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## A STUDY ON PROFESSIONAL MISCONDUCT IN THE ADVOCATES ACT 1961

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### Abstract

Professional misconduct in law basically refers to the dishonorable or disgraceful conduct by an advocate. It can be defined as the behavior outside the limits of what is observed as worthy or acceptable by the governing figure of a profession. Objective of the study, To find the punishments for misconduct of lawyers. To analyze the duty of the advocate towards the court. To know the grounds of professional misconduct. This paper aims to provide an overview of the topic relating to the issue of 'Professional Misconduct' in the legal profession. The paper covers the types and instances of professional conduct, duties of advocates,. The paper discusses the instances amounting to professional misconduct and the Advocates Act of 1961. The paper studies the punishments for lawyers, grounds of professional misconduct and understanding and developing laws and Acts relating to the issue of Professional Misconduct. It has been found that most of the people are aware about professional Misconduct. Dismiss the complaint, or where the proceedings were initiated at the instance of the State Bar Council, directs that proceedings be filed; Reprimand the advocate; Suspend the advocate from practice for such a period as it deems fit.

**Keywords** - Profession, misconduct, ethics, lawyers, court.

### Introduction

The word 'Professional Misconduct' implies unethical actions. It implies, in the legal sense, an act intentionally committed by the people involved in the profession with the wrong intention. For his selfish ends, it implies any action or actions of an advocate in breach of professional ethics. It leads to 'professional misconduct' if an act results in a conflict with his profession and renders him ineligible to be in the profession. In other words, an act that disqualifies an advocate from continuing in the field of law. In the Advocates Act, 1966, misconduct was not specified, but misconduct envisages infringement of discipline, although it would not be possible to set out exhaustively unfair means. Factors: Ineffective Study Habits Ineffective Time Management Skills or Overload Psychological Factors, Not Knowing the Boundaries, Prevention, Prevention through

Instructional Approaches. Site iconLaw Insider India, Advocates Professional Misconduct and Punishment for it, LI Network LI Network ,1 year ago Aashima Kakkar: Professional misconduct refers to disgraceful or dishonourable conduct not befitting an advocat. Chapter V of the Advocate Act, 1961, deals with the conduct of Advocates. It describes provisions relating to punishment for professional and other misconducts. Section 35(1) of the Advocate Act, 1961, says, where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to it disciplinary committee. Generally legal profession is not a trade or business, it's a gracious, noble, and decontaminated profession of the society. Members belonging to this profession should not encourage deceitfulness and corruption, but they have to strive to secure justice to their

clients. The credibility and reputation of the profession depends upon the manner in which the members of the profession conduct themselves. It's a symbol of healthy relationship between Bar and Bench. The Advocates Act, 1961 as well Indian Bar Council are silent in providing exact definition for professional misconduct because of its wide scope, though under Advocates Act, 1961 to take disciplinary action punishments are prescribed when the credibility and reputation on the profession comes under a cloud on account of acts of omission and commission by any member of the profession.

The legal profession is regarded as a noble profession by society, and good ethics is a basic requirement of any profession. To preserve the nobility of the legal profession, those who practice it must adhere to and follow a set of ethical standards. Professional ethics refers to the commitment to and observance of a set of professional standards. These ethics are rules that govern a person's or a group's behavior in a professional setting. It establishes guidelines for how an individual should interact with other people and institutions in a given setting. The Advocates Act of 1961 governs the practice of law in India. In addition, Sections 3 and 4 of the Advocates Act, 1961, respectively, provide for the establishment of State Bar Councils and the Bar Council of India. Misconduct occurs when a person fails to follow professional norms or ethics. The Advocates Act of 1961 makes no mention of professional misconduct. Even the Bar Council is deafeningly silent about professional misconduct. Professional misconduct is defined as unacceptable or improper behavior, especially when perpetrated by a professional

#### Objectives:

- To find the punishments for misconduct of lawyers.
- To analyze the duty of the advocate towards the court.
- To know the grounds of professional misconduct.

