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The development and institutional characteristics of China's built heritage conservation legislation

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Abstract

The article reviews comprehensively the emergence and development of China's national legislative system for cultural heritage, with a particular focus on built heritage. It covers the period from the late Qing Dynasty to the present. The antiquity preservation legislation and policies from the late Qing Dynasty to the early Republic of China (ROC) era signify the initial emergence of the state-led legislative system for cultural heritage protection and management. The Interim Regulations on the Conservation and Management of Cultural Heritage, passed in 1960, represent the state's first targeted effort to protect significant historic monuments and sites. The 1982 Cultural Heritage Protection Law (CHPL) established the mechanism for the conservation of Protected Cultural Heritage Sites (PCHS), while the 2008 Regulation on the Conservation of Famous Historic and Cultural Cities, Towns and Villages (RCFHCCTV) defined the principles for the conservation and management of historic cities. China's current jurisdiction for the conservation of cultural heritage is underpinned by legislation such as the CHPL, the Intangible Cultural Heritage Law (ICHL), and the RCFHCCTV. This article analyses the characteristics of the current state legislative system for built heritage conservation and the challenges and constraints regarding urban conservation. It concludes with strategic guidance for improving the legislation for China's built heritage conservation in the present era of rapid economic development and urban regeneration.

Keywords: Conservation legislative history, Built heritage, Historic and cultural cities, Chinese conservation policies

1 Introduction

Cultural heritage conservation has become a mainstream discipline today. Both central and local governments emphasise the significance of cultural heritage conservation and management. The administration and governance of the urban environment in accordance with a specific set of regulations and legislation is a key component of modern societies. Reinforcing and improving the mechanisms for conservation and management is an effective way to advance the protection of built heritage. A historical review of the legislative process can highlight

shortcomings in addressing present challenges and identify the need to formulate future goals.

Some of the recent research has reviewed modern heritage conservation laws and regulations in China. Li (2002, 2005) provides a concise review on the laws related to the conservation of antiquities in China, tracing its history back to the epigraphy from the Song Dynasty. Their later work presents a comprehensive account of the laws and regulations from the Republic of China (ROC) era and analytical commentary on the critical legislation (Li 2013). This book also includes documents and regulations related to the conservation of antiquities issued in the 'border region' (the area governed by the Communist Party of China before 1949). Other notable works within the same category include those of Xian (2009) and Zhou (2007). Xu (2012, 2016) reviews systematically and

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analyses in detail the emergence and early development of modern Chinese archaeology and museology, revealing the multi-origin, multi-processual, and multi-treads characteristics of Chinese archaeology's emergence before 1949. Xu (2015) also provides a brief historical account of Chinese antiquities preservation.

Generally, research on the conservation legislation during the late Qing Dynasty and the ROC period primarily focuses on the introduction and analysis of the legal texts. There has been insufficient analysis on the emergence and development of conservation concepts, the evolution of the legal system, and the correlation between relevant events. Li (2015) and Li (2018), among others, have discussed the origins of the legalisation on the conservation of cultural relics in China. There has been much research on the conservation system of cultural heritage, which can be found in the *Compilation of Legal Documents on Cultural Heritage Undertakings in China (1949–2009)*, edited and published by the National Cultural Heritage Administration (NCHA 2009). The publication contains 235 significant documents related to cultural heritage conservation issued by the central government and other relevant departments during the 60 years since the founding of the People's Republic of China (PRC). These documents illustrate the historic context in which cultural heritage conservation evolved in China. In addition, Wang (2009, 2011) and Li (2018) have conducted comprehensive and in-depth research on the formation and Chinese characteristics of the Protected Cultural Heritage Site (PCHS) mechanism. Zhang (2011, 2012) and Chai (2013) have also systematically reviewed the conservation system of the Historic and Cultural Cities. There are also studies on the domestic and overseas cultural heritage conservation laws, such as the work of Zhu (2007) through the paradigm of ecological law. Zhou (2017) studies Japan's legal system for cultural heritage conservation and conducts a comparative analysis between the Chinese and Japanese systems on the conservation of intangible cultural heritage (ICH).

Since the First Opium War of 1840, China's modern history started with the country being forced open by the superior weaponry of Western colonial countries. For the following century, Chinese antiquities were blatantly looted and vast destruction was inflicted on China's ancient cultural sites. In the late Qing Dynasty and early ROC era, intellectuals became increasingly aware of the necessity to legislate for the protection of antiquities and ancient sites against the extensive destruction and looting in these turbulent times. It led to the emergence of legislation for cultural heritage protection in a modern sense.

This article reviews, analyses, and compares the relevant legislation and regulations for antiquity preservation

from the late Qing Dynasty and early ROC era. It discusses the emergence of preservation philosophy on antiquities and ancient sites in China, the current legislative and regulative systems, and current challenges in the conservation of historic cities, streets, and buildings. It seeks future directions to improve the legislative mechanism for urban and rural built heritage conservation.

2 Early legislation on antiquity preservation in the early 20th century

China is a country with a vast territory, stunning landscapes, long history, and abundant cultures. It is one of the most significant cradles of human civilisation. The life and economic activities of successive generations have created diverse historic remains and unique cultural landscapes. However, current urban and rural development has rarely considered the diversity of the territorial environment and its cultural resources. It is worth pondering the reasons behind such neglect.

In the early 20th century, Zhou Zuoren, a modernist writer and pioneer of Chinese folklore, pointed out that,

'China is a country as old as Greece. Its culture is the most advanced in East Asia and can be comparable with India. Due to repeating chaos, its prosperity has diminished. The civilisation's remains have almost all dispersed or disappeared today. If only one or two in a thousand ancient arts survived and was inherited by the next generation, how would it be? Generally, as past dynasties ended, people tended to create chaos. Wherever wars touched, cities were ruined. All buildings were torched, and the treasures within them lost. Moreover, looting was prevalent. Besides the burning, grain was also stolen. The essence of a generation was all lost.' (Zhou 1913)

Historically, a new dynasty would often destroy structures such as palaces as well as whole cities of the previous dynasty, which might be a direct reason why Chinese ancient architecture and cities rarely survived. Xiang Yu's burning of the Qin capital of Xianyang, during which 'the fire lasted for three months', is one example.

