

REVIEW

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# Medico-legal history taking from the victims of sexual assaults: the role of nurse examiners

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## Abstract

**Background:** Sexual assault examiners provides comprehensive health care to victims of sexual assault. Communication with the victim is important to collect relevant information from the victims. Ineffective communications can cause re-victimization and hamper the medico-legal evidence collection.

**Main text:** This article aims to orient the novice examiner and nurses to the prerequisites of medico-legal history collection, techniques of building trust, establishing rapport, ensuring privacy and confidentiality, taking consent, communicating effectively with the victims of sexual assault, and components of medico-legal history collection.

**Conclusions:** Novice examiners and nurses need to be trained in collecting medico-legal history and evidence. The examiners who conduct the examination should be dedicated to delivering compassionate and high-quality care to individuals who have disclosed sexual assault.

**Keywords:** Crime victims, Forensic nursing, Intimate partner legislation and jurisprudence, Medical history taking, Sex offenses, Violence

## Background

Sexual assault is still a widespread community, legal and health problem around the world (Dworkin et al. 2021). Sex crimes are complex and multidimensional; over the past few decades, adult and child sexual abuse has gained public attention and become one of the highest in the world (Hagra et al. 2011). Dealing with the victims of sexual assault is traumatizing and challenging. Nurses are the first healthcare team to encounter such victims in various settings such as emergency services, suicide prevention centers, and crisis centers (Lynch 2011; Topçu and Kazan 2018). Handling sexual assault survivors necessitates having the appropriate knowledge and training to provide comprehensive medical care management to these vulnerable patients (Schmitt et al. 2017). Nurse examiners' knowledge and attitude toward sexually assaulted patients are important aspects influencing

victims' care as well as their physical and psychological well-being (Strunk 2017; Veidlinger 2016). The roles of nurse examiners are to attain a complete medical history from the victim, conduct medico-legal examination carefully, and collect and preserve evidence appropriately. It is not the examiner's job to draw inferences or pass judgement on a victim or even an assailant (Caruso 2019). The nurse examiners should possess competencies that involve knowledge, skills, professional ethics, and attitudes necessary for them to complete the sexual assault examination (Ferguson and Faugno 2009). Furthermore, nurses dealing with sexual assault victims face legal and ethical dilemmas requiring a prompt and efficient response based on medical liability, moral, and bioethical principles (Martins et al. 2020). Communication with the victim is paramount as this basic skill helps collect relevant information for assessing and evaluating the victims and reducing or eliminating victimization. The careful taking of medico-legal history and evaluating the assessment findings are highly important in any criminal investigation (AlMadani et al. 2012). In the case of child sexual abuse, getting accurate information is very

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challenging. The children mix the events they have experienced with the information they got through watching visual media or hearing from others (Alsaif et al. 2018). In some cases, the children may not disclose the assault because of the fear of social stigma or late assailant revenge (Zaki et al. 2019). The process of taking a history from a child requires exceptional competencies, which include excellent communication skills.

Medico-legal history collection from the victims usually occurs after the emergency medical care and prior to the assessment and collection of evidence. This lays a foundation for appropriate care, which may include prevention and management of sexually transmitted diseases such as human immunodeficiency virus (HIV), emergency contraception, and immediate follow-up services, including counseling and community-based sexual assault advocacy (Patel et al. 2013). However, during the care of victims, a few challenges and problems may arise; these include negligence of non-injured victims in the emergency room, underestimated patients' complaints, long waiting hours, not being permitted to eat or drink while waiting for the medico-legal examination, unqualified health professionals conducting a physical exam, and blaming victims for the victimization. Prompt and compassionate victim care from medico-legal professionals who understand victimization issues can benefit the victims (Mont and White 2013). This article aims to orient the professionals to the components of medico-legal history taking and the essential techniques required to communicate effectively with the sexual assault victims.