#### Review of literature

**(Bhalla 2012)** SOLICITORS PROFESSIONAL MISCONDUCT AT a time when the Lloyd-Jacob's Committee and the Monopolies Commission have declared that collective retail price maintenance is contrary to the public interest and when the Government have announced their intention of introducing legislation to ban retail price maintenance altogether.

**(Gut 2012)**. BSN, RN Counterpoint Professional Misconduct and Professional Discipline Nurses should know their rights and learn all they can about the disciplinary system. Professional misconduct, as defined by the New York State Education Department, Office of the Professions, is "the failure of a licensed professional to meet expected standards

**(American Bar Association. House of Delegates and Center for Professional Responsibility (American Bar Association) 2007)** PROFESSIONAL MISCONDUCT AND THE LAW. The case of Clifford v. Timms, which was decided by Mr. Justice Warrington on January 26th, involved the discussion of certain questions of great interest to the medical profession. The parties to the suit were dentists; but the question at issue was of wider interest.

**(Rama Rao, Vijayalakshmi Tayaru, and Nageswara Rao 1987)** partnership provides for dissolution in case either partner is guilty of professional misconduct, the fact that the General Medical Council has found one partner to be guilty of conduct which is "infamous or disgraceful in a professional respect" is sufficient to justify the Court in granting relief.

**(Ojienda and Juma 2011)**..rules of those courts as regards language or otherwise; (3) the pleaders were permitted to enter into agreements with their clients for their fees for professional services. The Act did not affect certain vakils entitled to appear before the village munsif and other authorities specified under a Madras Code.

**(Abel 2011)**, Frequency of Student Academic Misconduct Student academic misconduct ,

such as cheating and plagiarism, has increased in recent decades (McCabe, Trevifio, & Butterfield, 2001) and is an important concern in higher education. Meanwhile, it has been reported that faculty members often do little to prevent misconduct or to challenge students

**(Pont 2016).** Understanding Professional Misconduct : the Moral Responsibilities of Professionals Thomas w. Norton Professor Werhane asks the question: "How do decent people, people who work for reputable companies engaged in worthwhile projects, people who follow their expertise and their consciences, behave questionably in certain circumstances or produce.

**(Sir Parry 2021),** partnership provide for dissolution in case either partner is guilty of professional misconduct , the fact that the General Medical Council has found one partner to be guilty of conduct which is "infamous or disgraceful in a professional respect" is sufficient to justify the Court in granting relief to the Medical students' perceptions of professional misconduct: relationship with typology and year of programme

**(Luban 2018)** Professional misconduct : relationship with typology and year of programme Juliana Zulkifli, Brad Noel, Deirdre Bennett, Siun O'Flynn, Colm O'Tuathaigh Medical Education Unit, School ABsTRACT misconduct .9 10 It has been shown that medical of Medicine, University College Aim To examine the contribution of programme students become desensitized.

**(Johnson 2014)** Torture Memos and Professional Misconduct NANCY V. BAKER New Mexico State University From 2001 to 2003, John Yoo of the U.S. Department of Justice provided legal advice that supported broad presidential authority in national security, including advice commonly known as the "torture memos." In 2009, the Office of Professional Responsibility concluded.

**(Gut 2012)** in the administration of justice, which prevails over their duty of care towards the clients. Liability of lawyers under contract law

arises for breach of contractual obligations either express or implied. Under tort law, the liability arises for failure to exercise reasonable care and skill in rendition of their professional services.

**(Federal Register 2022)** members of the public— should be handled through nondisciplinary means. Disciplinary actions should be confined to alleged violations of state equivalents of Rule 8.4(c) of the ABA Model Rules of Professional Conduct. Model Rule 8.4(c) states that it is professional misconduct for lawyers to engage in conduct "involving dishonesty, fraud, deceit

**(American Bar Association. House of Delegates and Center for Professional Responsibility (American Bar Association) 2007)** the attorney's professional duty to provide diligent legal representation the only duty of concern when sexual involvement with a client occurs? Most states' ethics rules do not specifically address attorney-client sexual relations. Ethics rules, however, have inferentially addressed this issue.4 Rule 1.7(b) of the Model Rules of Professional.

