

ARTICLE

PERSONALIZED PRICES IN THE DIGITAL MARKETPLACE: A STUDY OF ALGORITHMIC PRICE DISCRIMINATION AND THE CONSUMER PROTECTION LAW**Dr. Sonia Maan*****Abstract**

There is a growing usage of data driven algorithms in this digital e-commerce era, enabling sellers on the platforms and platforms itself engaging in the price discrimination and personalised pricing and adjustments in real time. The adoption of these practices though on the surface level appear to be efficient and competitive but raise serious concerns regarding transparency, opacity and violation of consumer rights by leveraging consumers personal data to create such personalised pricing in the digital marketplaces. The paper begins to analyse the challenges posed by the algorithmic price personalisation and goes on to examine the effectiveness of the Consumer Protection Act of India, 2019 to effectively address these challenges. The paper employs a doctrinal approach through comparative lens, to understand the statutory provisions and case laws addressing the issue with reference to e-commerce. The paper further delves into the consideration of interplay of consumer law and allied legal framework including data protection and competition law, to identify the appropriate regulatory framework for algorithmic pricing. The questions answered in the paper are: (i) can personalised pricing be regarded as an unfair trade practice as mentioned in the consumer protection act; (ii) how much transparency in pricing, data use, and segmentation is required to be considered as a violation to consumer's right to be informed and (iii) what kind of remedies are available and desirable. The paper argues that present consumer protection law already has measures to target the algorithmic price personalisation but a clearer and transparent provisions, guidance and regulatory reforms are required to make protections effective in digital marketplaces. The paper proposes a calibrated approach that is strong transparency and auditability requirements of price algorithms, targeted unfair dealing and discrimination measures, enhanced data governance and pro-active regulatory approach. In conclusion, the paper suggests that harmonisation of consumer protection law with technological oversight is necessary to maintain the market, transparency and fairness while still allowing personalised prices in a regulated manner.

Keywords - Algorithmic Discrimination, Consumer Protection, Unfair Trade Practice, Transparency Pricing, Data Governance.

I. INTRODUCTION

In recent times, the traditional form of market concept is blurring and the introduction of digital technologies are shaping the future of sale of goods and services, and price decision. With the advancements in the e-commerce, platform-based businesses and digital marketplaces have become central intermediaries in day-to-day transactions. The e-commerce platforms have led to the conglomerates of thousands of sellers and products, providing variety of choices to the consumers and at the same time, market reach to the brands showcasing their products on the platform. There

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are app-based services that enable the on-demand service to the consumers such as booking a cab, hotel, movie- tickets and ordering grocery items, among others. In most urban setting, food delivery or booking a cab has become fundamental day to day activity, however, the apps or the platforms creates rankings or recommend items through the complex algorithms. This 'platformisation' has on one hand, expanded the market reach for sellers, reduced the search costs, and allowed for price transparency that is to at least check the prices on all the apps selling same products; but on the other hand, created personalised price fixing by the algorithms. It is believed that with the advancements in the technology, the artificial intelligence would be taking majority of our decisions.¹ Traditionally, consumer markets were governed by the uniform pricing concept wherein sellers in the particular marketplace selling the same products at the same time were charging same price subject to limited bargaining. In contrast, e-commerce platforms having the digital technology to modify the prices or tailor it according to the paying capacity of the users of the digital platforms, by utilising the vast amount of consumer data. This predictive analytics of the AI has become a blessing for the retailers to maximise their profits by leveraging technology in their favour². Therefore, we can see a paradigm shift from static uniform pricing to dynamic and ever increasing personalised pricing system. The consequences of such practices have raised disputes surrounding the ethical use of AI in the consumer markets.³ As algorithmic prices are evolving, addressing consumer concerns takes the centre stage.⁴