## **Main text**

### **Prerequisites for medico-legal history collection and examination**

#### ***Establishing rapport and gaining trust***

Nurse examiners must provide prompt psychological assistance and compassionate and confidential treatment in a timely fashion (Berry and Rutledge 2016). Establishing trust and offering support are the cornerstones of the history collection and documentation process in any sexual crime interview. Gaining trust will help the examiner interview in a relaxed manner and collect relevant information that will guide the medico-legal examination and documentation (Gibney and Jones 2014).

### **Techniques for establishing rapport and facilitating disclosure**

An examiner's fundamental character for conducting history collection is to 'believe the patient.' Professionals like police, lawyers, may not require to believe the victim. Still, a health care provider should believe when a patient says that sexual assault has happened as same as in the case of a patient reporting that she has backache

and getting treatment for it (Gravelin et al. 2019). Moreover, the term 'alleged sexual assault' basically points out disbelief, which can hinder the history collection in the medico-legal examination. Conveying the message 'we believe you' will relax the victims who all are having the trauma of the incident (Bhatt and Brandon 2019). A portrait with this wording and the local language translations hung on the examination room wall will convey the message and make the victims relax for the interview. The confirmation of the occurrence of sexual assault was not considered as examiner's role during the case total investigation. Documentation of the history and details of evidence should be unbiased and neutral. Your role is not to win the case but give the most accurate and complete documentation to law enforcement and judicial agencies (Veidlinger 2016). Whenever you collect history or communicate with patients, always maintain eye contact and engage with your patient. Distractions like ringing phones, other people's voices etc. should be removed as far as possible.

### ***Patient reaction and adaptation to the patient***

The victim may present herself or himself to you in a variety of ways. Some may cry and sit in the corner of the examination room; some show anger; they may be tired after explaining the events to law enforcing agencies like the police. They may be frightened because of the horrifying incident, or they may even think that the perpetrator will come back. They may be alert or sometimes under the influence of any substances. The expectation of the examiner and the actual reactions of the patient can be entirely different. Whatsoever, adaptation to the patient is very important in history collection (Caruso 2019).

### ***Environmental modification***

The environment where history collection is happening should be safe, private and comfortable. Ideally, these rooms should be away from the general wards, or they should be located where other patients or someone should not overhear what the patient reveals to the examiner. Segregating the area from other patients using a curtain is not recommended (Keten and Abacı 2020).

When there is more comfort to the victim, there will be more sharing of information, which is very important in the case of child survivors. A safe, neutral, and child-friendly environment is needed when interviewing children under the age of 18 years. The interview room can be incorporated with child-friendly toys, art material, or other props. Elaborate play materials can be avoided (Ministry of Women and Child Development 2013).

### **Safety assessment**

Offering temporary admission to hospital or social shelter services as an alternative plan is required, especially for threatened victims or those who fear a recurrence of sexual violence (Ministry of Health and Family Welfare (MOHFW) 2014). A safety plan should be made available to the victim even if she/he wants to go home. Minors' protection policy and specific precautions should be implanted to safeguard their safety. Critically, the involvement of a social worker/counselor from the hospital to discuss the child's safety is mandatory in case of the perpetrator is the legal guardian or parents (Henrick and Byrd 2019). The presence of police officers or legal authorities in the examination room during the history collection and forensic examination of the victim should not be permitted. However, the attendance of the victim's relative is allowed if the victim requests. The unnecessary intrusion or distractions to health professional duties by police is not accepted. Importantly, health professionals should focus on treating the victim and they must not entertain inquiries from legal authorities during patient care such as "whether rape occurred," "whether the survivor is capable of sexual intercourse," "whether the person is capable of having sexual intercourse." Furthermore, interviewing the sexual assault survivors by legal authorities should be delayed until they have attained medical and psychological stabilization (Ministry of Health and Family Welfare (MOHFW) 2014). Initial medical care for acute problems also needs to be ensured before the examination and evidence collection.