**( Monahan 2001)** Discipline and Punish: The Importance of Professional Accountability .Punish The Importance of Professional Accountability The foundation on which the analysis of a profession must be based is its relationship to the ultimate source of power and authority in modern society—the state. —Eliot Freidson, Professional Dominance, 83 If the argument in the previous chapter is correct, the efforts of those.

**(Mehta 2020)** Accounting Professionals' Ethical Judgment and the Institutional Disciplinary Context: A French-US Comparison. one aspect of the national institutional context (namely the accounting profession's disciplinary system) may be associated with accounting professionals' EJ. To this end, we use their perception of the seriousness of professional misconduct as a surrogate for EJ. In addition, we perform a Springer.

**(Abel 2011)** Conversation and Conversion: Professional Misconduct in the Catholic Church...Conversation and Conversion – Professional Misconduct in the Catholic Church David Ranson Over fifty years ago, the Jewish mystic and feminist, Simone Weil, recounted in one of her insightful essays that in the first leg end of the Holy Grail, it is said that the Grail belongs to the first comer.

**(Rama Rao, Vijayalakshmi Tayar, and Nageswara Rao 1987)** Careers of Misconduct: The Structure of Prosecuted Professional Deviance Among Lawyers..CAREERS OF MISCONDUCT : THE STRUCTURE OF PROSECUTED PROFESSIONAL DEVIANCE AMONG LAWYERS\* BRUCE L. ARNOLD JOHN HAGAN University of Calgary University of Toronto We develop a career model of prosecuted misconduct among lawyers. This model combines labeling theory's emphasis.

**(United States. Army. Office of the Judge Advocate General 1942)** Firm Commitments: Lawyers cannot ignore duty to report ethics violations by colleagues At the same time, ABA Model Rule 8.3 (Reporting Professional Misconduct ) states: "A lawyer having knowledge that another lawyer Joanne Pituita is assistant ethics counsel in the ABA Center for Professional Responsibility. has committed a violation of the Rules of Professional Conduct.

**(Pavlacic, Kellum, and Schulenberg 2021)** A Lawyer's Privilege against Self-Incrimination in Professional Disciplinary Proceedings...Against Self- Incrimination in Professional Disciplinary Proceedings Geoffrey C. Hazard, Jr.f and Cameron Beard Historically, lawyer disciplinary proceedings appear to have been summed? Mary, although a full hearing generally was accorded if the lawyer con- tested the charge. Today, pre hearing administrative inquiry usually dif- ferentiates among.

**(Janket, Meurman, and Diamandis 2019)** Private Talks: Lawyers shouldn't have ex parte communications with judges—except when it's OK ETHICS Private Talks Lawyers shouldn't have ex parte communications with

judges?except when it's OK A H R A. THOMPSON THE ETHICS RULE REGULATING EX PARTE communications with judges sounds simple enough. In the ABA Model Rules of Professional Conduct, which serve as the basis for most rules of professional conduct.

**Hypothesis :**

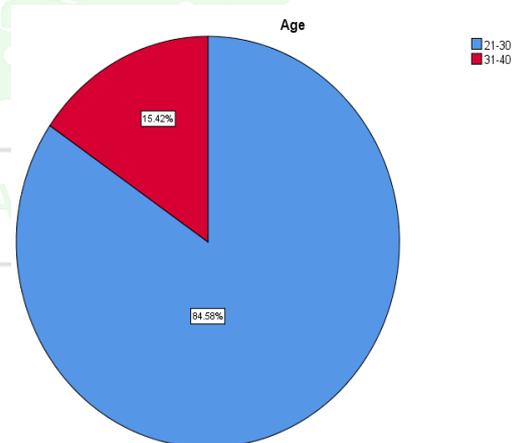
H0: there are no significant associations between the educational qualification of the Respondent and their study on professional misconduct.

Ha: there are significant associations between the educational qualification of the Respondent and their study on professional misconduct.

