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Impact of the Mediation Act, 2023 on Matrimonial and Family Disputes

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Abstract: ***The Mediation Act, 2023 is India's first dedicated and comprehensive cross-sectoral legislation on mediation. It is both significant and yet legally complex in its ramifications for matrimonial and family disputes because the "family" adjudication in India is already legally complex due to the personal-law reconciliation functions that are integrated into the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954, the Family Courts Act, 1984, and protective measures like the Protection of Women from Domestic Violence Act, 2005. This paper contends that the Act's implications should not be considered a blanket "pro mediation" reform, but rather, a highly contested framing of the possible and the limited scope of embedded mediation, along with the mediation 'exclusionary' non-categories, confidentiality, and the integrated court ecosystem. The paper advances three main arguments. To begin with, the Act's "overriding effect" clause is expressly subjacent to a number of enactments, including the Family Courts Act, 1984, which points to a possible intentionality to retain the family court conciliation frameworks and the High Court mediation rules. Second, although the Act creates a first in domestic violence/child abuse for confidentiality exceptions, this protective measure is a reactive one and needs to be accompanied by structural screening, representation, trauma informed, and judicial review, in order to adequately protect vulnerable parties. Third, the Court Annexed Mediation Centers continue to play an important role, especially given that transitional provisions maintain court-annexed rules until new standards are entered, and given that national efforts (e.g. "Mediation 'For the Nation'" campaign in 2025) reflect the State's growing dependence on institutional mediation for disputes involving domestic and family violence) holds three. Using doctrinal analysis, feminist and access-to-justice theory, parliamentary materials, and Supreme Court case law, this paper addresses two questions: whether specific disputes should be completely excluded, and how to safeguard the interests of vulnerable parties without compromising the therapeutic and administratively efficient aspects of the settlement.***

I. INTRODUCTION

Family conflict is a unique phenomenon that encompasses both intimacy and dominance. Disputes occur in private relational contexts, but the State provides the legal words (marriage, divorce, child custody, spousal maintenance) and the power monopoly (courts, police, and protection orders). Indian family litigations have been "settlement-oriented" for quite some time. Statutory reconciliation obligations have been enshrined in some personal laws. For instance, the Hindu Marriage Act (HMA) 1955, imposes a duty on courts to attempt reconciliation before any relief is granted, except in certain circumstances. Reconciliation provisions are also found in the Special Marriage Act of 1954. The Family Courts Act of 1984 deepens this "settlement-driven" approach by placing Family Courts the obligation to assist and persuade the parties towards a negotiated settlement, and to use whatever procedure is flexible to family dispute resolutions. In this context, the Mediation Act of 2023 has an undiluted purpose of promoting the institutional mediation framework, establishing a Mediation Council, and setting standards for accreditation and enforcement of mediated settlement agreements. However, this does not mean the Act has a straightforward purpose in relation to matrimonial and family disputes.[1]

To start, the Act's phasing is notable: the 9 October 2023, notification that brought the Act into force added certain provisions but core operational provisions, such as the pre-litigation mediation structures, were excluded from this first notification.[2] Additionally, there is an overarching effect in the Act, which is, however, constrained by the provisions in the Second Schedule. This shows a degree of legislative caution in terms of the enforcing the Act in sensitive areas such as existing mechanisms of settlement. Lastly, domestic violence and child safety issues create an especially difficult set of core normative dilemmas.

[1] Coordes, L. N. (2024). Chapter 11 Mediation. Emory Bankr. Dev. J., 41, 153.
[2] Shen, K. L. (2024). Labour Proceedings in the Judicial System: A Comparative Analysis.

The very features of mediation that are often seen as beneficial can, where there is an imbalance of power between the parties, also pose the greatest risk of coercion. The socio-legal and feminist critiques of mediation have been, and still are, critiques of mediation without adequate safeguards as a forum for the reproduction of structures of domination. This is in line with the global standards that UN Women legislative guidance does not recommend the mandatory use of alternatives to litigation for survivors of violence, and the Istanbul Convention of the Council of Europe does not permit mandatory ADR for the violence covered by the Convention. Surveys conducted on public health and national surveys show the extent of intimate partner violence in India. Such evidence suggests that "family harmony" is an inadequate indicator of justice.

II. RESEARCH DESIGN

A. *Research Questions*

1) Should some matrimonial and family disputes be excluded entirely from mediation under the Mediation Act, 2023 framework?
2) How should the legal system protect vulnerable parties (especially domestic violence survivors, children, and economically dependent spouses) when mediation is used in family disputes?

