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## **WHEN INNOVATION DIFFUSES INTO LEGAL SYSTEMS: ON A PUBLIC DISCLOSURE SYSTEM AS CHINA'S HARASSMENT PUNISHMENT**

**ABSTRACT:** Public sexual harassment remains more prevalent than workplace sexual harassment, yet existing enforcement mechanisms in China are ill-equipped to combat it, given the absence of effective enforceable legislation against such harassment. Reputational sanctions present a viable alternative governance mechanism to supplement the current legal framework. Chinese women's online resistance has leveraged this approach through stigma reversal, simultaneously reducing societal tolerance for public sexual harassment and gaining policy attention. The diffusion of this mechanism into public law is accelerated by the construction of China's social credit system, with its capacity to revitalize the reason-giving regime, and demonstrates scalability. Such innovation diffusion would elevate and supersede this extra-legal practice, thereby eliminating the systemic risks inherent in unstructured civic enforcement. The tripartite mechanism of normativity, coercion, and imitation has channelled the innovation diffusion of reputational sanctions from informal social practice to formal legal adoption. This trajectory materialized through the Public Disclosure System for Sexual Harassment Punishments, an innovative law enforcement strategy adopted in Hangzhou that achieved measurable cost-efficiency while triggering substantial controversy regarding its legitimacy. Although concerns over this policy persist, regarding potential breaches of both the principle prohibiting improper connection and the principle of proportionality, along with the danger of irreparable reputational damage, this article contends that the long-term innovative value of Hangzhou's practice justifies its manageable implementation challenges.

**KEYWORDS:** Public sexual harassment, Reputational sanctions, Innovation diffusion, Law enforcement

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## I. Introduction

The prevailing academic consensus is that sexual harassment fundamentally concerns gender, specifically involving discrimination against women by men, and can be divided into quid pro quo harassment and hostile environment harassment.<sup>1</sup> Specifically, many disadvantaged groups have to endure sexual harassment due to factors such as occupational status, industry characteristics, and personal labels.<sup>2</sup> Early legislative advocates aimed to reduce the incidence of workplace sexual harassment over time, thereby shaping a labour market with diminished gender inequality.<sup>3</sup> Unfortunately, sexual harassment can occur anywhere, not just in office spaces. Based on location and context, harassment can thus also be categorized into workplace harassment and public sexual harassment. The former infringes upon the equal employment opportunities of vulnerable groups and has garnered more attention, while the latter occurs in more commonplace and discreet settings, attracting relatively less intense legal scrutiny.

China serves as a typical example where legislative attention and enforcement resources directed toward combatting public sexual harassment pale in comparison to those dedicated to combatting workplace sexual harassment. In 1992, China adopted the Law on the Protection of Women's Rights and Interests, which addressed the plight of women in the areas of political participation, career development, and access to educational resources, making no mention of sexual harassment. The year 2005 witnessed the amendment of this law, which for the first time stipulated that 'sexual harassment of women is prohibited', and that victims of such harassment have the right to seek support from their employers.<sup>4</sup> In 2012, the State Council issued the Special Rules on the Labour Protection of Female Employees to strengthen this policy objective, making it clear for the first time that employers are obliged to

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<sup>1</sup> Sandy Welsh, 'Gender and Sexual Harassment' (1999) 25 Annual Review of Sociology 169.

<sup>2</sup> Catharine A MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* (Yale University Press 1979); Rebecca K Lee, 'Beyond the Rhetoric: What It Means to Lead in a Diverse and Unequal World' (2018) 71 Stanford Law Review Online 110.

<sup>3</sup> *ibid.*

<sup>4</sup> For example, in 2002, women held twice as many jobs as men that paid under 500 RMB a month; men held one and a half times as many jobs as women that paid 2,000 RMB or more a month. Thus, the 2005 amendment was committed to eliminating the unequal dilemmas faced by women in exercising their fundamental rights to survival, and directly combatting sexual harassment was not a major legislative goal. For a discussion of the legislative history of women's rights in China, see Jamie Burnett, 'Women's Employment Rights in China: Creating Harmony for Women in the Workplace' (2010) 17(2) Indiana Journal of Global Legal Studies 289, Article 8.

prevent and disrupt sexual harassment in professional environments. The Law on the Protection of Women's Rights and Interests was amended again in 2023, further detailing specific measures by which employers should seek to prevent sexual harassment.

In the course of China's legislation on women's rights and interests, efforts to combat workplace harassment have been the central focus. This focus has several very plausible explanations. First, sexual harassment in the workplace inherently affects the economic interests of women, whereas public sexual harassment does not necessarily entail financial detriment. For a developing country, ensuring that individuals have access to enough of what they need to survive is a prioritized goal of public policy. Second, public sexual harassment can be difficult to identify, prove, and legally punish. These behaviours are generally hidden and in many cases known only to the harasser and the harassed, so that the law finds it hard to intervene. This challenge is compounded when the harassment occurs verbally, because different communities exhibit divergent perspectives on what constitutes inappropriate language. Such lack of consensus on the boundaries of verbal harassment creates additional barriers for recognition and reporting. Unless the cost of information is sufficiently low, legislation against public sexual harassment is likely to end up providing a merely formal condemnation, lacking in positive effects. Finally, in the event of extremely egregious sexual harassment, the provisions of administrative or criminal law are more effective. However, victims generally feel compelled to endure public sexual harassment that falls below the existing legal threshold of proof, and it can be argued that an unspoken agreement between public policy makers and vulnerable groups has led to this legislative choice, a strategic omission in legislating against public sexual harassment.<sup>5</sup>

Long-standing public sexual harassment has persisted as a governance challenge in China, and is an issue now demanding timely resolution. First of all, the legislative lacuna to address the issue directly does not mean that public sexual harassment is rare. With the development of public transportation and the rise of urbanisation, China's population has become at once more mobile and more densely packed, meaning that the opportunities for public sexual harassment have been increasing.

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<sup>5</sup> Another plausible explanation for the apparent lacuna in legislation is that China's anti-sexual harassment legislation builds on an individual dignity and rights framework, and therefore sees no need to distinguish specifically between the types of sexual harassment that can be combated under statutory law, see Jiahui Duan, 'Workplace Sexual Harassment in China: A Comparative Inquiry into the Personality-Based Paradigm' (2023) 11(2) *cxad008* <<https://doi.org/10.1093/cjcl/cxad008>> accessed 1 July 2025.

Multiple recent surveys conducted by Chinese scholars among university students at different periods demonstrate the prevalence of public sexual harassment<sup>6</sup> and highlight a persistent public demand for legal intervention specifically to address harassment in public spaces.<sup>7</sup> Secondly, public sexual harassment is not only about protecting women's rights and interests but also about victimising men. The political objective of building a Harmonious Society requires policymakers to address this conundrum effectively.<sup>8</sup> Finally, the challenges of addressing public sexual harassment do not of themselves justify allowing it to go unchecked. Once formalized channels of redress are absent, private remedies may be triggered, potentially leading to an escalation of conflicts.<sup>9</sup> In the long run, it is necessary for the anti-discrimination law to adopt innovative strategies to manage public sexual harassment with an acceptably low governance cost.

This paper provides a fresh example, a potential near-term-use case for reputational sanctions in anti-discrimination law enforcement. Pragmatically, this case will demonstrate whether or not reputational sanctions, as an innovative governance tool, can effectively control public sexual harassment. Normatively, the Hangzhou experiment remains so provocative that some scholars even publicly criticized this system as an

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<sup>6</sup> Zhenghua Jiang and Ming Zeng, 'An Analysis of the Tolerance Effect of College Students in the Failure of Sexual Harassment Control: Based on the Investigation of Six Universities in a province' (2020) 1 Journal of Chinese Youth Social Science 95 (姜正華、曾明：《高校性騷擾治理失靈中的大學生容忍度效應分析——基於A省6所高校的調研》，載《中國青年社會科學》2020年第1期，第95–102頁）。(This survey of over 1,500 college students in China reveals significantly higher tolerance levels for verbal sexual harassment compared to physical-contact harassment. Notably, more than 30% of respondents did not consider exposure to sexual jokes as constituting sexual harassment); Fangfang Pan, 'A Study on Young People's Understanding of Sexual Harassment in Colleges and Universities: Analysis and Investigation Based on Empirical Research Results' (2020) 1 Journal of Chinese Youth Social Science 85, 87 (潘芳芳：《青年群體對高校性騷擾的認知狀況研究——基於實證調研成果的分析與考察》，載《中國青年社會科學》2020年第1期，第85–94頁）。(This survey of 1,600 college students in China reveals that only 43.8% of respondents classified offensive verbal remarks as sexual harassment, demonstrating substantial societal tolerance for verbal harassment. Conversely, an overwhelming 92% identified unwelcome physical contact as constituting harassment.)

<sup>7</sup> These statistics reflect public expectations for legislative action against physical-contact public sexual harassment. They further indicate that physical-contact harassment (as opposed to verbal harassment within the scope of public sexual harassment) should be prioritized in China's legislative agenda.

<sup>8</sup> eila Choukroune, 'Global "Harmonious Society" and the Law: China's Legal Vision in Perspective' (2012) 13(5) German Law Journal 497. ('The socialist harmonious society is to be founded on democracy and the rule of law, equity and justice, honesty and comradeship, vitality, stability and order, as well as harmony between Man and nature.' (499); and '[T]he first "duty" of people's courts is to resolve social conflicts while maintaining stability, safeguarding economic development, and promoting social harmony in the pursuit of justice and equity'. (502))

<sup>9</sup> China's #MeToo movement, an online social movement since 2018, has sparked significant social conflicts due to the authorities' refusal to provide official avenues for redress, see Zhongxuan Lin and Liu Yang, 'Individual and Collective Empowerment: Women's Voices in the #MeToo Movement in China' (2019) 25 Asian Journal of Women's Studies 117.

abuse of public authority.<sup>10</sup> This paper consequently examines both the legitimacy of reputational sanction and their diffusion pathway from contested informal practice into formal legal systems.

Historically, Chinese society exhibits deep familiarity with reputational governance, given its longstanding tradition of regulating gender relations through communal shaming. For example, the Ming code mandated that adulteresses of commoner status (*jian fu*) undergo the added humiliation of being ‘stripped naked to receive punishment’ (*qu yi shou xing*), a calculated practice of public shaming designed to annihilate the accused woman’s social standing, thereby reinforcing fear-based compliance with gender-specific behavioural codes among the broader female population.<sup>11</sup> Surprisingly or not, personal reputation is still an important tool for China’s authorities in seeking to regulate the gender order. Hundreds of years after the drafting of the Ming code, people who sexually harass others in public spaces would risk damage to their reputation and a loss of social capital. The authority in Hangzhou pioneered China’s application of reputational sanctions against individuals for public sexual harassment. Specifically, municipal databases disclosed administrative penalty decisions for all harassment incidents occurring in local public spaces, particularly transit systems, publishing offenders’ names, spatiotemporal details of violations, punitive outcomes, and legal bases. This policy was enforced in Hangzhou from 2018 until its suspension in 2023 following public debates, with the first published case involving indecent assault.<sup>12</sup>

The wider background here is that China, where reputational sanctions have long served as an online self-help remedy for women

<sup>10</sup> A well-known law professor from China University of Political Science and Law criticized this policy publicly, arguing that disclosing the punishment decision after the offender has already received statutory penalties amounts to secondary punishment and harm, which definitely violates legal principles. Furthermore, sexual harassers still possess the right to privacy even though they broke the law, and such disclosure would infringe that right. See Luo Xiang, ‘Is Public Shaming of Subway Perverts Excessive Punishment?’ (*WeChat Official Account*, 21 April 2023) <<https://mp.weixin.qq.com/s/lcW5s8Wc2ETEv3qXirLV7A>> <<https://perma.cc/DNU7-GPGN>> accessed 1 July 2025 ( 祥洛: «杭州實名公示“地鐵色狼”, 是否過度懲罰? », 載微信公眾號 (風聲 OPINION) 2023 年 4 月 21 日 ).

<sup>11</sup> Matthew Harvey Sommer, *Sex, Law, and Society in Late Imperial China* (Stanford University Press 2000) 220–21. (This work further documents additional humiliating measures employed to strip individuals violating gender norms of their social standing, such as the mandatory distinctive clothing imposed on sex workers to demarcate them from respectable women: for details see 217–18).

<sup>12</sup> Caini Yang, ‘Hangzhou Publicizes Names of Metro Sexual Harassers’ (*SIXTH TONE*, 21 April 2023) <<https://www.sixthtone.com/news/1012763>> <<https://perma.cc/2ZXC-EZ5Q>> accessed 1 July 2025; Minjun Zhu, ‘Hangzhou Metro Police Disclosed 35 Cases of Molestation or Privacy Invasion, Including 12 Cases of Escalator Clandestine Photography’ (*THE PAPER*, 16 June 2023) <[https://www.thepaper.cn/newsDetail\\_forward\\_23508613](https://www.thepaper.cn/newsDetail_forward_23508613)> <<https://perma.cc/D25B-RFG3>> accessed 1 July 2025 ( 朱敏駿: «杭州地鐵警方公布 35 例猥褻或隱私侵犯案, 其中扶梯偷拍 12 例 », 載澎湃新聞網 2023 年 6 月 16 日 ). (The punishment decisions showed that the offenders engaged in acts such as voyeurism and illicit filming of victims in restrooms and on escalators, and some of the victims were minors. As a result, many of the offenders received administrative detention for their serious offences.)

experiencing public sexual harassment, witnessed two key developments: the launch of a grassroots website dedicated to exposing public sexual harassers in 2006, was accompanied by a surge in social media posts warning women about the locations and times when sexual harassment is most likely to occur.<sup>13</sup> These self-help remedy actions, while providing women a paradigm to articulate dissent against existing power structures, risk generating unexpected negative externalities, such as accidentally injuring innocent people, creating disproportionate fear among both men and women, driving public opinion to extremes, and inciting hatred.<sup>14</sup> Thus, a prudent strategy for Chinese authorities lies in formalising this grassroots practice into a codified social control instrument — what this article terms China's Administrative Punishment Disclosure System. Two compelling rationales drive this institutionalisation. Firstly, reputation-based administrative sanctions enhance punitive measures against public sexual harassment offenders, serving both deterrent and normative functions. Secondly, victim-centric redress mechanisms curb reliance on extrajudicial self-help remedies while maintaining orderly digital discourse.

This article aims to explore why and how reputational sanctions gradually entered the regulators' field of vision and then served as a formal strategy of social governance, and proceeds in three parts. It begins by introducing the gap in China's public sexual harassment legislation and the consequences in which it has resulted, that is, an outdated statutory framework increasingly challenged by digitally empowered resistance seeking to dismantle entrenched gender power asymmetries. It then explores what are the avenues through which an informal self-help remedy strategy gains diffusion. This section argues that the process can ultimately be summarized into three primary elements, namely legitimacy, coercion, and imitation. Finally, it analyses the concerns that may arise from this diffusion process and argues that the benefits of this innovation outweigh the downsides for anti-discrimination practices in China.

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<sup>13</sup> Henan Business Daily, 'Beggar Tops Pervert List, Credibility of Catch Perverts Alliance Questioned' (CCTV, 16 November 2006) <<https://news.cctv.com/society/20061116/100151.shtml>> <<https://perma.cc/VZK5-7B2C>> accessed 1 July 2025 (河南商報:《乞丐登上色狼榜榜首,抓色狼聯盟真實性遭到質疑》,載央視網 2006 年 11 月 16 日).

