iJRASET
International Journal For Research in Applied Science and Engineering Technology

INTERNATIONAL JOURNAL FOR RESEARCH

IN APPLIED SCIENCE & ENGINEERING TECHNOLOGY

Volume: 13 **Issue:** XII **Month of publication:** December 2025

DOI: https://doi.org/10.22214/ijraset.2025.76457

www.ijraset.com

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International Journal for Research in Applied Science & Engineering Technology (IJRASET)
ISSN: 2321-9653; IC Value: 45.98; SJ Impact Factor: 7.538
Volume 13 Issue XII Dec 2025- Available at www.ijraset.com

The Evolution of Arbitration in India: Contemporary Developments and Structural Challenges

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Abstract: ***Arbitration has emerged as a vital and increasingly preferred alternative dispute resolution mechanism in India, particularly for the resolution of complex commercial and contractual disputes. Recognizing its potential to reduce judicial burden and enhance ease of doing business, the Indian government has undertaken a series of legislative, institutional, and policy-driven initiatives aimed at strengthening the arbitration framework and positioning India as a global arbitration hub. This research undertakes a comprehensive examination of the recent developments in arbitration law and practice in India, focusing on reforms introduced to modernize the arbitral process and align it with international best practices.***

The study provides a detailed analysis of the existing legal framework governing arbitration in India, primarily examining statutory reforms, institutional mechanisms, and the evolving role of arbitration institutions. It further evaluates the judicial approach adopted by Indian courts, highlighting a gradual shift towards minimal judicial intervention and greater deference to arbitral autonomy. Significant amendments introduced to streamline procedures, expedite dispute resolution, and enhance the enforceability of arbitral awards are critically discussed to assess their effectiveness in practice.

Despite these progressive developments, the Indian arbitration system continues to face several structural and operational challenges that hinder its optimal functioning. These include persistent issues relating to the enforcement of arbitral awards, excessive judicial interference at various stages of the arbitral process, procedural delays, and inconsistent interpretations by courts. Additionally, the study underscores the pressing need for capacity building through the development of skilled arbitrators, institutional strengthening, and greater awareness among stakeholders to ensure efficiency and credibility in arbitration proceedings.

The article concludes by offering pragmatic recommendations to address these challenges, emphasizing the importance of judicial discipline, institutional reform, professional training, and policy coherence. By identifying both the advancements and shortcomings within the current arbitration regime, this research seeks to contribute to the ongoing discourse on arbitration reform in India and to provide insights for further strengthening the country's arbitration ecosystem.

Keywords:Arbitration,India,CommercialDisputes,LegalFramework,InstitutionalSupport,Judicial Intervention, Enforcement, Delays, Capacity Building

I. INTRODUCTION

Arbitration has emerged as an important alternative dispute resolution mechanism globally, including in India. Over the past few decades, India has made significant efforts to promote arbitration as a preferred method for resolvingcommercialdisputes. Theaimhasbeentoprovideaquicker,moreefficient,andcost-effectivemeans of settling disputes, thereby attracting foreign investments and improving the ease of doing business in the country. In recent years, India has witnessed several keydevelopments in its arbitration landscape. These developments have been driven by both legislative reforms and judicial interventions, which seek to align the country's arbitration framework with international standards and address some of the longstanding challenges faced by parties involved in arbitration proceedings.This paper aims to explore the recent developments and key challenges surrounding arbitration in India. It will examine the significant legislative changes introduced by the Indian government, such as the Arbitration and Conciliation (Amendment) Act, 2019, which aimed to enhance the efficiency and credibility of the arbitration process.Additionally,it willanalyzelandmarkjudicialdecisionsthathave shapedthe arbitrationjurisprudence in the country.Despitethesepositivedevelopments, severalchallengespersistinIndia'sarbitrationregime.Thispaperwillshed light on some of the key challenges faced by parties engaging in arbitration proceedings, such as delays in the enforcement of arbitral awards, the issue of excessive judicial intervention, and the lack of adequate infrastructure and expertise.

