

Legal Capacity of the Intelligent Facilitator and its Impact on Responsibility in Islamic Jurisprudence

Mohamed Mahmoud El Gammal

Assoc. Prof. Dr. College of Islamic Studies, HBKU, Qatar
malgammal@hbku.edu.qa

Abstract

The “Intelligent Facilitator” is a computer program with several sensors and effectors and has some characteristics, such as autonomy, flexibility, learning, adaptation, communication, interaction with the users, the ability to transform goals into tasks, and acting in its environment. The paper’s title is “Legal Capacity of the Intelligent Facilitator and its Impact on responsibility in Islamic Jurisprudence,” in which the “electronic facilitator” is technically referred to as the “Intelligent Agent.” Although I use the term “Intelligent Agent” throughout the paper as many researchers do, I have ignored it in the title because describing this role as a sort of “agency” is not accurate and constitutes question-begging. That is because the “electronic facilitator” is unconscious and undiscerning no matter how intelligent, independent, and expert it is.

Keywords: Legal Capacity, Intelligent Facilitator, Legal Capacity Responsibility, Islamic Jurisprudence.

I. INTRODUCTION

The paper aims to characterize the intelligent facilitator from a Fiqhi perspective and demonstrate its ruling in light of the sharia objectives and juristic maxims. It attempts to utilize the Fiqhi applications of the self-executing contracts, such as *muñÉÏÉh* and *’istijrÉr* sale contracts.

The first section of the paper explains the fundamental principles on which the ruling of the “Intelligent Agent” is based. These principles include the Fiqhi maxims, sharia objectives, and analogical reasoning related to the *muñÉÏÉh* contract. The second part shows the juristic characterization of the intelligent Agent, followed by the most important conclusions. I ask Allah to make this work purely for His sake!

II. FUNDAMENTAL PRINCIPLES GOVERNING THE RULING OF THE INTELLIGENT AGENT

A. Fiqh Maxims

Juristic maxims that can help in deciding the ruling of the Intelligent Agent are as follows:

i. First Maxim: *Al-KharÉj biĻ-ÖamÉn*

This maxim means the person is entitled to the benefits derived from the item that s/he shall indemnify if damaged [1]. Therefore, the user incurs the same damages of the Intelligent Agent and is responsible for its acts before third parties. He bears all the consequences of the contract and performs all his duties and obligations. In return, the user enjoys the Intelligent Agent's ability to search, compare, follow up, and negotiate. These activities require enormous time, effort, and money from the user. That is why the maxim states that the item's benefit is the right of the indemnifier.

ii. Second Maxim: *At-TÉbiÑ IÉ Yufrad bÊ xukm*

This maxim talks about secondary things that do not exist independently and only exist with other primary things. For example, the former is a part or acts as a part of the latter. The principle signifies that a subsidiary item cannot be the subject of the contract independently, such as the baby animal in its mother's womb. This fetus cannot be sold separately from its mother [2].

Therefore, the Intelligent Agent is subordinate to the user and subject to its rulings. It cannot be given a rule separately. The contract's rights and duties apply to the primary party (i.e., the user). A secondary thing, on the contrary, cannot precede the primary party, and it shall terminate upon the termination of the primary one. That is why faults that might be forgiven in subordinate items cannot be tolerated in the main ones.

iii. Third Maxim: *Al-ÑAdah MuĻakkamah*

This principle denotes that custom is a basis for judgment. People resort to the Intelligent Agent because they need to use it as an intelligent tool to accomplish more than what they want. In principle, the Intelligent Agent is accountable for the contract's rights and duties when it goes against the user's will. But people usually take the user to account because it is impossible to charge the Intelligent Agent since it is software with no place, legal capacity, or money. In this case, we apply the notion of this maxim that custom is a basis for judgment.

iv. Fourth Maxim: **Things are in principle permissible till evidence supports their prohibition**

This maxim addresses the Intelligent Agent since there is no Sharia text prohibiting it. A person utilizes this Agent, and it brings him/her many benefits and interests. Benefits are in principle permissible, and this supports the permissibility of using the Intelligent Agent.