<sup>14</sup> See Chengting Mao, 'Feminist Activism via Social Media in China' (2020) 26(2) *Asian Journal of Women's Studies* 245. (These negative externalities are consistently accompanied by stigmatisation on the one hand and defence of feminism on the other.)

## II. Practices against Public Sexual Harassment in China

For a long time, reputation has been regarded as an effective tool for achieving network governance between specific actors.<sup>15</sup> That said, does reputation still function effectively beyond private orders? Given the legislative gap and the rising demand for measures to combat sexual harassment, the online self-help remedies from China's women offer a promising answer to this question.

### *A. China's Legislation on Sexual Harassment*

#### *1. Defining Public Sexual Harassment: A Legal Perspective*

Sexual harassment — particularly in public spaces — constitutes an inherently contested concept, its definitional ambiguity stemming from divergent interpretations of individuals across socioeconomic strata, generations, genders, regions, and educational backgrounds. Consequently, China's laws have deliberately avoided rigid legal definitions of such conduct.<sup>16</sup> This article similarly refrains from proposing definitive theoretical boundaries, instead adopting a pragmatic approach by analysing administratively adjudicated cases to delineate its scope, focusing exclusively on public harassment incidents that meet three cumulative criteria. First, the conduct must be universally recognized as harassment across all demographic groups with minimal classificatory dispute; second, it must satisfy China's broad statutory criteria for sexual harassment; and third, it must cause sufficient distress that victims actively seek legal redress rather than private resolution.

Undoubtedly, the inherent definitional challenges of public sexual harassment exclude certain marginal cases from our analytical scope. This delimitation is nevertheless methodologically justified by posing a fundamental question: Should all public sexual harassment incidents warrant reputational sanctions? This article answers in the negative. As 'regulation exists to get industry, organisations, and individuals to modify their behaviour to gain compliance with the law, and ultimately

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<sup>15</sup> Lisa Bernstein, 'Beyond Relational Contracts: Social Capital and Network Governance in Procurement Contracts' (2015) 7 *Journal of Legal Analysis* 561; Ricard Gil and Giorgio Zanon, 'Formal and Informal Contracting: Theory and Evidence' (2017) 13 *Annual Review of Law and Social Science* 141; Rory Van Loo, 'The New Gatekeepers: Private Firms as Public Enforcers' (2020) 106(2) *Virginia Law Review* 467.

<sup>16</sup> As early as 2005, *Law of the People's Republic of China on the Protection of Rights and Interests of Women* established statutory protections against sexual harassment while deliberately omitting precise legal definition of sexual harassment. It was not until the 2020 Civil Code that Article 1010 provided the first legislative attempt at defining sexual harassment as '(behaviours) against another person's will by words, characters, images, or physical acts'.

to achieve desired outcomes,<sup>17</sup> not all inappropriate conduct requires (or can effectively receive) legal remediation — public sexual harassment need not invariably trigger reputational penalties, nor even demand regulatory intervention. A graduated regulatory spectrum best captures the nuanced governance of public sexual harassment. Consider a subway dispute where observable evidence (e.g., inappropriate verbal advances) objectively constitutes harassment, yet the targeted individual deems the conduct tolerable and elects to disregard it, while the perpetrator promptly ceases. Here, the ‘market’ achieves self-correction through private resolution — however imperfect — rendering formal regulatory intervention unnecessary under conventional theory.<sup>18</sup> The calculus grows more complex when allegations lack corroborating evidence yet involve irreconcilable accounts. Enforcement authorities may then intervene, typically employing mediation or verbal warnings to the accused male about public decorum, rather than imposing formal penalties. This scenario represents regulatory engagement at the enforcement pyramid’s base — invoking warnings without escalating to punitive measures — where the market’s failure triggers only minimal state response.<sup>19</sup> Responsive regulation theory explains this calibrated approach: enforcement strategically balances persuasion and coercion, with interventions ‘attuned to regulated actors’ differing motivations.’<sup>20</sup> Consequently, this article confines its analysis to harassment cases warranting reputational sanctions — those where such measures satisfy normative legitimacy and regulatory efficacy thresholds.

## 2. *China’s Asymmetrical Legislation on Public Sexual Harassment*

For a considerable period of time, China’s legal framework for addressing

<sup>17</sup> Cento Veljanovski, ‘Strategic Use of Regulation’ in Robert Baldwin, Martin Cave and Martin Lodge (eds), *The Oxford Handbook of Regulation* (Oxford University Press 2010) 87.

<sup>18</sup> Anthony I. Ogus, *Regulation: Legal Form and Economic Theory* (Bloomsbury Publishing 2004 (first published 1994)) 4. (Ogus postulates that market failures generating information asymmetry and negative externalities in private transactions necessitate social regulation to enhance transactional efficiency.)

<sup>19</sup> Neil Gunningham, ‘Enforcement and Compliance Strategies’ in Baldwin, Cave and Lodge (eds), *The Oxford Handbook of Regulation* (Oxford University Press 2010) 127–29. (This chapter systematically articulates a graduated enforcement framework wherein regulators should escalate interventions proportionally to subjects’ compliance levels, organising enforcement measures into a pyramidal structure ascending from least to most coercive: warning → warnings, directions, and negotiated outcomes → penalty notice → prohibition notice/improvement notice → enforceable undertakings and restorative justice strategies → fines and other punitive action → incapacitation.)

<sup>20</sup> Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press 1992). (This monograph pioneers a responsive regulation paradigm that transcends the traditional regulation/deregulation dichotomy.) See also Peter Mascini, ‘Why Was the Enforcement Pyramid so Influential? And What Price Was Paid?’ (2013) 7(1) *Regulation & Governance* 48. (This article provides a comprehensive synthesis of academic debates surrounding the enforcement pyramid model.)



sexual harassment has operated at a relatively coarse level of granularity. As shown in Table 1, public harassers generally only face administrative penalties within this country's legal system. After the administrative sanction, the perpetrators will not face any further adverse consequences. In other words, despite the existence of relevant legislation, the deterrent effect on public harassers remains minimal. Generally speaking, public sexual harassment cases are typically addressed under Article 44 of the PRC Public Security Administration Punishment Law, which stipulates that 'indecently assaulting others' includes cases of public sexual harassment. Administrative authorities may impose detention for 5 to 15 days on the offenders. Only a small number of them, whose actions are particularly egregious and meet the criteria for sexual crimes under the Criminal Law, are subjected to criminal penalties. Furthermore, the cost of seeking justice for victims is high, and even if they succeed in a civil case, the compensation awarded is often low.<sup>21</sup>

The disproportionate allocation of regulatory resources to these two types of sexual harassment is directly related to the approach used in China's public policy formulation. This country's legislators are accustomed to enacting public policies from standards to rules and in a top-down way. This legislative approach is effective in the prevention of workplace sexual harassment, but it fails when applied to public spaces because entities like employers who can enforce specific rules to meet the given standards are rare in such settings. With the global development of the feminist movement, Chinese legislators have also recognized the necessity of strengthening the protection of vulnerable groups' right to live safely in the public sphere. However, the challenge lies in how to expand efforts against sexual harassment into broader areas.<sup>22</sup> One measure is to establish principled clauses in higher-level laws and further refine them in lower-level laws. Hence, the Civil Code added a specific provision on sexual harassment, particularly addressing the obligations

<sup>21</sup> Xuanhui Wang, 'Analysis of 110 Cases of Sexual Harassment by Public Welfare Organizations: Workplace Sexual Harassment Accounts for 60%' (*THE PAPER*, 26 November 2021) <[https://www.thepaper.cn/newsDetail\\_forward\\_15564988](https://www.thepaper.cn/newsDetail_forward_15564988)> <<https://perma.cc/4BPV-BKUV>> accessed 1 July 2025 (王選輝:《公益組織大數據分析 110 起涉性騷擾案例: 職場性騷擾占六成》, 載澎湃新聞網 2021 年 11 月 26 日)。

<sup>22</sup> Chinese legislators were not unaware of the necessity to regulate public sexual harassment. A key piece of evidence is the Outline of Women's Development in China (2021-2030) [中國婦女發展綱要 (2021-2030 年)] issued by the State Council, which explicitly guarantees women's right to protection against sexual harassment in public spaces. However, as this paper emphasizes, enforcing anti-harassment rules entails prohibitively high information costs, suggesting traditional law enforcement measures may not constitute the most effective governance strategy. This explains lawmakers' deliberate omission of specific provisions in statutory law, a strategic pause allowing innovative grassroots solutions to emerge organically.

of employers. By placing the responsibility on employers, enforcement of workplace sexual harassment rules has become more feasible, allowing law enforcement officers to achieve broad anti-discrimination goals at a relatively low cost. China’s legislative system against sexual harassment is presented in the following Table 1, which shows that a gap in legislation against public sexual harassment still exists. Essentially, it is more difficult to find a third party to prevent public sexual harassment from occurring than when combating sexual harassment in the workplace. If authorized officers were solely responsible for enforcing anti-sexual harassment rules among strangers, the ubiquitous, covert, and random nature of public sexual harassment would result in exorbitant enforcement costs that the government could not bear. As a refinement of the overall legislative goal, laws addressing public sexual harassment should differ from those focusing on workplace sexual harassment in order to adopt differentiated enforcement strategies to curb the escalation of public sexual harassment.

Table 1: China’s Legislative System on Combating Sexual Harassment

Obligated Parties	Rights Holders	Protected Interests	Legal Form
Perpetrators	Victims	Personal dignity	Civil Code
	State	General social order	Public Security Administration Punishment Law
	Employers	Work and production order	Labour Contract Law, local regulations

3. *The Social Impacts of China’s Anti-Public-Sexual Harassment Framework*

The gap in legislation indirectly reflects the fact that little public attention has been paid to the issue of public sexual harassment, which results in vulnerable groups in China’s society having experienced sexual harassment in public spaces. However, the majority of them have not resorted to legal action. According to the investigation results from Zhengzhou Evening News and Sina, only 736 out of 20,127 people (3.66%) who experienced sexual harassment ultimately dared to trust in and turn to legal remedies,<sup>23</sup> indirectly fostering the rampant spread of public sexual harassment, particularly in public transportation. Another survey

<sup>23</sup> Zhengzhou Evening News, ‘The Psychological Record of Sexual Harassment: Victims Often Remain Silent’ (SINA NEWS, 28 June 2005) <<https://news.sina.com.cn/s/p/2005-06-28/03207061263.shtml>> <<https://perma.cc/WR67-KJMP>> accessed 1 July 2025 ( 鄭州晚報：《性騷擾下的心態實錄：被騷擾者通常保持沈默》, 載新浪網 2005 年 6 月 28 日 ).

conducted by the China Youth Daily Social Survey Centre through the online platforms *Minyi China* (民意中国) and Questionnaire Net, with 1,899 respondents, showed that 53.4% of them had experienced sexual harassment on buses or subways, and 51.7% did not receive assistance when encountering such harassment.<sup>24</sup> Obviously, compared to the more systematic governance of workplace sexual harassment, public sexual harassment has been severely neglected in China.

Statutory constraints have not wholly precluded enforcement innovation. As one potentially viable experiment, Hangzhou's public security apparatus has redirected regulatory focus toward procedural adaptation, instituting a Public Sexual Harassment Penalty Disclosure System — a reputational sanction mechanism with longstanding transnational precedents in environmental protection, food safety, and other vital regulatory domains where public interest transparency is paramount.<sup>25</sup> However, it is a double-edged sword for social governance. On the one hand, it might consolidate social consensus on the rule of law; on the other hand, it might provide the public with more grounds to criticize the authority.<sup>26</sup> Notwithstanding its nominal legal compliance, this system faces mounting scholarly critique within Chinese academia. A review of this literature reveals that Chinese public law scholars have primarily focused on the following aspects:

- (1) What exactly this system is, such as whether it constitutes secondary punishment, reputation-based sanctions, public supervision, or an abuse of power?<sup>27</sup>

<sup>24</sup> Chenying Wang and Yue Ma, 'Sexual Harassment on Public Transport: Over Half of Respondents Reported Experiences' (*CHINACOURT.ORG*, 25 June 2015) <<https://www.chinacourt.org/article/detail/2015/06/id/1655881.shtml#:~:text=%E8%B0%83%E6%9F%A5%E6%98%BE%E7%A4%BA%EF%BC%8C61.,%E6%84%8F%E8%87%AA%E6%88%91%E9%81%93%E5%BE%B7%E7%BA%A6%E6%9D%9F%E3%80%82>https://perma.cc/7DS9-M4VW>> accessed 1 July 2025 (王琛瑩、馬越：《公共交通上的性騷擾：超半數受訪者表示曾遭遇》（來源：中國青年報），載中國法院網 2015 年 6 月 25 日）。

<sup>25</sup> David M. Driesen, 'Alternatives to Regulation? Market Mechanisms and the Environment' in Baldwin, Cave and Lodge (eds), *The Oxford Handbook of Regulation* (Oxford University Press 2010) 207–208. ('The United States in the late 1980s enacted a "Right-to-Know" law requiring chemical companies ... to report their release of toxic chemicals' and 'the EU has spearheaded the use of eco-labels to inform consumers about the environmental attributes of products.')

<sup>26</sup> Bifan Shi, 'The Normative Meaning of Human Dignity as a Fundamental Right' (2008) 5 *Modern Law Science* 146 (石畢凡：《作為基本權利的人格尊嚴及其規範意涵——以“賁淦女示眾事件”為例》，載《現代法學》2008 年第 5 期，第 146–152 頁)；Bin Bai, 'The Normative Meaning of "Dignity of Human Person" and Its System Status' (2019) 6 *Law and Economy* 51 (白斌：《憲法中的人格尊嚴規範及其體系地位》，載《財經法學》2019 年第 6 期，第 51–66 頁)。

<sup>27</sup> Ruixue Wang, 'On the Rules of Limited Disclosure of Administrative Penalty Decisions' (2023) 45(3) *Global Law Review* 114 (王瑞雪：《論行政處罰決定有限公開規則》，載《環球法律評論》2023 年第 3 期，第 114–128 頁)；Zhanglin Xiong, 'On the Publicity of Administrative Penalty Decisions as "Power"' (2023) 2 *Political Science and Law* 141 (熊樟林：《論作為“權力”的行政處罰決定公開》，載《政治與法律》2023 年第 2 期，第 141–159 頁)。

(2) How to regulate the use of this system by public authorities through procedural means, such as the design of enforcement procedures.<sup>28</sup>

(3) How legislative oversight can be used to define the boundaries of disclosure, including what should be disclosed and whether the disclosure should be relative or absolute, in order to ensure that reputational sanctions do not cause unnecessary harm.<sup>29</sup>

These unresolved controversies have generated dissent against the adoption of reputational sanctions for governing public sexual harassment. Nevertheless, Hangzhou authorities maintain the practice's validity, asserting full compliance with both the amended PRC Administrative Punishment Law (APL) and Zhejiang Province's Interim Measures for Online Penalty Disclosure — categorically denying allegations of power overreach.<sup>30</sup> Under Zhejiang Province's 2015 Interim Measures for Online Disclosure of Administrative Penalty Results, Hangzhou's public security organs possess explicit authority to publish penalty decisions for public sexual harassment offenders. This local framework gained enhanced legitimacy through the 2019 revision of Article 48 of APL — a superior legal instrument that, while not specifying concrete disclosure thresholds, broadly authorizes publicity for penalties with 'certain impacts on society'. Within this statutory ambiguity, Hangzhou's interpretation of disclosure criteria constitutes a legally tenable position. Why did local authorities persist with reputational sanctions despite criticism? The answer lies in China's enduring tradition of extra-legal stigmatisation management, whose operational logic the following sections examine.