Byanalyzingtherecentdevelopmentsandchallenges,thispaperaimstoprovideacomprehensiveunderstanding ofthe arbitration landscapein India. It will highlight the progress made, theareas that require further attention, and the potential implications for businesses and investors seeking to resolve disputes through arbitration in India.

II. HISTORICAL BACKGROUND

ArbitrationinIndiahasalonghistoricalbackgroundthathasevolvedovertime.Let'sexplorethekeymilestones and developments in the history of arbitration in India:

1) Ancient and Medieval Periods: Arbitration as a method of dispute resolution has deep roots in ancient India. During this time, disputes were often resolved through the intervention of a neutral third party or a council of elders who would hear both parties and render a decision.1 The process was based on principles of fairness and justice.2
2) BritishColonialEra:ThemodernarbitrationframeworkinIndiacanbetracedbacktotheBritishcolonialera. TheBritishintroducedformallegalmechanismsforarbitrationthroughtheIndianArbitrationActof1899.This legislation incorporated the provisions of the English Arbitration Act of 1889, which emphasized the enforceability of arbitration agreements and the finality of arbitral awards.3
3) Independence and Post-Independence Era: After India gained independence in 1947, the Indian Arbitration Actof1940cameintoforce.ThisactwaslargelybasedontheEnglishArbitrationActof1934andcontinuedto govern arbitration in India until it was repealed and replaced by the Arbitration and Conciliation Act, 1996.4
4) The Arbitration and Conciliation Act, 1996: The Arbitration and Conciliation Act, 1996 is the current governing legislation for arbitration in India. It was enacted to align Indian arbitration laws with international standards, particularlythe UNCITRAL Model Law on International Commercial Arbitration. The act provides a comprehensive framework for domestic and international arbitrations, and it also recognizes and enforces foreign arbitral awards.5
5) Judicial Interpretation: The Indian judiciary has played a crucial role in shaping arbitration law in India through various landmark judgments. The Supreme Court of India has consistently adopted a pro-arbitration approach and has interpreted the provisions of the Arbitration and Conciliation Act, 1996, in a manner that promotes party autonomy and limits judicial interference in arbitration proceedings.6
6) Amendments and Reforms: Over the years, the Arbitration and Conciliation Act, 1996, has undergone amendments to address practical challenges and improve the efficiency of arbitration proceedings. In 2015, significant amendments were made to the act to expedite arbitration, reduce court intervention, and promote institutional arbitration.7
7) International Arbitration Centers: In recent years, India has witnessed the establishment of international arbitrationcenterstopromoteIndiaasahubforinternationalcommercialarbitration.Thesecenters,suchasthe Mumbai Centre for International Arbitration (MCIA) and the Delhi International Arbitration Centre (DIAC), aim to provide world-class arbitration facilities and institutional support for resolving international disputes.[8]

The historical background of arbitration in India demonstrates its evolution from traditional dispute resolution practices to a modern legal framework aligned with international standards. The Indian government's efforts to promotearbitrationandthejudiciary'spro-arbitrationapproachhavecontributedtothegrowthanddevelopment of arbitration in India.

III. RECENT DEVELOPMENTS IN ARBITRATION IN INDIA

1) Arbitration and Conciliation (Amendment) Act, 2019: The Indian government introduced significant amendments to the Arbitration and Conciliation Act in 2019 to make arbitration a more efficient and cost- effectivedispute resolution mechanism.The amendmentsaimed topromote institutionalarbitration, streamline the arbitration process, and minimize judicial intervention.[9]
2) Creation of the New Delhi International Arbitration Centre (NDIAC): The New Delhi International ArbitrationCentreAct,2019wasenactedtoestablishtheNDIACasanindependentandautonomousinstitution forthepromotionofinstitutionalarbitration.TheNDIACaimstoprovideworld-classinfrastructureandfacilities for conducting international and domestic arbitration.10
3) SettingupoftheMumbaiCentreforInternationalArbitration(MCIA):TheMCIAwasestablishedin2016 as an independent, not-for-profit organization to promote institutional arbitration in India. It provides a framework for the conduct of international and domestic commercial arbitration and aims to position Mumbai as a major arbitration hub.11
4) Fast-track procedure for arbitration: The 2019 amendment introduced a fast-track procedure for arbitration caseswherethevalueofthedisputedoesnotexceedINR3crore(approximatelyUSD400,000).