In the digital market, use of personal data allows sellers to sort consumers based on profiling. Say for example, an online platform knows that Mr. A is looking to buy a badminton racquet and based on the browsing history and past purchases, Mr. A buys the best high-end product and lives in a posh wealthy neighbourhood, using the latest expensive device. The platform naturally would reflect a higher price for Mr. A and anyone falling in the same criteria would be getting the same higher price. This growth trajectory is stemming from the consumers expectations of variety of services that are designed for them. In fact, there was a survey that was conducted which stated that 76% of the Indian consumers rather prefer personalisation. The platforms such as Flipkart and Amazon cater to these demands and use AI to recommend products and personalise price⁵. Similarly, Nykaa the beauty app, has analysed the data of their consumers and recommended products based on profiling resulting in 40% increase in sales. It is believed that targeted engagement builds trust and keeps the consumers for longer. Another survey by Deloitte conducted in 2021, represents that they had a better view of marketers if they offered various promotions. Companies are looking for better ways to improve consumer support and behaviour and personalisation helps in this. There are consumer

¹ Nilaydri Shyam & Arun Sharma, *Waiting for a Sales Renaissance in the Fourth Industrial Revolution: Machine Learning and Artificial Intelligence in Sales Research and Practice*, 69 *Indus. Mktg. Mgmt.* 135 (2018).

² Mona Ashok, Rohit Madan, Anton Joha & Uthayasankar Sivarajah, *Ethical Framework for Artificial Intelligence and Digital Technologies*, 62 *Int'l J. Inf. Mgmt.* 102433 (2022).

³ X. Liu, Y. Wang & J. Zhang, *AI-Generated Content in Digital Marketing: Opportunities and Challenges*, 87 *J. Mark.* 30 (2023).

⁴ Shahriar Akter, Umme Hani, Yogesh K. Dwivedi & Anuj Sharma, *The Future of Marketing Analytics in the Sharing Economy*, 104 *Indus. Mktg. Mgmt.* 85 (2022).

⁵ Liyi Chen, Alan Mislove & Christo Wilson, *An Empirical Analysis of Algorithmic Pricing on Amazon Marketplace*, in *Proceedings of the 25th Int'l Conf. on World Wide Web (WWW '16)* 1339 (Jacques Bourdeau et al. eds., ACM Press 2016).

suggestion tools that improve the conversion rates for businesses, look at Myntra where its AI tool surpassed CTR by 30%⁶.

This shift is majorly driven by the access to big data, machine learning and use of artificial intelligence. The data is continuously collected by the platforms or online sellers from the entire time we are on the their browsers, or through the past purchasing behaviour, search inquiries, click patterns, locations, devices, and number of hours spent on a particular app, among others. Through this practice, the algorithm is getting trained on the willingness of the consumer to pay and predict the behaviour of the consumer to respond to price changes in future. This can happen multiple times a day based on the demand and individual profiles. How many times, we have observed the price fluctuations/ inflation while booking an airline ticket or cab booking? The more time we spend on searching the tickets, the more likely it is for us to witness inflated prices. Therefore, two users looking for the same hotel, or a ticket, may be displayed a different price based on the browsing history, or the ability of the user to pay. This is the personalised concept pricing that algorithm is doing backend.

This is the reason, it has become a major policy concern. There is an issue of opacity. Consumers are unaware of the price personalisation which is happening based on profiling and behaviour of consumers, so the question is raised about the right of the consumer to exercise informed choice as non-disclosure is cited as misleading conduct or an unfair trade practice. Further, algorithm function on the basis of consumers vulnerabilities, such as someone looking for something urgently, last minute tickets, medical services etc. This algorithm pricing in this case amounts to taking advantage of these vulnerabilities.

Hence, taken together, this personalised pricing by the algorithm falls squarely within the consumer protection law, and the paper delves into the effectiveness of the law to address technologically assisted forms of price selection and discrimination.