<sup>28</sup> Mingjie Weng, 'On the Standardized Exercise of Administrative Discretion in the Disclosure of Administrative Punishment Decisions' (2023) 2 *Law and Economy* 97 (翁明杰:《行政處罰決定公開過程中的裁量權及其規範路徑》, 載《財經法學》2023年第2期, 第97-111頁); Ying Tang, 'Legal Control of Disclosure of Administrative Penalty Decision Under Process Theory' (2023) 496(3) *Law Science* 37 (湯瑩:《過程論視角下公開行政處罰決定的法律控制》, 載《法學》2023年第3期, 第37-50頁).

<sup>29</sup> Jinrong Cai, 'The Normative Structure and Discussion on Disclosure of Administrative Penalty Decisions' (2023) 3 *Administrative Law Review* 17 (蔡金榮:《行政處罰決定公開的規範結構及展開》, 載《行政法學研究》2023年第3期, 第17-29頁); Rongjie Lu, 'The Determination of the Publicity of Administrative Punishment Decisions with "Certain Social Influence"' (2022) 4 *Law and Economy* 180 (盧榮婕:《“具有一定社會影響”的行政處罰決定公開之認定》, 載《財經法學》2022年第4期, 第180-192頁); Xiangwen Kong, 'On the Function and Limits of Disclosure of Administrative Penalty Decisions' (2021) 33(6) *Peking University Law Journal* 1619 (孔祥穩:《行政處罰決定公開的功能與界限》, 載《中外法學》2021年第6期, 第1619-1637頁); Liyan Sun, 'On the Balance of Interests in Disclosure of Administrative Punishment Decisions: Based on the Comparison with the Disclosure of Criminal Punishments' (2021) 39(6) *Tribune of Political Science and Law* 70 (孫麗巖:《論行政處罰決定公開的利益權衡——從與刑事制裁公開的對比角度》, 載《政法論壇》2021年第6期, 第70-83頁).

<sup>30</sup> Weijing Chen, 'A Group of Sexual Predators were Disclosed in Hangzhou: Have Their Privacy Rights been Infringed?' (China Newsweek, 25 April 2023) <<https://www.inewsweek.cn/society/2023-04-25/18314.shtml>> accessed 1 July 2025 (陳威敬:《杭州實名公開一批“色狼”, 侵犯隱私了?》, 載中國新聞周刊網2023年4月25日).

## *B. Online Resistance from China's Women*

### *1. Online Resistance as a Weapon: A Self-help Remedy*

When the law fails to provide effective prevention and dispute resolution, the space for self-help remedies arises. Victims of public sexual harassment often turn to online platforms to disclose personal information about offenders and their harassing behaviours. Their motivations for doing so include attempting a form of retaliation, seeking to alleviate feelings of humiliation, and providing a warning to potential victims to stay vigilant. With the rise of mobile phones and the internet in China, this form of self-help remedy emerged as early as 2005 and sparked significant debate online. Most vulnerable groups, especially women who have experienced sexual harassment, show support for such actions, feeling encouraged by these stories. Opponents, however, deplore such actions as illegal practices with limited effectiveness, accusing them of inciting hatred. Nevertheless, this trend has not waned despite public debate. Furthermore, some female volunteers have established the *Catch the Pervert Alliance* website, calling on more women to come forward and publicly expose sexual harassers.

These resistance exemplars manifest the unique operational logic of Chinese women's contestation of patriarchal power structures. Unlike western societies with entrenched traditions of openly challenging patriarchy, Chinese women navigate Confucian constraints reinforced by material socioeconomic forces — a paradigm commanding such pervasive adherence that direct confrontation proves counterproductive. Effective resistance here necessitates concrete case-based demonstrations of gendered oppression to secure discursive legitimacy: absent such evidentiary grounding, and activists risk being dismissed as troublemakers violating Confucian social harmony norms.

Online resistance campaigns occupy a paradoxical space — rooted in tangible sociocultural realities yet fraught with operational tensions. Their capacity to mobilize sympathy derives not merely from appealing to universal moral instincts, but more fundamentally from China's latent consensus on gender equality, a consensus institutionalized through constitutional provisions and women's protection policies, and subsequently internalized by the educated populace. Yet social attitudes remain nebulous; substantive disagreements persist regarding the concrete manifestations of gender equality.<sup>31</sup> Most tellingly, no societal consensus exists on what constitutes sexual harassment, a definitional vacuum even the Women's Rights Protection Law fails to fill. In this

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<sup>31</sup> Yue Qian and Jiaxing Li, 'Separating Spheres: Cohort Differences in Gender Attitudes about Work and Family in China' (2020) 20(2) *China Review* 19.

context, Chinese women's online resistance primarily seeks to accelerate the emergence of social norms prioritising female lived experiences, thereby operationalising statutory equality principles across broader situational contexts.<sup>32</sup>

Women engaged in online resistance face a joint regulatory straitjacket, which means that they are constrained simultaneously by state laws, public policies, and platform user agreements. In China's governance paradigm, such online resistance is often construed as undermining the paramount social value of 'harmonious society'.<sup>33</sup> As legislators intensify crackdowns on cyber violence,<sup>34</sup> internet platforms correspondingly amplify content moderation, progressively constricting the discursive space for online resistance, a dynamic that paradoxically fuels victims' collective indignation and creates fertile ground for institutionalising reputational sanctions. This section examines the aetiology, tactics, and consequences of Chinese women's online resistance, analysing how extra-judicial reputation mechanisms managed to diffuse into China's formal legal system despite such constrained conditions.

## 2. *Why Resist Online?*

China's specialized legislative framework for women's rights protection emerged comprehensively with the founding of the PRC. The landmark 1950 Marriage Law instituted modern legal principles including gender equality and monogamy in marital relations. In the public sphere, Chinese women enjoy the right to work, vote and possess or inherit property equally with men, a revolutionary outcome concomitant to the Constitution of the People's Republic of China that brought Chinese women to a new stage of women's liberation.<sup>35</sup> The Reform and opening-up since 1978 precipitated further legal developments. For example, the 1992 Women's Rights Protection Law (WRPL) established dedicated safeguards, while the 1995 Beijing World Conference on Women elevated 'gender equality' to a fundamental state policy. Subsequent revisions to

<sup>32</sup> Jiang Chang and others, 'A Virtual Gender Asylum? The Social Media Profile Picture, Young Chinese Women's Self-Empowerment, and the Emergence of a Chinese Digital Feminism' (2016) 21(3) *International Journal of Cultural Studies* 325. ('Chinese women's self-empowerment through using social media is derived not from a straightforward struggle against the patriarchy or for woman power, but from a gentle, rational yet resolute stance that incorporates a new female identity into the "harmonious society" enshrined in Confucian ideals.')

<sup>33</sup> Choukroune (n 8).

<sup>34</sup> Article 6 of *Provisions on Governance of Cyber Violence Information* mandates that '[c]yber information service providers and users shall insist on the socialist core values, comply with laws and regulations, respect social morality and ethics, promote the formation of a positive, healthy and uplifting cyber culture, and maintain a sound network ecology'.

<sup>35</sup> Jinghao Zhou, 'Keys to Women's Liberation in Communist China: An Historical Overview' (2003) 5(1) *Journal of International Women's Studies* 67.

the WRPL, coupled with the 2016 Anti-Domestic Violence Law, created a layered legal regime. However, as noted earlier, these instruments predominantly protect vital interests (life/property), reducing other gender equity provisions to declaratory norms, leaving gaps in areas like public sexual harassment. Simultaneously, China's market reforms reconfigured gender ideologies. The revolutionary ethos of 'women holding up half the sky' gave way to neoliberal pragmatism, reviving Confucian domesticity norms that pressure women into caregiving roles, compensating for the state's welfare retrenchment while freeing men for unfettered market competition.<sup>36</sup> This dual trajectory of legislative progress and familial power reconfiguration necessitated new channels for feminist expression. Digital platforms like sina weibo, rednote and live-streaming services provided critical infrastructure for contesting gendered power structures through viral advocacy. The trend of disclosing personal information of public sexual offenders epitomizes this synthesis, leveraging internet tools to articulate safety demands of female groups while participating in social governance.

Public sexual harassment has long been systematically minimized and normalized, a social process framed by gender studies scholarship as 'silencing'.<sup>37</sup> This silencing mechanism exacts a heavy toll on victims' willingness to report, thereby emboldening perpetrators. The phenomenon's persistence reflects co-constitutive legal and cultural failures. Take China as an example, despite constitutional anti-discrimination principles, specialized anti-discrimination legislation remains absent.<sup>38</sup> For decades, like western legal systems, Chinese lawmakers prioritized egregious sexual violence (e.g., rape, molestation), while even post-reform

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<sup>36</sup> Qian and Li (n 31). This article reveals that post-reform Chinese society exhibits paradoxical gender attitudes, maintaining comparatively egalitarian views in public spheres while perpetuating private-sphere expectations that women should sacrifice career advancement for familial obligations.

<sup>37</sup> Liz Kelly and Jill Radford, "Nothing Really Happened": The Invalidation of Women's Experiences of Sexual Violence' (1990) 10(30) *Critical Social Policy* 39. (Concerning the unequal gender/power structure, the authors challenge that 'there are numerous ways in which women's experiential knowledge is denied, invalidated and forced underground. ... What mainstream knowledge has attempted to do is limit what counts as abuse — it operates by the strategy of inclusion and exclusion, including what men define as violating/abusive and excluding much of what women experience as violating/abusive.')

<sup>38</sup> Article 33 of the *Constitution of the People's Republic of China* mandates that, '[A]ll citizens of the People's Republic of China are equal before the law'. See also, article 48: 'Women in the People's Republic of China shall enjoy equal rights with men in all spheres of life: political, economic, cultural, social and familial. The state shall protect the rights and interests of women, implement a system of equal pay for equal work, and train and select female officials.'

workplace harassment laws provided meagre remedies.<sup>39</sup> Empirical research on Chinese women's online harassment disclosures reveals that a total of 59 persons were explicitly identified as sexual harassment suspects from 2017 to October 2018. However, only 15 of these identifications resulted in responses<sup>40</sup> — most accusers faced no material consequences, much less legal sanctions, even when accusing public figures. This evidentiary void substantiates MacKinnon's (1988) thesis that the law institutionalizes silence: 'When the state also forecloses a validated space for denouncing and rectifying the victimisation, it seals this secrecy and reinforces this silence.'<sup>41</sup> Social pressures compel women experiencing public sexual harassment to perform as if 'nothing really happened', a compliance shaped by traditional gender norms that: (a) blame victims through modesty policing ('you shouldn't have worn that'); (b) normalize misconduct ('he probably didn't mean it, or why didn't you stop him?'); (c) trivialize harm ('even if intentional, it's not worth fussing over'); (d) stigmatize resistance ('you'll shame your family by making it public').<sup>42</sup> Publicly exposing and condemning such acts thus serves dual purposes: fracturing this culture of silence while signalling legislative demand for systemic reform.

There are many forms of self-help remedies, but why is reputational sanction often the preferred method of resistance for victims of harassment? The answer lies in the complex social power imbalances behind this choice. Firstly, using reputational sanctions is the least costly way for victims to resist. The majority of victims of public sexual harassment are women subjected to male perpetrators, and the physical power imbalance between the genders often leads victims to avoid direct confrontation with the harasser to prevent the risk of violence. Moreover, even when personal safety is not immediately at risk, victims

<sup>39</sup> The August 2005 amendment to *Law of the People's Republic of China on the Protection of Rights and Interests of Women* marked the statutory codification of 'sexual harassment' as a legally cognisable harm. Article 1010(1) of *Civil Code of the People's Republic of China* stipulates that, '[a] person who has been sexually harassed against his will by another person through oral words, written languages, images, physical acts, or the like has the right to request the actor to bear civil liability in accordance with law'. This means that individuals who claim to have been sexually harassed have to pay the costs of a civil action themselves in order to obtain legal redress.

<sup>40</sup> Kaibin Xu and Yan Tan, "'Let Feminists Tell Me My Fault': A Study of the Discourse Strategies of Sexual Harassment Suspects' (2020) 20(5) *Feminist Media Studies* 623.

<sup>41</sup> Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Harvard University Press 1987) 104.

<sup>42</sup> See Olivia O'Halloran and Nancy Cook, 'Breaking the Silence: Exploring Women's Experiences of Participating in the #MeToo Movement' (2023) 24(6) *Feminist Media Studies* 1371. MacKinnon's acute observation that '[w]hen faced with individual incidents of sexual harassment, the legal system's first question was, is it a personal episode?' demonstrates how legal institutions actively reinforce silencing norms, see MacKinnon, *Feminism Unmodified* 106.



face difficulties in proving their claims. What is more, they may be humiliated by the perpetrator, who may accuse them of making false allegations. The victim could even be exposed to public scrutiny, adding to their psychological burden. Notably, due to the repercussions of the Peng Yu case (in which a basic court controversially ruled that Peng Yu, who voluntarily helped an old lady, should compensate her because his assistance must be motivated by infringement), bystanders in public spaces have become reluctant to intervene when vulnerable groups suffer to avoid trouble. This leaves victims isolated and less willing to confront sexual harassers on the spot.<sup>43</sup> As a result, one of the strategies many women employ in their covert resistance to public sexual harassment is to gather information about the suspect and post it online.

### 3. *Stigma Reversal as Online Resistance*

Stigma Reversal is a critical strategy employed by victims of public sexual harassment in their online resistance. For these victims, stigmatisation constitutes a significant barrier to resistance. If they voluntarily disclose their experiences, what they have experienced might be 'deeply discrediting' so that they are reduced 'from a whole and usual person to a tainted, discounted one,'<sup>44</sup> as discussed by Goffman; specifically, women who dared not resist were distinguished and labelled with undesirable characteristics so that they 'experience status loss and discrimination that lead to unequal outcomes.'<sup>45</sup> During the process of stigmatisation, victims of sexual harassment may even develop tendencies toward self-stigmatisation — 'Am I being overly sensitive?'<sup>46</sup> The interplay between external stigmatisation and self-stigmatisation creates a vicious cycle, discouraging victims from resisting and exacerbating the proliferation of this social problem.

However, unlike Goffman's theory of stigmatisation, which posits that individuals manage stigma through avoidance of mainstream norms, defensive cowering, and concealment of stigma,<sup>47</sup> an increasing number of women in China have recognized the necessity of breaking this cycle. As a form of spontaneous resistance, more women are engaging in

<sup>43</sup> For a discussion of the moral apathy prevalent in China caused by *Xu XX v Peng Yu*, see Melody W. Young, 'The Aftermath of Peng Yu: Restoring Helping Behavior in China' (2013) 22 *Pacific Rim Law & Policy Journal* 691.

<sup>44</sup> Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* (Prentice-Hall 1963) 3-4.

<sup>45</sup> Bruce G. Link and Jo C. Phelan, 'Conceptualizing Stigma' (2001) 27 *Annual Review of Sociology* 363.

