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Objective Signs Act Done with Intent to Prevent Child Being Born Alive or To Cause It to Die After Birth: National and Indian Experiences

Khudaykulov Feruzbek Khurramovich[1], Dr. Divyashree[2]
[1]*Acting Assistant Professor of Criminal Law, Criminology and Anti-corruption Department of Tashkent State University of Law*
[2]*Asst Professor, School Of Criminology And Behavioural Science Rashtriya Raksha University Lavad, Dahegam, Gandhinagar, Gujarat, India*

Abstract: ***The article analyzes the problems of qualification crime, connected with infanticide. the terms, used in formulation of crime under considering, which demands of unambiguous and luminous exposition are defined. this article illustrates the objective side of the crime structure and its facultative signs and their criminal legal significances belong to offence of infanticide , including the theoretical and practical problems of facultative signs of the objective side of the crime structure, which are specified in the criminal code of the republic of uzbekistan. in addition, proposals and recommendations for further improvement of the criminal legislation. also, in this article, the author analyzes offence of infanticide in national, foreign and Indian experiences. This article illustrates that the facultative signs of the objective side of the crime of offence of infanticide are specified in the Criminal Code as extenuating (qualifying) signs at the qualification of criminal offense and Objective signs of this crime consist in the unlawful deprivation life of a newborn child.On the objective side, the crime under article 99 of the criminal code of the Republic of Uzbekistan has a material structure. It can be committed either through action or inaction. A socially dangerous consequence must be in the necessary cause-and-effect relationship with the mother's act.***
Keywords: infanticide, criminal law, privileged formal element of a definition of crime, facultative signs of the objective side of the crime; the time, socially dangerous act; socially dangerous consequences; causal link.

I. INTRODUCTION

One of the types of murder with extenuating circumstances under the criminal code of Uzbekistan is the murder of a newborn child by a mother. Article 99 of the Criminal code provides for three situations in which the murder of a newborn child by a mother can be qualified under this article:

1) The murder of a newborn child by a mother during childbirth;
2) The murder of a newborn child by a mother immediately after childbirth;

In essence, we are talking about three separate elements of the crime and three circumstances that mitigate the punishment. The reasons for the selection of compositions are the following signs: time, situation, mental state of the mother. The first two are related to the objective side of the crime, the third to the subject of the crime.

This type of crime is quite common in recent years. However, a significant proportion of newborn murders are presented as abortions and remain undetected by law enforcement agencies. One of the reasons for this is that the corpus delicti provided for in article 99 of the criminal code of the Republic of Uzbekistan is new and insufficiently studied by law enforcement. When considering this crime, many controversial issues arise. Many of them are, on the one hand, the subject of criminal law and the doctrine of criminal law, and on the other hand, relate to the field of medicine.

Objective signs of this crime consist in the unlawful deprivation life of a newborn child.

On the objective side, the crime under article 99 of the criminal code of the Republic of Uzbekistan has a material structure. It can be committed either through action or inaction. A socially dangerous consequence must be in the necessary cause-and-effect relationship with the mother's act.

The victim of this crime is a newborn child who was born and did not die. In this regard, the definition of the beginning of human life is important for the existence of this corpus delicti.

M.X.Rustambayev said that This type of homicide is a mitigating circumstance murder because it is the birth of a woman who is giving birth to a crime special mental and physical condition during or immediately after birth occurs as a result.

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This condition is called labor pains and the baby in the woman with this eye can cause a relatively negative feeling. Or is it unwanted (pregnancy as a result of rape or cheating by promising to marry) can lead to childbirth. Baby when any part of the body comes out of the mother's womb or when it is full that his mother killed him after he was born Uzbekistan Should be qualified by Article 99 of the Criminal Code. Killing is an active action (e.g., inflicting grievous bodily harm, drowning, suffocation) and inactivity (e.g., not feeding) possible [1, P. 82].

However, not any destruction of the fetus at the beginning of labor should be considered murder. In such a situation, the correct assessment of what was done depends on the period of pregnancy. In medicine, premature termination of pregnancy after 22 weeks is called early delivery, termination of pregnancy for a period not exceeding 22 weeks is called artificial termination of pregnancy or abortion.

It is usually considered to be a baby from the beginning of birth and the time of birth from the mother's womb to 4 weeks [2, P. 96].

If you are pregnant for more than 22 weeks, the fetus is already capable of extrauterine life. Based on this, the beginning of the criminal law protection of life should be recognized from the moment of delivery during pregnancy over 22 weeks.