In the Consumer Protection Law, the doctrine of unfair trade practice, misleading conduct and transparency and fairness provisions are there however, post algorithmic era, there is an uncertainty regarding the adequacy of the consumer protection law to tap on the algorithmic price discrimination/personalisation. It is not clear as to when the non-disclosure of personalised/recommended pricing be treated as 'misleading conduct' or the charging higher prices from certain consumers as an 'unfair trade practice'. The question is what kind of transparency and fairness is required from the e-commerce platforms. This creates the regulatory gaps and legal ambiguity, from where the enforcement slips through leaving consumers remediless.

These issues cannot be studied in isolation, we require a multi-disciplinary approach taking into account consumer protection law, data protection law, and competition law. Competition law focusses on market conditions targeting anti-competitive behaviour of the sellers but does not cater to fairness in individual prices, looking at data protection law, addressing consent, purpose of data collection among others, not dealing with price outcomes, and consumer protection law has not yet challenged the notion of personalised pricing. As a result, harmful forms of algorithmic price discrimination may fall between these regimes, escaping effective oversight. The central problem

⁶ Deloitte Digital, Personalising the Customer Experience (2021), <https://www.deloittedigital.com/mt/en/insights/perspective/Personalising-The-Customer-Experience.html> (last visited Mar. 1, 2026).

this paper addresses is whether and how consumer protection law can and should be interpreted and reformed to fill this emerging regulatory gap in the governance of personalised prices in digital marketplaces.

To take an example, US Delta Airlines in July revealed that 3 percent of its domestic fare pricing is decided based on AI, though not disclosing how it is done at backend⁷.

II. UNDERSTANDING THE ALGORITHMIC PRICE DISCRIMINATION

From the angle of economics, price discrimination refers to the practice of charging different prices from the different consumers for the same product or services where the difference in price is not justified by corresponding differences in cost. The classic case is that two consumers buying the same product would pay the same price at the same time, but if this is not the case, then there is price discrimination.

Economic theory talks about degrees of price discrimination. The first degree is the personalised pricing which means tailoring the price to each individual's paying capacity or willingness to pay. The second degree price discrimination is where the price is determined based on the quantity purchased, and not the paying capacity of the consumer. Examples include bulk discounts, premium versions of software, or tiered subscription plans. Then comes the third degree price discrimination which involves different prices to distinct, identified groups of consumers like student discounts, senior citizens off, particular region etc. It is pertinent to distinguish between dynamic pricing and personalised pricing. Dynamic pricing fluctuates based on demand and supply, according to changing market conditions without any differentiation among the consumers⁸.

Algorithmic Pricing

The selection of prices by the algorithm in a digital marketplace is done extensively with the help of big data and enabling technologies. The online marketplaces and platforms collect data on a daily basis based on browsing histories, prior purchases, click patterns, search history, location data, device usage, among others. which can serve as proxies for purchasing power or price sensitivity. These data are further enriched by inferences drawn from behavioural profiles, such as whether a user appears brand-loyal, risk-averse, or in urgent need of a product or service. By utilising these techniques, the companies employ machine learning tools and profile settings to pick and choose consumers based on 'bargain hunters', 'high willingness power', 'loyal consumers', or 'switchers'. Prices are then differentiated across these segments.

The designers of digital platforms, using different user interface for different consumers, often highlight the issue of dark patterns as well alongside personalised pricing and discrimination. Dark patterns are those patterns embedded in the interface or design that forces the consumers to do something which they initially don't plan to do. For example, more often we see the platform offering flat 500/- discount, or best buy at Rs. 99, to trick the consumers into making a purchase. But when the consumer selects those products and decides to make the final purchase, the ultimate

⁷ Katherine Fan, Delta Is Using AI to Determine Some Ticket Prices. What Does That Mean for Travelers?, AFAR (July 31, 2025).

⁸ Eugenio Miravete, Price Discrimination: Theory (2005).

price reflects a different pricing, adding the hidden costs. All of these technology enabled activities, hinders the consumer's welfare and consumers face a lot of hardships.