'Qin Shi Huang (the first emperor of the Qin Dynasty) confiscated the weapons around the country and melted them to cast twelve metal statues. It was a disaster. Even the largest architecture, the Epang Palace covering more than 300 li and housing mountains of treasures, was torched to charcoal by Xiang Yu's three-month-long fire.' (Nian 1917)

Such political thinking and historical reasoning had long been articulated by Liang Sicheng, a renowned architect

and urban planner. In the article ‘Why study Chinese Architecture’, Liang pointed out that,

‘China’s metal and stone historic objects, as well as calligraphy and artworks, have always been valued by scholars.....Yet only architecture, for thousands of years, was entirely in the hands of craftsmen. Its artistic expression is mostly the result of unconscious inheritance from mentors and gradual evolution.....Therefore, when an era ended and another rose, probably due to the lack of interest, many grandiose creations from the previous dynasty were destroyed or transformed to an extent that was equivalent to destruction. Therefore, for generations, there was never a habit of objectively appreciating our ancestors’ architecture. During construction in the Sui and Tang Dynasties, historic remains of the Qin and Han Dynasties were not valued or preserved. The same can be said for the Northern Song Dynasty towards Tang architecture, or Ming and Qing Dynasty towards historic buildings from the Song and Yuan Dynasties. Contemporary techniques were used during the reconstruction of historic buildings, and architectural forms were wilfully altered. There was little consideration in maintaining the initial appearance of historic structures.’ (Liang 1944)

The modern concept of preserving antiquities in China emerged at the end of the Qing Dynasty and early ROC era. The first step towards introducing modern legislation was initiated after political reform and the establishment of local autonomy. The legislation for preserving antiquities and ancient sites and early rescue efforts during the late Qing and early ROC era initiated the modernisation of China’s cultural heritage conservation system of legislation (Zhang 2009).

The late Qing Dynasty’s ‘New Policies’ were concerned about reforms in many aspects and were a constructive initiative to modernise China’s legislative system. One of its symbolic moves was imperial edict of ‘Preparatory Constitutionalism’¹ issued on 1st September 1906 (the 13th day of the seventh month of year 32 of Guangxu Emperor). Upon this imperial edict, several constitutional reform measures were implemented. These significant legislative documents were collected in the *Guangxu New Legislation*, in which the ‘constitutional category’ is listed first among 13 categories. Within this category were: the ‘Constitutional Memorial Proposing Regulations for Local Self-governance in Administrative Seats,

Towns, and Townships and also a Draft of the Regulations for Elections’² issued on 18th January 1909, with the ‘Regulations for Urban, Township, and Village Self-governance’ (RUTVS)³ (nine chapters and 112 articles) and the ‘Regulations for Elections of Urban, Township, and Village Self-governance’⁴ (six chapters and 81 articles) attached to this document.

Article 5 of Chapter 1 and Section 3 of the RUTVS concerns various objectives of self-governance. These include ‘protecting ancient sites’ and ‘poverty alleviation, arts and crafts of the poor, *Jiushenghui* (a charity agency for water safety and rescue), and *Jiuhuohui* (a charity agency for fire safety)’ as ‘philanthropic actions of the cities, towns and villages’ (the fifth point of the article). This is the first law relating to the protection of ancient sites and objects in China’s history (Zhang 2009). Before the specialised law was enacted, Zhejiang’s governor Zeng Yun planned to set up an Antiquity Preservation Office for protecting ancient sites around the West Lake, which referenced the RUTVS (Li 2018). However, due to the feeble and chaotic political state of the Qing Dynasty, protecting ancient sites and antiquities was not prioritised by the provincial governors. Preservation practices were also limited.

In July 1906, the central official system reform of the Qing Dynasty entered the overall adjustment phase. The Cabinet (*Neige*), Ministry of Military and Intelligence (*Junjichu*), Ministry of Foreign Affairs (*Waiwubu*), Ministry of Personnel (*Libu*), and Ministry of Education (*Xuebu*) were retained, while other departments were reorganised. The previous Ministry of Policing (*Xunjingbu*) was reformed as the Ministry of Civil Affairs (*Minzhengbu*), an entirely new and modernised organisation responsible for local administration, policing, and people’s livelihood and notably including the protection of ancient sites and antiquities among its jurisdictions.

On 15th September 1909 (the second day of the eighth month of the first year of Xuantong Emperor), the Ministry of Civil Affairs drew up the ‘Rules for the Measures to Promote the Preservation of Ancient Sites’⁵ (RMPPAS) (Ministry of Civil Affairs of the Qing Dynasty 1909). In 1909, the preamble memorial submitted for the *Measures*, stated that on the 20th day of the 12th month of Year 32 of Guangxu Emperor (1906) the ‘objectives for the preservation of ancient sites’, identified by the Ministry of Works (*Gongbu*), was received and that each province should ‘preserve and catalogue the ancient tombs

¹ *Xuanshi Yubei Lixian* (《宣示预备立宪》)

² *Xianzheng Biancha Guan Zou Heyi Cheng Zhen Xiang Difang Zizhi Zhangcheng bing Lingni Xuanju Zhangcheng Zhe* (《宪政编查馆奏核议城镇乡地方自治章程并另拟选举章程折》)

³ *Cheng Zhen Xiang Difang Zizhi Zhangcheng* (《城镇乡地方自治章程》)

⁴ *Cheng Zhen Xiang Difang Zizhi Xuanju Zhangcheng* (《城镇乡地方自治选举章程》)

⁵ *Baocun Guji Tuiguang Banfa Zhangcheng* (《保存古迹推广办法章程》)

and ancestral temples, and report to the ministry,' initially for the purpose of 'letting people visit and experience (the testimony of) noble acts and ancestors' wisdom.' However, its implementation was short-lived and, therefore, had limited impact. The memorial also commented that the regulations issued by the previous dynasties 'had become a mere formality as time passed', while in ancient empires such as Egypt, Greece, and Rome, 'the protection of ancient sites was quite broadly implemented,' whether be it,

'a plant or tree, old residences or historic remains, either related to history or of artistic significance, large or small, all cherished and preserved. Therefore, either in the royal households or among the commoners, in the well-connected metropolises or remote countryside, there are museums storing historic objects, preserving the representative examples of the achievements of civilisations.' (Ministry of Civil Affairs of the Qing Dynasty 1909, 27–31)

Conversely,

'Chinese culture started earlier than many other countries, and throughout history, there were numerous wise figures and sages. The number of historic remains is several times greater than in other countries. The reason why our historic remains from thousands of years have not survived as much as in the West lies in the neglect of investigation and preservation.' (ibid.)

As such,

'we have them but do not treasure them, letting them flow out of the country as if they were rubble.....It not only disagrees with our ancient spirit but also damages our nation's image and dignity.' (ibid.)

Therefore, the RMPPAS was proposed in 1909 to reiterate preservation requirements.