B. *Objectives*

1) To map the Mediation Act's formal interface with family adjudication systems (personal laws, Family Courts Act processes, court-annexed mediation rules).
2) To evaluate whether the Act's "non-mediable" architecture and confidentiality exceptions adequately protect vulnerable parties, particularly domestic violence survivors.
3) To assess how court-annexed mediation centres are positioned to implement the Act's standards and transitional arrangements, and what reforms are necessary.

C. *Hypotheses*

1) H1: A categorical exclusion of all family disputes is neither doctrinally coherent nor socially desirable; instead, structured exclusions should apply to classes of disputes marked by high coercion risk (e.g., serious domestic violence, child abuse, threats to life/safety), while allowing mediation for low-risk issues with safeguards.
2) H2: The Act's existing safeguards (non-mediable list, confidentiality exceptions) are necessary but insufficient; effective protection requires a procedural "safety architecture" including screening, representation/legal aid, and judicial review of mediated outcomes.
3) H3: Court-annexed mediation centres will remain the practical backbone of family mediation because the Act preserves court-annexed rules during transition and because family-law settlement is institutionally embedded in Family Courts and Legal Services Authority networks.

D. *Method*

This is a doctrinal and policy paper combining: (i) statutory interpretation of the Mediation Act, 2023 and linked enactments; (ii) parliamentary committee materials on the Mediation Bill; (iii) Supreme Court jurisprudence on mediation/settlement in civil and matrimonial contexts; and (iv) international instruments and UN guidance on violence against women and ADR safeguards.

III. SETTLEMENT THEORY IN FAMILY JUSTICE

Matrimonial disputes can take various forms, including legal disagreements, negotiations pertaining to emotional and identity issues, and financial disputes surrounding care work and child custody. Each of these issues carries its own unique emotional burdens, and are individually layered processes. However, through the lens of settlement theory, these issues may explain why some forms of mediation are highly sought after: mediation has the potential to diminish adversarial escalation, relationship strife, and serves the unique needs and interests of the disputing parties where legal remedies provide no or limited options.[3]

Part of the problem is that the so-called "family settlement ideal" is ultimately problematic. Settlements have been described as concealing disparity: they hide the fact that parties are not negotiating from the same set of legal or financial circumstances. Settlements, and in this case the idealization of the "family settlement" are arguably not ideal, as they are premised on the assumption that all parties are negotiating in good faith and are empowered to do so.

[3] Roberts, S. (2000). Settlement as civil justice..

With respect to disputes in the family, areas that influence the power of the prospective negotiator include, but are not limited to, financial, social, and housing resources, social support, and stigma, and perhaps, most importantly, fear.[4] Most public health officials have recognized that intimate partner violence and wife battering are social problems that are widespread and that they disproportionately affect women. Because of this, most have concluded that informal or "private ordering" can perpetuate high risk outcomes in the absence of a focus on assuring the safety of the parties involved.

This is why the absence of coercion and the autonomy of the survivors are so highly prioritized in the setting of international standards.

The handbook on violence against women and international law published by UN Women emphasizes that there are times when the law and legal systems may not place survivors in a position where they are required to engage in alternative dispute resolution (ADR) that is actually designed to substitute for a verdict when there are safety concerns.[5] The Istanbul Convention goes one step further and requires that States refrain from imposing ADR (including mediation and conciliation) when the violence is within the scope of the Convention. This is why these standards do not prohibit mediation, but do prohibit the creation of mediations that represent the only means for achieving the effective resolution to a legal problem. The Mediation Act, 2023, must therefore be analyzed through a dual lens: (a) mediation as a facilitator of access to justice, and (b) mediation as a possible site of coercive compromise, absent the incorporation of adequate safeguards.[6]

IV. APPLICABILITY TO PERSONAL LAWS

The first legal question is not whether mediation is "good," but **which legal regime governs** mediation when the dispute is matrimonial/family.

A. The Act's scope, phased commencement, and family-law reality

Section 1(3) considers staggered commencement by notification. The 9 October 2023 notification resulted in the coming into force of limited provisions (including the Mediation Council framework and some transitional provisions). This is important because numerous provisions that are critical to pre-litigation mediation, and the enforcement of mediated settlements, are reliant on full operationalisation and sub-ordinate legislation.