B. Sharia Objectives

We attempt to formulate a perspective related to the Intelligent Agent based on the Sharia objectives as follows:

i. First: Sharia objectives require removal of hardship

Absolving the user from the responsibility for the actions of his/her Intelligent Agent entails hardship and difficulty for those dealing with Intelligent Agents. This kind of Agent lacks the legal capacity, which means it cannot hold rights and duties (legal standing) or exercise them (legal agency). Difficulty should be removed in Islamic Sharia, and this necessitates the permissibility of using the Intelligent Agent while holding the user accountable for the commitments resulting from this usage.

ii. Second: Circulation is an objective for financial transactions

Money should be circulated and transferred among people, and this must be from lawful sources and through legal channels. Therefore, monopoly, hoarding, and collecting money unnecessarily are not allowed. The Intelligent Agent contributes to money circulation because it can superbly access the suppliers' services and products and fulfill the users' wills, facilitating sale and lease transactions.

iii. Third: Means take the same ruling of their purposes

The verdict established to an end is given to the means leading to that end. In other words, the means leading to obligatory ends are obligatory, and the means leading to forbidden ends are forbidden. Also, the status of a medium follows its purposes; the means to the best purposes are the best means, and the means to the lowest ones are the lowest.

In fact, the Intelligent Agent is no more than a permissible medium because it is used to save time, effort, and money. Most of the time, it achieves the user's goals when contracting a commodity or service. As long as the Sharia does not prohibit the objective, it does not ban its medium.

iv. Fourth: Objectives addressing complementary needs

Purchasing goods and services online has become a need, particularly after the companies have promised sales and discounts for those shopping on their websites. But often, if you try to buy a good or service from an unspecified company, you will find yourself in front of a sea without a coast, which makes you spend much time exploring different websites, and maybe you do not get what you want. This situation makes you need to use the Intelligent Agent that can access hundreds of sites and make various comparisons to reach the best results, and then send you its recommendation, which if you accept, your contract is complete.

Therefore, such a need amounts to a necessity that recommends using the Intelligent Agent, although it is not accountable for the contract's rights and duties. These rights and duties are the user's responsibility even if the Agent contradicts his/her will.

C. Analogical reasoning related to *muñÉĪÉh*

MuñÉĪÉh is a transaction in which each of the contractors gives the other the items contracted without offer or acceptance, or with an offer and without acceptance. Contextual indication replaces the verbal expression here [3], and the ruling established by indication has the same authority as the ruling based on uttered words.

The question is: are actions showing approval enough for the formation of *muñÉĪÉh* contract and thus may serve as a basis that is analogous to the user's actions towards the Intelligent Agent and his/her approval of the consequences of its behaviors? This analogy has a sort of dissimilarity because the user demands the Intelligent Agent in writing to search, compare, and follow up according to conditions s/he introduced or properties s/he stipulated based on its autonomy, intelligence, rationality, and proactiveness. Therefore, it could be a representative should it enjoy legal capacity and thus a tool affiliated to the user.

III. FIQHI CHARACTERIZATION OF THE INTELLIGENT AGENT

This paper principally aims to find how the Intelligent Agent is characterized in Islamic jurisprudence. There are three possibilities: the Intelligent Agent is a mere medium, enjoys the legal person's capacity, or is a genuine agent of the user. Let's discuss it in some detail.

A. The Intelligent Agent is a medium or tool only

The intelligent Agent could be described as a medium or tool for the user. Therefore, any action done by the Agent is deemed approved by the user. That is because it carries the user's will to the other contractor and acts as per his/her order. Accordingly, the user should take utmost care when feeding the Intelligent Agent with the necessary information to start working. It also provides security for the second party contracting with the Intelligent Agent. Therefore, it is not possible to consider a machine or software competent for legal obligations [4].

