 ILI L. Rev. 144 (2020).
[5] Matilda Claussen-I-Carlsson, *Artificial Intelligence and the External Element of the Crime: An Analysis of the Liability Problem* 7 (2017).

Like it is said, every coin has two faces, like every technology, there are pros and cons attached to it. The advantage is with regards to ease of living and cons are with respect to the default. So, this brings pertinent legal questions; who should be held responsible when AI causes injury or harm to person or property; who should bear the legal consequences; can we attach criminal liability upon a machine; is the infliction of liability feasible and so on and so forth.

III. INFLICTING CRIMINAL LIABILITY

Assigning criminal responsibility to artificial intelligence presents deep-rooted challenges within the legal domain. AI systems, by their nature, lack the capacity to understand legal obligations or to be meaningfully subjected to punishment. They cannot be deterred by threat, reformed through penalty, or judged through moral lenses as humans can. Furthermore, attempting to assign criminal intent to an AI entity risk confusing its role as a tool with that of an independent agent, potentially disrupting core legal doctrines. Nonetheless, the increasing independence of AI — particularly in critical sectors like healthcare, finance, transportation, and security — has intensified demands for legal innovation that can effectively address the risks and consequences of AI-driven harm.

The aspect of inflicting punishment to AI is quite challenging. The entire theme behind the criminal law is to punish the criminal to deter him and others from committing crimes in future. In civil law and in criminal law, where compensation will suffice, the concept of product liability has been evolving in the contemporary scenario. If the AI has committed some fault then the manufacturer or operator can be held liable by citing the reason of mal-functioning or ill-operation respectively. This liability has been cited in the Consumer Protection Act, 2019. Now this imposition of liability is limited to the functioning of AI which is dependent on the human intervention.

Now, if we talk about the liability of AI which is working without human intervention or say no human intervention, then the question arises as to upon whom the liability will arise. To answer this question, we will address the practical aspects of inflicting criminal liability upon AI working without human assistance. To inflict criminal liability, the two essentials that are actus reus and mens rea must be established. The resultant act is actus reus, which can very well be established as the injury or the loss sustained by the victim due to the default or any act or omission on the part of AI. Now the question arises for mens rea that is guilty intention. This question that whether the AI is capable enough to form intention, that too guilty one, need to be asked for committing an offence under the law time being in force. However, we can still impose the mens rea on the AI with some interpretation.

 [ISSN 2581-5369]

- Illustration 1: If the AI has committed an act which resulted in causing death of a person. Now the word referring to act includes an series of act as a single act under section 2(1) of BNS. Therefore, there is a duty upon the AI and that duty is violated then it leads to illegal omission then the AI can be held responsible for the resultant act that is death of a person.
- Illustration 2: If the AI has committed an act which resulted in causing death of a person. Now the resultant death of a person is committed under a certain circumstances which leads to presumption that certain act would lead to death of a person. Then this could be covered under fourthly of section 101 BNS and hence, AI can be held responsible.
- Illustration 3: If the AI has committed an act which resulted in causing death of a person. The manner in which death occurred is so negligent or rash which leads to a presumption against the AI that it has to follow certain amount of duty which it breached and hence the resultant act. The breach could be for two reasons for which separate liability would establish that is if there is data insufficiency then the manufacturer must be held liable or if there is negligence on the part of AI then AI must held liable under section 106(1) BNS.

Therefore, through this interpretation the AI working without human intervention can be held liable by fulfilling the two essentials of criminal law jurisprudence.[6] These illustrations are limited to death; however, this interpretation can be extended to any other offence by similar argumentation.

IV. PENAL CONSEQUENCES

The advancement of artificial intelligence (AI) in autonomous functions and critical decision-making has introduced unprecedented challenges to the concept of legal accountability, especially in the sphere of criminal law. Unlike human beings or even legal entities like corporations, AI lacks essential attributes such as consciousness, moral judgment, and intent—cornerstones of criminal responsibility. This fundamental difference gives rise to a complex dilemma: how can criminal law, which traditionally targets human misconduct, adapt to situations where an AI system contributes to or causes actions that would typically qualify as criminal offenses?

As we have seen the imposition of criminal liability upon AI, now it is required to discuss the

[6] Ankit Kumar Padhy & Amit Kumar Padhy, *Criminal Liability of Artificial Intelligence Entities*, 8 Nirma U. L.J. 8 (2019).

 [ISSN 2581-5369]

penal consequences behind any act or omission which the law prohibit. The basic aim of criminal law is to punish the offender and put him behind the bars so as to deter him/her and others from committing crime in future. The second aim is to satisfy the victim for his/her loss or injury sustained that offender has been punishment which gives an internal satisfaction to the victim.

Section 4 of Bhartiya Nyaya Sanhita, 2023 prescribes six mode of punishment that are death penalty, life imprisonment, imprisonment for a term either rigorous or simple, forfeiture of property, fine and community service. Here, the question arises as to who should be put behind bars or whom to deter. Will it satisfy the purpose?

Punishment for murder under section 103 BNS is either life imprisonment or death. The feasibility of death penalty has to be discussed here. Is dismantling the machine is sufficient or is there anything more to do? Dismantling the machine is approximately equal to inflicting death penalty.[7] However, the ultimate motive to deter the offender or others from committing crime is not satisfied. Therefore, the feasibility of deterrent theory of punishment has to be called in question in cases of imposition of liability on AI.