Even once fully operational, Section 2 largely constrains application of the provisions to mediation carried out in India, and certain specific connected domicile/ citizenship/ agreement/ cross-border/ mediation with government parties scenarios. Family disputes typically fall within the relevant territory and party-connection criteria, but they are governed by, and operate within, distinct procedural legislation and personal law systems.[7]

B. The "overriding effect" clause is deliberately limited for family justice

It is stated in Section 55(1) that, with the exception of provisions in the Second Schedule, the Act has overriding effect on mediation/conciliation provisions in other laws.[8] Importantly, the Second Schedule mentions the Family Courts Act, 1984 and the Legal Services Authorities Act, 1987. Doctrinally, this signals that Parliament intended: (i) not to affect Family Courts' settlement functions; and (ii) not to eliminate Lok Adalat / Permanent Lok Adalat systems, which are legally associated with the services.[9]

This is in tune with the existing structure of family law in the country. Family Courts Act aims "to promote conciliation" and to facilitate quick resolution of family disputes. Section 9 of the Act mandates that every court/system/ institution shall attempt settlement.[10] Personal laws reinforce this: HMA 23(2) mandates that the courts shall reconcile, save specified exceptions. The Special Marriage Act also requires that reconciliation is a primary function of the court. The most immediate "family" impact of the Mediation Act is, therefore, not replacing these duties, but to systematise and give professionalism to the mediation ecosystem (accreditation, ethics, institutional mediation) around (not touching) Family Courts' statutory conciliation mandate.[11]

[4] Kotkin, M. J. (2005). Invisible Settlements, Invisible Discrimination. NCL Rev., 84, 927.
[5] Women, U. N. (2012). Handbook for national action plans on violence against women.
[6] Irvine, C. (2024). Does Mediation Deliver Justice? The Perspective of Unrepresented Parties (Doctoral dissertation, Queen Margaret University, Edinburgh).
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[10] Sengupta, A. (2023). Pre-Institution Mediation: A Rule or a Law?. Part 2 Indian J. Integrated Rsch. L., 3, 1.
[11] Rahman, N., & Raj, R. (2021). The Significance of Special Marriage Act, 1954: An Insightful Analysis of the Challenges of Implementation. Issue 4 Int'l JL Mgmt. & Human., 4, 169.

C. "Non-mediable" design and what it signals about family disputes

Disputes from the "indicative list" in the First Schedule allow for no mediation in section 6(1). The First Schedule contains disputes involving the rights of third parties, except in the case of matrimonial disputes involving the interest of a child. This carve-out is indicative of a position: it recognizes children as "third parties" in divorce/custody battles, but it does not want this reality to indisputably preclude mediation. This design choice is a case with Indian custody jurisprudence, which prioritizes child welfare and is contextually robust and not easily addressable through win-lose adjudication.[12]

Section 6 also establishes an important proviso. While it is true that the majority of criminal prosecutions are not mediable, it is also true that courts can, and in this case must, refer mediations for matters involving compoundable offences, including the compoundable matrimonial ones. This provision seeks to balance the public nature of the criminal law with the reality that a marital breakdown often involves minor, criminal, and compoundable allegations under the IPC, in addition to civil claims. However, its scope is narrow. There are no compoundable matrimonial-criminal provisions with respect to certain important criminal-matrimonial provisions, such as IPC 498A; consequently, the proviso should not be construed as a blanket approval to mediate for serious criminal acts.

D. Judicial doctrine: the Supreme Court's "calibrated pro-mediation" line

Even prior to the enactment of the 2023 Act, the Supreme Court constructed doctrinal frameworks for court-referred, or, as some would say, court-based, Alternative Dispute Resolution (ADR). The ADR mandate under the CPC (89) rests on procedural design and is operationalised and upheld in Salem Advocate Bar Association (II) v. Union of India[13]. In Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.[14], the court delineates the boundaries of referral, and mechanical referrals, as opposed to substantive ones, are discouraged. In the case of family disputes, K. Srinivas Rao v. D.A. Deepa[15] is viewed as an institutional advocacy for the imposition of constructive mediation in matrimonial (or family) conflicts, even systemically through mediation centres. Conversely, the court has also, through inherent or implicit powers—in G. Singh v. State of Punjab, a bedrock case on the outer limits of compounding and quashing of criminal proceedings—enabled the post-settlement extinction of the criminal facet of proceedings in predominantly civil disputes in the "civil" dominant" intermixing of jurisdiction.