It could be argued that the Intelligent Agent is autonomous and translates its will, and sometimes changes or modifies the user's will depending on the circumstances of its environment. So how could the user be accountable for the Intelligent Agent's action and contract when the latter has gone against the former's will? [5]

This argument could be countered by saying the user definitely knows that the Intelligent Agent has its environment, which it utilizes and runs in. Otherwise, the user would not have requested it to act on his/her behalf, or s/he would have used the 1st generation of the Intelligent Agent that carries out the user's orders without any changes. Therefore, the interests of the user and the other contractor require accountability for the Intelligent Agent's actions. Additionally, holding the user accountable for that urges him to control the Intelligent Agent, even though control in this domain is minimal but not absent.

Resorting to the Intelligent Agent indicates that the user intends to authorize the Agent to conclude the contract on his/her behalf and do all the processes needed. Thus, the contract

becomes binding on the user, not because s/he has accepted its terms, but because s/he has chosen to conclude the contract through the Intelligent Agent [6]

B. The Intelligent Agent has the legal person's capacity

The Intelligent Agent enjoys the legal standing acquired by the legal person, which means s/he can hold rights and duties suitable for their nature and enjoys the legal agency established on reason and discretion. Legal agency qualifies the person to act and decide in a manner considered by the Sharia. Most often, the legal person acts only through his/her representative.

The Intelligent Agent, however, can exercise its duties directly without any need for a representative, and thus it resembles the natural person more closely than the legal person. It is independent of the user and free to take action. In this case, the Agent is the negotiator and the decider and is fully cognizant of the features of the contract's subject matter and terms. Moreover, to alleviate the harm from the user when violating his/her conditions, it is recommended to provide security for the Intelligent Agent's user so that s/he bears the consequences of their acts.

One may discuss this argument by stating that the Intelligent Agent is devoid of consciousness and self-perception. Neither it has a homeland or residence, nor does it live in a specific place on the internet. It travels among the websites and does not have patrimony from which financial liabilities could be settled [7]. Also, it is impractical to create a bank deposit in its name to ensure repayment in case of violating its user's terms. This suggestion is useless because the depositor is the user, and it is easier for the user to indemnify directly.

C. The Intelligent Agent is a genuine agent for the user

The Intelligent Agent could be characterized as a natural agent subject to the rulings of *wak'alah* (agency) because it concludes the contracts pursuant to instructions of its user who adheres to the Intelligent Agent's acts as long as they are in the scope of its agency. If it exceeds its limits, it shall be responsible for any damages resulting from the violation unless the user approves it [8].

The characterization above could be argued as follows:

- i. The intelligent Agent does not have legal capacity because it lacks consciousness and self-perception, which are the locus of legal assignment. We cannot say that the Intelligent Agent is legally assigned and thus cannot be a genuine agent [9].
- ii. The Intelligent Agent expresses its will, not the user's, because it can communicate and work in its environment and sometimes modify the user's orders. After concluding the contract, the Intelligent Agent disappears, and the relationship then becomes between the user and the other party contracted with the Intelligent Agent [10].

It could be argued that the Intelligent Agent is only a tool in the user's hand, and the Intelligent Agent's will is itself the user's. Were the user's will not present, the Intelligent Agent could not be programmed to respond or conclude the contracts. Therefore, the user translates his/her

intention by assigning the Intelligent Agent to undertake the offer and acceptance processes as per the circumstances [11].

- iii. Sometimes, it is not easy to recognize the Intelligent Agent that concluded the contract. That is because it can copy itself and send the other copies to complete the required work or authorize other Intelligent Agents to accomplish this task on its behalf. The Intelligent Agent exists and runs only via the physical medium where it is stored. Therefore, it is not surprising that the Agent disappears without prior notice, making it hard to consider it a responsible agent [12].

D. Preponderant opinion

The appropriate characterization is to consider the Intelligent Agent a medium and tool utilized by the user, who is held accountable for the consequences of its acts. That is because the Intelligent Agent has no legal capacity, perception, homeland, or patrimony. Also, it cannot translate its will automatically, making it difficult to deem it an agent for its user. On the contrary, it needs intervention from the user who feeds it with the information s/he wishes others to see.