On the objective side, this crime includes two situations: murder of a child during childbirth and murder of a child immediately after it. Understanding the first situation involves understanding the question of what it means to commit an act "during childbirth". The concept of "birth" is broader than the term "birth of a child".

In terms of forensic medicine, infancy is a very short time; A baby is a baby that lives up to 1 day after birth [3, P. 386].

Birth can be natural, natural premature, or artificial premature. In the scientific literature, it is reasonably stated that the deprivation of life of a child born as a result of natural childbirth or natural or artificial termination of pregnancy should be considered murder. The viability of the child does not affect the qualification of the act.

Such proposals unreasonably expand the boundaries in the understanding of premeditated murder and make it difficult to distinguish crimes under article 99 and article 98 of the criminal code from illegal abortion (article 114 of the criminal code), and therefore they are unlikely to find broad support in the scientific literature and will be in demand in the process of law enforcement.

Currently, the literature suggests established sustainable approaches that are accepted by judicial practice in distinguishing murder from illegal abortion. They are as follows: causing the death of a live child born as a result of any birth (natural, natural, temporary, artificial premature) during pregnancy of more than 22 weeks is considered murder, and the destruction of the fetus during pregnancy up to 22 weeks or the killing of the child in the womb during pregnancy over 22 weeks before the start of labor, if there are other relevant conditions, is qualified as illegal abortion.

Understanding the second situation, which relates to the objective side of the act described in article 99 of the criminal code, implies understanding the question of what it means to kill a child "immediately after birth". Various opinions have been expressed in the literature regarding the interpretation of this criminal law concept. So, some authors under this period of time understand, first, a day from the moment of birth of the child. Others believe that setting a predetermined time limit is unacceptable and suggest that this time limit should be determined on a case-by-case basis. According to third parties, the period of time "immediately after delivery" is the period of time after the birth of the child and before the separation of the placenta (children's place).

It seems that the most acceptable solution to this issue was proposed by A. N.Popov. It is logical that the period "immediately after delivery" can not be significantly removed from the time of delivery; it must be specific to all situations, otherwise it may lead to differences in the qualifications and responsibilities of the perpetrators; it should not relate to the previous birth period.

This understanding of this phenomenon, firstly, takes into account the current reality in medical practice (2-4 hours after birth in medicine is called the early postpartum period), secondly, it does not contradict article 99 of the criminal code, since such a period of time is not long and directly follows childbirth without any break. The subject of this crime is special: the mother of a newborn child who reached the age of 16 and killed her child.

On the subjective side, the crime in question is characterized by intentional guilt. The moment of intent does not affect the qualification of the act. In such a situation, it is important that its implementation occurs during childbirth or immediately after it, in the conditions of a special mental state of the culprit, and not earlier or later than this time frame. Partial implementation of intent outside these time limits (for example, performing preparatory actions) excludes the responsibility of the guilty party under article 99 of the criminal code of the Republic of Uzbekistan.

According to article 99 of the criminal code, the murder of a mother of her child occurs not just during childbirth or immediately after it, but in a psychotraumatic situation caused by childbirth.

In such a case, the law indicates an unusual situation in which the crime was committed. The concept of "psychotraumatic situation" is used when describing the reason for the occurrence of a special mental state of the perpetrator: strong emotional excitement (affect), when the person could not fully understand the meaning of their actions or direct them.

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It seems that in relation to article 99 of the criminal code of the Republic of Uzbekistan, it is necessary to consider the "psychotraumatic situation caused by childbirth" as the cause of a special mental state of a woman in labor, when she could not fully understand the meaning of her actions or direct them. If the perpetrator was in a special mental state caused by childbirth, but at the same time could fully understand the significance of their actions or direct them, then all the actions can not be assessed under article 99 of the criminal code, but must be qualified under article 98 of the criminal code.

In this situation, it is necessary to conduct a forensic psychiatric examination, which can give an answer to the question of the presence of a mental disorder that does not exclude sanity. This condition of the mother may serve as a basis for prescribing compulsory medical measures.

In relation to article 99 of the criminal code of the Republic of Uzbekistan, we are talking about a painful mental disorder that does not completely limit the ability of a woman in labor to be aware of and direct her actions. In such a situation, a violation of mental activity manifests itself in a distortion of the brain, which allows you to partially understand your actions and guide them.

For example in England offence of infanticide is:

a) Where a woman by any wilful act or omission causes the death of her child being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, if the circumstances were such that but for this Act the offence would have amounted to murder or manslaughter, she shall be guilty of felony, to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.

b) Where upon the trial of a woman for the murder or manslaughter of her child, being a child under the age of twelve months, the jury are of opinion that she by any wilful act or omission caused its death, but that at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then the jury may, if the circumstances were such that but for the provisions of this Act they might have returned a verdict of murder or manslaughter , return in lieu thereof a verdict of infanticide.

c) Nothing in this Act shall affect the power of the jury upon an indictment for the murder of a child to return a verdict of manslaughter, or a verdict of guilty but insane.