E. Safeguards for domestic violence survivors

The hardest test for any family mediation regime is domestic violence. The danger is not abstract: survivors may negotiate under threat, with limited resources, and with pressure to maintain "family honour." Public health sources highlight violence against women as widespread, and Indian survey data confirms substantial prevalence of spousal violence.[16]

F. The Act's built-in safeguards: important, but reactive

The Act contains at least three safeguard clusters relevant to domestic violence:[17]

1) Non-mediable categories (Section 6 + First Schedule). Criminal prosecution disputes are listed as non-fit for mediation. This reduces (but does not eliminate) the risk of mediating serious domestic violence criminal cases as "family disputes."
2) Confidentiality with a violence/abuse exception (Section 23). While confidentiality is a core feature, Section 23 creates exceptions to privilege against disclosure, including where information relates to "domestic violence or child abuse" that has occurred or is likely to occur. This exception is normatively aligned with global standards that treat violence risk as overriding private confidentiality.
3) No obligation to settle (Section 7(3)). Even when courts refer parties to mediation, the Act states parties are not under an obligation to come to settlement. This matters in domestic violence contexts where "process pressure" can be as coercive as legal compulsion.

Yet these safeguards are **reactive**: confidentiality exceptions often operate only after disclosure occurs, and "no obligation to settle" does not prevent unequal bargaining in the room.

[12] Gaurav Nagpal v. Sumedha Nagpal, (2009) 1 SCC 42.
[13] AIR 2005 SC 3353.
[14] (2010) 8 SCC 24.
[15] AIR 2013 SUPREME COURT 2176.
[16] Jiang, J. (2019). The family as a stronghold of state stability: Two contradictions in China's anti-domestic violence efforts. International journal of law, policy and the family, 33(2), 228-251.
[17] Hornbeck, A., Johnson, B., LaGrotta, M., & Sellman, K. (2006). The Protection of Women form Domestic Violence Act: Solution or Mere Paper Tiger. Loy. U. Chi. Int'l L. Rev., 4, 273.

G. The protection-law baseline: mediation cannot dilute statutory remedies

The structure of the PWDVA revolves around the first/principal order of protection and residence security. These orders are of a judicial nature (i.e. protection orders, residence orders, monetary orders, interim and ex parte orders). This structure indicates a rights and safety, as opposed to a "mutual compromise" model. If mediation is to be part of the process, it must not be an informal substitute for the protections that are, in fact, enforceable. Maintenance disputes pose the same potential danger. The Supreme Court in Rajnesh v. Neha[18] has issued what are called 'scape' guidelines in an attempt to streamline the maintenance adjudication process across multiple jurisdictions and to address the challenges of non-consolidation of orders, cross orders, and hiding income—which are not mediation problems unless there is a disclosure and judicial oversight component.[19]

H. International standards: the "no mandatory ADR" principle in violence cases

UN Women's handbook on violence against women legislation warns against Alternative Dispute Resolution (ADR) designs that coerce survivors into settlement agreements as an alternative to legal remedies. The Istanbul Convention crystallises such a principle by expressly prohibiting the mediation/conciliation of violence that falls within the scope of the Convention. Although India is not a party to that Convention, this norm is persuasive in terms of being a best-practice benchmark for constructing survivor-centred systems.[20]

1) How to Protect Vulnerable Parties: a Proposed "safety Architecture"

To operationalise Section 23's violence exception and the Act's broader ethics framework in family disputes, this paper proposes the following safeguards as a doctrinally justified minimum[21]:

1) Early screening and triage. Court-annexed centres should adopt structured screening for coercive control, threats, child abuse, and financial dependency—before joint sessions.
2) Process design: shuttle and hybrid models. Where mediation proceeds, default to shuttle mediation, separate waiting areas, and remote participation options—especially relevant given the Act's acceptance of online mediation as an institutional goal.
3) Representation and legal aid. Survivors should not be expected to negotiate without counsel. Since the Legal Services Authorities ecosystem is preserved as a parallel regime, legal aid integration is feasible and normatively required.
4) Mandatory independent legal advice for certain terms. Any settlement involving waiver of maintenance arrears, withdrawal of protection claims, or child custody arrangements should be conditional on documented independent advice and a "cooling review" by a judge.
5) Judicial review against minimum standards. Family Courts already act as gatekeepers for decrees; mediated terms should be scrutinised for voluntariness, absence of unconscionability, and child welfare—echoing custody jurisprudence's welfare standard.