<sup>46</sup> This self-stigmatisation phenomenon persists even among female legal professionals versed in anti-discrimination laws: see Nina Burleigh and Stephanie B Goldberg, 'Breaking the Silence: Sexual Harassment in Law Firms' (1989) 75(8) *ABA Journal* 46.

<sup>47</sup> Goffman *Stigma* (n 44).

reputational sanctions against perpetrators of public sexual harassment. In short, stigma reversal — which has been defined as ‘the imputation of guilt and moral inferiority to the members of a dominant group on the basis of descent occurs when the moral justification of the group’s position of advantage is being redefined’<sup>48</sup> — has been adopted by Chinese women as an essential instrument for online resistance.

One of the practices of stigma reversal in online resistance is the manipulation of narrative.<sup>49</sup> First, victims leverage narrative to occupy the moral high ground. Any opposition to such online resistance, regardless of its phrasing, is framed as chauvinistic indifference to women’s dignity and feelings, while those initiating the resistance are disseminated as embodying a heroic identity. This narrative manipulation constitutes a form of normative inversion,<sup>50</sup> wherein spontaneous collective action by women challenges dominant sociocultural norms in an attempt to shift public tolerance of public sexual harassment.<sup>51</sup> Yet, second, this self-help remedy undeniably violates the law (e.g., China’s Personal Information Protection Law), and narrative alone cannot justify such online resistance. Thus, exposers employ reflexive discourse to negotiate paradox, asserting that their disclosure of personal information serves only to warn women near the scene of the incident — not as an infringement, but as a means of self-preservation.

Another method of stigma reversal involves altering social evaluation through specific practices. The most common action is the public disclosure of perpetrators’ personal information (even photographs) and details of their misconduct. This redirects public attention to the perpetrators’ unlawful and immoral conduct, indirectly prompting the audience to recognize that shame should rightfully attach to the harassers, not the victims. However, such disclosures lack state authorisation and often rely solely on the posters’ accounts, inviting scepticism or even backlash. Although activists argue that their ‘voice’ stems from inadequate

<sup>48</sup> Lewis M. Killian, ‘The Stigma of Race: Who Now Bears the Mark of Cain?’ (1985) 8(1) *Symbolic Interaction* 1.

<sup>49</sup> Hieu P. Nguyen, Steven Chen and Sayantani Mukherjee, ‘Reverse Stigma in the Freegan Community’ (2014) 67(9) *Journal of Business Research* 1877. (This article advances an analytical framework that examines stigma reversal through three constitutive dimensions, namely ideological formations, strategic interventions, and resource mobilisation mechanisms.)

<sup>50</sup> Andreas Wimmer, ‘Elementary Strategies of Ethnic Boundary Making’ (2008) 31(6) *Ethnic and Racial Studies* 1025. (‘In normative inversion, the symbolic hierarchy is turned on its head, such that the category of the excluded and despised comes to designate a chosen people, morally, intellectually and culturally superior to the dominant group.’)

<sup>51</sup> As a typical example, sexual violence researchers ‘have substituted the word “survivor” for “victim,” in order to both challenge victim-blaming and make visible women and children’s resistance and coping strategies [in the context of sexual attack]’. See Kelly and Radford (n 37).

law enforcement in certain jurisdictions, this does not of itself justify the ensuing public sentiment. Similarly, while disclosers insist that their actions are not intended to disrupt public order but rather to participate, as private citizens, in the governance of civil society — compensating for gaps in legal protections — the consequences of such actions may nevertheless conflict with the political objective of fostering a harmonious society.

#### 4. *Consequences of Online Resistance*

The personal information of accused harassers was disclosed on Catch the Pervert Alliance website and other similar platforms.<sup>52</sup> This kind of online resistance, which has persisted for over twenty years, not only serves as a source of psychological comfort and a warning mechanism but has also genuinely promoted the welfare of vulnerable groups. As the calls for addressing public sexual harassment grew louder, Guangzhou, the fourth-largest city in the world by subway ridership, decided to introduce women-only carriages on its metro system to create a safer environment for female passengers. Following Guangzhou's initiative, other cities in China have also adopted this measure.<sup>53</sup>

In fact, public sexual harassment complaints in China are not always welcomed, and many organisations may view the accusers as troublemakers, thus being unwilling to take active steps. That is to say, making a complaint may face the hazard of formal avenues for relief being cut off. In 2023, a female college student at Wuhan University believed that she was sexually harassed by a male student in the university library. Although she submitted videos as proof of alleged sexual harassment, the university remained unresponsive to her repeated appeals for action. Feeling that formal complaint channels would not lead to any resolution acceptable to her, she chose to disclose the harasser's personal information online. Her action quickly attracted significant public attention. Ironically, within hours of her post, the University promptly issued an announcement promising to conduct a special investigation into the case. Thus, in a social environment where neither the law nor responsible authorities provide support to the accusers, reputational sanctions become the most accessible channel for individuals alleging

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<sup>52</sup> Lin and Yang (n 9).

<sup>53</sup> Wanxi Zhao, 'Because I Am a Woman, I Must Strongly Oppose Women-Only Carriages' (*THE PAPER*, 24 September 2019) <[https://www.thepaper.cn/newsdetail\\_forward\\_4476349](https://www.thepaper.cn/newsdetail_forward_4476349)><<https://perma.cc/TP7L-9CKC>> accessed 1 July 2025 (趙皖西: «就因為我是女性, 我更加要反對女性車廂», 載澎湃新聞網 2019 年 9 月 24 日).

harassment to seek justice.<sup>54</sup>

These self-help remedies profoundly concerned the authorities. A typical case occurred on June 7, 2023, when a woman claimed on social media that she was secretly photographed by a male stranger on the subway in Guangzhou and disclosed his picture. However, netizens later discovered that the man was innocent and the woman had falsely disclosed his photo on the internet for defamatory purposes. The incident caused an uproar, and the woman suffered severe attacks online.<sup>55</sup> What is more, such online self-help measures are particularly not welcomed by China's internet regulatory authorities. China's Cyberspace Administration, which aims to establish an orderly space for internet expression, continuously supervises and reminds internet content producers to operate in accordance with the law, and not to impersonate news units or anchors or to release false information.<sup>56</sup> However, the inflammation of public opinion triggered by the aforementioned cases often renders its efforts futile.

More concerning is the fact that such self-help remedies may involve illegal actions, which could turn victims into offenders. Disclosers may all too easily be accused of violating privacy. This risk is particularly heightened with the enforcement of the PRC Personal Information Protection Law, which has made the control and disclosure of personal information increasingly legally perilous. The best solution would be to legalize such actions, thus avoiding risk of legal liability to the victims while also allowing the authorities to regulate and standardize information disclosure.

From this perspective, the 2021 amendment to the APL, which expands the scope of personal information disclosure by the authority, comes at an opportune time. By allowing relevant authorities to disclose perpetrators' personal information, reputational sanctions can provide

<sup>54</sup> See 'A student Reported Sexual Harassment, Wuhan University: Demerit Punishment!' (CNR News, 14 October 2023) <[https://news.cnr.cn/dj/20231014/t20231014\\_526450760.shtml](https://news.cnr.cn/dj/20231014/t20231014_526450760.shtml)> <<https://perma.cc/U8XR-V59V>> accessed 1 July 2025 (《“學生舉報遭受性騷擾”，武漢大學：記過處分！》，載央廣網 2023 年 10 月 14 日)。

<sup>55</sup> Yating Yang, "Blatant Cyberbullying": Top China School Student Faces Fierce Online Backlash After Falsely Accusing Man of "Secretly" Filming Her on Subway' (*South China Morning Post*, 14 June 2023) <<https://www.scmp.com/news/people-culture/gender-diversity/article/3223824/blatant-cyberbullying-top-china-school-student-faces-fierce-online-backlash-after-falsely-accusing>> <<https://perma.cc/G4F6-ESAY>> accessed 1 July 2025.

<sup>56</sup> Yong Niu and Guangyu Yang, 'The Cyberspace Administration of China Launches Special Action to "Clear and Standardize Key Traffic Links of the Internet Communication Order", Cleaning Up a Batch of Fake "News Anchors"' (*People's Daily Online*, 15 May 2023) <<http://politics.people.com.cn/n1/2023/0515/c1001-32686631.html>> <<https://perma.cc/CUR5-GVRX>> accessed 1 July 2025 (牛鏞、楊光宇：《國家網信辦開展“清朗·規範重點流量環節網絡傳播秩序”專項行動，清理一批仿冒“新聞主播”》，載人民網 2023 年 5 月 15 日)。

emotional redress to victims, thereby discouraging them from resorting to online resistance and preventing them from incurring legal risks associated with self-help remedies. Moreover, such disclosure can generate substantial deterrence, which may indirectly contribute to alleviating online gender antagonism. Ultimately, by acknowledging the ‘weapons of the weak,’ this approach effectively reduces the extremely high governance costs in both anti-discrimination enforcement and internet regulation.

### III. Diffusing into Law: Reputational Sanctions as Governance Innovation in China

#### *A. Catalysts for Innovation Diffusion*

##### *1. Evolving Societal Consciousness*

Hangzhou’s adoption of reputational sanctions as an enforcement measure reflects the municipal authorities’ institutional responsiveness to evolving social norms. This policy alignment occurred within a broader context where shifting societal attitudes toward gender equality increasingly inform Chinese public policy formulation. In fact, the changes in prevailing Chinese attitudes to oppression on the basis of gender can determine the direction of Chinese public policy. The prevalence of public sexual harassment can be attributed to a work culture tolerant of such behaviours and a process of gender socialisation, leading to the institutionalisation of degrading harassment.<sup>57</sup> This gender structure facilitates the proliferation of sexual harassment from workplaces to public domains in China. However, things are changing. Gender studies scholars argue that China’s post-socialist transition gives rise to a new gendered structure of power, by which urban young women have assembled various discursive and material practices in their struggles.<sup>58</sup> A typical manifestation of this is that the aforementioned online social movements contradict the gender norms imposed on women by Confucian culture. Despite the fact that male authority still maintains a dominant position, more and more Chinese citizens who recognize women’s exposure to risk in public spaces now uphold the idea that women should not simply endure, and that the government should take up the fight for women’s rights. Therefore, this shift in social consensus has first been reflected

<sup>57</sup> Cecilia L. Ridgeway and Shelley J. Correll, ‘Motherhood as a Status Characteristic’ (2004) 60(4) *Journal of Social Issues* 683.

<sup>58</sup> Angela Xiao Wu and Yige Dong, ‘What Is Made-in-China Feminism(s)? Gender Discontent and Class Friction in Post-Socialist China’ (2019) 51(4) *Critical Asian Studies* 471.

in local regulations at lower levels of authority. The typology of sexual harassment constructed in gender studies has also been adopted by other local governments in China.<sup>59</sup> For example, the 'Guidelines for Preventing Sexual Harassment in Shenzhen' specifically differentiate between *quid pro quo* harassment and hostile environment harassment, with the former involving sexual threats or coercion as the price for desirable social resources, and the latter referring to discomforting behaviours or atmospheres affecting professional development.

Empirical evidence confirms that Hangzhou's governance apparatus has accurately discerned the trajectory of evolving social attitudes. The public's views are utterly different from those of scholars. They are not concerned whether this is really an administrative reform that disregards the rule of law. Instead, the public is more focused on the positive signals conveyed by this innovative practice. In a Weibo poll entitled, 'Is it appropriate for Hangzhou to disclose the full names of sexual harassers?' nearly 711,000 netizens participated, with 97% agreeing that revealing the information of harassers was appropriate, while only 3% felt it might be inappropriate. This result not only reflects the public's anger toward rampant public sexual harassment, but also ties into the long-standing tradition of online self-help remedies against sexual harassment in China.<sup>60</sup> Against the backdrop of steadily declining public tolerance for sexual harassment in public spaces, legislative innovations for anti-sexual harassment are currently welcomed, provided that such innovations are effective. It is not difficult to see that in relation to public sexual harassment, a deeply abhorrent social violation, the public expects severe punishment to strengthen deterrence. One form of severe punishment expected by the public is reputational sanction. As noted, when surveyed about this controversial measure, public opinion polls show that 97% of netizens welcome it.<sup>61</sup> The efficacy of reputational sanctions in China is evidenced by their continued social potency, though opposition persists precisely because of their perceived effectiveness. Public support for legally humiliating criminals enables the authorities to withstand scrutiny of their legitimacy. This also allowed the Metro Police in Hangzhou to implement the public disclosure of administrative penalty decisions with more confidence compared to other sectors.

<sup>59</sup> Welsh (n 1).

<sup>60</sup> Yang (n 12).

<sup>61</sup> Jiyi Fang, 'Controversy Over Public Disclosure of "Perverts"? Official Response' (*Guancha Syndicate*, 21 April 2023) <[https://www.guancha.cn/politics/2023\\_04\\_21\\_689265.shtml](https://www.guancha.cn/politics/2023_04_21_689265.shtml)> <<https://perma.cc/3D22-YC4X>> accessed 1 July 2025 (房佳宜: 《公示“色狼”姓名引爭議? 官方回應》, 載觀察網 2023 年 4 月 21 日).

## 2. *Public Trust in Reputational Sanctions*

Chinese public confidence in reputational sanctions as a tool against public sexual harassment stems from this governance mechanism's sustained efficacy during China's market economy development, rendering it culturally familiar. Such visibility constitutes a critical factor in its social acceptance and diffusion. Reputational sanctions on individuals were initially embedded into China's Social Credit System, which is mainly presented as the construction of China's corporate social credit system (企業社會信用體系, CSCS), a programme to amass data on regulatory compliance, inspections, payments of taxes and court judgments, and civic conduct of business entities, and to generate publicly available social credit profiles that can be used by government agencies and market participants. CSCS is a regime of rewards and punishments (in the form of 'redlists' and 'blacklists') maintained by government agencies. With the Supreme People's Court establishing the debtor blacklist in 2013 under the CSCS framework, if a legal entity is placed on a blacklist, its legal representative and the individuals directly responsible for the infraction will also be blacklisted<sup>62</sup> — marking the inception of China's formal reputational sanctions against individuals. Notably, this provision applies to both individuals and the legal representatives and officers of companies in default. The list mandatorily discloses defaulter identities, including names and national ID numbers. Beyond reputational stigmatisation, listed individuals face restrictions on a range of 'high-end' expenditure, including travelling and staying in certain hotels. The application of reputational sanctions to individuals is thus by no means Hangzhou's innovation. After nearly a decade of implementation under the framework of CSCS, the Chinese public has progressively recognized and endorsed its social utility, thereby accepting its broader governance applications. Online resistance by victims of public sexual harassment underscores the urgency of addressing this issue, reinforcing the societal belief that such measures warrant trial. At the very least, standardized reputational sanctions can effectively assuage victims' grievances and demonstrate governmental resolve to combat public sexual harassment through legal means.