3 The comparison of early relevant Laws and Regulations on antiquity preservation

The RMPPAS and the 'Interim Measures for Preservation of Antiquities' (IMPA)⁶ issued in the late Qing Dynasty and early ROC era were milestones in the modern history of China's preservation of historic objects, monuments and sites. It set the foundation for the legislation of antiquity preservation during the ROC era. The concepts of 'antiquity (*guwu*)' and 'ancient monument (*guji*)' were already relatively established as seen in legislative texts and newspaper articles. The legislation for heritage conservation took, as precedents, conservation philosophies

and experience from European countries, the United States, and Japan, including these countries' conservation and management mechanisms as well as their restoration and repair techniques.

After the ROC was founded in 1912, not only was the destruction and neglect of antiquities not as well mitigated as during the late Qing Dynasty, but theft, smuggling, and destruction of antiquities were even exacerbated. Therefore, in March 11th 1914, the Ministry of Internal Affairs (*Neiwubu*) of the Beiyang government issued an 'Instruction to the Provincial Civil Affairs Chiefs for the Effective Preservation of the Historic Objects, Monuments and Sites of the Past'⁷; stating that

'Our own country cannot protect China's antiquities but has to rely on foreigners to facilitate their preservation. This is not appropriate for our country. Therefore, we must declare strict laws and instructions for their preservation.' (Ministry of Internal Affairs (Republic of China) 1916, 8–10)

In October 1916, the Ministry of Internal Affairs issued the IMPA, requiring all regions to 'carefully investigate and effectively preserve' antiquities concurrently. The instruction for issuing the IMPA also stated that,

'China's antiquities are abundant. The method to organise them should start with investigation. The most urgent task is preservation. The longer the objects have been circulated, the more precious they are, but because the nation does not have specific laws and regulations for their preservation, they are easily dispersed and hard to collect. Merchants have long gained profits by selling and transporting the objects, which has led to their disappearance. Sometimes ignorant people would damage objects carelessly, or affluent foreign merchants would scour them all around. Gradually, increasing numbers of objects are lost in these ways.' (Ministry of Internal Affairs (Republic of China) 1916, 8–10)

Therefore, Article 5 of the IMPA states that 'stealing, unauthorised collecting, smuggling, or destruction (of antiquities) should all be investigated and penalised strictly' (Ministry of Internal Affairs (Republic of China) 1916, 8–10).

Most scholars consider the RMPPAS and the IMPA as the starting point of China's modern cultural heritage conservation legislation (Li 2015) and they have analysed and studied the texts of these two important legislative documents (Xian 2009). Upon a comprehensive analysis

⁶ Baocun Guwu Zanzheng Banfa (《保存古物暂行办法》)

⁷ Wei Qieshi Baocun Qiandai Wenwu Guji Zhi Gesheng Minzhengzhang Xunling (《为切实保存前代文物古迹致各省民政长训令》)

Table 1 Comparison of two legal documents from the late Qing Dynasty and early ROC era

Rules for the Measures to Promote the Preservation of Ancient Sites (Ministry of Civil Affairs) 2nd of the 8th month of the first year of Xuantong Emperor (1909)	Interim Measures for Preservation of Antiquities (Ministry of Internal Affairs) October 1916
<p>Article 6 Items for Investigation</p> <ul style="list-style-type: none"> • Remains such as stone steles, stone sutra pillars, stone chimes, statues, stone carvings, ancient paintings, and cliff inscriptions since Zhou and Qin Dynasties; • Stone ancient objects (often stolen or smuggled in recent years); • Murals from renowned artists, exquisite carvings and statues in ancient temples, and other precious artistic calligraphy; • Ancestral tombs of historic figures and imperial mausoleums of ancient emperors; • Ancestral temples of renowned historic figures or other ancient sites; • Antiquities and finds from excavations; <p>Article 5 Items for Preservation</p> <p>Steles and tablets, sutra pillars, statues;</p> <ul style="list-style-type: none"> • Ancient metal and stone objects, calligraphy and artworks, pottery and porcelain, or fine prints of books from the Song and Yuan Dynasties, stone rubbings, and template of tablets; • Ancient mausoleums of emperors, ancestral temples and tombs of historic figures; • Ancient temples, murals from renowned artists, wells, intricate carvings and statues; • Other ancient sites that are not mausoleums, ancestral temples or tombs 	<ul style="list-style-type: none"> • Mausoleums of emperors of all previous dynasties, tombs of historic figures, documented and reported to the ministry by local officials from the Qing Dynasty; • Ancient city walls and fortresses, ramparts and caves, towers and temples, pavilions and pagodas, embankments, dikes and bridges, lakes, ponds, wells, and springs. Any remains related to historic figures should be preserved; • Stone steles, tablets or plaques, statues, mural paintings and cliff carvings from all dynasties. Many of such ancient sites have survived and are of cultural and artistic values; • Natural landscape of the past and ancient trees; • Metal, stone, bamboo, and wooden objects, pottery and porcelain, textiles, and other historic objects, old calligraphy and carvings, artworks from historic figures. They are both artistic remains and valuable for historical research. <p>All of the above should be temporarily stored and maintained. Regulations should be refined and promoted after comprehensive planning to ascertain the situation. Other departments' previous specific preservation measures for ancient objects can be continued but should be reported to this ministry in order to leave records for future reviews.</p>

and comparison of the two documents, as well as other relevant memorials and circulars, the evolution of China's modern conservation philosophies can be revealed, as shown in Table 1.

The comparison of the two legal documents reveals that the RMPPAS significantly influenced the IMPA. Although the articles' content had been reduced, the essential elements such as the selected entities for preservation and preservation requirements stipulated in the IMPA followed the RMPPAS, but with some expansion in both. As for the historical periods covered, the focus on ancient times (Zhou and Qin Dynasties – Song and Yuan Dynasties) was extended to all dynasties. Regarding the categories, the IMPA added buildings and structures such as 'city walls and fortresses', 'towers and temples', and 'banks, dikes and bridges', as well as gardens and, particularly, new categories such as 'natural landscape of the past' and 'ancient trees'. It was one of the earliest applications of statutory regulation to protect what is to-day called 'ancient and famous trees', showing the progressiveness of the times.

Regarding the overall structure of the legislation, it is noted that in the early Meiji era, Japan had already legislated on the protection of ancient shrines and temples, antiquities, as well as ancient sites. This directly influenced China's legislation for the preservation of antiquities. However, a comparison between the RMPPAS and

Japan's 1897 Ancient Temples and Shrines Preservation Law (ATSPL)⁸ reveals some weaknesses in the former.