Potential Consumer Harms

The algorithmic price personalisation often causes opacity and information asymmetry problem. Consumers are often unaware about the prices being personalised for them. This undermines the ability of the consumers to make informed decisions which is their right to be able to have full disclosed information, and to compare the prices across platforms to get the best deal. Other than that, there is exploitation of vulnerabilities. The algorithm profiling identifies the consumers based on those who are in urgency, time-pressured, less informed, or user of only one platform. These consumers may be charged systematically higher prices precisely because their circumstances make them less likely to shop around or delay purchases. The practice can generate discriminatory effects along socio-economic, gender, racial, or geographic lines, even where the algorithm does not use protected characteristics explicitly. These algorithms are trained over time, AI models effectively learn from the data we provide them with, therefore there are high chances of biasness in the algorithm itself. Due to this biasness, certain consumer groups may face more price discrimination⁹. All of this erodes trust in the market. When the consumers get to know the reality, they would be hesitant to use the digital platforms with ease or their confidence would be low, ultimately contravening the foundational goals of consumer protection regimes and the innovation in the technology.

Potential Benefits and Justifications

However, apart from the harms, some defend the algorithmic pricing based on creation of efficiency and market expansion. The firms would be in a position to benefit from the differential pricing by serving different and large consumers at different prices. The firms then, may recover fixed costs and innovate.

Algorithmic pricing is also defended on the ground of competition. The personalised pricing adjusts with the market conditions and platforms often compete to provide low prices to the consumers. Furthermore, consumers may experience lower prices on the platform at times¹⁰.

The focus of this paper therefore, lies in the conflict between these economic benefits and legal and regulatory framework embedded in consumer protection law. The central question is how to distinguish acceptable, efficiency-enhancing differentiation from opaque, exploitative, or discriminatory pricing practices that undermine consumer rights and market integrity.

III. EXISTING LEGAL FRAMEWORK: CONSUMER PROTECTION LAW AND RELATED REGIMES

The legal and regulatory framework for personalised pricing in the digital marketplace is not found under any one dedicated statute, rather it sits at the intersection of Consumer Protection Law, Data Privacy Law and Competition Law. Each of these frameworks provide for a partial provisions for

⁹ A. Israeli & E. Ascazra, Algorithmic Bias in Marketing, Harvard Bus. Sch. Teaching Note 521-020 (2020).

¹⁰ N. Duani, A. Barasch & V. Morwitz, Demographic Pricing in the Digital Age: Assessing Fairness Perceptions in Algorithmic Versus Human-Based Price Discrimination, J. Assoc. for Consumer Research (advance online publication) (2024), <https://doi.org/10.1086/729440>.

algorithmic price discrimination. Looking at the Consumer Protection Act, section 2(47) define unfair trade practice as a practice which, “for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice”. For our reference, clause (i) states that statement which materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made; (ii) permitting the publication of any advertisement, whether in any newspaper or otherwise, including by way of electronic record, for the sale or supply at a bargain price of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement. Explanation. - For the purpose of this sub-clause, "bargain price" means, -(A) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise; or (B) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold". From the perusal of the provision, the algorithmic price fixation can squarely fit into point (ii) wherein the bargain price as offered by the sellers are not the same for all the consumers and not the ‘best’, lowest, or deal of the day’ as claimed. Plausible links could be drawn to (i) above, that relates to “*false or misleading representation* about the price or value of goods/services and where algorithms are designed to manipulate price in a manner akin to “manipulating price or conditions of delivery,” Personalized pricing fits uneasily within this framework. The central question remains, whether offering prices based on individuals buying behaviour and different prices to different consumers amounts to misleading practice or an ‘unfair’ practice. To answer this question, the intention of the consumer becomes paramount, the knowledge of the consumer assuming the prices to be uniform for all the consumers, then the undisclosed personalisation can be treated as misleading. Further, the act also talks about the concept of unconscionable bargain, where the algorithm leverages information and tests the individual’s willing to pay. The consumers are at the mercy of the algorithm and technically, becomes the weaker party, accepting terms set by the digital marketplace. However, Courts time and again have set aside the contracts having unfair contract terms or unconscionable standard form of contract that exploits weaker parties, and the same can be logically extended to digital personalization, even though explicit case law on algorithmic pricing remains sparse.