Thisexpedited process aims to resolve disputes within six months.12

5) Onlinefilingofarbitrationcases:TheCOVID-19pandemicacceleratedtheadoptionoftechnologyindispute resolution. Indian courts and arbitration centers embraced online platforms for filing arbitration cases and conducting virtual hearings, allowing parties to participate remotely.13
6) Expansion of the scope of public policy: The 2019 amendment clarified that an award can be set aside if it is contrarytothefundamentalpolicyofIndianlaworthemostbasicnotionsof moralityorjustice. Thisprovision expands the scope of public policy as a ground for challenging an arbitral award.
7) Pre-arbitration mediation: The Indian government has encouraged parties to attempt mediation before initiating arbitration proceedings. The 2019 amendment provides that if a party files an application for arbitration,thecourtmustreferthepartiestomediation,unlessitfindsthatthedisputeisnotcapableofsettlement by mediation.14
8) **I**nternationalCommercialArbitration:TheIndianjudiciaryhasshownanincreasedpro-arbitrationapproach byrecognizingandenforcingforeignarbitralawardsinlinewithinternationalconventionssuchastheNewYork Convention. This approach has bolstered India's reputation as an arbitration-friendly jurisdiction.[15]
9) TheArbitrationandConciliation(Amendment)Bill,2021:ItseekstoamendtheArbitrationandConciliation Act, 1996 to

- provideforautomaticstayofawards incertain cases and
- tospecifybyrules thequalifications, experienceandcriteriaforrecognition of arbitrators.

➢ It has sought to provide that interested parties may seek an unconditional stay on the enforcement of arbitral awards in cases where "the arbitral agreement or contract is motivated by fraud or corruption".
➢ Also,the8thScheduleoftheActwhichcontainedthequalificationsrequiredforrecognitionofarbitrators has also been removed.[16]
➢ AprovisohasbeenaddedtosectionoftheArbitrationActandwillbeapplicableretrospectivelyfrom 23rd October, 2015. As per this amendment, if the Court is satisfied that a prima facie case is made out that the arbitral agreement or contract which is the basis if the award has been induced or affected by fraudorcorruption,itshallbesetasidewithoutdelayt illthedisposalofthechallengetotheawardunder section 34. The bet will bar the prize.[17]

IV. LEGALFRAMEWORKFORARBITRATIONIN INDIA

InIndia,thelegalframeworkforarbitrationisprimarilygovernedbytheArbitrationandConciliationAct,1996 (theAct).TheActisbasedontheUNCITRALModelLawonInternationalCommercialArbitrationandprovides a comprehensive set of rules and regulations for both domestic and international arbitration proceedings in India.[18]Keyprovisions andfeatures ofthelegalframeworkforarbitration inIndia includethefollowing:

1) Arbitration Agreement: The Act recognizes the autonomy of parties to choose arbitration as a method of disputeresolution.Anarbitrationagreementmustbeinwritingandcanbeintheformofanarbitration clausein a contract or a separate agreement.[19]
2) Arbitral Tribunal: The Act provides for the establishment of an arbitral tribunal, which is responsible for resolving disputes through arbitration. The tribunal can be a sole arbitrator or a panel of arbitrators, as agreed upon by the parties.
3) AppointmentofArbitrators:TheActsetsoutproceduresforappointingarbitrators. Iftheparties failtoagree on the appointment of an arbitrator, the court can intervene and make the appointment. The Act also contains provisions for challenging the appointment of an arbitrator in certain circumstances.
4) Conduct of Arbitral Proceedings: The Act outlines the conduct of arbitral proceedings, including the powers ofthetribunal,submissionofstatementsandevidence,oral hearings,andtheconductofwitnessesandexperts. The Act provides flexibilityto the tribunal to determine the procedure to be followed, subject to the agreement of the parties.20
5) Enforcement of Arbitral Awards: The Act provides for the recognition and enforcement of arbitral awards, bothdomesticandinternational.Anaward,oncerendered,canbeenforcedinthesamemannerasacourtdecree. Limited grounds for challenging an arbitral award are provided under the Act.
6) Court Assistance: The Act allows parties to seek certain forms of court assistance in relation to arbitration proceedings. This includes the power of the court to grant interim measures, assist in the appointment of arbitrators, and assist in the collection of evidence.
7) Institutional Arbitration: In addition to the provisions of the Act, India has several institutional arbitration bodies,suchastheMumbaiCentreforInternationalArbitration(MCIA)andtheDelhiInternationalArbitration Centre (DIAC), which provide administrative services and facilities for arbitration proceedings.21