The ATSPL is a specialised law for preserving the architecture of temples, shrines, associated treasures and collected treasures. It stipulates that the state shall provide subsidy for the restoration of ancient temples and shrines and their associated treasures. According to the specific rules upon consultations with the Preservation Committee of Ancient Temples and Shrines⁹, the Interior Minister was to decide the funding of objects for restoration. The local officials were responsible for directing and supervising relevant projects. Although the protection stipulated by the ATSPL only covered the architecture and treasures of shrines and temples, it also provided detailed regulations for the criteria of listing protected cultural properties and other mechanisms such as preservation and restoration management, the use of preservation funding, presentation, and public access. It is considered the prototype of Japan's conservation system for cultural properties. By contrast, while the RMPPAS had detailed measures for preserving and investigating ancient sites, other relevant management measures were relatively vague. The provincial governors were authorised to make decisions on these matters. Although the regulations included expressions such as 'subject to

⁸ *Koshaji hozonhō* (《古社寺保存法》)

⁹ *Koshaji hozonkai* (古社寺保存会)

severe penalty,' 'the crime of negligence, and 'punished severely', the RMPPAS did not specify actual penalties or methods of punishment (Li 2015).

The decade between the ROC government's relocation of its capital to Nanjing in 1927 and the outbreak of the Sino-Japanese War in 1937, triggered by the Double Seven Incident, is also called the 'ROC's golden decade'. During this decade, the nation's economy was recovering rapidly, and many areas such as politics, legislation, culture, and education were fast developing. The 'Regulations on the Preservation of Historic Sites and Antiquities' (RPHSA)¹⁰ and Law on the Preservation of Antiquities (LPA)¹¹ which were introduced during this period have had a considerable impact on the later development of cultural heritage conservation.

In September 1928, the Ministry of Interior Affairs of the Nationalist government in Nanjing issued the RPHSA, defining the categories, scope, and measures for preserving historic monuments and sites. It clarified the understanding of historic monuments and sites to the public and identified the direction for their preservation. The RPHSA was ground-breaking for the development of the conservation of monuments and sites in contemporary China (Zhou 2007). In the same year, the 'Organisation Regulations of the Administration of Education's Committee for Preservation of Antiquities'¹² was introduced, and the Administration of Education Central Committee for Preservation of Antiquities¹³ was founded.

The RPHSA categorised the protected entities into 'historic monuments and sites' and 'antiquities'. Historic monuments and sites were further divided into three sub-categories: lakes and mountains; architecture; and historic sites. The 'lakes and mountains' category included famous mountains, lakes, forests, ponds, wetlands, and other landscapes. The 'architecture' category included ancient cities, fortresses, embankments and dikes, bridges, shrines, gardens, temples, towers, pavilions, pagodas and other structures. The 'historic sites' category included ancient mausoleums, ramparts, caves, rocks, wells, springs, and other ancient sites. Antiquities were divided into ten sub-categories, such as steles and tablets, metal and stone objects, pottery, and plants.

On 2nd June 1930, the Nationalist government enacted the LPA. The legislation has 14 articles regulating the definition of antiquities, their preservation, registration, excavation and circulation, and the organisation of preservation agencies. It defines protected entities as 'all antiquities related to archaeology, history, palaeontology, and other cultures', and further stipulates that 'the scope and categories of antiquities are decided by the Central Committee for Preservation of Antiquities (CCPA)'¹⁴.

The 'Implementation Rules of the Law on the Preservation of Antiquities' (IRLPA)¹⁵, issued on 3rd July 1931, has 19 articles focusing on regulating the registration of privately owned antiquities and the excavations of antiquities. In June 1932, the Nationalist government formulated the 'Organisation Regulations of the Central Committee for Preservation of Antiquities'¹⁶ and re-established the CCPA.

The LPA and IRLPA had borrowed features of modern preservation legislation from the West. Both were pioneering a definition of standards for the preservation of antiquities. They were the direct manifestation in antiquity preservation of the constitutional spirit during the Xinhai Revolution. Following the LPA, the Executive Branch¹⁷ issued a series of detailed rules and regulations, such as the 'Regulations of Antiquity Excavation'¹⁸ (1935), 'Regulations of Foreign Academic Institutes and Private Individuals in Antiquity Excavation'¹⁹ (1935), and 'Regulations of Passports for the Exportation of Antiquities'²⁰ (1935) (Table 2).

All the legal and regulatory documents and institutions and bodies listed in the table above represent China's earliest legislation and the specialised organisations that were set up to protect antiquities and ancient sites. They represent the origin of the state's implementation of heritage conservation and management. During this tumultuous period, while the CCPA contributed positively to heritage conservation, the implementation of the legislation was limited, and a long-term and stable management mechanism was not yet established. Only a small number of local governments had established specialised departments for the management of antiquities. Consequently,

¹⁰ Mingsheng Guji Guwu Baocun Tiaoli (《名胜古迹古物保存条例》)

¹¹ Guwu Baocun Fa (《古物保存法》)

¹² Daxueyuan Guwu Baoguan Weiyuanhui Zuzhi Tiaoli (《大学院古物保管委员会组织条例》)

¹³ Daxueyuan Zhongyang Guwu Baoguan Weiyuanhui (大学院中央古物保管委员会)

¹⁴ Zhongyang Guwu Baoguan Weiyuanhui (中央古物保管委员会)

¹⁵ Guwu Baocun Fa Shixing Xize (《古物保存法施行细则》)

¹⁶ Zhongyang Guwu Baoguan Weiyuanhui Zuzhi Tiaoli (《中央古物保管委员会组织条例》)

¹⁷ Xingzheng Yuan (行政院)

¹⁸ Caijue Guwu Guize (《采掘古物规则》)

¹⁹ Waiguo Xueshu Tuantu huo Siren Canjia Caijue Guwu Guize (《外国学术团体或私人参加采掘古物规则》)

²⁰ Guwu Chuguo Huzhao Guize (《古物出国护照规则》)

Table 2 List of events related to the legislation of antiquity preservation during the late Qing Dynasty and ROC era