The Infanticide Act 1922 effectively abolished the death penalty for a woman who deliberately killed her newborn child, while the balance of her mind was disturbed as a result of giving birth, by providing a partial defence to murder. The sentence that applies (as in other partial defences to murder) is the same as that for manslaughter. This act was repealed by section 2(3) of the Infanticide Act 1938.

The Infanticide Act 1938 extended this defence to cases where "at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child."

Before the partial murder defence of diminished responsibility became part of English law in the Homicide Act 1957, this provided other than referral for possible insanity, the main means of lenient sentencing for a mother found guilty of deliberate killing of her infant than the mandatory life sentence or death sentence applying to murder.

In the 21st century it has become common for a severely post-natally depressed mother who kills her infant child not to receive a prison sentence, except in exceptional circumstances. Where a less extreme or no condition is suffered by the mother then causing or allowing a child (under 15) to die (under the Domestic Violence, Crime and Victims Act 2004, s.5) carries as of 2019 an effective sentence recommentation, unless the seven influential steps of sentencing determine otherwise, of 1–14 years' custody. Offender's responsibility substantially reduced by mental disorder or learning disability or lack of maturity will mean the lowest of three culpabilities applies, "Lesser culpability", and in that instance the starting point is taken as two years' custody setting a possible range of 1 to 4 years' custody. In a report the terms of which were agreed on 1 November 2006, the Law Commission recognised the difficulties facing the court when a defendant is in denial and unwilling to submit to psychiatric examination, as she perceives the purpose of such examination as an attempt to prove her guilt. In such cases, the mother is unlikely to have any other defence and is therefore more likely to be convicted of murder or causing a child to die [4].

Female infanticide in India has a history spanning centuries. Poverty, the dowry system, births to unmarried women, deformed infants, famine, lack of support services and maternal illnesses such as postpartum depression are among the causes that have been proposed to explain the phenomenon of female infanticide in India. Although infanticide has been criminalized in India, it remains

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an under-reported crime due to the lack of reliable data. In 2010, the National Crime Records Bureau reported approximately 100 male and female infanticides, producing an official rate of less than one case of infanticide per million people [5].

The Indian practice of female infanticide and of sex-selective abortion have been cited to explain in part a gender imbalance that has been reported as being increasingly distorted since the 1991 Census of India, although there are also other influences that might affect the trend [6].

Section 315 of the Indian Penal Code defines infanticide as the killing of an infant in the 0–1 year age group. The Code uses this definition to differentiate between infanticide and numerous other crimes against children, such as foeticide and murder [7].

Infanticide in India, and elsewhere in the world, is a difficult issue to objectively access because reliable data is unavailable [8]. Scrimshaw states that not only accurate frequency of female infanticide is unknown, differential care between male and female infants is even more elusive data.[41] Reliable data for female infanticide is unavailable. Its frequency, and that of sex-selective abortion, is indirectly estimated from the observed high birth sex ratio; that is, the ratio of boys to girls at birth or 0–1 age group infants, or 0–6 age group child sex ratio. The natural ratio is assumed to be 106, or somewhere between 103 and 107, and any number above or below this range is considered as suggestive of female or male foeticide respectively. Higher sex ratios than in India have been reported for the last 20 years in China, Pakistan, Vietnam, Azerbaijan, Armenia, Georgia and some Southeast European countries, and attributed in part to female infanticide, among other factors.[45] There is an ongoing debate as to the cause of high sex ratios in the 0–1 and 0–6 age groups in India. The suggested reasons for high birth sex ratio include regional female foeticide using amniocentesis regardless of income or poverty because of patrilineal culture,[46][47] the under-reporting of female births, smaller family size and selective stopping of family size once a male is born. Sheetal Ranjan reports that the total male and female infanticide reported cases in India were 139 in 1995, 86 in 2005 and 111 in 2010;[51] the National Crime Records Bureau summary for 2010 gives a figure of 100.[52] Scholars state that infanticide is an under-reported crime. Reports of regional cases of female infanticide have appeared in the media, such as those in Usilampatti in southern Tamil Nadu [9].

One of the biggest reason for increase in female infanticide is being associated with the increase in number of private Ultrasound Scanning Centres which often tell the sex of baby, and as they become more accessible and affordable people who could not find out the sex of baby historically, have started finding it out and often results in abortion in case of girl child [10].