### **Taking consent**

One of the legal responsibilities of the nurse examiners is to obtain valid informed consent from victims who are more than 18 years. Children usually require the consent of their parents in order to perform medico-legal history taking and evidence collection. The consent can be generally taken for examining and collecting evidence, treatment and management of STIs, pregnancy prophylaxis, and forensic photography (Yesodharan et al. 2021). All steps of history taking and medico-legal evidence collections need to be explained to the victim in a developmentally appropriate manner. Remember, the victim has all the right to cooperate or decline all or any step or procedure of the medico-legal history taking and evidence collection (Fouché et al. 2018). Few fundamental questions need to be answered while taking the consent. (a) Whether the patient can give the consent? (b) Whether the children below 18 can give the assent? (c) Whether the patient understands the role of each team member? (d) Whether the information given is protected from disclosure to any team members? (e) Whether the patient understands

the long term implications of the consent given? (Henky 2017). Patients intoxicated with any substance may also be able to give consent if they responded correctly and cooperated physically with the examiner throughout the examination (Gharedaghi et al. 2018).

### **Ensuring confidentiality**

Confidentiality is an agreement between the organization members rendering the services that aim to reduce stigma and discrimination, foster trust, and ensure privacy and autonomy in an individual's decision-making. Comprehensive written policies and procedures about the confidentiality of the information should be distributed, debated, and agreed upon among the staff, volunteers, and the administration and need to be explained to the victims (Zannoni 2007). The medico-legal examiners should take necessary precautions to protect the victim's confidentiality and clearly explain the limits of confidentiality (Yadav 2017). The information collected from a victim is confidential unless the medico-legal expert obtains permission to reveal such information. They should follow the circle of confidentiality, and the information should not be discussed with other staff members unless it is necessary for the treatment of the victim (Javorka and Campbell 2019).

### **Ensuring privacy**

The privacy right of the victims to be examined in a secured ward with strict limitations to prevent public intrusion and disruption. Privacy is essential to maintain the confidentiality of the information; it restricts the public from accessing the personal details of the victim. The victims' medical file should not contain any statements given, personal notes kept by the victim, notes or reports from law enforcement agencies, or any other information that directly or indirectly affects the victim's privacy. Further to this, the history taking must be conducted in private rooms. Any records including confidential information should be kept in locked file cabinets or drawers that are only accessible to professionals in the circle of confidentiality. Digital medical records should be secured, encrypted, and access should only be granted to the concerned professionals. E-consents can solve these issues greatly (Chen et al. 2020; Yesodharan et al. 2018, 2021).

### **Communication with family members**

Along with victims of sexual assault, others in their lives also need help dealing with feelings they experience after such incidents. A family member or friend who accompanies a victim may have been allowed to stay with the victim as per the wishes. The major questions usually come into these contexts is can you share

anything? How much can you share? What about children and minors? The general rule about the adult victim is that ask him or her whom and what we can share. It is preferred that a highly qualified nursing team examine children’s victims to effectively respond to their needs (Caruso 2019). Child sexual abuse is different, and the nurse examiners require exceptional skill in talking to the parents or guardians of the children. In some cases, the parents can be the perpetrators, too (Putt and Dinnen 2020).

**Approaches to survivors of sexual assault**

Reducing re-traumatization is the key approach to tackling the further psychological and health burden on victims. This can be an interaction, attitude, situation, or environment that replicates the events or dynamics of the original trauma and triggers the overwhelming feeling and reactions associated with them. The very sensitive approach to minimizing re-traumatization includes five major components: safety, trustworthiness, choice, collaboration, and empowerment (Subramanian and Green 2015) (Table 1).

**Communication skills for caring of victims**

**Effective communication**

Health care professionals need to communicate effectively with the victims and survivors. A professional with effective and good communication skills can make the victim regain the strengths which lost due to the incident. The use of clear and concise language in a timely and accurate way is essential to avoid misunderstanding and confusion. A care provider with poor communication skills can re-victimize and traumatize the victim. Effective communication requires the message to be sent and received as it was intended (Lewis and Jaramillo 2008).