Periods	Legislations and Regulations	Organisation establishment	Publications
1900–1915	1906, Measures to Promote the Preservation of Ancient Sites ^a 1909, Rules for the Measures to Promote the Preservation of Ancient Sites (RMPPAS) 1912, Executive Order to Protect the Imperial Ancestral Temples and Mausoleums ^b 1914, President's Executive Order to Restrict the Exportation of Antiquities ^c		
1916–1929	1916, Interim Measures for Preservation of Antiquities (IMPA) 1927, Measures for Restriction of Antiquity Exportation ^d 1928, Regulations on the Preservation of Historic Sites and Antiquities (RPHSA) 1928, Regulations of the Administration of Education's Committee for the Preservation of Antiquities	1928, Administration of Education Central Committee for the Preservation of Antiquities	
1930–1936	1930, Law on the Preservation of Antiquities (LPA) (Amended in 1935) 1931, Implementation Rules of the Law on the Preservation of Antiquities (IRLPA) 1932 Organisation Regulations of the Central Committee for Preservation of Antiquities 1932, Operational Guidelines for the Central Committee for Preservation of Antiquities ^e 1935, Outline of the Temporary Scope and Categories of Antiquities ^f 1935, Regulations of Antiquity Excavation 1935, Regulations of Passports for the Exportation of Antiquities 1935, Regulations of Foreign Academic Institutes and Private Individuals in Antiquity Excavation 1936, Regulations of Rewards for Turning in Antiquities ^g	1930, Ministry of Education's Committee for the Preservation of Antiquities 1932, Central Committee for the Preservation of Antiquities	1935, Compilation of Various Countries' Legislation and Regulation for Preservation of Antiquities 1935, Work Report of the Committee for Preservation of Antiquities

^a Baocun Guji Tuiguang Banfa (《保存古迹推广办法》)

^b Baohu Huangshi Zongmiao Lingqin Ling (《保护皇室宗庙陵寝令》)

^c Dazongtong Xianzhi Guwu Chukou Ling (《大总统限制古物出口令》)

^d Jinzhi Guwu Chukou Banfa (《禁止古物出口办法》)

^e Zhongyang Guwu Baoguan Wei Yuanhui Banshi Guize (《中央古物保管委员会办事规则》)

^f Zanding Guwu zhi Fanwei ji Zhonglei Dagang (《暂定古物之范围及种类大纲》)

^g Guwu Jiangli Guize (《古物奖励规则》)

many ancient sites and antiquities still suffered from mismanagement.

4 Cultural heritage protection law and characteristics of the protected cultural heritage sites mechanism

After the founding of the People's Republic of China (PRC) in October 1949, the state's cultural heritage²¹ protection system was gradually established based upon the foundation of the processes mentioned above. Since 1950, considering the extensive damage and loss of cultural heritage during the previous tumultuous period and wars, the State Council of the PRC enhanced the

protection and management of cultural heritage sites by promulgating a series of policies, legislations and regulations and supporting these by establishing relevant central and local implementing administrations. As the country's industry and agriculture developed with advances in infrastructure provision, and with the continuous improvement of the legal system, formulation of the Cultural Heritage Protection Law (CHPL)²² was put on the government's agenda.

On 17th November 1960, the State Council issued the 'Interim Regulations on the Conservation and Management of Cultural Heritage' (IRCMCH)²³ and the 'State Council's Guidance on Further Strengthening the Conservation and Management of Cultural Heritage'²⁴. The

²¹ 'Wenwu' (文物), while translated as cultural heritage in the latest administrative and legal texts, primarily refers to the tangible historic remains such as cultural heritage sites and objects. It was initially translated as 'cultural relics', which is still used in some academic literature in the Chinese context. Intangible cultural heritage is generally not covered by the legislation and regulations discussed in the following sections.

²² Wenwu Baohu Fa (《文物保护法》)

²³ Wenwu Baohu Guanli Zanzheng Tiaoli (《文物保护管理暂行条例》)

²⁴ Guowuyuan Guanyu Jinyibu Jiaqiang Wenwu Baohu he Guanli Gongzuo de Zhishi (《国务院关于进一步加强文物保护和管理工作的指示》)

State Council also announced in March 1961 the first list of 180 national Protected Cultural Heritage Sites (PCHS). Subsequently, the Ministry of Culture issued three important interim measures: the ‘Interim Measures for the Conservation and Management of PCHS’ (IMPCHS)²⁵ in 1962; the ‘Interim Measures for the Restoration Management of Revolutionary Monuments, Historic Monuments, Ancient Architecture, and Carving Caves’²⁶ in 1963; and the ‘Interim Measures for the Management of Investigation and Excavation of Archaeological Sites and Tombs’²⁷ in 1964.

The formulation and implementation of regulations such as the IRCMCH and IMPCHS established the PCHS system and the responsibilities of central and local administrations towards protection and management, upon which attempts to establish long-term mechanisms for the state-led protection of PCHS began.

However, the newly established national system for cultural heritage conservation suffered a tremendous setback during the decade-long Cultural Revolution which started in 1966. Radical revolutionary movements, symbolised by ‘breaking the ‘Four Olds (*po sijiu*)’ (old ideas, old culture, old customs and old habits), led to unprecedented, extensive and intentional devastation of cultural heritage sites. Society’s inclination to ignore traditional culture and ‘destroy the old to build the new (*pojiu lixin*)’, led to lingering negative impacts for years to come. It was only in the mid-1970s that work on cultural heritage conservation resumed gradually.

After establishing the ‘Reform and Opening Up (*gaige kaifang*)’ policy of 1978, China entered the rapid socio-economic development phase. The Criminal Law of PRC, enacted in 1979 and implemented in 1980, stipulated criminal liabilities for illegal actions contravening the CHPL such as ‘smuggling valuable cultural heritage objects’ and ‘deliberate destruction (of cultural heritage)’ (Article 173 and 174). In 1980, the State Council endorsed the ‘Report on Strengthening the Conservation and Management of Ancient Architecture and Cultural Heritage Sites’²⁸ and issued other significant documents, such as the ‘Notice on Strengthening the Conservation of Historic Remains’²⁹.

On 19th November 1982, the 25th session of the Standing Committee of the National People’s Congress (NPC) passed the CHPL. It laid down the foundation for the state’s legal system on cultural heritage conservation and embodied China’s cultural heritage conservation system. The most remarkable achievement was establishing the PCHS conservation and management mechanisms.

Notably, the PCHS refers to the ‘spatial entity composed of immovable cultural heritage sites and their surrounding environmental elements’ (Wang 2011). The CHPL (1982) considered the relationship between cultural heritage sites and their surroundings from the very start. It stipulates that ‘for the various levels of PCHS, the administrations of the respective provinces, autonomous regions, direct-administered municipalities and counties, autonomous counties, and municipalities are responsible for defining the conservation boundaries, erecting signs with descriptions, creating registries, and assigning particular agencies or individuals for their management’ (Article 9). It further stipulates that ‘based on the specific demands of cultural heritage conservation and upon the approval of the provincial-level administrations (including provinces, autonomous regions, and direct-administered municipalities), a construction restricted zone can be established around the PCHS. New buildings and structures within this zone should not adversely impact the environmental features of the PCHS’ (Article 12).