Hangzhou's practice has more than met the public's expectations, providing evidence for the effectiveness of reputational sanctions in

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<sup>62</sup> Lauren Yu-Hsin Lin and Curtis J. Milhaupt, 'China's Corporate Social Credit System: The Dawn of Surveillance State Capitalism?' (2023) 256 *The China Quarterly* 835. See also Xin Dai, 'Toward A Reputation State: A Comprehensive View of China's Social Credit System Project' in Oliver Everling (ed), *Social Credit Rating: Reputation und Vertrauen beurteilen* (Springer Gabler 2020) 141-142.

combating public sexual harassment. Since the implementation of the public disclosure system, local newspapers in Hangzhou have claimed that it has indeed achieved the expected goal of effectively curbing subway sexual harassment. Data released by the Hangzhou Metro Police showed a 25% year-on-year decrease in sexual harassment cases after the implementation of this system.<sup>63</sup> The experience of Hangzhou is borne out by cases from other regions with similar provisions. Additionally, quantitative research indicates that the U.S. registration/notification system led to a noticeable decline in crime rates.<sup>64</sup> Specifically, the actual registration of released sex offenders is significantly linked to a decrease in crime rates, which means providing offender information to local authorities enhances monitoring. This increased monitoring raises the costs for recidivists. Furthermore, the implementation of this rule is related to a reduction in the frequency of sexual offences, regardless of the number of registered offenders. A potential explanation for this impact is that such a rule deters potential (unregistered) offenders by increasing the penalties for sexual crimes. Based on expectations regarding the effects of disclosure, some scholars even hope that this registration/notification system could be extended to juvenile sex offenders.<sup>65</sup>

This enforcement innovation also generates positive externalities that further consolidate public trust in its utility. Effective governance of public sexual harassment necessitates active public participation, and Hangzhou's detailed disclosure of administrative penalty decisions furnishes citizens with actionable intelligence, enabling potential victims to heighten vigilance. Such awareness extends beyond immediate targets, fostering communal solidarity as informed citizens monitor their surroundings and engage in private remedies.

The central government, acutely attuned to shifting public sentiment, has noted both rising public trust in reputational sanctions and declining tolerance for sexual harassment. Consequently, despite academic and media debates, Beijing has refrained from intervening against Hangzhou's experiment, a tacit endorsement rooted not only in the Administrative Punishment Law's amendments (which legitimize the practice) but also

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<sup>63</sup> Yapu Zhang, 'Hangzhou Disclosed A Batch of Penalty Results for "Perverts": Some Fined, Some Detained' (*Yingxiang Net* ([www.hnr.cn](http://www.hnr.cn)), 19 April 2023) <<http://news.hnr.cn/shxw/article/1/1648470327457296386>> <<https://perma.cc/HZZ9-BQ3L>> accessed 1 July 2025 (張亞普:《杭州公開一批對“色狼”的處罰結果:有罰款,有拘留》,載映象網 2023 年 4 月 19 日)。

<sup>64</sup> J.J. Prescott and Jonah E. Rockoff, 'Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?' (2011) 54(1) *Journal of Law and Economics* 161.

<sup>65</sup> Robin Walker Sterling, 'Juvenile-Sex-Offender Registration: An Impermissible Life Sentence' (2015) 82(1) *The University of Chicago Law Review* 295.



in the central government's strategic reliance on local pilots to assess both the scalability of reputational sanctions across governance contexts and their potential to mitigate any potentially destabilising effects arising from women's online resistance movements. Due to the punishment disclosure system in the Administrative Penalty Law, this system can be seen as an innovative approach for China to address public sexual harassment without fundamentally changing its legal framework. It represents one crucial possibility for legal system innovation in contemporary China. That is to say, the Administrative Penalty Law allows local governments to have discretion over information disclosure. This means that local governments can experiment with the social governance effects of reputational sanctions and, should unintended consequences emerge, the central government retains oversight authority to recalibrate implementation.<sup>66</sup>

### 3. *Reputational Sanctions as Rule-of-Law Enhancers*

Besides deterring alleged perpetrators of public sexual harassment, reputational sanctions also contribute to the policy objective of lawful administration by activating the reason-giving regime's institutional function, thereby imposing constraints on administrative agencies. The acceleration of the information economy has facilitated the emergence of a reputation society, wherein damage to individual reputation now carries more extensive socioeconomic consequences than ever before.<sup>67</sup> This necessitates prudence in governmental deployment of this regulatory tool, as its improper application risks engendering systemic corruption. Hangzhou's practice demonstrates how reputational sanctions can be operationalized as a Chinese-style reason-giving mechanism to mitigate such concerns.

Reason-giving in this context refers to the provision by government agencies of justifications for an administration decision when issuing rules, so that the public, particularly those affected by the proposed or final rules, can understand and evaluate the rules' rationale.<sup>68</sup> Legal theorists regard reason-giving as constitutive of due process, whose requirements of procedural protection, including the requirement of

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<sup>66</sup> For an examination of how China's central government leverages local experiments to test legal and policy innovations see Lizhi Liu and Barry R. Weingast, 'Taobao, Federalism, and the Emergence of Law, Chinese Style' in Anupam Chander and Haochen Sun (eds), *Data Sovereignty: From the Digital Silk Road to the Return of the State* (Oxford University Press 2023) 137-58.

<sup>67</sup> Lior J. Strahilevitz, 'Reputation Nation: Law in an Era of Ubiquitous Personal Information' (2008) 102(4) *Northwestern University Law Review* 1667.

<sup>68</sup> Ashley S. Deeks, 'Secret Reason-Giving' (2020) 129(3) *The Yale Law Journal* 612.

reason giving, can effectively constrain governmental power.<sup>69</sup> Reason-giving forms one element in judicial practice. It limits judicial discretion, enhances accountability, and facilitates judges in overcoming biases and in disregarding irrelevant information.<sup>70</sup> Public law scholars identify three core functions of reason-giving in administrative enforcement: (a) enabling vertical accountability within bureaucratic hierarchies through documented enforcement records; (b) facilitating control, accountability, and coordination amongst institutions and different administrative levels; (c) assisting officials in obtaining public cooperation and in avoiding complaints or lawsuits, which take time and will involve short term pain even if the officials are ultimately found to be blameless.<sup>71</sup> China's 1996 Administrative Punishment Law institutionalized reason-giving provisions to constrain state power and standardize enforcement in the nascent administrative penalty system.<sup>72</sup>

Hangzhou's approach synergizes two disclosure-based mechanisms, reputational sanctions and reason-giving, as dual instruments for social governance and state power supervision. In this case, public security authorities disclose not only perpetrators' personal identities but also detailed incident particulars (time, location, frequency, and methods of harassment). Such disclosures serve dual purposes, amplifying reputational deterrence while activating the reason-giving system, thereby indirectly promoting consistency in penalty standards for public sexual harassment. China's legal framework categorizes punishments for public sexual harassment into three tiers based on severity of the offence: (a) no penalty; (b) five to ten days administrative detention; (c) ten to

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<sup>69</sup> Jerry L. Mashaw, 'Reasoned Administration: The European Union, the United States, and the Project of Democratic Governance' (2007) 76(1) *The George Washington Law Review* 99.

<sup>70</sup> Ori Katz and Eyal Zamir, 'Law, Justice and Reason-Giving' (2025) 22(2) *Journal of Empirical Legal Studies* 243. ('[t]he very engagement in writing and the enhanced accountability that comes with the provision of written reasons are expected to foster more deliberative thinking and stricter adherence to legal norms.') Also see Zhuang Liu, 'Does Reason Writing Reduce Decision Bias? Experimental Evidence from Judges in China' (2018) 47(1) *The Journal of Legal Studies* 83.

<sup>71</sup> Mashaw (n 69). This article particularly focuses on the third function of reason-giving, emphasising its significance for 'good administration,' as '[t]he requirement that agencies give understandable and relatively complete reasons for rulemaking as well as for decisions in individual hearings does more than facilitate judicial review. It also increases the power of participants in informal rulemaking processes to force agencies to consider problems and issues that they raise by submitting comments concerning the agency's proposals.'

<sup>72</sup> Article 31 of *Law of the People's Republic of China on Administrative Penalty* (1996 version) mandates that '[B]efore deciding to impose administrative penalties, administrative organs shall notify the parties of the facts, grounds and basis according to which the administrative penalties are to be decided on and shall notify the parties of the rights that they enjoy in accordance with law.'

fifteen days detention.<sup>73</sup> While this proportionality principle preserves tolerance for social interactions, it may embolden potential offenders. Detailed punishment disclosures clarify the ‘circumstances are absolutely vile’ threshold for severe penalties,<sup>74</sup> enhancing legal deterrence and encouraging victims to seek police intervention — thus concretising constitutional equality guarantees through novel enforcement channels.

Beyond substantive justice, Hangzhou’s practice advances procedural justice. Comprehensive disclosure of penalty decisions subjects reputational sanctions to procedural constraints. In a surveillance society where individual’s practical obscurity is eroded<sup>75</sup> — magnifying the effects of reputational sanctions — strict adherence to reason-giving principles becomes imperative to achieve good administration standards and provide judicial review benchmarks for potential administrative litigation. Notably, this practice need not impose excessive enforcement costs. Reason-giving constitutes an inherent component of penalty decisions regardless of disclosure, and China’s pre-existing nationwide platforms for publishing administrative penalty decisions ensure compatibility with current workflows.

However, Hangzhou’s approach fails adequately to balance reason-giving against victim protection. Disclosing victims’ surnames alongside contextual details risks exposing their identities — reinforcing enforcement legitimacy at the cost of potential stigmatisation. An optimal refinement would replace identifiable victim information with pseudonyms, preserving both the efficacy and reason-giving advantages of reputational sanctions without compromising victims’ interests or violating lawful administration principles.

#### *4. Cross-Domain Applicability of Reputational Sanctions*

One potential critique might ask whether Hangzhou’s success was merely an isolated case. Such concern merits serious consideration, as certain regulatory instruments demonstrate efficacy only within specific spatial

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<sup>73</sup> Article 44 of *Public Security Administration Punishments Law (2012 Amendment)* mandates that ‘[A]nyone who acts indecently towards any person or deliberately expose his body at a public place shall be detained for not less than 5 days but not more than 10 days if the circumstances are absolutely vile. Anyone who acts indecently towards a disabled person, mentally insane patient, or minor under the age of 14, or who commits any other severe violation shall be detained for not less than 10 days but not more than 15 days.’

<sup>74</sup> *ibid.*

<sup>75</sup> Patrick C. File, ‘A History of Practical Obscurity: Clarifying and Contemplating the Twentieth Century Roots of a Digital Age Concept of Privacy’ (2017) 6(1) *University of Baltimore Journal of Media Law & Ethics* 4. (‘Practical obscurity — the idea that a privacy interest exists in information that is not secret but is nonetheless difficult to obtain.’)

contexts.<sup>76</sup> Should reputational sanctions prove effective in combating public sexual harassment solely in particular municipalities (Hangzhou, for example), this practice would lack the necessary scalability for incorporation into the national legal framework, given that statutory institutional arrangements must possess nationwide applicability. This article argues that the deterrent effects of reputational sanctions on public sexual harassment are not territorially limited to Hangzhou. This universality stems from the fundamental operational logic underlying reputational sanctions. Generally speaking, reputational sanctions can address a critical information dilemma in the governance of public sexual harassment, a dilemma that has long challenged traditional anti-discrimination legislation. A typical cost-benefit analysis suggests that rational individuals will refrain from violating the law when the marginal illegal gain fails to exceed the marginal illegal cost. If the increase in personal utility from an act of sexual harassment can be estimated, corresponding adverse consequences can be established to create a 'no profit' rule, effectively deterring potential offenders. However, traditional anti-discrimination legislation has struggled to create such an ideal rule due to two significant information barriers. One challenge lies in the high information costs of legislation. Quantifying subjective utility is inherently difficult, even if a range estimation is attempted. As a result, accurately calculating the subjective utility offenders derive from acts of public sexual harassment becomes nearly impossible. Relying on reductions in utility, policymakers are unable to establish reliable thresholds to deter violations during the rule-making process. Another barrier involves the costs of enforcement, which further complicate the execution of such policies. In the absence of precise knowledge about the benefits offenders gain from a single act, authorities often resort to harsher punitive measures to deter violations. This approach not only increases the cost of prevention but is also inefficient, given the low probability of apprehending offenders compared to other less pervasive crimes. Attempts to enhance this probability further escalate enforcement costs, but higher penalties do not necessarily lead to stronger deterrence under such conditions. An ideal solution would lower the enforcement costs of anti-public-sexual harassment efforts while achieving heightened deterrence. This article argues that reputational sanctions present such an ideal characteristic. By promoting self-regulation, reputational sanctions address these challenges in an innovative way.

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<sup>76</sup> Certain governance models like network governance require specific relational frameworks for effective implementation, see Bernstein *Beyond Relational Contracts* (n 15).

Specifically, reputational sanctions provide a mechanism to achieve the goal of lowering enforcement cost as well as increasing the costs of violations without precise calculation, while reducing enforcement costs with the operation of self-regulation. In contexts where information and enforcement costs are high, reputational sanctions may facilitate self-regulation to internalize enforcement costs. This is a kind of human behaviour that depends on individuals' willingness to impose constraints on themselves, often driven by external stimuli (for example the 'nudges' beloved of behavioural economists). A nudge capitalizes on the bounded rationality of humans to maximize individual welfare or minimize losses with minimal legal intervention. It enhances individuals' subjective valuation of lawful behaviour, enabling legal compliance without relying solely on state coercion to increase negative consequences. Nudging strategies include using default options to guide choices or fostering social conformity to encourage compliance.<sup>77</sup>

In addition, reputational sanctions serve as a tool to elevate the costs of unlawful conduct, thereby amplifying the legal deterrent effect against public sexual harassment. Offenders under traditional law enforcement frameworks might perceive that administrative punishments are the only consequence of apprehension, with no further repercussions. Reputational sanctions introduce additional public disclosure consequences, creating a sense of loss for offenders. Their privacy is compromised, and their concealment is removed. For repeat offenders who previously acted with impunity or potential offenders considering occasional violations, this sense of loss can trigger 'loss aversion,' making the act of harassment appear 'not worth' the risk. In summary, reputational sanctions offer a technically innovative enforcement mechanism by nudging rational actors toward self-restraint. It is a strategy that overcomes the informational challenges inherent in anti-discrimination legislation and provides a promising pathway for more effective social governance.

However, the effectiveness of a measure does not necessarily mean that it must be absorbed into the law. The incorporation of innovative practices into the legal system requires pathways of institutionalization. Where such pathways are absent, we witness the existence of myriad forms of 'order without law.'

#### *B. Pathways for Innovation Diffusion*

Although reputational sanctions deserve adoption and standardisation by public policymakers, is China's legal system ready to accommodate

<sup>77</sup> See Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions about Health, Wealth, and Happiness* (Yale University Press 2008).

this innovation? Are there existing pathways to facilitate the diffusion of this innovation from informal practices into the legal system? This article argues that the answer to both questions is in the affirmative. Drawing on DiMaggio and Powell's (1983) framework,<sup>78</sup> this section analyses the pathways for the diffusion of reputational sanctions.

### *1. Normativity*

Sociological research points out that social change has always been driven by the active efforts of professionals, and it is the specialized division of labour that brings about normative pressure.<sup>79</sup> In the face of hard-to-eradicate illegal behaviours, scholars often call for the enhancement of deterrence by lawmakers.<sup>80</sup> In the United States, one of the most paradigmatic examples of deterrence enhancement through social governance is the enactment of Megan's Law, which established sex offender registration requirements amid deepening legal scholarship on sexual offenses.<sup>81</sup> In China, within the framework of CSCS, regulators have similarly attempted to employ information disclosure as a top-down governance instrument for targeted social issues, though public sexual harassment was not originally included among these prioritized concerns. As a primary strategy of operating CSCS, it manifests as the system of disclosing the names of untrustworthy individuals, industry-specific access reviews, and the requirement of presenting a clean criminal record, among other legal provisions to combat illegal behaviours such as deliberate debt evasion, professional misconduct, and recidivism. These measures essentially constitute deterrence escalation mechanisms because, when individuals exist within what Weber called the 'web of significance', the circulation of records of violations through institutional networks compels them to bear consequent social pressures, including depletion of social capital and revocation of professional qualifications. The essence of China's practice lies in transforming phenomena traditionally governed by legal deterrence into a modality of networked governance, thereby intensifying deterrent effects.