V. INSTITUTIONAL SUPPORT FOR ARBITRATION

Institutional support for arbitration plays a crucial role in ensuring the effective and efficient resolution of disputes through arbitration. Various organizations provide institutional support by establishing rules, procedures, and services that facilitate the arbitration process.[22] Here are some key aspects of institutional support for arbitration:

1) ArbitralInstitutions:Theseorganizations,suchastheInternationalChamberofCommerce(ICC),theLondon Courtof InternationalArbitration(LCIA),and the American ArbitrationAssociation(AAA), offerinstitutional support by administering arbitration cases. They provide a framework for the arbitration process, including appointment of arbitrators, case management, and administration of fees.23
2) Rules and Procedures: Arbitral institutions develop and maintain sets of rules and procedures that govern the arbitration process. These rules address various aspects of arbitration, including the appointment and qualifications of arbitrators, the conduct of proceedings, the determination of arbitral awards, and the enforcement of awards.
3) Case Administration: Institutional support includes administrative services to manage the arbitration process effectively. This may involve maintaining case files, organizing hearings, facilitating communication between parties and arbitrators, and managing the financial aspects of the arbitration, such as the collection and distribution of fees.24
4) Appointment of Arbitrators: Many arbitral institutions maintain panels of qualified arbitrators from various jurisdictionsandfieldsofexpertise.Theyofferassistanceintheappointmentofarbitrators,ensuringthatparties have access to competent and impartial individuals to hear their disputes.
5) Facilities and Resources: Arbitral institutions often provide physical facilities, such as hearing rooms and conferencespaces,to conduct arbitrationproceedings.Theymayalso offeraccess to researchresources,libraries, and other amenities to support the arbitration process.
6) Mediation and Alternative Dispute Resolution (ADR) Services: Some arbitral institutions also provide mediation and other ADR services alongside arbitration. These mechanisms offer parties additional options to resolve their disputes outside of formal arbitration proceedings.25
7) Training and Education: Many institutions offer training programs, workshops, and seminars to educate practitioners, arbitrators, and parties on various aspects of arbitration. These initiatives help enhance the understanding of arbitration procedures, rules, and best practices.
8) Code of Ethics and Professional Standards: Arbitral institutions often have codes of ethics and professional standards that arbitrators and parties are expected to follow. These guidelines help maintain integrity, professionalism, and fairness in the arbitration process.26

Institutional support for arbitration contributes to the credibility and efficiency of the process, as well as the enforceability of arbitral awards. Parties benefit from the expertise, neutrality, and administrative services provided by arbitral institutions, leading to a more reliable and effective means of resolving disputes.

VI. JUDICIAL APPROACH TOWARDS ARBITRATION

Thejudicialapproachtowardsarbitrationvariesacrossdifferentjurisdictions,asitisinfluencedbynationallaws and legal systems. However, there are some general principles and trends that can be observed.[27]