**Goals of effective communication**

- Identify the needs of victims or survivors and meet them
- Obtain and provide relevant information
- Protect the safety of the victims
- Explain the legal proceedings and role of each person

**Table 1** Components to consider minimization of re-traumatization (adapted with permission from Subramanian and Green 2015)

<b>Safety</b>	<ul style="list-style-type: none"> <li>• Knock on the door and ask permission to enter the patient’s room</li> <li>• Meet with the person before they disrobe</li> <li>• Ask the person to disrobe only when necessary or only partially disrobe</li> <li>• Clearly identify and provide washrooms</li> <li>• Take time to familiarize the person with the physical environment</li> <li>• Ask about comfort level with lighting</li> <li>• Share control</li> <li>• Show respect</li> <li>• Use a warm and compassionate manner to build rapport</li> </ul>
<b>Trustworthiness</b>	<ul style="list-style-type: none"> <li>• Explain all procedures in terms the person can understand</li> <li>• Tell the person what to expect and how long it will take</li> <li>• Ask the person what he or she wants</li> </ul>
<b>Choice</b>	<ul style="list-style-type: none"> <li>• Ask if you can touch them each time</li> <li>• Ask before you invite in additional staff</li> <li>• Ask if you can close the door</li> <li>• Allow the person to decide where to sit in the room</li> <li>• Explain the rationale for each procedure. What the procedure will feel like and make appropriate modifications to reduce re-traumatization</li> <li>• Obtain consent for each part of the exam performed</li> </ul>
<b>Collaboration</b>	<ul style="list-style-type: none"> <li>• Ask “what are your top worries or concerns” and address these first if possible</li> <li>• Share information</li> <li>• Encourage the person to make decisions about treatment</li> </ul>
<b>Empowerment</b>	<ul style="list-style-type: none"> <li>• Ask “what happened to you,” not “what is wrong with you?”</li> <li>• Never ask “why” questions as they imply fault</li> <li>• Take time with the person, so he or she feels genuinely heard</li> <li>• Ask if the person has preferences related to or has had difficulty with a particular procedure</li> <li>• Ask the person what you should know before you begin the procedure</li> <li>• Ask if there is a way you can make the procedure easier for him or her</li> <li>• Ask if there is a way you can make the person relax: like a different position</li> <li>• Pay attention to body cues; many survivors have been conditioned to be passive and defer to authority and so may not disclose distress during a procedure</li> </ul>

- Understand and respond sensitively to special needs or concerns.
- Help the victims to understand and exercise their constitutional and legal rights