Article 99 of the criminal code of the Republic of Uzbekistan provides for liability for murder under extenuating circumstances related to a certain mental state of the perpetrator caused by childbirth. In the theory of criminal law, it is recognized that a person who is not the subject of a crime specifically specified in the relevant article, who participates in the Commission of a crime under this article, may be criminally liable for this crime as an organizer, instigator or accomplice.

Complicity in a crime under article 99 of the criminal code of the Republic of Uzbekistan is impossible, since the actions of other persons do not fall under this article. The circumstances on the basis of which the responsibility of the mother is mitigated do not apply to accomplices in infanticide.

If the murder of a newborn child is committed by the woman who gave birth to it together with other persons, then their joint actions have different qualifications. Most authors believe that the actions of accomplices should be qualified as simple or qualified murder.

If the mother herself performs the role of organizer, instigator or accomplice in the murder of a newborn, her actions, as well as the actions of the performer, are proposed to qualify as complicity in the murder, pointing to the obvious unfairness of the qualification: for causing the death of a child with her own hands, the mother is responsible for the privileged composition of the murder, and in the case of causing death by someone else's hands – for the qualified one.

Based on this, it can be concluded that complicity will occur if the persons taking part in this act are aware that the woman is in a special mental state caused by childbirth, when she is not fully aware of the significance of her actions or directs them. If the persons who assist the woman do not realize this fact, their assessment as accomplices in the crime described in article 99 of the criminal code of the Republic of Uzbekistan is excluded altogether. Complicity in this crime in reality can occur in rare cases, since it is not given to any person to be aware of the special mental state of a woman during childbirth, but only to those who have certain knowledge or special training (for example, a doctor or psychologist).

Complicity in this crime in reality can occur in rare cases, since it is not given to any person to be aware of the special mental state of a woman during childbirth, but only to those who have certain knowledge or special training (for example, a doctor or psychologist).

One of these controversial issues is the definition of the moment of the beginning of life. This question is important for the qualification of an act under article 99 of the criminal code of the Republic of Uzbekistan. The difficulty is that it is not clearly defined in medicine, so researchers of criminal law have to answer this question themselves. Most modern researchers agree that the moment of the beginning of life should be recognized as the beginning of physiological childbirth.

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In particular, the factors that cause cases of mental trauma in the mother – pregnancy as a result of rape, missed gestation period for abortion, anxious behavior of the newborn (crying a lot, not being quiet for a long time), the mother is deprived of the opportunity to sleep and rest for a long time (due to prolonged labor), the existence of a demand from the father of the baby, consisting of any price offer to get rid of the baby, the father's refusal to acknowledge the baby as a child, the refusal to formalize the marriage, the persecution of the baby's mother by close relatives.

Under the criminal law of England and Wales, infanticide is both an offence in its own right and a partial defence to the charge of murder. Only a biological mother who kills her own child within 12 months of the birth can be charged with infanticide or rely on it as a defence. The death can be by either act or omission. Under s 1 of the Infanticide Act 1938, (as amended by s 57 of the Coroners and Justice Act 2009), infanticide can apply where a woman:

by any wilful act or omission; causes the death of her child who is aged under 12 months; but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child; or by reason of the effect of lactation caused by the birth of the child then; notwithstanding that the circumstances were such that, but for this Act, the offence would have amounted to murder; she shall be guilty of an offence of infanticide; and may for such an offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.

R v Gore (2007) EWCA Crim 2789 established that there is no need for all the ingredients of murder to be proved before a defendant could be convicted of infanticide. The case confirmed that the aim of Parliament was to create a new offence of infanticide which covered circumstances much wider than offences that would otherwise be murder. The mens rea for infanticide, therefore, does not require any intention to kill or cause serious bodily harm. In a case where infanticide is claimed for an offence that otherwise would have been framed as murder or manslaughter the burden of proof is on the prosecution to disprove a claim of infanticide beyond a reasonable doubt. The possibility that infanticide could be found in cases whereby a homicide could not be established was an issue which has been highlighted by the Law Commission. For example, the interpretation of 'wilful act', could include a negligent act which falls below the standard of gross negligence which is necessary for the offence of manslaughter to be established. Following this, the Coroners and Justice Act 2009 clarified the position that infanticide cannot be charged in circumstances which would not lead to a homicide [11].

A state of mind that does not exclude insanity – it is the case that the mother is a sane person who, due to her mental state being disturbed at the time of the crime, is unable to fully understand or control the significance of her actions (inactions). Mental disorders, which do not exclude mental retardation, are often expressed in the form of physiological affect.