**Methodology :**

A non doctrinal research method is using the convenient sample method. The study has both primary and secondary data,primary data was collected through convenience sampling from a well structured questionnaire convenience sampling. The sample size of the research is 200. The secondary data is collected from many journals. The independent variable considered in age of the respondents and dependent variables is their opinion and privacy issue related to financial accounting. The study used percentage, graph, charts, and chi -square tests for meaningful analysis.

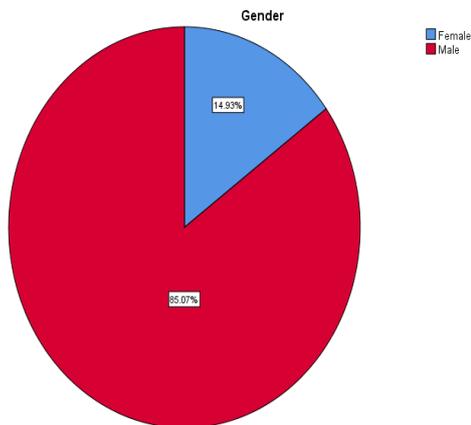
**Figure 1**



**Legend**

Figure 1 represents the age of the sample population.

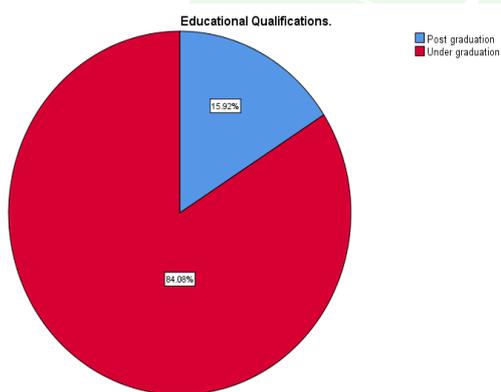
**Figure 2**



**Legend**

Figure 2 represents the gender of the sample population.

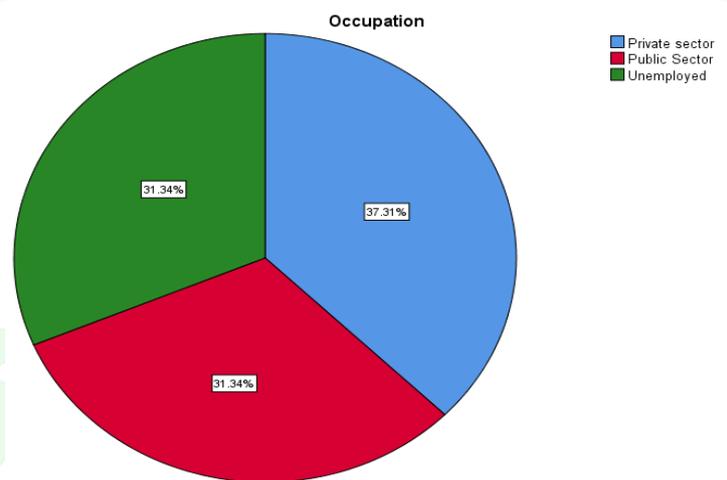
**Figure 3**



**Legend**

Figure 3 represents the educational qualification of the sample population

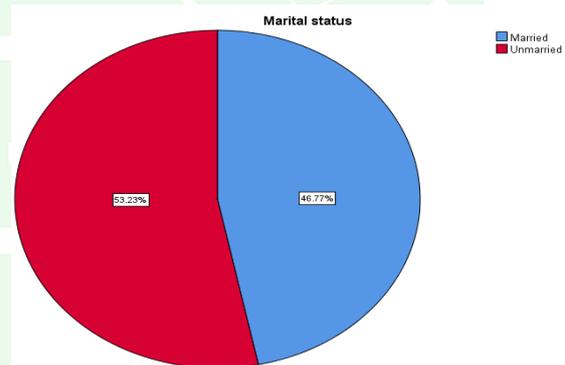
**Figure 4**



**Legend**

Figure 4 represents the occupation of the sample population.