**Active listening techniques**

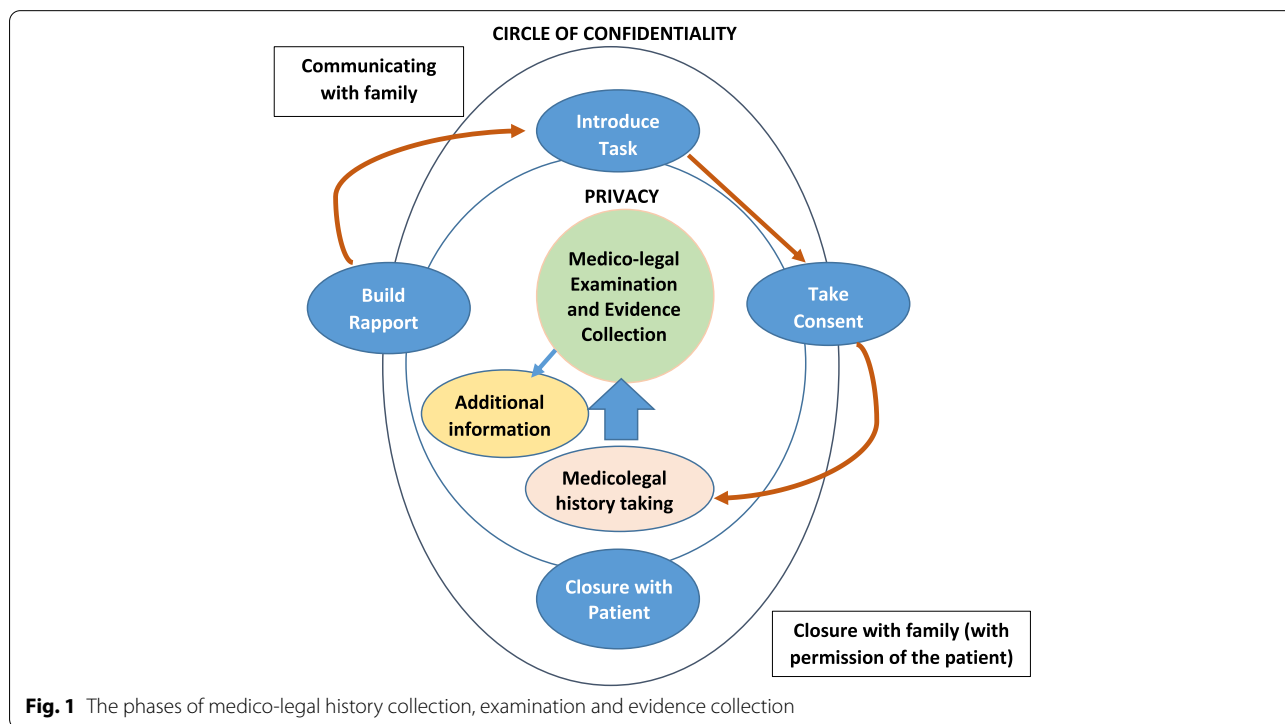
An examiner is committed to understanding the victim’s perspective, which includes both verbal and nonverbal cues. The interruptions, while the victim is communicating, may send a message that an examiner is not cared about what the person wants to convey or is uninterested in the subject matter. Effective communication involves active listening techniques, such as making eye contact, paraphrasing, asking follow-up questions, good presence of mind, and absence of interruptions. A nurse examiner needs skills for attention, hearing, and understanding and remembering for active listening (Caruso 2019).

**Open-ended and closed-ended questions**

There is a place for yes or no questions, but open-ended questions will allow you to gather maximum qualitative information from the victim. Using easy language and well-clarified questions enables victims, especially children or the uneducated, to provide valuable answers.

**Medico-legal history taking**

Obtaining detailed history is considered a fundamental part of a medico-legal examination of victims of sexual assault and rape (Fig. 1). Comprehensive history-taking is required to gather relevant information that helps in medical therapy and forensic evidence (Ingemann-Hansen and Charles 2013). It is agreed that meticulous medical history of previous anal-genital surgery, gynecologic with menstrual history, injuries, drug-facilitated sexual assault, and details of the assault should be documented. In contrast, inaccurate medico-legal history and examination with inappropriate evidence collection could result in alleged perpetrators being released by courts (Fouché et al. 2018). In addition, considerable concerns are rising about the risk of sexually transmitted diseases, pregnancy, suicidal attempts, and psychological consequences (Barnes and Forde 2021). The adoption of formal sexual assault examination forms was established in many sexual assault centers worldwide. This can facilitate forensic physical exams, evidence collection, and evaluation of sexual assault events (Awan et al. 2020). It is agreed that the adoption of a SANE program in several emergency hospitals increases the credibility and accuracy of formal medico-legal history documents. The following figure exhibited some of the suggested components of a sexual assault medico-legal history that should be taken by SANE (Awan et al. 2020; Caruso 2019; Ministry of Health and Family Welfare (MOHFW) 2014;



**Fig. 1** The phases of medico-legal history collection, examination and evidence collection



Schnoor 2020). The key components are explained in Fig. 2.