The deterrent theory of punishment can be justified on certain grounds. For interpretation, the concept of general deterrence can be discussed. Inflicting death penalty to AI can be equalised to dismantling the AI driven machine which ultimately hampers the interest of manufacturer, thereby creating a general deterrence in the minds of other manufacturers to not to manufacture such defaulting machines in future. This justifies the concept of theory of deterrence. Death penalty is considered to be most severe form of punishment as it deprives humans from its life. AI is a separate entity, sometimes in form of robot or sometime in form of just a software. The significance of death penalty under criminal law is to make the offender incapable to crime in future. This same principle can be applied here also as permanent deletion of software or dismantling the robot will make the AI incapable of committing crime in future. Putting restrains or limitation on liberty or freedom of AI entity means restriction on its freedom to act as an AI entity is significant or equalised to limitation on human liberty in the contemporary scenario.[8] However, the feeling of repentance or moral agency is still not justified in such cases for which there is still a requirement in evolvement of criminal law jurisprudence.

Furthermore, temporary deletion of software upon which the AI is working can be equalised as

[7] Dafni Lima, *Could AI Agents Be Held Criminally Liable: Artificial Intelligence and the Challenges for Criminal Law*, 69 S.C. L. Rev. 682 (2018).
[8] Ryan Abbott & Alex Sarch, *Punishing Artificial Intelligence: Legal Fiction or Science Fiction* 27 (Univ. of Cal. 2017).

 [ISSN 2581-5369]

imprisonment in criminal law jurisprudence.[9] There are few adjustments which has to be made to apply the present criminal law to AI driven machines but still the moral agency is missing which is very much required as victim should feel satisfied. Fine can very well be imposed upon the manufacturer which can be recovered as per section 461 BNSS.

However, the question of the effect of punishment on AI driven machines is still unanswered. What affect will it make on AI apart from restraining it from its functioning as there is lack of moral agency? The lack of moral agency is important here as the victim is unsatisfied or the society at large is unsatisfied as the perpetrator of the crime is unaffected and only bear penal consequences.

Another significant question that arises is inline with the reformative theory of punishment. This theory advocate that the offender should reform him/her so as to again mix in the society. A fair chance of reform should be given to the offender. However, can this be possible in AI driven machines? After dismantling, can the manufacturer be allowed to again make the machine or make the software again. This question can be answered as above we argued that AI lacks moral agency therefore, the feeling of reform is not there in the machine. Therefore, this circumstance is answered.

V. EXISTING CRIMINAL LIABILITY

The rapid integration of artificial intelligence (AI) into diverse areas of society has triggered significant legal and regulatory debates, especially within the realm of criminal justice. As AI systems begin to act independently, make decisions, and engage with human environments in increasingly sophisticated ways, concerns emerge about who should be held responsible when these systems are involved in harmful or criminal incidents. Criminal law, which has long been grounded in the principles of human intent and responsibility, now faces the complex task of addressing conduct carried out by entities that lack consciousness, moral judgment, and legal identity.

Council of Europe, an international organization, which works for safeguarding and promoting human rights, democracy and rule of law in Europe. It has posed an obligation upon its member states to adopt regulation and set up the standards for driving automated vehicle. The Council of Europe Committee on Criminal Problems (CDPC) is raising concern regarding AI wide use in everyday life. Therefore, in furtherance, France has adopted legislation on use of automated driving. It has relaxed the driver from any criminal liability while driving the vehicle if the

[9] Matilda Claussen-I-Carlsson, *Artificial Intelligence and the External Element of the Crime: An Analysis of the Liability Problem* 7 (2017).

automated driving mode is functioning and the driver has operated it according to the standard. However, the driver would be liable if the driver had not followed the set operating mechanism. The manufacturer will be liable when the driver has followed all the operating mechanism and still there is some offence committed, therefore, the criminal liability shifts to manufacturer as it is he who has tested or authorised the use of the automated vehicle.

At present, the subject of AI and criminal liability is not governed by any regional or international organisation. They are still discussing this issue. The European Commission has released a white paper ""On Artificial Intelligence - A European approach to excellence and trust" which has two objectives; promoting the use of AI and addressing the risks associated with it. EU has recognised fundamental values such as human dignity, privacy protection and fair trial and it invites member states to contribute in this decision-making process. It had recognised fault-product liability and discusses other issues as well.[10]

VI. CONCLUSION

The world is changing at large pace and with the advent of technology the society is now prone to negative change along with positive ones. This study has discussed the three aspects of the liability of the AI; AI when acting as an innocent party, AI working complementary to the human force and lastly, AI working without human intervention. When AI is working as an innocent party then the entire control is in the hands of the operator, so if there is any default then the manufacturer or operator would be held liable as they are responsible for the working of the AI. Secondly, when AI is working complementary to the human force then the amount of assistance has to be gauged to inflict liability, so there is mishandling on the part of human force then the manufacturer or operator would be held responsible. The gray area is with respect of self-driven AI that is AI working without human intervention, then through some interpretation, AI can be held solely liable and penal consequences can be attracted. However, the lack of moral agency is the only reason which is against this interpretation as the victim is not satisfied. Therefore, there is still some more research to do to categorically held AI liable in cases of self-driven AI.

To address the complexities posed by artificial intelligence, especially in criminal contexts, relying solely on traditional legal principles is no longer sufficient. A multifaceted legal strategy is required—one that incorporates aspects of product liability, consumer protection, regulatory intervention, and criminal accountability. Given India's rapidly advancing digital landscape,

[10] European Committee on Crime Problems, *Feasibility Study on a Future Council of Europe Instrument on Artificial Intelligence and Criminal Law* (Sept. 4, 2020), Strasbourg.

there is a pressing need to develop AI-specific legislation that ensures both public safety and technological progress. Establishing such a responsive legal framework will be critical to maintaining fairness and accountability in a world increasingly influenced by autonomous, intelligent systems.

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