In conclusion, the peculiarity of offence of infanticide is that the subject of the crime can only be the mother of the baby. The actions of participants in the crime of murder must be qualified by Articles 28 and 97 of the Criminal Code of the Republic of Uzbekistan.

According to **Indian Penal Code** '' Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both." (Section 315 of the Indian Penal Code "Act done with intent to prevent child being born alive or to cause it to die after birth")

According to statistics published by the National Crime Records Bureau, a department of the Government of India, kidnapping and abduction represented 40.3 per cent of recorded crimes against children in 2020, rape was 20.5 per cent, murder (other than infanticide) was 5.3 per cent, and exposure and abandonment was 2.7 per cent. All other crimes against children accounted for 31.5 per cent.

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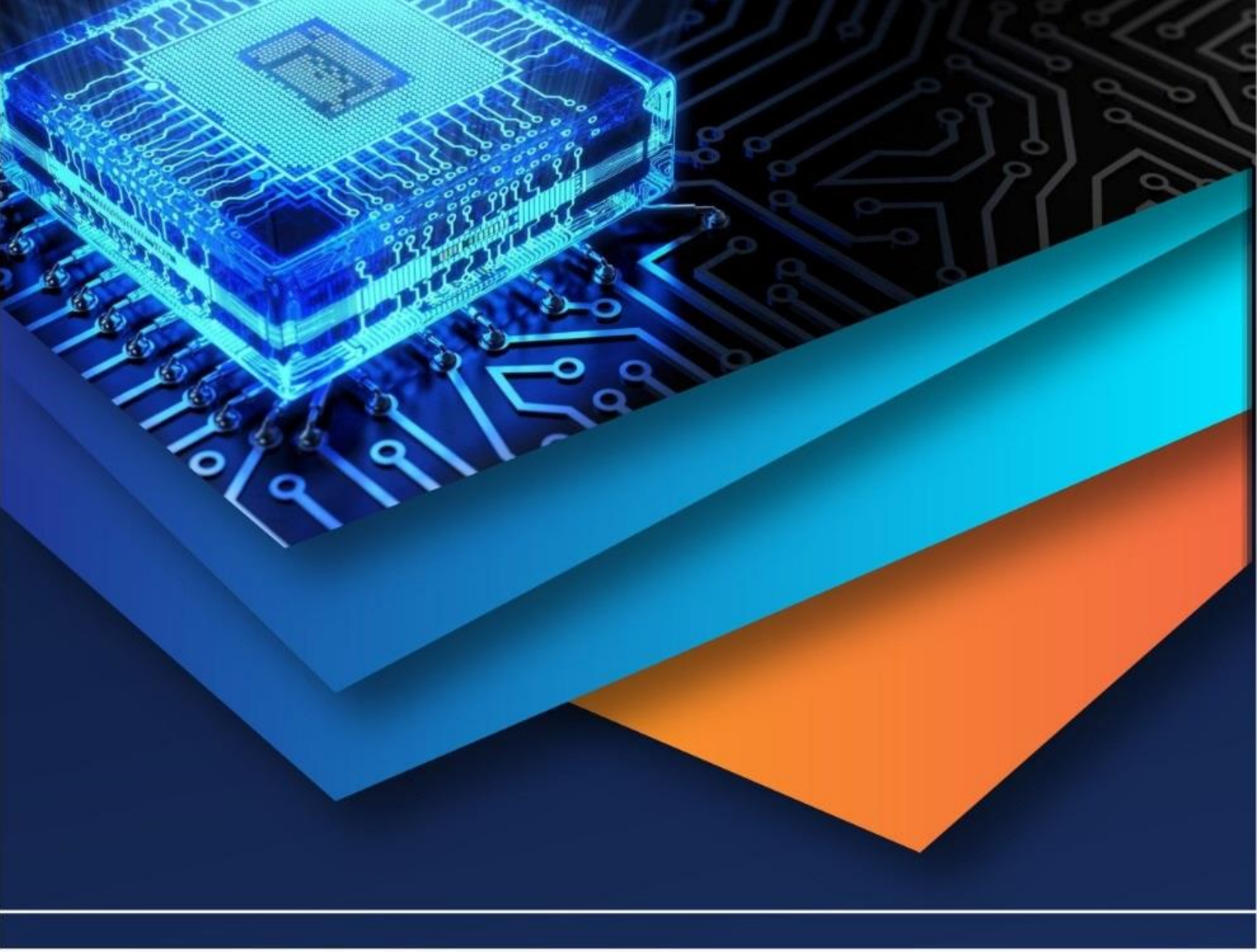
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