The next section 2(28) provides for misleading advertisement which means “falsely describing a product or a service, giving a false guarantee, about the nature, substance, quantity, quality or standard, or Conveys an express or implied representation which is misleading, and Includes advertisements that conceal important information, where such concealment is likely to affect the consumer’s decision”. Algorithmic price discrimination is not itself illegal, but how it is presented to the consumers creating a misleading representation or impression in the minds of the consumers about the price could call for an action under misleading advertisement. For example, if a platform

displays 'X' price, for a product, and consumer is assuming the same price for everyone, but due to opaque algorithm, price 'Y' is charged from some consumers and price 'X' is charged from others, based on profiling, violates the consumers right of informed choices, when the omission of a fact that price is decided by the behaviour pattern is not disclosed. Along with this, the displaying of advertisement such as 'best deals today', 'lowest price for the day' among others, is a misleading advertisement when the same is not adhered to by the sellers.

We know that the algorithmic price personalisation is built on extensive data collection and analysis of personal data that is either directly given by the consumers (age, location etc) or assumed (purchasing history, time spent on apps, income bracket, willingness to pay). This raises privacy concerns as well¹¹. Under the Digital Personal Protection Act, these activities are not prohibited per se, rather constrained based on lawful use and processing, purpose limitation, consent mechanism and fairness. Textually, consent is obtained for lawful processing but when the consent form is bundled up, or broad without mentioning about individual prices, that same consent doesn't remain a valid consent as it was not informed or specific. This raises doubts whether consent truly covers algorithmic price personalisation or whether the practice exceeds the scope of the original notice and purpose. Additionally, the Act stipulates the purpose limitation and transparency, meaning that collection of data should be kept minimal and to be processed only for the purpose for which it is collected, however, when the data is collected for one purpose but then repurposed and used to infer willingness to pay or behaviour recording, it converts into actionable wrong.

A close look at the Competition Act, 2002 would reveal that personalised pricing by the dominant player in the relevant market would result in an abuse if excessive prices are charged from the segment of consumers. Another major concern is the algorithmic collusion¹². This issue is concretised by the recent litigation on the collusion of Ola and Uber. The complaints before the authority (CCI) alleged that platforms surge-pricing and incentive algorithms led to the 'hub and spoke cartel' among the drivers. It was argued that platforms central algorithm was setting the prices on which the drivers agree. However, CCI rejected these contentions holding no agreement among the drivers as required by section 3 of the Act. It was stated that since drivers are not setting the prices, it is the algorithm which is manipulating the prices, there is absence of collusion among the drivers on this aspect, the Commission was reluctant to treat algorithm-mediated pricing as a cartel. This decision reflected the scope of the act in treating the platform set algorithm prices. For personalised pricing, the implication is that much harmful conduct by large platforms may fall outside competition law scrutiny unless dominance is established or clear collusive structures can be shown, reinforcing the need to rely on consumer protection and data-protection tools to address opaque, discriminatory pricing.

Taken together, these regimes provide a partial fit to the algorithm personalised prices. Opacity and misleading prices can be termed as unfair trade practice, invasive recording of behaviour pattern and consumer data threatens consumers privacy. However, the effectiveness in addressing the algorithmic challenges remain stagnant. The enforcement mechanism regarding standards to target

¹¹ T. Kim, K. Barasz, L.K. John & M.I. Norton, When Identity-Based Appeals Alienate Consumers, Harvard Bus. Sch. NOM Unit Working Paper No. 19-086 (2022).

¹² I. Abada, J.E. Harrington, X. Lambin & J.M. Meylahn, Algorithmic Collusion: Where Are We and Where Should We Be Going (Working Paper 2024).

algorithms, or cross-border platform jurisdiction creates hurdles in smooth functioning of the legal and regulatory framework. As a result, while existing legal frameworks offer important footholds, they remain under-inclusive and ill-adapted to the systemic, data-driven nature of algorithmic price discrimination in digital markets.