1) Supportive of Arbitration: In many jurisdictions, courts tend to be supportive of arbitration as an alternative dispute resolution mechanism. This is because arbitration offers parties the flexibility to resolve their disputes outside of the traditional court system, and it is seen as promoting efficiency and party autonomy.28
2) Limited Judicial Intervention: Courts generally adopt a policy of limited intervention in arbitration proceedings. They respect the principle of party autonomy, which means that parties are free to choose their arbitrators, determine the procedure, and agree on the applicable law. Courts are reluctant to interfere with the decisions of arbitrators, including their findings of fact and interpretation of the law.29
3) EnforcementofArbitralAwards:Courtsplayacrucialroleintheenforcementofarbitralawards.Theprimary purpose of arbitration is to obtain a final and binding award, and courts typically uphold this principle by enforcing arbitral awards in accordance with national and international laws. The grounds for setting aside or refusing enforcement of an arbitral award are generally limited and specified by law.30
4) Judicial Review of Arbitration Agreements: Courts mayreview the validityand enforceabilityof arbitration agreements. Theyensure that the agreement meets therequirements ofthe applicable arbitration lawand that it is not unconscionable or tainted by fraud or duress.

If a court finds an arbitration agreement to be valid, it will generally stay any court proceedings and refer the parties to arbitration.[31]

5) Assistance in Arbitral Proceedings: Courts may provide assistance to arbitrators and parties in conducting arbitration proceedings. This includes granting interim measures, such as injunctions or the appointment of emergency arbitrators, and ruling on procedural matters when necessary. However, such assistance is typically limited and designed to support the arbitration process rather than substitute for it.32
6) SetAsideProceedings:Insomejurisdictions,partiesmayseektosetasideanarbitralawardbeforethenational courts. The grounds for setting aside an award are generally limited and may include procedural irregularities, lack of jurisdiction, or violation of public policy. Courts conduct a review of the award but do not engage in a full re-examination of the merits.[33]

VII. KEY CHALLENGES IN INDIAN ARBITRATION

Indian arbitration faces several key challenges that hinder its efficient and effective functioning. Some of the prominent challenges include:

1) Overburdened judicial system: The Indian judiciary is burdened with a high volume of cases, resulting in delays in resolving arbitration-related matters. The backlog of cases often leads to significant delays in the enforcement of arbitral awards and defeats the purpose of arbitration as a quick and efficient dispute resolution mechanism.34
2) Lackof specializedarbitrationbenches: Arbitration-relatedmattersin Indiaaregenerallyhandled byregular courts, which may lack specialized knowledge in arbitration law and practice. This can lead to inconsistent decisionsanddelaysintheresolutionofdisputes,asjudgesmayrequiretimetofamiliarizethemselveswiththe intricacies of arbitration.35
3) Judicial intervention and excessive court control: Indian courts have often been criticized for excessive interference in arbitration proceedings. Frequent challenges to arbitral awards on various grounds and intervention in the appointment of arbitrators by courts undermine the autonomy and finality of arbitral proceedings, adding to the delays and costs involved.36
4) Limited availability of skilled arbitrators: India faces a shortage of qualified and experienced arbitrators, particularlyin specialized sectors such as construction, infrastructure, and international arbitration. The limited pool of arbitrators affects the qualityand efficiency of arbitration proceedings, and parties maystruggle to find suitable arbitrators for their disputes.37
5) LackofinstitutionalsupportWhileIndiahasafewwell-establishedarbitralinstitutions,suchastheMumbai Centre for International Arbitration (MCIA) and the Delhi International Arbitration Centre (DIAC), the overall institutional infrastructure for arbitration is relatively underdeveloped. This results in a lack of standardized procedures, administrative support, and specialized rules for different sectors, thereby affecting the credibility and efficiency of the arbitration process.38
6) Inadequateenforcementofarbitralawards: DespiteIndiabeingasignatorytotheNewYorkConventionon theRecognitionandEnforcementofForeignArbitralAwards,challengesoftenariseinenforcingbothdomestic and foreign arbitral awards. This can be attributed to the complex enforcement procedures, lack of awareness among courts, and occasional protracted court battles.39
7) Publicpolicy considerations: Indian courts have broad discretion to set asidearbitral awardsiftheyare found to be contraryto public policy. However, the interpretation and application of the public policyexception have been subject to differing views, leading to uncertainty and potential abuse of this ground for challenging awards.40
8) Costand time considerations: Arbitrationin Indiacanbetime-consuming andexpensive. Lengthyproceedings, frequent court intervention, and the involvement of senior counsel contribute to increased costs. This can deter parties, especiallysmaller businesses, from choosingarbitration as a preferred dispute resolution mechanism.41

Efforts are being made to address these challenges, including legislative reforms such as the Arbitration and Conciliation(Amendment)Act,2019,whichaimstostreamlinethearbitrationprocessandpromoteinstitutional arbitration. However, significant progress is still required to ensure a robust and efficient arbitration ecosystem in India.