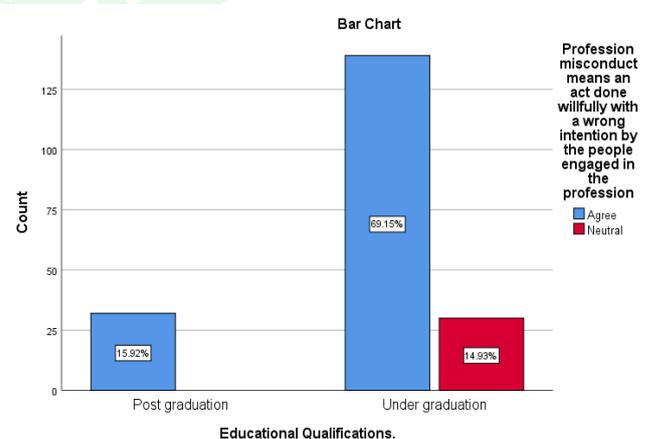
**Figure 5**



**Legend**

Figure 5 represents the marital status of the sample population.

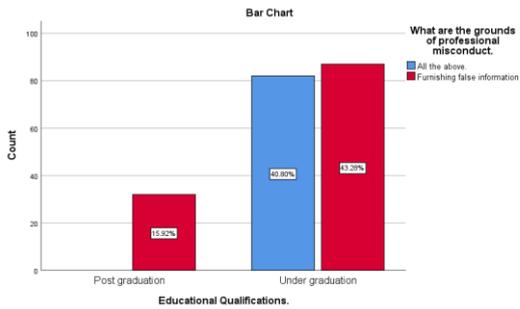
**Figure 6**



**Legend**

Figure 6 represents the bar chart with comparison of dependent variable educational qualifications to the sample population.

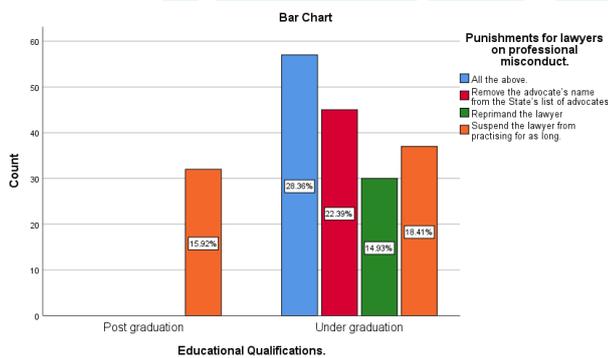
**Figure 7**



**Legend**

Figure 7 represents the bar chart with comparison of dependent variable educational qualification the sample population

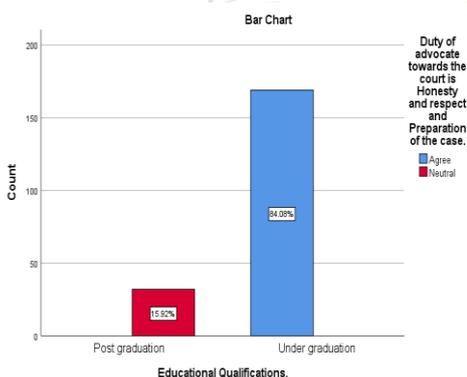
**Figure 8**



**Legend**

Figure 8 represents the bar chart with comparison of dependent variable educational qualifications to the sample population.

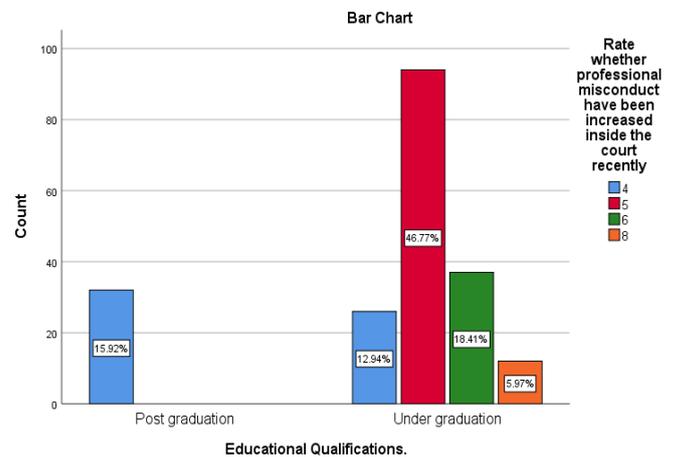
**Figure 9**



**Legend**

Figure 9 represents the bar chart with comparison of dependent variable educational qualifications to the sample population.