IV. COMPARATIVE AND INTERNATIONAL FRAMEWORK

The paper draws comparative insights looking at the jurisdictions of EU, USA to reveal any best practices or overlapping regarding the algorithmic pricing through the consumer law, data protection law and competition law.

In the European Union framework, the GDPR¹³ is the cornerstone for automated decision making and price fixation. Article 22 of the GDPR exclusively restricts decisions which are based solely on the automated processing that produce legal or similarly significant effects, and Recitals 60–63 emphasise transparency about profiling. GDPR does not prohibit price discrimination, rather it requires clear disclosures and providing information of how the decision was taken under automation. Data protection authorities have issued guidance indicating that opaque individualized offers based on extensive tracking can violate fairness and transparency principles, particularly where consumers are unaware that they are being profiled for pricing.

Together with GDPR, there are consumer protection laws such as UCPD, Consumer Rights Directive that addresses misleading and aggressive practices. The European Commission has acknowledged and identified algorithm pricing as priority enforcement area.¹⁴ The anti-trust laws in the EU prohibits concerted agreements that restrict competition in the market and algorithmic pricing falls in this contextually, because interoperable or shared software can potentially serve as a conduit for anticompetitive price coordination. There is an Omnibus Directive in EU framework which has taken into consideration the algorithmic pricing and mentions that traders have the bounden duty to inform the consumers when the prices have been decided through automation. In fact, recital (45) explicitly states that “may personalize the price of their offers for specific consumers or specific categories of consumer based on automated decision-making and profiling of consumer behaviour allowing traders to assess the consumer’s purchasing power. Consumers should therefore be clearly informed when the price presented to them is personalized on the basis of automated decision-making, so that they can take into account the potential risks in their purchasing decision.”¹⁵ There are other acts as well that indirectly take care of algorithmic pricing such as Digital Markets Act and Digital Services Act. While DMA looks after the gatekeepers, setting transparency and interoperability rules on the very large platforms, DSA on the other hand, takes care of the online intermediaries. It is seen that under the EU framework, algorithmic pricing is not prohibited but rather regulated through the acts of transparency and strengthening data access.

¹³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 Apr. 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), 2016 O.J. (L 119) 1.

¹⁴ Morgan Lewis, Algorithmic Pricing Emerges as Enforcement Priority for EU & UK Antitrust Regulators, LawFlash (Oct. 14, 2025).

¹⁵ Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 Nov. 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU as regards the better enforcement and modernisation of Union consumer protection rules, 2019 O.J. (L 328) 7, rec. 45.

Tracing the algorithmic pricing in the USA shows an enforcement driven model. There is Federal Trade Commission at the top that prohibits practices that are deceptive or unfair. However, individual states have crafted their own anti-trust legislations that target algorithmic pricing. States like New York, Connecticut and California have recently established laws restricting the algorithmic pricing. The concern over tacit collusion has long been the debatable matter in the USA. The new law states that it is “unlawful for a person to use or distribute a common pricing algorithm as part of a contract, combination in the form of a trust, or conspiracy to restrain trade or commerce.” Further, the law makes it “unlawful for a person to use or distribute a common pricing algorithm if the person coerces another person to set or adopt a recommended price or commercial term recommended by the common pricing algorithm for the same or similar products or services.” The law defines common pricing as well that is “Common pricing algorithm” is and includes “any methodology ... used by two or more persons, that uses competitor data to recommend, align, stabilize, set, or otherwise influence a price or commercial term.” Although, all the price personalisation or price fixing goes to section 1 of the Sherman Act, however, when price fixing becomes unfair or deceptive, help of section 5 of the FTC Act can still be taken, as it remains an enforcement mechanism for algorithmic pricing.