VIII. RECOMMENDATIONS FOR STRENGTHENING THE ARBITRATION REGIME

Tostrengthenthearbitrationregime,herearesomerecommendations:

1) EnactmentandModernization of Arbitration Laws: Governmentsshouldenact comprehensive andmodern arbitrationlawsthatalignwithinternationalstandards,suchastheUnitedNationsCommissiononInternational TradeLaw(UNCITRAL)ModelLawonInternationalCommercialArbitration.Theselawsshouldprovideclear guidelines on arbitration procedures, enforceability of arbitral awards, and remedies available to parties.42

2) Judicial Support and Non-Interference: Courts should adopt a pro-arbitration stance and minimize judicial interference in the arbitration process. This includes respecting party autonomy, enforcing arbitration agreements,andrefrainingfromunnecessaryinterventioninthearbitralproceedings.Clearguidelinesshouldbe provided to ensure judicial support for arbitration.43
3) Specialized Arbitration Institutions: Governments should establish or strengthen specialized arbitration institutions that can administer arbitration proceedings efficiently. These institutions should have well-defined rules, experienced arbitrators, and effective case management procedures to ensure the smooth conduct of arbitrations.44
4) Training and Accreditation of Arbitrators: Governments should promote the training and accreditation of arbitratorstoenhancetheircompetenceandprofessionalism.Establishingeducationalprograms,workshops,and certification processes for arbitrators will help ensure quality and consistency in arbitration proceedings.45
5) TransparencyandEfficiency: Arbitrationproceedingsshouldbeconductedwithtransparencyand efficiency. Parties should have access to relevant information, and hearings should be conducted in a timely manner. Implementing technological advancements, such as e-filing and videoconferencing, can significantly improve the efficiency of arbitration proceedings.
6) MediationandConciliationSupport:Encouragingtheuseofmediationandconciliationalongsidearbitration can help parties reach amicablesettlements and reducetheburden on arbitration. Governments should promote mediationandconciliationmechanisms,providetraining,andestablishmediationcenterstofacilitatealternative dispute resolution.46
7) Recognition and Enforcement of Awards: Governments should ensure the effective recognition and enforcementofarbitralawards.Domesticcourtsshouldupholdtheirobligationsunderinternationalconventions,suchastheNewYorkConventionontheRecognitionandEnforcementofForeignArbitralAwards,andenforce arbitral awards promptly and without undue scrutiny.47
8) International Cooperation and Harmonization: Governments should promote international cooperation and harmonizationofarbitrationlaws.Participatingininternationalforums,supportinginitiativesforharmonization of arbitration rules, and engaging in bilateral and multilateral agreements can enhance the effectiveness and consistency of the arbitration regime.48
9) Investor-State Arbitration: In the context of investor-state disputes, governments should ensure the fair and transparent resolution of disputes while preserving the right to regulate in the public interest. Incorporating safeguards against frivolous claims and addressing issues related to transparency and diversity in arbitrator appointments can strengthen the investor-state arbitration regime.49
10) Public Awareness and Education: Governments should undertake initiatives to raise public awareness about arbitration as a reliable and efficient method of dispute resolution. Education programs, public campaigns, and collaborations with academic institutions can help promote a better understanding of arbitration among businesses and the general public.[50]

IX. CONCLUSION

Finally, Arbitration in India has witnessed positive developments, including legislative reforms, institutional support, and a pro-arbitration approach by the judiciary. These efforts have been instrumental in promoting arbitration as a viable alternative to traditional litigation. However, challenges such as judicial delays, limited awareness, infrastructure gaps, and enforcement issues need to be addressed for India to become a global arbitration hub.