The second and third attempts of characterization are not different. Those believing that the Intelligent Agent has legal capacity state that it a genuine agent, and those rejecting its legal capacity confirm that it is not.

Therefore, the Intelligent Agent is a tool or medium associated with the user and follows the latter in their rulings. So, the user should be responsible for the actions of their follower.

The evidence supporting this conclusion is the Quranic verse, which reads: {Believers, guard yourselves and your families against a Fire.} [Quran 66:6] This verse confirms that the believer is responsible for himself and his dependent. In a Hadith, it was reported that the Prophet (peace be upon him) judged only half of the blood money to be paid for families of the Muslims killed by the detachment he sent to Khath'Nam. The context demonstrates that the payment had been made from the Muslim's public treasury. The treasury paid half of the amount, indicating that the one in charge is responsible for the damages caused by the subordinate (the detachment). The Prophet (peace be upon him) did not pay the other half of the blood money because those killed committed a mistake by staying among the polytheists. Another evidence is the incident in which Caliph Abu Bakr (may Allah be pleased with him) paid the blood money of M'Élik ibn N'Éwayrah when killed mistakenly by Kh'Élid ibn Al-Wal'Éd. Since Kh'Élid was a subordinate of the Caliph, the public treasury bore the responsibility of its official's mistake [13].

Hanafi scholars hold that *al-'Aj'Ér al-Mushtarak* (independent contractor) indemnifies the mistakes of his/her subcontractor although the latter guarantees only in case of violation or negligence. Since the subcontractor is affiliated with the main contractor, the latter shall be responsible for the damages caused by the former. Also, the coercer incurs the responsibility for the acts committed by the coerced entity, and the relatives share the responsibility for paying the blood money in manslaughter. These two rulings support the above conclusion [14].

Based on the abovementioned, the user is accountable for the Intelligent Agent's mistake. However, if the error is caused by the programmer, the other contracting party, the hacker, the viruses, or their senders, responsibility shall be incurred on the one caused the damages.

The burden of responsibility for the errors committed by the Intelligent Agent before or during the contract could be removed by encouraging the users to arrange cooperative insurance against the risks of using the Intelligent Agents. If the risks insured occur, insurance companies shall compensate the affected party for any harm. This solution will motivate people to adopt the Intelligent Agent technology and help boost e-commerce.

IV. Conclusion

The paper has arrived at some key conclusions, which are as follows:

- i. The ruling of the Intelligent Agent could be built on the Fiqh maxims such as "privilege must be paid for," which signifies that whoever benefits from something should bear its harms. Another maxim is "subordinates follow the same rulings applicable to the primary one," which confers the contract's rights and duties on the original benefactor. Also, the juristic principle saying that the "custom is a basis for judgment" works here because people usually put the responsibility on the user. The last maxim is "things are in principle permissible," mainly there is no Sharia text prohibiting the usage of the Intelligent Agent, and people utilize it in their lives.
- ii. The ruling also could be established in the light of the Sharia objectives such as "alleviating hardship." This objective necessitates the permissibility of using the Intelligent Agent and contributes to money circulation, which is a unique goal for transactions in Islam. The Intelligent Agent is no more than a permissible medium, and the means are subject to the same rules of their ends. Sharia objectives related to human needs require allowing its usage because people need it, and what people need should be treated as a necessity.
- iii. The Intelligent Agent has been characterized as a mere medium, a legal person with a legal capacity, or a genuine agent. There is no difference between the last two characterizations. Scholars who say that the Intelligent Agent has legal capacity state that it is a real agent, and those rejecting its legal capacity confirm that it is not.
- iv. The preponderant characterization is that the Intelligent Agent is a tool and medium adopted by the user, who incurs the responsibility for the consequences of its acts. That is because the Intelligent Agent has no legal capacity, perception, homeland, or patrimony. Also, it cannot translate its will automatically.
- v. The paper proposes arranging cooperative insurance against the risks of using the Intelligent Agents. This proposal will motivate people to adopt the Intelligent Agent technology and lead to boosting e-commerce.

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