**History taking from an individual with a developmental disability**

The victims may have disabilities, namely, autism spectrum disorder (ASO), seizure disorders, communication disabilities, cerebral palsy, hearing impairment, intellectual disability, visual impairment, or may have two or more of these diagnoses together.

Record even the brief verbalizations in the quotes. Specially trained interviewers can solve a few problems associated with the communication of these individuals with a developmental disability. It may take extra time to communicate effectively with individuals with a disability.

**Individuals with hearing impairment**

Ask the patient what their preferred medium for translation is. Certainly, the hearing impaired may be able to just write the questions down. Use sign language expert or technology via television and that is where a screen is placed right in front of a patient’s face so that the sign language translator cannot see the exam taking place and only sees the patient’s face. When a translator or interpreter services are used then, the examiner should sustain eye contact with the client, rather than shifting to the interpreter. The individuals who communicate through sign language use facial expressions to convey

the meaning. The facial expressions can be involuntary also due to pain or any other physical or psychological discomfort and often can result in misinterpretation and misunderstanding (American Psychological Association 2012). If a patient denies wanting to use the sign language translator, note this in the documentation.

**Individuals with visual impairment**

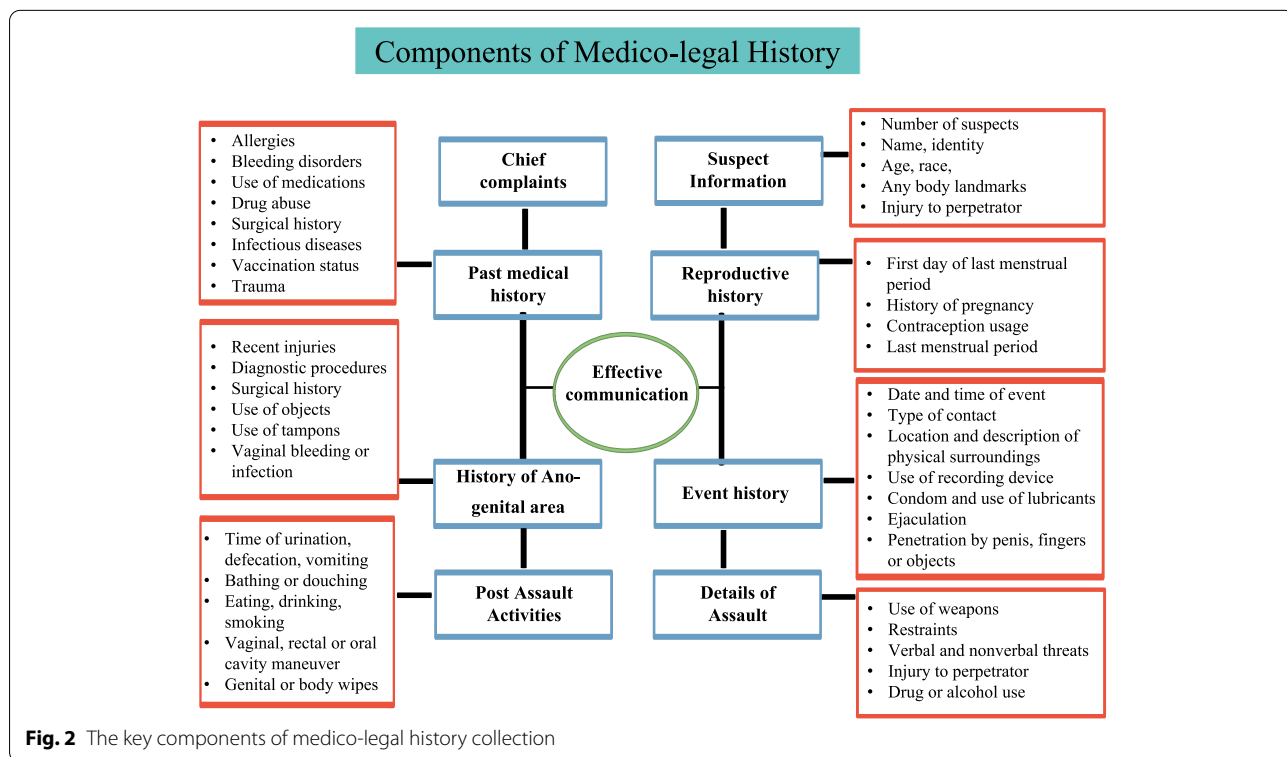
Individuals with visual impairment required documents in larger print or Braille and also needed enhanced awareness of the immediate environment.