**Figure 10**



**Legend**

Figure 10 represents the bar chart with comparison of dependent variable educational qualification the sample population

**Figure 11**

Educational Qualifications. \* Profession misconduct means an act done willfully with a wrong intention by the people engaged in the profession

Crosstab				
Educational Qualifications		Profession misconduct means an act done willfully with a wrong intention by the people engaged in the profession		Total
		Agree	Neutral	
Post graduation		32	0	32
Under graduation		139	30	169
Total		171	30	201

Chi-Square Tests					
	Value	df	Asymptotic Significance (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square <sup>a</sup>	6.677 <sup>b</sup>	1	.010		
Continuity Correction <sup>b</sup>	5.352	1	.021		
Likelihood Ratio	11.358	1	.001		
Fisher's Exact Test				.006	.003
N of Valid Cases	201				

a. 1 cells (25.0%) have expected count less than 5. The minimum expected count is 4.78.  
b. Computed only for a 2x2 table

**Legend**

Figure 11 represents the chi square test

**Figure 12**

Educational Qualifications. \* What are the grounds of professional misconduct.

Crosstab					
Count		What are the grounds of professional misconduct.			Total
		All the above.	Furnishing false information		
Educational Qualifications.	Post graduation	0	32		32
	Under graduation	82	87		169
Total		82	119		201

Chi-Square Tests				
	Value	df	Asymptotic Significance (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	26.226 <sup>a</sup>	1	.000	
Continuity Correction <sup>b</sup>	24.255	1	.000	
Likelihood Ratio	37.659	1	.000	
Fisher's Exact Test			.000	.000
N of Valid Cases	201			

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 13.05.  
b. Computed only for a 2x2 table

**Legend**

Figure 12 represents the chi square test

**Figure 13**

Educational Qualifications. \* Punishments for lawyers on professional misconduct.

Crosstab						
Count		Punishments for lawyers on professional misconduct.				Total
		All the above.	Remove the advocate's name from the State's list of advocates	Reprimand the lawyer	Suspend the lawyer from practicing for as long.	
Educational Qualifications.	Post graduation	0	0	0	32	32
	Under graduation	57	45	30	37	169
Total		57	45	30	69	201

Chi-Square Tests			
	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	72.809 <sup>a</sup>	3	.000
Likelihood Ratio	80.924	3	.000
N of Valid Cases	201		

a. 1 cells (12.5%) have expected count less than 5. The minimum expected count is 4.78.

**Legend**

Figure 13 represents the chi square test.

**Figure 14**

Educational Qualifications. \* Duty of advocate towards the court is Honesty and respect and Preparation of the case.

Crosstab				
Count		Duty of advocate towards the court is Honesty and respect and Preparation of the case.		Total
		Agree	Neutral	
Educational Qualifications.	Post graduation	0	32	32
	Under graduation	169	0	169
Total		169	32	201

Chi-Square Tests				
	Value	df	Asymptotic Significance (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	201.000 <sup>a</sup>	1	.000	
Continuity Correction <sup>b</sup>	193.599	1	.000	
Likelihood Ratio	176.216	1	.000	
Fisher's Exact Test			.000	.000
N of Valid Cases	201			

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 5.09.  
b. Computed only for a 2x2 table

**Legend**

Figure 14 represents the chi square test.

**Figure 15**

Educational Qualifications. \* Rate whether professional misconduct have been increased inside the court recently

Crosstab						
Count		Rate whether professional misconduct have been increased inside the court recently				Total
		4	5	6	8	
Educational Qualifications.	Post graduation	32	0	0	0	32
	Under graduation	26	94	37	12	169
Total		58	94	37	12	201

Chi-Square Tests			
	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	93.836 <sup>a</sup>	3	.000
Likelihood Ratio	96.432	3	.000
N of Valid Cases	201		

a. 1 cells (12.5%) have expected count less than 5. The minimum expected count is 1.91.