Examining the evolution of women's rights protection in China reveals three distinct cohorts of professionals whose collective efforts transformed sexual harassment from a neglected issue into a governance priority addressed through reputational sanctions. The first cohort

<sup>78</sup> Paul J. DiMaggio and Walter W. Powell, 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields' (1983) 48(2) *American Sociological Review* 147.

<sup>79</sup> *ibid.*

<sup>80</sup> Daniel S. Nagin, 'Deterrence: A Review of the Evidence by a Criminologist for Economists' (2013) 5 *Annual Review of Economics* 83.

<sup>81</sup> Rose Corrigan, 'Making Meaning of Megan's Law' (2006) 31(2) *Law and Social Inquiry* 267.

comprises international law experts. Following China's ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1980, these specialists conducted periodic audits of China's efforts on anti-discrimination. As early as 1999, CEDAW review committees recommended establishing legal remedies for sexual harassment victims, with such international expertise becoming a catalytic force in China's progressive refinement of gender equality policies.<sup>82</sup>

The second group consists of comparative law scholars in China. Capitalising on the 1995 UN World Conference on Women in Beijing, these academics systematically analysed foreign legal frameworks addressing sexual harassment throughout the 1990s.<sup>83</sup> Their scholarship transcended traditional characterisations of harassment as mere '*shua liu mang*' ( 耍流氓 ) or '*sheng huo zuo feng*' ( 生活作風 ), reconceptualising it as a legally cognisable claim with theoretical foundations. This conceptual legalisation yielded two significant impacts: first, it informed legislative proposals before the National People's Congress, culminating in the 2005 Women's Rights Protection Law's explicit prohibition of sexual harassment. Second, it resolved early judicial confusion where courts struggled to identify violated rights in harassment cases, often misclassifying them as defamation or labour disputes. These scholarly efforts directly enabled the Supreme People's Court's 2018 *Notice on Adding Causes of Action in Civil Cases* to recognize 'sexual harassment tort liability disputes' formally as a distinct legal category.<sup>84</sup>

The third cohort involves legal scholars engaged in legislative projects. Unlike their academic counterparts, these practitioner-scholars actively shaped lawmaking and judicial reforms. Notable examples include the 2009 *Expert Proposal Draft on Workplace Sexual Harassment Prevention Law*, submitted by researchers from Sun Yat-sen University and Zhejiang Academy of Social Sciences, which prompted the All-China Women's Federation to acknowledge the inadequacy of gender-specific protections.<sup>85</sup> Their work facilitated the development of a comprehensive anti-harassment legal framework, transitioning from constitutional

<sup>82</sup> Ninglan Xue, 'Preventing Sexual Harassment in China: Academic Discussion, Legislation and Adjudication' (2021) 3 *Journal of Chinese Women's Studies* 88 ( 薛寧蘭: 《防治性騷擾的中國之路: 學說、立法與裁判》, 載《婦女研究論叢》2021年第3期, 第88-102頁 ).

<sup>83</sup> *ibid.*

<sup>84</sup> Li-wan Wang, 'Legislation against Sexual Harassment in China: Experience and Prospects' (2022) 5 *Journal of Chinese Women's Studies* 83 ( 王理萬: 《性騷擾立法的中國經驗與前景展望》, 載《婦女研究論叢》2022年第5期, 第83-96頁 ).

<sup>85</sup> *ibid.*

principles to specific provisions across civil, labour, and education laws. These efforts not only secured legislative recognition of specialized knowledge,<sup>86</sup> but also expanded harassment governance from workplaces and educational institutions to public spaces, with reputational sanctions emerging as the next frontier of innovative enforcement. It is within this professionalized context that public sexual harassment gained societal recognition, compelling administrative agencies to incorporate it into novel regulatory approaches and creating the necessary conditions for the diffusion of reputational sanctions.

## 2. *Coercion*

Why did the administrative authorities choose reputation as a tool to combat public sexual harassment? This decision was also influenced by the top-down formulation of public policy objectives. Since the beginning of the 21st century, the primary goal of China's administrative law enforcement reforms has focused on reducing mutual distrust both among strangers and between citizens and law enforcement agencies. This societal psychology of mutual distrust manifests particularly prominently in public discourse surrounding anti-public sexual harassment measures. In recent years, the internet has seen a surge in cases where individuals expose and report sexual harassment by posting online. These cases are often highly controversial and provocative, even though both parties are usually unable to provide concrete evidence, significantly disrupting the order of online expression. As mentioned earlier, in Guangzhou's metro sexual harassment cases, both parties have their supporters. Once the public debate escalates, it divides into two opposing camps, pressuring the authorities to take sides. For law enforcement agencies, to avoid accusations of bias, they must ensure that their actions are transparent and provide clear support for any enforcement decisions so as not to exacerbate social conflicts. In other words, for law enforcement agencies dealing with sexual harassment incidents, timely disclosure may be a powerful measure to prevent the loss of control over public discourse and a crucial way to demonstrate their proactive attitudes toward such cases, thereby maintaining their legitimacy.

To enhance law enforcement transparency and mitigate public opinion risks surrounding sensitive social issues, China's central authorities have consistently promulgated top-down administrative enforcement reform

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<sup>86</sup> *The Implementation Outline for Building a Government Ruled by Law (2015-2020)*, issued by the central government, mandates that 'establishing consultation mechanisms involving state organs, social organizations, and subject matter experts to deliberate on significant interest adjustments in government legislation.'



objectives. An examination of policy directives issued by Beijing to subordinate agencies reveals the central government's increasingly resolute commitment to bolstering enforcement credibility through heightened transparency, with annually escalating performance benchmarks. Long before Hangzhou's initiative, the Central Committee of the Communist Party of China explicitly mandated in the Implementation Outline for Building a Government Ruled by Law (2015–2020) that 'a system for publicising administrative law enforcement actions shall be implemented. Efforts shall be made to promote IT application and information sharing in administrative law enforcement, and local authorities and departments with necessary conditions shall establish uniform administrative law enforcement information platforms by the end of 2016'. By 2018, this policy objective had evolved into 'promoting the transformation of governmental functions, maintaining the credibility and executive force of the government'.<sup>87</sup>

The Three-Year Action Plan for Improving the Quality of Administrative Law Enforcement (2023–2025) introduced more granular and ambitious reform targets, including 'by the end of 2025 ... the quality and efficiency of administrative law enforcement shall be significantly improved, the authority and credibility of administrative law enforcement shall be greatly enhanced'. Beyond establishing these overarching frameworks, Beijing has provided concrete implementation blueprints for local enforcement agencies. The penalty disclosure mechanism has emerged as a prioritized reform measure endorsed at the highest levels. Several Opinions of the General Office of the State Council on Strengthening the Services and Supervision over Market Entities by Means of Big Data Analysis expressly stipulate that 'unless otherwise provided by laws and regulations, administrative licensing and penalty decisions shall be published online within seven working days from the date of issuance'.

These policy directives, disseminated through bureaucratic channels, are ultimately implemented by administrative enforcement agencies to achieve their designated governance objectives. For a bureaucratic system, normative requirements are directly expressed to subordinates who are expected to respond to instructions from superiors within a specified time frame. Especially for Chinese officials, aligning with the position of their superiors is key to the promotion of lower-level

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<sup>87</sup> General Office of the State Council, *Notice of Issuance of the 2018 Legislative Work Plan of the State Council* (Document No 14, 2018) (《國務院辦公廳關於印發國務院 2018 年立法工作計劃的通知》國辦發〔2018〕14 號, 2018 年 3 月 2 日發布).

bureaucrats.<sup>88</sup> For law enforcement agencies responsible for addressing public sexual harassment, this performance pressure from higher authorities compels them to mobilize available resources rapidly and to establish disclosure systems for administrative punishments related to public sexual harassment efficiently. Currently, CSCS and the 'Judicial Transparency' project under construction together lay the foundation for a vast disclosure system. In the private sector, the authority encourages the disclosure of various social credit information under the framework of CSCS, leading to the development of commercial platforms such as *Tianyancha* and *Qichacha*. Users can pay to access information such as the industrial and commercial registration, equity structure, and litigation records of various business entities on these platforms. In the public sector, to promote judicial legitimacy, 'Judicial Transparency' encourages the public broadcast of court trials through the Internet and the lawful disclosure of effective judgments on the China Judgments Online website. Against this backdrop, private credit disclosure platforms and public information disclosure websites can be considered part of the information infrastructure. It is the local government's responsibility to identify the blueprint laid out by the central government and to commit to integrating public infrastructure continuously and utilising information diffusion to deter potential illegal activities. The implementation of the public disclosure system for sexual harassment in Hangzhou Metro is also a demonstration of fully utilising infrastructure and aligning with the current top-level design. In conclusion, at a time when law enforcement agencies are under pressure to fulfil governance targets set by public policymakers, reputational sanctions offer a perfect solution to the external criticisms they face.

### 3. Imitation

What constitutes the normative function of institutional imitation? When discussing how imitation occurs, DiMaggio & Powell (1983) theorized that:

*Organizations tend to model themselves after similar organizations in their field that they perceive to be more legitimate or successful. The ubiquity of certain kinds of structural arrangements can more likely be credited to the universality of mimetic processes than to any concrete evidence that the adopted models enhance efficiency.*<sup>89</sup>

This analytical framework proves equally applicable to legal institutional reforms. In recent years, the Chinese government has consistently emphasized

<sup>88</sup> Hongbin Li and Li-An Zhou, 'Political Turnover and Economic Performance: The Incentive Role of Personnel Control in China' (2005) 89 *Journal of Public Economics* 1743.

<sup>89</sup> DiMaggio and Powell (n 78).

the need to strengthen the fairness and transparency of law enforcement.<sup>90</sup> Faced with this macro-level goal, the public security departments do not have a predetermined execution path. A feasible approach is to imitate the judicial system, another legal application department, and learn from how the judiciary enhances judicial transparency.

In the year 2000, the Supreme People's Court introduced the 'Management Measures for the Disclosure of Judicial Documents', stating that 'to promote the further development of the reform of the trial methods and safeguard judicial justice, the Supreme People's Court has decided to selectively disclose judicial documents to the public from this year onwards.' This reform remains a work in progress. All levels of courts are required to disclose effective judicial documents publicly. Exceptions for non-disclosure were strictly stipulated by law, and the public can conveniently access the text of judicial documents online without restrictions. After July 1, 2013, when China's Judicial Documents Website was launched, the total number of documents surpassed 100 million judgments within an 86-month period. This initiative received an overwhelmingly positive response. As the world's largest judicial document website with over 1.5 billion overseas visits, it reflects the continuous improvement of judicial efficiency and fairness in this developing country, and the fact that China's judicial transparency has drawn attention and recognition from countries around the world. In the World Bank's Doing Business Report, this country's judicial system received high scores across all evaluation dimensions.<sup>91</sup>

However, as the construction of CSCS progresses, administrative agencies cannot simply replicate the judicial document disclosure system when pursuing the overarching policy objective of 'enhancing administrative transparency and governmental credibility'.<sup>92</sup> The most critical issue pertains to the substantive content of disclosed information.

<sup>90</sup> General Office of the State Council, Guiding Opinions of the General Office of the State Council on Comprehensively Implementing the Administrative Law Enforcement Publication System, the Recording System of Law Enforcement in the Whole Process and the Legal Review System of Major Law Enforcement Decisions (Document No 118, 2018) (《國務院辦公廳關於全面推行行政執法公示製度執法全過程記錄製度重大執法決定法製審核製度的指導意見》國辦發〔2018〕118號, 2019年1月3日發布).

<sup>91</sup> Pan Luo, 'Global Largest Judgment Database Exceeds 100 Million Documents' (*China News Service*, 1 September 2020) <<https://www.chinanews.com.cn/gn/2020/09-01/9279998.shtml>> <<https://perma.cc/7784-76U4>> accessed 2 July 2025 (羅攀:《全球最大裁判文書資源庫文書總量突破1億篇》, 載中國新聞網2020年9月1日).

<sup>92</sup> General Office of the State Council, Several Opinions of the General Office of the State Council on Strengthening the Services and Supervision over Market Entities by Means of Big Data Analysis (Document No 51, 2015) art 18 (《國務院辦公廳關於運用大數據加強對市場主體服務和監管的若干意見》國辦發〔2015〕51號第18條, 2015年7月1日發布).

Given that administrative enforcement is far more pervasive than judicial litigation, enforcement agencies lack the capacity to produce meticulously reasoned legal documents akin to judicial opinions. Indeed, most street-level bureaucrats are not trained to formulate such sophisticated legal reasoning. Consequently, administrative organs must develop a disclosure paradigm tailored to enforcement operations.

For agencies handling sexual harassment cases, an optimal model for emulation already exists. Building upon pre-existing resistance strategies employed by Chinese women, street-level bureaucrats need only document the verified perpetrator's personal information, evidence and other incident details, then correlate these findings with applicable legal provisions and penalty outcomes to effectuate reputational sanctions. The enforcement agencies' emulation of this model derives not from any preconceived notion of its capacity to achieve optimal governance outcomes, but rather from an institutional confidence in its empirically verifiable social utility — its dual capacity to provide redress for aggrieved victims while systemically deterring sexual misconduct. While administratively disclosed information undergoes legal vetting and evidentiary review — thus commanding greater authority than online self-help remedies — the structural parallels between informal and formal reputational sanction frameworks remain evident. Retrospectively, the informal reputational sanction mechanism, through bureaucratic emulation, has successfully institutionalized itself within formal legal operational processes.

This emulation exemplifies regulators' capacity for timely and effective responsiveness to societal demands, therefore the image of administrative law enforcement agencies may also be strengthened. For a long time, this country's law enforcement agencies have faced accusations of inadequately handling sexual harassment cases, even leading to doubts from victims regarding how their cases were processed. Due to the gap in legislation, the penalties for sexual harassers often fail to meet the victims' expectations, in that these cases are considered minor violations and lack strict enforcement procedures, which prevents harassers from receiving a heavy penalty.<sup>93</sup> Consequently, public security agencies, as the main administrative body for combating public sexual harassment, inevitably face accusations from victims who find the sanctions imposed on public sexual harassers unacceptable. Chinese law enforcement agencies,

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<sup>93</sup> *Public Security Administration Punishments Law*, art 44 (n 73). (This institutional reality means that even when public sexual harassment is substantiated by evidence, it may not necessarily result in detention; even in egregious cases, offenders face a maximum administrative detention period of fifteen days.)

particularly the public security agencies, have long confronted a credibility deficit among female demographics, resulting in a persistent legitimacy crisis.<sup>94</sup> Should authorities continue to fall short of societal expectations in public sexual harassment enforcement, such institutional distrust would inevitably intensify. After the adoption of reputational sanctions for combating public sexual harassment, the social control efficacy of this approach has garnered cross-institutional validation within governmental enforcement bodies, leading to its diffusion beyond public security departments' initial application in combating public sexual harassment. Since as early as 2018, according to the official website of information disclosure of Zhejiang Province, multiple Chinese administrative agencies have implemented public disclosure regimes spanning diverse regulatory domains, including but not limited to transportation infrastructure, food safety protocols, and environmental protection standards.<sup>95</sup>

#### IV. Some Normative Concerns

Reputation as an innovative tool for social governance has been recognized by China's authorities and designed into an administrative penalty decisions disclosure system to address public sexual harassment. Yet does this policymaking innovation yield unequivocal benefits? Substantive objections to this innovation have emerged in the public discourse, which this section crystallizes into three core arguments. These objections are all grounded in considerations related to the rule of law, and they have gained considerable traction within legal academia. However, this section will demonstrate that when properly implemented, reputational sanctions not only pose no threat to the rule of law but can actively enhance the legal system's positive social impacts.