Wang (2009) recognises that China’s PCHS system has played two critical roles by far. First, the continuous and effective promotion of the system has raised the awareness of citizens and local officials on cultural heritage conservation and rescued numerous endangered cultural heritage sites on many critical occasions. Therefore, the system has played an irreplaceable and crucial role in upholding local cultural traditions and sustaining regional characteristics. Its second important role has been to encourage increases in annual expenditure on funding cultural heritage conservation projects by central and local financial systems, guaranteeing stable and reliable funding support for cultural heritage sites and their setting.

The 2002 amendment to the CHPL increased the number of articles exponentially compared to the 1982 version. Whereas there were only 33 articles in the 1982 version, the amended version contained 80. While retaining the fundamental principles and framework developed under the 1982 version, the amended version contained extensive revisions and supplementations of existing articles. The amended version was also more applicable and aligned with the reality of cultural heritage conservation practices.

According to the CHPL, the heritage entities under enhanced protection at the national level are categorised into immovable and movable cultural heritage. Immovable cultural heritage mainly includes: (1)

²⁵ *Wenwu Baohu Danwei Baohu Guanli Zanxing Banfa* (《文物保护单位保护管理暂行办法》)

²⁶ *Guanyu Geming Jinian Jianzhu, Lishi Jinian Jianzhu, Gujianzhu, Shikusi Xiushan Zanxing Guanli Banfa* (《关于革命纪念建筑、历史纪念建筑、古建筑、石窟寺修缮暂行管理办法》)

²⁷ *Guyizhi, Gumuzang Diaocha, Fajue Zanxing Guanli Banfa* (《古遗址、古墓葬调查、发掘暂行管理办法》)

²⁸ *Guanyu Jiaqiang Gujianzhu he Wenwu Guji Baohu Guanli Gongzuo de Qingshi Baogao* (《关于加强古建筑和文物古迹保护管理工作的请示报告》)

²⁹ *Guanyu Jiaqiang Lishi Wenwu Baohu Gongzuo de Tongzhi* (《关于加强历史文物保护工作的通知》)

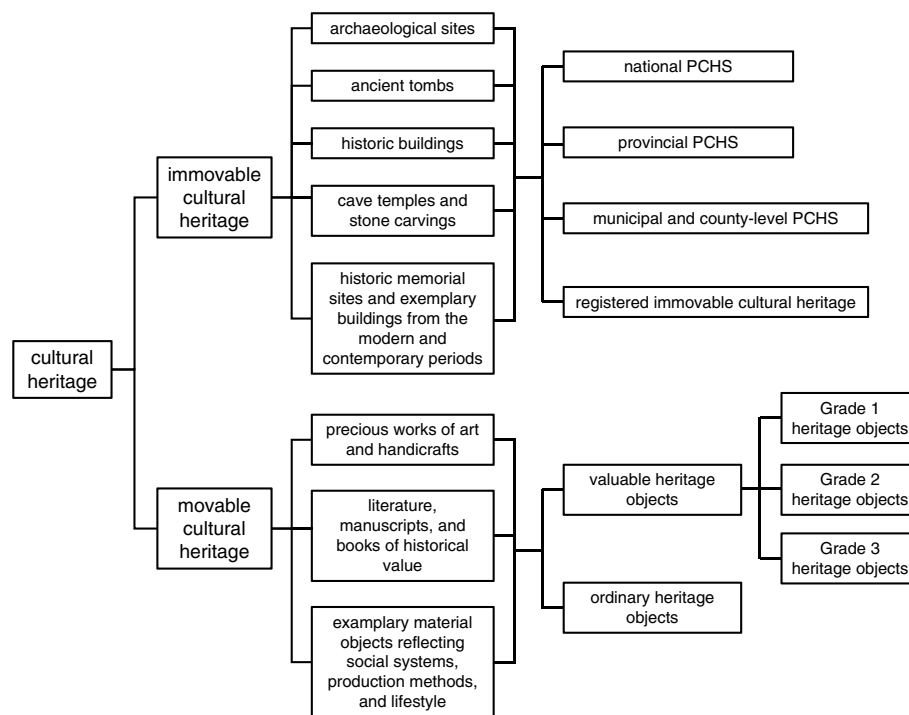


Fig. 1 Categories of cultural heritage under the CHPL (Source: the author)

archaeological sites, ancient tombs, historic buildings, cave temples, stone carvings, and mural paintings that are of historical, artistic or scientific values, including those underground and the areas where they are buried; (2) significant historic memorial sites, material objects, and exemplary buildings of modern and contemporary periods related to major historic events, revolutionary movements, or renowned historic figures, that are highly memorable, of great significance for education or preservation of historic information (Fig. 1). New types of PCHS such as cultural landscapes and cultural routes recognised in recent years are listed under a special category of 'Others'. Although provisions are also made in Chapter II (Immovable Cultural Heritage) of the Law for the designation of the Famous Historic and Cultural Cities and Districts, few specific regulations and requirements concerning their conservation and management are mentioned.

5 Regulations on the conservation of historic cities and challenges

On 8th February 1982, the State Council's response to the 'National Construction Committee and other Departments' Request for Instructions on the Protection of China's Famous Historic and Cultural Cities (*lishi wenhua mingcheng*)' stated that 'the protection

of the first list of Famous Historic and Cultural Cities (FHCC)³⁰ has significantly positive meanings, such as inheriting our rich cultural heritage throughout our long history, carrying forward honourable revolutionary traditions, educating patriotism, constructing socialist spiritual civilisation, and expanding China's international influence'. Therefore, the State Council announced the first list of 24 FHCCs having a long history and distinctive characteristics, including Beijing.

The CHPL, enacted in the same year, established the protection status of national FHCCs³¹. It stipulated that 'cities with exceptionally abundant protected cultural heritage entities, or with significant historic value or revolutionary connotations, could be verified and listed as FHCCs by the State Council upon an application from the State's cultural administrations and urban and rural construction and environment protection departments' (Article 8).

Generally speaking, it was the post-war modern conservation movement that initiated the concern over urban built heritage. In the 1960s, Western countries such as Britain, the United States, and France started to designate conservation areas to protect historic districts

³⁰ '*Lishi Wenhua Mingcheng*' (历史文化名城), literally means 'historically and culturally outstanding cities', refers to a protection status for historic cities.

³¹ '*Guojia Lishi Wenhua Mingcheng*' (国家历史文化名城)

through legislation. In 1975, Japan started to legislate the protection of districts with traditional buildings and selected key properties for protection in locally protected historic districts. China began to list protected FHCCs in 1982. This measure was timely for protecting China's historic cities, especially considering the dilapidation of many historic urban districts due to the lagging economic and urban development (Zhang 2012).