To overcome these challenges, continued efforts should focus on streamlining court processes, enhancing awareness and training programs, investing in infrastructure and technology, and strengthening enforcement mechanisms.Byaddressingtheseissues,Indiacanfurtherenhanceitspositionasanattractiveseatforarbitration, attracting international businesses and fostering a robust arbitration ecosystem within the country.

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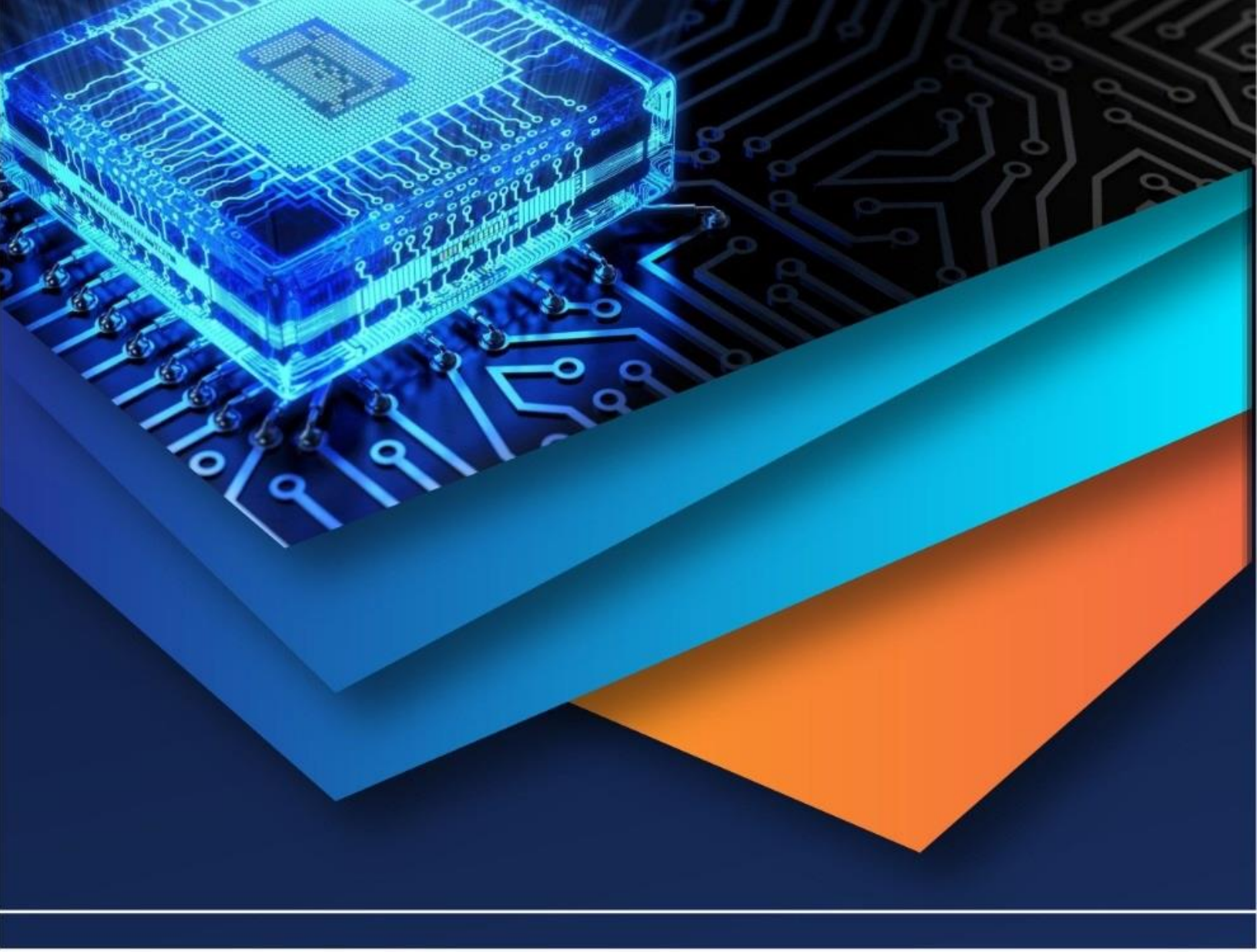

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