If we look at other jurisdictions, then evidently there is no dedicated algorithmic law, however China has given a Guidance “Provisions on the Management of Algorithmic Recommendations in Internet Information Services, 2021”, that imposes obligations on the users of algorithm and mandates that no platform would use “unreasonable differential treatment” on consumers based on transaction history, searches etc. In the Singapore Jurisdiction, Model AI Governance Framework has been established that provides a guidance for the use of algorithm to set prices. Looking at the United Kingdom, the Competition and Markets Authority issued Guidance on personalised pricing and choice architecture and a report on “Algorithms: How they can reduce competition and harm consumers”¹⁶. These comparative analysis show a common trajectory that regulators are taking note of algorithmic pricing and stronger measures are being taken in regulating price personalisation if not completing prohibiting. For India, this presents a concrete template to frame or devise a forward looking and integrated approach to price personalisation by AI.

V. CONCLUSION AND RECOMMENDATIONS

Algorithmic pricing is sitting at the intersection of commercial strategy and exploitative discriminatory harm. By leveraging the large amount of data through profiling of consumers, firms can maximise wealth by adjusting prices in real time. In theory, this looks good as it increases efficiency or innovation, but in practice, information asymmetry, discrimination based on region, etc and willingness to pay of the consumers create serious risks for consumer autonomy, fairness, and market integrity.

The analysis above of the existing legal regimes such as Consumer Protection Act, 2019, Digital Personal Data Protection Act, 2023 and Competition Act, 2002 along with the comparative insights provide a bleak picture of targeting price personalisation through AI. Though, it was discussed earlier

¹⁶ Competition and Markets Authority, Algorithms: How They Can Reduce Competition and Harm Consumers (Jan. 19, 2021).

that undisclosed personalization can be challenged as an unfair or misleading trade practice, also pricing set by dominant layers in the relevant market would call for an action under abuse of dominance, profiling and automated decision-making trigger data protection duties and differential pricing correlated with protected traits raises equality concerns. Yet the structural design of these regimes reflects a pre-algorithmic world of bilateral contracting and visible terms, not a digital marketplace where prices are individually tailored, constantly changing, and determined by opaque models.

Comparative analysis reflects that the international counterparts are working towards ex-ante approach. The debates are on across jurisdictions, and a common pattern is visible that law is slowly catching up but largely remains reactive, fragmented and no clear designated law/rule on the same is in the pipeline.

In the light of this background, a more integrated and forward looking strategy is required. The aim is not to prohibit the personalised pricing but to ensure that when the prices are personalised, it should be transparent, non-exploitative and with reasonable oversight. This can be done through a harmonious collaboration of regulators, doctrinal clarifications/amendments and consumers support.

Recommendations

1. There is a need to have clear application of unfair trade practice doctrine to algorithmic pricing. Consumer Protection authorities should issue guidelines stating that undisclosed price personalisation may amount to misleading practice by the platforms.
2. Introduction of targeted transparency and obligations are required, wherein platforms using price personalisation should vividly mention that prices are different and upon request, provide for explanations wherever required. Maintain internal documentation sufficient for regulatory audits. Mere generic disclosures buried in terms and conditions should be deemed insufficient.
3. Data Protection Act should also recognise personalised pricing and accordingly alter the consent mechanism or stricter purpose limitation. Impact assessments for large-scale or sensitive-segment pricing systems to be done and limits on the use of sensitive or proxy-sensitive data for pricing decisions to be regulated.
4. Develop regulatory capacity for algorithmic audits and supervision. Consumer, competition, and data protection authorities should be empowered to conduct or commission technical audits of pricing algorithms, including access to training data, model documentation, and output testing. Joint task forces or memoranda of understanding can reduce siloed oversight and allow a unified response to cross-cutting issues.
5. Address discrimination and vulnerability explicitly. There is a requirement to address the consumer vulnerabilities. Protections should be given known vulnerabilities like children, elderly, distressed groups.
6. Promote research, civil society oversight, and international cooperation. There is a need to have harmonious coordination engaging in cross-border regulations, monitoring of algorithmic harms by society and providing researchers the opportunity under regulated conditions to use the data to study the price personalisation.