V. ROLE OF COURT-ANNEXED MEDIATION CENTRES

Court-annexed mediation centres are the institutional hinge between the Mediation Act's promise and family courts' daily reality.

A. Transitional Continuity and Institutional Centrality

Section 57 provides that rules governing court-annexed mediation continue until regulations are made under Section 15(1), and those rules continue to apply to pending court-annexed mediations as well.[22] This is a strong legislative acknowledgment that High Courts and mediation centres already run sophisticated systems, and that abrupt replacement would be disruptive—especially in family matters where process stability matters.

Further, even in the Act's pre-litigation design, institutional mediation is envisioned through recognised mediation service providers and panels, including court-annexed mediation centres and legal services institutions. This reinforces the practical reality: family mediation in India is already largely *court-annexed*.

[18] (2021) 2 SCC 324.
[19] Chakraborty, W. (2018). Social status of the working women-a case study of the Coochbehar town (Doctoral dissertation, University of North Bengal).
[20] Lute, J. H. (2007). The role of force in peacemaking. Peacemaking in international conflict: Methods & techniques, 419-463.
[21] Sowter, D. (2020). Full Disclosure: Family Violence and Legal Ethics. UBCL Rev., 53, 141.
[22] Broodryk, T. (2020). Mediation as a tool to manage and resolve class actions. Stellenbosch Law Review, 31(2), 226-248.

B. The "Mediation for the Nation" moment and family disputes in practice

The state actively promotes court-related mediation through campaigns. A court-related mediation news report from July 2025 discusses a "Mediation for the Nation" campaign scheduled for July 1 – September 30 2025. During that 90-day campaign, the American state courts included "matrimonial disputes" and "domestic violence" in the categories for which they offered mediated settlements. Samadhan, the Delhi High Court Mediation Centre, offered a mediation drive during that same period. There is a policy tension here that needs to be noted; while the campaigns may improve clearances and decrease backlogs, they induce, at least in part, settlement pressures which, in cases of domestic violence, may be problematic unless there is rigorous screening. The "no obligation to settle" principle in the Act needs to be, culturally, operationalized in that context.

C. Court-annexed centres as norm-creators: training, ethics, and data

The Mediation and Conciliation Project Committee of the Supreme Court is tasked with the implementation of mediation protocols under CPC Section 89.[23] Court-annexed centers have also turned into de facto best practice laboratories for things like case intake forms, mediator paneling criteria, confidentiality protocols, and feedback systems. The Mediation Bill is before the Parliament. The legislative debates center on the refinement of the 'non-mediable' list and the protection of vulnerable persons. The Standing Committee focused on matrimonial matters involving children's interests (a "third party" interest). Court-annexed centers combine these legislative debates into operational queries: when is it appropriate to decline mediation, what are the necessary screening protocols, and what may be needed to prove that a party has acted of their own accord.

D. Normative proposal: the "family mediation centre" model within court-annexed systems

To make court-annexed centres fit for family and domestic-violence-adjacent disputes, this paper proposes a specialised model:

1) Dedicated family mediation rosters with gender-balanced panels, advanced training in domestic violence, child development, and trauma.
2) Protocolised referral orders where Family Courts specify whether mediation is for *ancillary issues* (maintenance, visitation schedules) versus *status relief* (divorce decree), avoiding confusion about what mediation can legally accomplish.
3) Child-sensitive practice: custody/visitation mediation must internalise welfare jurisprudence and avoid trading child access for monetary concessions.
4) Outcome review templates: mediated terms should be mapped against statutory entitlements (PWDVA protections, maintenance standards) and flagged for judicial scrutiny.

VI. CONCLUSION

The Mediation Act of 2023 will change how matrimonial and family disputes are settled by creating new ways to reduce unnecessary conflict. Three findings stand out. First, regarding reconciliation duties and family law, the Act does not remove reconciliation duties; it still coexists with them. Also, through Section 55, in conjunction with the Second Schedule, the Act explicitly states that its overriding clause will not displace the Family Courts Act. The practical effect is the most likely outcome of mediation becoming a specialised profession. It will not achieve a revolution of personal law. Second, regarding the domestic violence safeguards, It is correct that the Act, in the case of domestic violence and child abuse, does not keep confidentiality. It is a good thing that safety is recognized, in the statute, as being more important than privacy, but there is no adequate procedural safety framework: screening, representation, trauma-informed process design, and judicial review. This does line up with some UN Women guidance and international best practices to avoid mandatory alternative dispute resolution in domestic violence situations. Third, with regard to the role of court-annexed mediation centres, transitional continuity rules and national campaigns state that court-annexed institutions will still be the most important source of family mediation, which will be the most important for the protection of vulnerable parties and the provision of efficiency.