##### *A. Improper Connection*

##### *1. The Principle of Prohibition against Improper Connection*

Public law scholarship advocates for the principle of prohibiting improper connection, which is a fundamental principle that 'prevents administrative agencies from forming illegal associations between an administrative decision or event and other unrelated events.'<sup>96</sup> This legal doctrine requires

<sup>94</sup> See Yuning Wu and Ivan Y. Sun, 'Citizen Trust in Police: The Case of China' (2009) 12(2) *Police Quarterly* 170.

<sup>95</sup> Chen (n 30).

<sup>96</sup> For a discussion of the implications and risks of improper connection (e.g. building a surveillance state), see Xiaodong Ding and Dale Yuhao Zhong, 'Rethinking China's Social Credit System: A Long Road to Establishing Trust in Chinese Society' (2020) 30(130) *Journal of Contemporary China* 630.

that any administrative action must exclude consideration of extraneous factors beyond the case's merits, as such inclusion would constitute an abuse of administrative power. For instance, law enforcement agencies must base penalties solely on the offender's misconduct, rather than irrelevant considerations such as physical appearance, ethnicity, or the enforcing officer's subjective disposition — factors wholly unrelated to the case's substantive elements. This principle effectively constrains the expansion of administrative authority while ensuring consistent treatment of comparable violations. The complexity arises from the operational reality that not all case-specific factors can be readily categorized as legitimate enforcement considerations. Regarding Hangzhou's practice, critics contend that imposing reputational damage and privacy infringements through state-mandated disclosure constitutes an improper connection, as these consequences bear no inherent connection to the act of sexual harassment itself. They argue that public sexual harassment cannot trigger the penalty disclosure mechanism without violating the principle of prohibition against improper connections.<sup>97</sup>

## *2. Legal Boundaries of Proper Connection*

The sustained advocacy among Chinese public law scholars for transplanting the principle of prohibition against improper connection from civil law systems, coupled with their ongoing doctrinal studies, stems primarily from domestic administrative agencies' recurrent difficulties in determining what constitutes 'improper connection'. This challenge, as a result, exposes law enforcement agencies to accusations of abusing state power. Take for instance the reputational sanctions commonly employed within CSCS: when a judgment debtor fails to satisfy an effective judgment or ruling of a court, that party will be prohibited by the court from having high or non-necessary consumptions and/or blacklisted as a 'discredited judgment defaulter' in the nationwide disclosure system. Administrative measures such as disclosing defaulters' information, imposing luxury consumption restrictions, and enforcing exit bans directly serve the legitimate purposes of compelling debt repayment, alerting the public to credit risks, and safeguarding recoverable assets — maintaining alignment between enforcement rationale, objectives, and means. However, existing Chinese legal provisions that elevate securities issuance standards for companies managed by discredited persons bear no rational connection to these enforcement purposes, as they prove ineffective in inducing debt repayment, consequently drawing scholarly

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<sup>97</sup> Xiang (n 10).

criticism.<sup>98</sup>

The fluidity and heterogeneity of popular notions preclude reliance on societal consensus for determining whether administrative means are ‘proper’. Instead, such assessments must derive from statutory interpretation. The public disclosure system for administrative punishments concerning public sexual harassment as an innovative governance mechanism, remains substantively grounded in national law, given its operational compliance with APL’s authorisation for publishing penalty information. Article 48.1 of APL (2021 Revision) stipulates that, ‘administrative sanctioning decisions that have certain impacts on society shall be disclosed to the public in accordance with the law’. Thus, the legitimacy of reputational sanctions hinges on whether they are applied to enforcement scenarios genuinely exhibiting ‘certain impacts on society’.

Elucidating the ‘certain impacts on society’ standard requires examining the legislative origins of China’s punishment decision disclosure regime. Scholarly consensus holds that the 2021 statutory incorporation of this mechanism aimed to adapt normative frameworks to the risk conditions in society.<sup>99</sup> Specifically, punishment disclosure enhances administrative transparency while enabling stakeholders to mitigate potential social risks through advance notice. This teleological interpretation suggests that not all administrative punishment decisions warrant lawful disclosure — the ‘certain impacts on society’ threshold minimally requires satisfying either of two criteria: (a) the penalty imposed necessitates public awareness to prevent irreparable harm to affected parties; (b) disclosing case details and offender information effectively enables risk prevention among the general public, thereby augmenting aggregate social welfare.

### 3. Case Analysis: Hangzhou’s Enforcement Innovation

The disclosure system for administrative punishments concerning public sexual harassment, as a form of reputational sanction, imposes long-term and potentially irreversible detrimental effects on offenders’ social creditworthiness. Such severe consequences necessitate strict compliance with the statutory threshold of ‘certain impacts on society’ when administrative agencies impose these penalties. This article maintains that Hangzhou’s practice satisfies the requirements under Article 48.1 of APL, because it establishes a proper connection between punitive means and enforcement purpose. Given that public sexual harassment predominantly occurs in high-density public spaces, disclosing offenders’

<sup>98</sup> Chunyan Ding, “‘Moral Conviction’ plus ‘Joint Sanctions’: The Judgment-Defaulter Blacklist System in China” (2023) 48(2) *Brooklyn Journal of International Law* 389, 436-439.

<sup>99</sup> Kong (n 29).

information serves dual purposes — enhancing deterrence through social condemnation while effectively mobilising both the public and venue administrators collectively to safeguard communal order. Maintaining public order constitutes this mechanism's primary legitimacy foundation, notwithstanding its ancillary reputational consequences beyond conventional administrative penalties. Liability is not immutable, after all, and offenders should bear the appropriate costs of their illegal actions in different aspects, otherwise the chaos of public harassment will remain hard to govern. In conclusion, the public disclosure regime for public sexual harassment punishments fully complies with the reputational sanction criteria established by APL, maintaining proper connections between enforcement purposes and methods.

Another similar criticism related to reputational sanctions concerns privacy. Critics contend that no proper connection exists between the deprivation of sexual offenders' privacy rights and their prior misconduct.<sup>100</sup> This position, however, conflicts with sociological and legal understandings of privacy. The concept of privacy, which emerged historically as a juridical response to media-inflicted social harms within private spheres, has demonstrated inherent dynamism in its legal implications and doctrinal development.<sup>101</sup> Judicial practices in the United States continually adjust the boundaries of privacy protection. The 'reasonable expectation' principle established in *Katz v. United States*<sup>102</sup> considers whether society would recognize such an expectation of privacy as one criterion for assessing the reasonableness of disclosures. Additionally, *United States v. Knotts*<sup>103</sup> introduced the public exposure theory, which posits that when individuals voluntarily place their privacy in the public domain, they may be deemed to have lost their reasonable expectation of privacy. Given the divergent social meanings attributed to privacy across cultural contexts, a rigorous examination becomes imperative to ascertain why privacy has assumed such paramount significance in contemporary China, and whether this heightened valuation warrants sustained attention.

Scholars questioning the practices in Hangzhou for reasons based on the notion of human dignity often exhibit a reverence for the myth of

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<sup>100</sup> Xiang (n 10).

<sup>101</sup> See Samuel D. Warren and Louis D. Brandeis, 'The Right to Privacy' (1890) 4(5) *Harvard Law Review* 193.

<sup>102</sup> *Katz v United States* (1967) 389 US 347.

<sup>103</sup> *United States v Knotts* (1983) 460 US 276.



privacy, which is indicated as a culturally embodied perspective.<sup>104</sup> The legal cultures of the common law system and the civil law system differ significantly. A pragmatic view from the common law system holds that wrongdoers are morally deficient or pose a danger to society and necessitate social control. In contrast, advocates of the civil law system metaphysically assert that the human dignity associated with the right of privacy, as a secular manifestation of humanity created in the image of God, provides the premise for all other fundamental rights claims. This is to say that it represents the ultimate moral aspiration, and that, in consequence, undermining a wrongdoer's dignity can set us on the path to nihilism. In light of China's extensive history of legal transplantation, this civil law-derived moral intuition has garnered substantial scholarly endorsement and institutional promotion among Chinese legal theorists. While this wariness of instrumentalism is commendable, it should not lead to rigidity. The initiation of state violence inevitably harms certain rights of wrongdoers. However, such harm is predicated on the realisation of corrective justice, aligning with the reasonable expectations of the general public and thus possessing inherent legitimacy. Therefore, even in a context where privacy protection remains as significant as in the past, disclosing the personal information of sexual harassers does not violate common sense.

### *B. Proportionality*

#### *1. The Principle of Proportionality*

The principle of proportionality was first developed by German administrative courts and it served as an additional constraint on police action. This doctrinal framework has subsequently been adopted and applied to administrative agencies across various jurisdictions. A failure to comply with the following requirements rendered administrative actions unlawful. As a universally applicable constraint on the exercise of public authority, the principle of proportionality generally entails three fundamental requirements: (a) the action had to pursue a lawful purpose; (b) the means adopted by the police vis-à-vis the citizen had to be suitable to achieve the purpose of the law; (c) if a less intrusive means to achieve the end of a law was available, this means had to be applied.<sup>105</sup> This

<sup>104</sup> Joshua Kleinfeld, 'Two Cultures of Punishment' (2016) 68(5) *Stanford Law Review* 933.

<sup>105</sup> Dieter Grimm, 'Proportionality in Canadian and German Constitutional Jurisprudence' (2007) 57(2) *The University of Toronto Law Journal* 383. See also Grégoire C.N. Webber, 'Proportionality, Balancing, and the Cult of Constitutional Rights Scholarship' (2010) 23(1) *Canadian Journal of Law and Jurisprudence* 179, 182. (This article examines the theoretical foundations and operational effects of the principle of proportionality, noting that 'the principle of proportionality, according to Alexy, consists of three sub-principles: suitability, necessity, and proportionality in the strict sense'.)

principle is often metaphorically illustrated in public law lectures through the maxim that law enforcement authorities must not ‘employ cannons to shoot sparrows’, but rather select enforcement measures proportionate to the specific administrative action in question.

This conceptual framework elucidates the distinction between the principle of proportionality and the principle of prohibition against improper connection. While the proportionality principle primarily concerns whether administrative agencies have adopted appropriately calibrated measures to achieve legitimate administrative ends, the principle of prohibiting improper connection prevents agencies from employing means that bear no rational relationship to their stated objectives. Only through the concurrent application of both principles can the legality of administrative enforcement measures be fully guaranteed.

## 2. Critical Perspectives and Counterarguments

When it comes to Hangzhou’s practice, some argue that reputational sanctions remain too severe, thus violating the principle of proportionality, in that disclosing the personal information of an offender who has already received an administrative penalty amounts to an additional punishment and may even violate the personal dignity to which the offender is entitled.<sup>106</sup> In actual fact, there have indeed been instances in China’s modern society where excessive punishment severely infringed upon the legitimate rights and interests of the public. Given this collective memory, public law scholars’ concerns are understandable, yet they fail fully to apprehend the legal implications embedded in Hangzhou’s innovative approach and to recognize that the current legal arrangements are disproportionately lenient and thus fail to prevent public harassment.<sup>107</sup> The proportion of cases involving ‘sexual harassment damage liability disputes’ as an independent civil cause of action, which was permitted by the Supreme People’s Court in 2018, accounted for only 21.82% of the total number of sexual harassment cases (2019–2021), and has been decreasing annually.<sup>108</sup> This empirical evidence, demonstrating the considerable procedural hurdles sexual harassment victims encounter

<sup>106</sup> Yang (n 12).

<sup>107</sup> Ting Xiao, ‘A City in Jiangsu Divides Citizens into Four Classes: “Good Citizens” Will Receive Preferential Treatment’ (*China Daily*, 26 March 2010) <[https://www.chinadaily.com.cn/dfpd/jjs/2010-03/26/content\\_9646161.htm](https://www.chinadaily.com.cn/dfpd/jjs/2010-03/26/content_9646161.htm)> <<https://perma.cc/9HR9-ZCEY>> accessed 2 July 2025 (肖亭：《江蘇睢寧將民眾分為4個等級“良民”將獲優待》，載中國日報網（來源：南方網）2010年3月26日）。

<sup>108</sup> Beijing Dongcheng District Yuanzhong Family and Community Development Service Centre, *Case Study Report on Legislation and Judicial Trials to Combat Sexual Harassment 2019-2021* (2021) (北京市東城區源眾家庭與社區發展服務中心：《防治性騷擾法律與司法審判案例研究報告（2019-2021）》）。

in pursuing civil remedies through judicial channels, substantiates the prevailing imbalance wherein perpetrators bear disproportionately low costs for their misconduct while victims incur relatively high burdens in seeking justice. Even if successful, the amount of civil compensation for victims is, as mentioned above, often low, leading to a general reluctance on the part of sexual harassment victims to seek judicial remedies. The difficulty of obtaining evidence and the relatively higher cost of seeking justice contribute to the low probability of offenders being held accountable.<sup>109</sup> Moreover, institutional support for harassment victims often comes primarily from their workplaces in the context of China's anti-sexual harassment law. Once they enter public spaces, the reality that victims have to bear the prohibitive cost of seeking justice themselves drives them to abandon their rights rather than pursue the legal responsibility of offenders. According to analysis in terms of law and economics, a low probability of sanction will lead to more frequent violations. Therefore, incorporating reputation governance into the package of consequences for violations is a reasonable governance measure that serves dual regulatory purposes — it directly elevates the costs of unlawful conduct while indirectly empowering victims to pursue legitimate redress through formal legal mechanisms.

In fact, other law enforcement practices in China have long demonstrated that it is wise for public policymakers to utilize external pressures to increase the cost of violations when a social disorder cannot be fully governed by traditional administrative enforcement alone. This approach can make a more positive impact at relatively lower enforcement costs. Take China's regulatory practices regarding related-party transactions as an example. Due to limited administrative capacity and the prevalence of business groups with pyramid structures in China, the China Securities Regulatory Commission (CSRC) and stock exchanges cannot effectively scrutinize all non-compliant related-party transactions among listed companies.<sup>110</sup> Therefore, the feasible strategy has been to punish exemplary violators to send regulatory signals to the market, thereby creating deterrent effects. Article 197 of China's Securities Law and Article 55 of the Administrative Measures on Information Disclosure by Listed Companies issued by CSRC stipulate that listed companies

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<sup>109</sup> *ibid.*

<sup>110</sup> Min Gong, Yanan Wang and Xiandong Yang, 'Do Independent Directors Restrain Controlling Shareholders' Tunneling? Evidence from a Natural Experiment in China' (2021) 94 *Economic Modelling* 548; Huan Dou *et al.*, 'Are Related-Party Transactions Beneficial or Detrimental in Emerging Markets? New Evidence of Financial Services Agreements from China' (2022) 81 *International Review of Financial Analysis* 102144.

involving related-party transactions shall face reputational sanctions including warnings and mandatory public explanations. Empirical analysis of two decades of public disclosure data from both private and state-owned enterprises in China shows that such reputational sanctions lead to lost business opportunities for listed companies, thereby effectively deterring the proliferation of non-compliant transactions.<sup>111</sup> When public policymakers apply this strategy to everyday life, we have reason to believe that reputational sanctions may similarly constrain public sexual harassment.