**Legend**

Figure 15 represents the chi square test

**Result:**

**Figure 1** represents the age of the sample population in that 21 to 30 were answered most with 84%. **Figure 2** represents the gender of the sample population in which male were answered most with 85%. **Figure 3** represents the educational qualification of the sample population in that UG were answered most with 84%. **Figure 4** represents the occupation of the sample population in that private sector were answered most with 37%. **Figure 5** represents the marital status the sample population in that unmarried were answered most with 53%. **Figure 6** represents the barchart of the sample population in that UG were answered most to agree with 69%. **Figure 7** represents the barchart of the sample population in that UG were answered most for furnishing false information with 43%. **Figure 8** represents the barchart of the sample population in that UG were answered most for all the above with 28%. **Figure 9** represents the barchart of the sample population in that UG were answered most for agree with 84%. **Figure 10** represents the barchart of the sample population in that UG were answered most for 5 with 46%. **Figure 11** represents the chi square test in that the value is 4.78 which is less than 0.05 so accepting alternative hypotheses. **Figure 12** represents the chi square test in that the value is 5.09 which is less than 0.05 so accepting alternative

hypotheses **Figure 13** represents the chi square test in that the value is 1.91 which is less than 0.05 so accepting alternative hypotheses. **Figure 14** represents the chi square test in that the value is 13.05 which is less than 0.05 so accepting alternative hypotheses. **Figure 15** represents the chi square test in that the value is 4.78 which is less than 0.05 so accepting alternative hypotheses.

### Discussion

**Figure 1** represents the age of the sample population in that 21 to 30 were answered most with 84% because they were my age group. **Figure 2** represents the gender of the sample population in which male were answered most with 85%. because they are from my contacts. **Figure 3** represents the educational qualification of the sample population in that UG were answered most with 84% because they were students. **Figure 4** represents the occupation of the sample population in that private sector were answered most with 37% because it's there work. **Figure 5** represents the marital status the sample population in that unmarried were answered most with 53%. because they were not married yet. **Figure 6** represents the barchart of the sample population in that UG were answered most to agree with 69%. because they knew about it. **Figure 7** represents the barchart of the sample population in that UG were answered most for furnishing false information with 43%. because they were known about it. **Figure 8** represents the barchart of the sample population in that UG were answered most for all the above with 28%. because they were known about it. **Figure 9** represents the barchart of the sample population in that UG were answered most to agree with 84%. because they were known about it. **Figure 10** represents the barchart of the sample population in that UG were answered most for 5 with 46%. because they were known about it. **Figure 11** represents the chi square test in that the value is 4.78 which is less than 0.05 so accepting alternative hypotheses. **Figure 12** represents the chi square test in that the value is 5.09 which is less than

0.05 so accepting alternative hypotheses **Figure 13** represents the chi square test in that the value is 1.91 which is less than 0.05 so accepting alternative hypotheses. **Figure 14** represents the chi square test in that the value is 13.05 which is less than 0.05 so accepting alternative hypotheses. **Figure 15** represents the chi square test in that the value is 4.78 which is less than 0.05 so accepting alternative hypotheses.

### Limitations:

One of the major limitations of the study in the sample frame. There is a major constraint in the sample frame as it is limited to a small area. Thus, it proves to be difficult to extrapolate it to a larger population. Another limitation is the sample size was about 200 which cannot be used to assume the thinking of the entire population in a particular country, state, or city. The physical factors have a larger impact, thus, limiting the study.

### Suggestion:

According to the survey done, most people are not aware about professional misconduct. Suspend the advocate from practice for such a period as it deems fit

### :Conclusion:

Based on the results of the analysis done, it has been found that most of the people are aware about professional Misconduct. Thus, it is known that most of the people were aware of professional misconduct but some people were not aware about it. Dismiss the complaint, or where the proceedings were initiated at the instance of the State Bar Council, directs that proceedings be filed; Reprimand the advocate; Suspend the advocate from practice for such a period as it deems fit

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