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[23] Sarkar, A. (2023). Mediation-An Effective Mechanism for Resolving Disputes in India. Issue 1 Indian JL & Legal Rsch., 5, 1.

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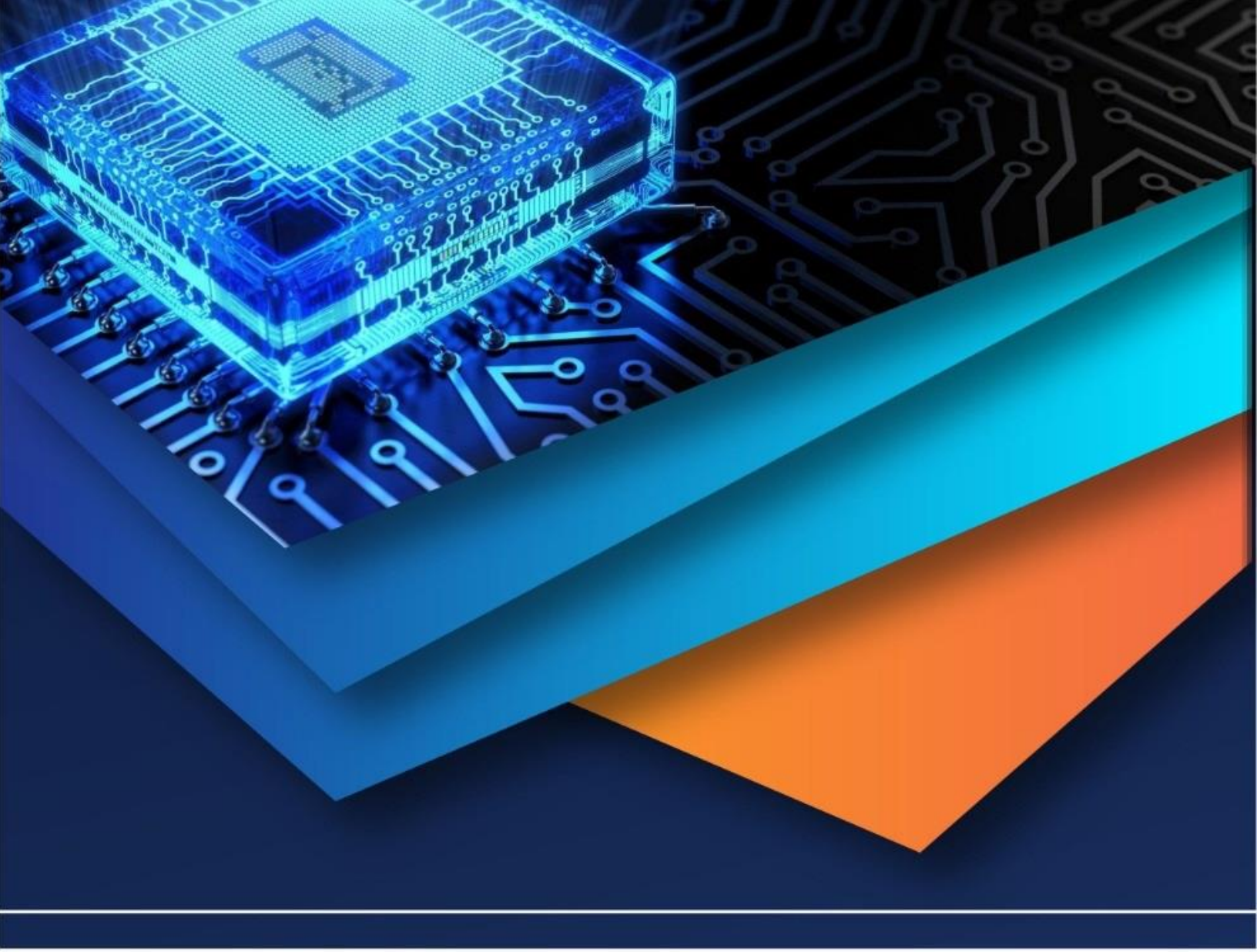

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