The failure to recognize reputational sanctions as a proportionate escalation of violation costs has led some commentators to misconstrue such measures as constituting punishing twice for a single offence. Proponents of this view maintain that offenders who have already received administrative punishments face additional reputational consequences, thereby violating the primary principle of law-based administration. This critique fundamentally misunderstands the jurisprudential reality that ‘the same act can violate legal norms in multiple fields, meaning that punishment measures are applied in each field.’<sup>112</sup> Just as environmental and food safety regulations impose reputational sanctions on non-compliant enterprises, these measures simply reflect evaluative judgments along a distinct regulatory dimension, a necessity arising from the multifaceted policy objectives inherent in governance systems where regulators must concurrently assess both the legality of specific conduct and its negative externalities. Therefore, reputational sanctions should not be regarded as ‘re-punishment’, but as instances of ‘multiple punishments’ that do not violate the rule of law.

In conclusion, as an integral component of punitive measures, reputational sanctions possess an inherent punitive character and constitute an escalation of legal responsibility. While requiring cautious implementation by administrative agencies, this innovative strategy can withstand proportionality scrutiny.

### *C. Irreparability of Reputation*

With the advancement of digital technologies, personal credit information now circulates through networks at unprecedented velocity, rendering it virtually impossible fully to neutralize pre-existing negative records through subsequent deletions or additions of new data. In

<sup>111</sup> Jian Zhou and others, ‘Do Sanctions Imposed on Peers Have a Deterrence Effect on Related-Party Transactions of Observing Firms? Evidence from Chinese Listed Firms’ (2024) 141 *Economic Modelling* 106898.

<sup>112</sup> Marianne von Blomberg and Björn Ahl, ‘Debating the Legality of Social Credit Measures in China: A Review of Chinese Legal Scholarship’ (2024) 24(3) *China Review* 17.

this information society, reputation functions as an intangible asset of exceptional fragility — one that requires meticulous maintenance by individuals to prevent the depreciation, impairment, or even bankruptcy of this invaluable immaterial property. Based on this contextual reality, those who argue against reputational sanctions believe that innocent individuals with similar names or other personal information may be implicated by the results of reputational sanctions. Furthermore, offenders may be burdened with a negative record for a lifetime due to a single mistake, which is evidently unfair. These twin concerns constitute the third objection underlying widespread scepticism toward the reliability of reputational sanction mechanisms.

### *1. Minimising Misidentification in Reputational Sanctions*

The first concern involving reputational sanctions is related to the modalities of personal information disclosure. Existing examples showed that as long as the information disclosure method can be gradually improved, the misfortune of reputation damage can be avoided. Specifically, during the development of the public disclosure system for judicial documents, disputes arose due to the disclosure of AIDS patient information leading to employment discrimination, claims of the right to be forgotten by parties, and data security issues caused by public information disclosure. These problems are not insurmountable. One important measure is that the Supreme People's Court has introduced an application system for involving parties in the three revisions of the 'Provisions of the Supreme People's Court on the Internet Publicity of Judicial Documents'. Upon judicial review and approval, parties can achieve an exemption from the disclosure of judicial documents. Currently, controversies over the public disclosure of judicial documents are rare. Similarly, innocent parties affected by public sexual harassment issues may demand corrections from the authority to prevent wrongful harm from the disclosure.

This article simultaneously acknowledges that contemporary reputational sanctions require enhanced institutional constraints to ensure that this innovative strategy does not risk violating the principle of proportionality. After all, compared to traditional industrial society, digital society not only strengthens the deterrent effect of reputational sanctions, but also leads to more serious uncontrollable consequences. Effective approaches must ensure procedural justice in the practice of reputation punishment. Any information disclosure must meet two conditions: (a) the subject's informed consent; (b) conclusive evidence of administrative punishments.

Properly to implement reputational sanctions, legislators must first develop nuanced interpretive guidelines for Article 48 of APL, that clearly delineate appropriate application scenarios. The framework should first establish categorical limitations, restricting reputational sanctions to specifically defined offence types given their position on the enforcement pyramid — such elevated status necessitates statutory safeguards against potential abuse of this powerful governance instrument. Second, the authority needs to devote more resources to achieving procedural justice in this practice. For instance, equally critical are robust evidentiary requirements that account for the permanent and life-altering consequences of reputational damage. Sanctions should only apply when administrative agencies can produce direct, incontrovertible evidence meeting stringent proof standards, with the full burden of proof resting on authorities who inherently possess superior evidence-collection capabilities in public spaces. The system must incorporate mandatory appeal periods during which no information disclosure may occur, allowing subjects to challenge penalties before suffering irreparable harm. Furthermore, all disclosure practices must strictly comply with the Personal Information Protection Law's principle of data minimisation, permitting only the revelation of information demonstrably essential for protecting public safety and ensuring enforcement transparency. While disclosing identifying physical characteristics of offenders may serve legitimate public interest, absolutely no irrelevant personal data, including residential addresses or employment details, may be revealed under any circumstances. Regulatory bodies violating these disclosure parameters must face significant legal consequences, as the overarching principle demands that only the minimum necessary information for effective social warning be disclosed.

Ensuring the proper application of reputational sanctions can effectively mitigate external criticisms. Some criticisms questioned China's motivation to perfect CSCS. Some scholars have characterized these regulatory efforts as 'state capitalism',<sup>113</sup> arguing that Beijing is constructing a system of social control that is 'both all-encompassing and highly individualized, using a mix of mechanisms to impose varying levels of supervision and constraint on people depending on their perceived threat to the state'. The most effective countermeasure to such criticisms lies in establishing rigorous legal parameters that precisely delineate the conditions for implementing reputational sanctions.

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<sup>113</sup> Lin and Milhaupt (n 62); see also Yu-Jie Chen, Ching-Fu Lin and Han-Wei Liu, "'Rule of Trust': The Power and Perils of China's Social Credit Megaproject" (2018) 32(1) *Columbia Journal of Asian Law* 1.

## 2. *Perpetual Consequences of Reputational Sanctions*

Critics contend that once initiated, reputational sanctions create indelible records in the digital society that may adversely affect offenders throughout their lifetime. This critique originates in Confucian social norms that prioritize containing shame within kinship boundaries (家醜不可外揚), positing that sexual harassment disputes ought to be resolved through closed-door mediation to prevent collateral reputational harm to all stakeholders. While such traditional conceptions may properly inform workplace and campus sexual harassment governance under China's legal framework, they prove inapplicable to public space harassment due to fundamental differences in statutory governance strategies. The legislative logic distinguishes three governance paradigms. Thus educational institutions assume primary responsibility for campus harassment and employers oversee workplace incidents — both entities may indirectly regulate members' conduct through organisational rule-making without resorting to reputational sanctions. A third paradigm is necessary however, for administrative agencies which lack authority to dictate public behaviour, and must therefore employ reputational sanctions, relying on decentralized social monitoring by the general public.

Moreover, the presumption of irreparable reputational harm is being progressively challenged in contemporary China. The legal system has developed multifaceted reputation restoration mechanisms across three dimensions. First, at top-level policy design, the State Council's 2020 guidelines mandated all governmental departments to implement credit rehabilitation programmes within legal parameters.<sup>114</sup> Second, substantive legal protections exist under Article 995 of the Civil Code (civil liability for reputational harm),<sup>115</sup> and the Anti-Unfair Competition Law (penalties for commercial defamation).<sup>116</sup> Third, institutional circulars (單位通報) have emerged as an effective extrajudicial remedy, exemplified during the COVID-19 pandemic when a community hospital's official

<sup>114</sup> Article 16 of Guiding Opinions of the General Office of the State Council on Further Improving the System for Deterring Bad-faith Acts and Building a Long-term Mechanism for Promoting Good Faith mandates that '[t]he determination of the list of seriously dishonest individuals and entities, as well as punishment for dishonesty and credit repair, shall be properly supervised'.

<sup>115</sup> Article 995 of *Civil Code of the PRC* mandates that '[w]here the personality rights are infringed upon, a victim has the right to request the actor to assume civil liability in accordance with this Code and other laws. The provisions on the statutes of limitation shall not apply to any request of a victim for cessation of infringement, removal of obstacles, elimination of danger, elimination of adverse effects, rehabilitation of reputation, or extending a formal apology'.

<sup>116</sup> Article 11 of *Anti-Unfair Competition Law of the PRC (2019 Amendment)* mandates that '[a] business shall not fabricate or disseminate false or misleading information to damage the goodwill or product reputation of a competitor'. Subsequent Articles 17(1) and 23 establish civil and administrative liabilities for violations of Article 11 respectively.

statement rehabilitated a controversial nurse's reputation by confirming her voluntary service while addressing qualification issues, thereby mitigating public speculation.<sup>117</sup> The fact is that in China, official circulars have served as a form of authoritative information dissemination, and have become a popular means of reputation repair for organisations and individuals.

Ultimately, sustained reputational sanctions may paradoxically benefit offenders by creating incentives for rehabilitation and demonstrating accountability to society. The evolving Chinese model demonstrates that when properly calibrated with restoration mechanisms, reputational sanctions need not constitute permanent stigma but can function as dynamic regulatory tools. Reputational sanctions not only avoid unnecessary damage to innocent parties but also serve the function of reputation restoration. One major way of restoring reputation is to prove yourself over time. In other words, only a long period without recidivism can prove the determination of a former offender's remorse. A public disclosure system as harassment punishment could potentially provide a verifiable record of an offender's reformation, which would be an informal certificate in the job market or in social interactions more generally. From this perspective, the public disclosure system of administrative penalty decisions for sexual harassment can serve as an avenue for the public demonstration of self-improvement.

## V. Conclusion

Using an example from China, this article examines how an informal self-help strategy has diffused into the legal system and gained legitimacy, making the authorities' adoption of a Public Disclosure System to regulate public sexual harassment part of China's evolving legal framework. This innovative model of social governance has been closely related to resistance on the part of China's women, through the combined forces of normativity, coercion, and imitation, and has effectively deterred potential offenders and mitigated social conflicts exacerbated by online resistance. Traditional views posit that the diffusion of innovation is a crucial driving force for the progress of an organisation or social system. This case

<sup>117</sup> Xin Dai, 'How to repair reputation' (2021) 1 *China Law Review* 125 (戴昕:《聲譽如何修復》,載《中國法律評論》2021年第1期,第125-140頁). (This hospital's official circular acknowledged her lack of professional qualifications while simultaneously verifying her voluntary service in the epidemic zone, urging the public to recognize her professional dedication rather than speculate about her private life. This institutional intervention successfully rehabilitated the nurse's public reputation while safeguarding the hospital's own institutional credibility.)



expands the traditional understanding by demonstrating that innovation can diffuse from informal practices to formal ones, without necessarily requiring organisations or individuals as carriers of diffusion.<sup>118</sup>

China's disclosure of sexual harassment offenders by public security departments is based on the most recent social consensus and aims to achieve the augmentation of deterrence, a result driven by the combined pressures of online resistance and higher-level public policy objectives.

Hangzhou's practice epitomizes a legal innovation propelled by contemporary social consciousness, yet remains inherently transitional. This is why the city's reform momentum has stalled: its Public Sexual Harassment Penalty Disclosure System operated only until June 2023, before reverting to anonymized notifications following intense academic critique. This trajectory demonstrates that innovative governance solutions diffusing into formal legal systems do not guarantee stable institutionalisation. Successful legal internalisation requires satisfying two evaluative criteria. The first criterion is the scrutiny of public opinion. Legal innovations must withstand public interrogation, as societal discourse reflects contemporaneous social consensus — innovations lacking this consensual foundation will face legitimacy crises. The second criterion derives from professional epistemic communities. Shared expert knowledge functions as an accountability mechanism to pressure authorities implementing enforcement innovations. China's legislature expressly recognizes the constitutional significance of these criteria, as codified in the 2023 Legislative Law Revision: 'the relevant specialized committees and the working bodies of the Standing Committee of the National People's Congress may organize legislative post-assessment of the relevant laws or the relevant provisions of laws'.<sup>119</sup>

Prospectively, it bears noting that innovative legal enforcement responds not only to social consciousness but also to technological evolution. As evidentiary technologies for documenting public sexual harassment advance, administrative agencies will likely issue substantially more sanctions — a trajectory already foreshadowed by emerging digital

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<sup>118</sup> James Coleman and others, 'The Diffusion of an Innovation Among Physicians' (1957) 20(4) *Sociometry* 253; James D. Westphal, Ranjay Gulati and Stephen M. Shortell, 'Customization or Conformity? An Institutional and Network Perspective on the Content and Consequences of TQM Adoption' (1997) 42(2) *Administrative Science Quarterly* 366; Mauro F. Guillén and Laurence Capron, 'State Capacity, Minority Shareholder Protections, and Stock Market Development' (2015) 61(1) *Administrative Science Quarterly* 125; Bernhard Reinsberg et al., 'The World System and the Hollowing Out of State Capacity: How Structural Adjustment Programs Affect Bureaucratic Quality in Developing Countries' (2019) 124 *American Journal of Sociology* 1222.

<sup>119</sup> Legislation Law of the People's Republic of China (2023 Amendment), art 67.

forensics capabilities.<sup>120</sup> To reduce administrative burdens, enforcement agencies will inevitably gravitate toward more cost-effective governance tools for addressing public sexual harassment, with Hangzhou's experiment serving as a pivotal reference. Yet even if this innovation progresses, it will confront enduring challenges, in particular rigorous social impact assessments that promise heightened scrutiny. The system faces inherent tensions with China's Personal Information Protection Law, and will likely precipitate reputation-sanction litigation. This necessitates legislative recalibration of competing policy priorities: either enduring the judicial backlash from reputational sanctions or implementing structural reforms to reconcile the regime with fundamental rights protections.

While there are controversies surrounding the improper connection principle, the violation of the principle of proportionality, and the potential risks associated with the irreparability of reputational sanctions, they do not undermine the legitimacy of this legal reform. Looking forward, reputational sanctions, as an instrument of China's social credit construction, possess features that are potentially applicable in spheres well beyond sexual harassment governance. Furthermore, the diffusion of innovation to update the law should not be seen as unique to China. In the long run, the law should confirm in a timely manner the legitimacy of norms that emerge spontaneously from a pragmatic perspective. Without violating higher-order laws, this confirmation would consolidate social consensus.

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<sup>120</sup> Zheng Su and others, 'What Explains Popular Support for Government Monitoring in China?' (2021) 19(4) *Journal of Information Technology & Politics* 377. (This study documents the pervasive adoption and progressive sophistication of innovative technologies in China's social governance framework.); Zhizhao Li et al., 'Policy Designs for Adaptive Governance of Disruptive Technologies: The Case of Facial Recognition Technology (FRT) in China' (2023) 6(1) *Policy Design and Practice* 27. (This research demonstrates how facial recognition technology has become thoroughly embedded in Chinese society. 'China's "Skynet" project — part of its social credit system — was completed in 2018 with more than 20 million security cameras installed nationwide'.)