**Language assistance services**

People with limited proficiency in any language also need to get equal access to the services. A good quality language assistance service can reduce discrimination based on the language (Ham 2004). Bilingual staff, interpreter services, and telephonic interpreters are a few options available. The written material also can be translated to the language of the victim. It is advisable to have forms available in all the local languages.

**Closure of the interview**

Answer questions or concerns of the victim and thank the victim for cooperation. You may also close the interview with the parents or family with the permission of the minor victim. It is very important to hear if they want to say anything without the presence of such family members.



### Sexual Assault Nurse Examiners (SANE) training programs

Establishing SANE training programs in collecting medico-legal history and forensic evidence is required to improve nurses' clinical performance while dealing with sexual assault victims. This will aid in the reduction of medical malpractice and the protection of victims' rights. The SANE program is implemented and adopted worldwide by various institutions such as the International Association of Forensic Nurses (IAFN), Sexual Assault Task Force (SATF), and the UK Association of Forensic Nurses and Paramedics (UKAFNP). SANE grounding program (SANE-GP) is multi-level activity-based learning initiated for the training of nurses in India for 42 h. Several learning activities are included in the SANE-GP, including medico-legal case discussions, communication and professional skill demonstrations, discussion of trial court verdicts and supreme court decisions, mock case examinations, simulated examinations, training on vaginal and other orifice specimen collection, and slide preparation. Additionally, basic modules such as female and male genitalia, medico-legal history taking, and interpretation of physical examination findings are included in the SANE curriculum. The collection, documentation, and preservation of medico-legal evidence (injuries documentation, forensic photography, colposcopy, and digital evidence) are critical components of the SANE program. Furthermore, the program focused on teaching nurses how to manage physical and psychological consequences of sexual assault, such as pregnancy testing and prevention, sexually transmitted disease testing and prophylaxis, psychosocial care, and family support. Finally, training on legal consideration and judicial proceedings is incorporated into SANE-GP training (Yesodharan et al. 2022).

### Conclusions

The health care professionals who conduct the examination are devoted to delivering compassionate and quality care to the victims revealing sexual assault. Remember, the history told by the patient is very important and always make sure to collect the information from them directly. Do not exaggerate or neglect what history you collected and always record the verbatim in the quote. We recommend that nurses dealing with sexual assault cases should be regularly trained with the presence of trained nursing staff's psychological support and Medico-Legal examiners around the clock to facilitate the legal process and guarantee rapid examination for the validity of forensic examination and samples collected from the victims.

### Abbreviations

ASO: Autism spectrum disorder; HIV: Human immunodeficiency virus; SAE: Sexual assault examination; SANE: Sexual assault nurse examiner; SANE-GP: Sexual Assault Nurse Examiner –Grounding Program; STI: Sexually transmitted infections.

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RY and SAS did a literature search in various databases, and TTJ did a literature search in different educational websites. AMH and VCN evaluated the articles and other literature, and all authors contributed to writing the manuscript. All authors read and approved the final manuscript.

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#### Ethics approval and consent to participate

This manuscript is a part of the study approved by Kasturba Medical College and Kasturba Hospital Institutional Ethics Committee through vide reference no 653/2018. This manuscript does not report on or involve the use of any animal or human data or tissue.

#### Consent for publication

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#### Competing interests

All authors declare that they have no potential competing interests.

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