The FHCC concept was formulated as a state-led urban built heritage conservation strategy, with distinct Chinese characteristics and practical significance. From a legal perspective, the FHCC refers to legally protected historic cities designated by the central government. From a conservation management perspective, these cities must establish a comprehensive cultural heritage conservation system and integrate 'conservation' into the entire process of urban planning and building development.

The CHPL's 2002 amendment added a protection mechanism for Famous Historic and Cultural Districts (FHCD)³². It stipulated actions to 'protect towns, streets, villages with exceptionally abundant cultural heritage entities and significant historic value or revolutionary connotations, which should be approved and announced by the administrations of provinces, autonomous districts, and direct-administered municipalities, and registered with the State Council' (Article 14).

In April 2008, an executive meeting of the State Council passed the 'Regulations on the Conservation of Famous Historic and Cultural Cities, Towns and Villages' (RCFHCCTV)³³. The regulation expanded on the concept of FHCCs established in the CHPL and detailed specific submission criteria. These criteria stipulate that protected areas:

- '1. should have exceptionally abundant protected cultural heritage entities;
2. should have a high concentration of historic buildings distributed across a considerable area;
3. should demonstrate traditional spatial patterns and historic styles and features;
4. were once political, economic or cultural centres; transportation hubs or strategic military locations; places where historic events took place, or demonstrate significant cultural and ethnic characteristics of a region's architecture;
5. should have at least two FHCDs if submitted for inscription as a FHCC.'

The FHCCs is a built environment heritage concept related to the urban jurisdiction areas. As such, conservation areas and selected protected entities need to be defined according to specific conditions that are outlined in historic cities' conservation management plans. The RCFHCCTV (2008) stipulates that 'famous historic cities, towns, and villages should be conserved holistically, preserving their traditional layout, historic features and spatial dimension, and their interdependent natural landscape and environment must not be altered' (Article 21). This means that the holistic conservation of FHCCs must primarily protect historic urban districts' overall layout, historic styles and features, as well as their interdependent natural environment and landscape settings, rather than entirely focussing on restricting urban development. New town development in the periphery of cities should indeed become a premise for the comprehensive conservation of historic districts within the cities.

Local governments' priority for economic development has led to a delay in legislating and planning for historic cities' conservation. Therefore, considerable ambiguity still exists in the scope of protected entities and management regulations in some listed FHCCs. The CHPL (2002) stipulates that 'the State Council could delist FHCCs should their layout, environment or historic styles and features be severely damaged; administrations of provinces, autonomous regions and direct-administered municipalities could delist famous historic and cultural towns, districts, and villages, should their layout, environment or historic styles and features be severely damaged; administrative penalties should be imposed on the responsible persons in charge and other directly responsible persons' (Article 69). However, among the 134 FHCCs listed by the State Council, many have already lost their overall historic features. During an extensive inspection organised by the Ministry of Housing and Urban-Rural Development (MOHURD) and the NCHA, 13 FHCCs were criticised for substantial destruction and inappropriate conservation measures. Notwithstanding, these cities were not delisted or designated as FHCCs in Danger as stipulated by the legislation above.

Currently, the state laws related to China's cultural heritage include the CHPL and Intangible Cultural Heritage Law (ICHL)³⁴. Laws and regulations related to built heritage include the CHPL, Urban and Rural Planning Law (URPL)³⁵, Environment Protection Law³⁶, the RPHCTV, and the 'Regulations on the

³² *Lishi Wenhua Jiequ* (历史文化街区)

³³ *Lishi Wenhua Mingcheng Mingzhen Mingcun Baohu Tiaoli* (《历史文化名城名镇名村保护条例》)

³⁴ *Feiwuzhi Wenhua Yichan Fa* (《非物质文化遗产法》)

³⁵ *Chengxiang Guihua Fa* (《城乡规划法》)

³⁶ *Huanjing Baohu Fa* (《环境保护法》)

Table 3 List of current state legislation and regulations on cultural heritage conservation

State Laws	The State Council administrative regulations	Departmental regulations
Cultural Heritage Protection Law (CHPL) (2002)	Regulations on the Implementation of Cultural Heritage Protection Law (RICHPL) (2003) Regulations on Protection of the Great Wall ^h (2006) Regulations on the Conservation and Management of Underwater Cultural Heritage (1989)	Measures for the Management of Foreign Entities' Participation in Archaeological Works ⁱ (1989) Measures for the Management of Archaeological Excavations ^j (1998) Measures for the Management of Cultural Heritage Conservation Projects ^k (2003) Measures for the Conservation and Management of World Cultural Heritage ^l (2006) Measures for the Conservation and Management of Ancient Human Fossils and Ancient Vertebrate Fossils ^m (2006) Interim Measures for the Management of Listing Cultural Heritage ⁿ (2009) Measures for the Conservation and Management of the Grand Canal's Heritage ^o (2012)
Urban and Rural Planning Law (URPL) (2007)	Regulations on Scenic Areas ^p (2006) Regulations on the Conservation of Famous Historic and Cultural Cities, Towns, and Villages (RCFHCCTV) (2008)	Measures for the Management of Urban Purple Lines ^q (2003)
Intangible Cultural Heritage Law (ICHL) (2011)	Regulations on the Protection of Traditional Arts and Crafts ^r (1997)	Measures for the Management of National Cultural-ecological Conservation Areas ^s (2018)
Environment Protection Law (2014)	Regulations on Natural Reserves ^t (1994) Regulations on the Conservation of Paleontological Fossils ^u (2010)	Measures for the Implementation of the Regulations on the Conservation of Palaeontological Fossils ^v (2012)

^h *Changcheng Baohu Tiaoli* (《长城保护条例》)ⁱ *Kaogu Shewai Gongzuo Guanli Banfa* (《考古涉外工作管理办法》)^j *Kaogu Fajue Guanli Banfa* (《考古发掘管理办法》)^k *Wenwu Baohu Gongcheng Guanli Banfa* (《文物保护单位工程管理办法》)^l *Shijie Wenhua Yichan Baohu Guanli Banfa* (《世界文化遗产保护管理办法》)^m *Gurenlei Huashi he Gujizhuidongwu Huashi Baohu Guanli Banfa* (《古人类化石和古脊椎动物化石保护管理办法》)ⁿ *Wenwu Rending Guanli Zanxing Banfa* (《文物认定管理暂行办法》)^o *Dayunhe Yichan Baohu Guanli Banfa* (《大运河遗产保护管理办法》)^p *Fengjing Mingsheng Qu Tiaoli* (《风景名胜区条例》)^q *Chengshi Zixian Guanli Banfa* (《城市紫线管理办法》)^r *Chuantong Gongyi Meishu Baohu Tiaoli* (《传统工艺美术保护条例》)^s *Guojiaji Wenhua Shengtai Baohu Qu Guanli Banfa* (《国家级文化生态保护区管理办法》)^t *Ziran Baohu Qu Tiaoli* (《自然保护区条例》)^u *Gushengwu Huashi Baohu Tiaoli* (《古生物化石保护条例》)^v *Gushengwu Huashi Baohu Tiaoli Shishi Banfa* (《古生物化石保护条例实施办法》)

Implementation of CHPL' (RICHPL)³⁷. They constitute the mainstay of the legal system for built heritage conservation (Table 3).

In summary, the various categories of cultural heritage under legal protection in mainland China include those specified by the following laws and regulations:

- 1) according to the CHPL, the objects of conservation and management include cultural heritage objects, immovable cultural heritage sites, and designated PCHS;
- 2) according to the URPL and RCFHCCTV, the objects of conservation and management include designated Famous Historic and Cultural Cities, Towns and Villages, FHCDs, historic buildings and traditional villages;
- 3) according to ICHL and 'Measures for the Management of National Cultural Ecological Conservation Areas' (2018), the objects of conservation and management include exemplary elements of intangible cultural heritage, representative inheritors, and cultural-ecological conservation areas;
- 4) there are also other special conservation regulations such as: 'Measures on Scenic Areas', 'Regulations on Protection of the Great Wall', and 'Measures for the

³⁷ *Wenwu Baohu Fa Shishi Tiaoli* (《文物保护法实施条例》)

Conservation and Management of the Grand Canal's Heritage.'

According to the Constitution and the Law on Legislation, the local People's Congress can introduce local legislation, while local administrations can formulate local rules and regulations. At present, most designated FHCCs have introduced such local cultural heritage conservation legislation. Apart from some regions and cities where legislation on historic environment conservation came earlier than the state's legislation, most FHCCs' legislative and regulatory system adopts a similar framework as the state.

Taking Shanghai as an example, local regulations on cultural heritage conservation include the 'Regulations on the Conservation of Shanghai's Historic Characteristic Areas and Outstanding Historic Buildings'³⁸ (2003, amended in 2019), 'Regulations on Cultural Heritage Conservation in Shanghai'³⁹ (2014), and 'Regulations on the Protection of Intangible Cultural Heritage in Shanghai'⁴⁰ (2016). Other highly relevant regulations include the 'Regulations on Urban and Rural Planning in Shanghai'⁴¹ (2011, amended in 2018) and 'Implementation Measures for Urban Regeneration in Shanghai' (2021)⁴². Comprehensive legislation and regulations assure the effective conservation and management of Shanghai's historic landscape. Since the implementation of regulations on preserving historic features in 2003, the legislative system of built environment conservation in Shanghai has been gradually refined through improving the relevant regulations and professional standards. Its legislative achievements are pioneering in the nation, especially by providing robust legal support for planning, conserving, and managing the historic landscape during urban development.

Indeed, since the 2015 amendment of the state's Law on Legislation, regions around the country have devoted increasing effort to the legislative work related to the FHCCs and FHCDs based on the fast-changing reality on the ground, including expeditiously formulating local regulations on the conservation and management of historic buildings, traditional villages, and historic landscapes.

In more recent years, the Central Committee of the Communist Party and the State Council successively

released several critical official opinions such as 'Some Opinions on Further Strengthening the Management of Urban Planning and Construction' (2016)⁴³, 'Opinions on the Implementation of the Scheme to Inherit and Develop Excellent Traditional Chinese Cultures' (2017)⁴⁴, 'Opinions on Strengthening the Reform of the Conservation and Use of Cultural Heritage' (2018)⁴⁵, 'Opinions on Strengthening the Conservation of Intangible Cultural Heritage' (2021)⁴⁶, and 'Opinions on Strengthening the Conservation and Transmission of Historic Culture in Urban and Rural Development' (2021)⁴⁷. These highlight the latest requirements for strengthening the conservation of cultural heritage. Particularly, these requirements include establishing scientific disciplines, preserving effective and well-managed conservation systems, and refining and strategising mechanisms and policies for the conservation and use of heritage. Currently, MOHURD has been engaging in legislation related to research on the conservation of FHCCs. Preliminary work on the latest amendment of the CHPL, led by the NACH, is also underway.

6 Discussion

6.1 Legislative process and concept development for the conservation of cultural heritage in China

The previous sections provide a comprehensive review of the evolution of China's cultural heritage conservation legislation and its patterns of change since the modern times. It reveals that the conservation of antiquities and historic monuments in China has had a history of more than 110 years since the beginning of the 20th century. Certain consistencies can be seen in the fundamental components and framework of the conservation legislation throughout the century.

Since the beginning of the nation's modern history, the legislative process for the conservation of cultural heritage in China has kept pace with the progress of the state's institution and legal system towards modernity. This has sometimes been ahead of the legislation for economic management and urban and rural governance. First attempts at conservation of antiquities and historic monuments were made around the late Qing Dynasty and the early ROC era. The LPA, enacted in 1930, drew on legal

³⁸ Shanghai Shi Lishi Fengmao Qu he Youxiu Lishi Jianzhu Baohu Tiaoli (《上海市历史风貌区和优秀历史建筑保护条例》)

³⁹ Shanghai Shi Wenwu Baohu Tiaoli (《上海市文物保护条例》)

⁴⁰ Shanghai Shi Feiwuzhi Wenhua Yichan Baohu Tiaoli (《上海市非物质文化遗产保护条例》)

⁴¹ Shanghai Shi Chengxiang Guihua Tiaoli (《上海市城乡规划条例》)

⁴² Shanghai Shi Chengshi Gengxin Tiaoli (《上海市城市更新条例》)

⁴³ Guanyu Jinyibu Jiaqiang Chengshi Guihua Jianshe Guanli Gongzuo de Ruogan Yijian (《关于进一步加强城市规划建设管理工作的若干意见》)

⁴⁴ Guanyu Shishi Zhonghua Youxiu Chuantong Wenhua Chuancheng Fazhan Gongcheng de Yijian (《关于实施中华优秀传统文化传承发展工程的意见》)

⁴⁵ Guanyu Jiaqiang Wenwu Baohu Liyong Gaige de Ruogan Yijian (《关于加强文物保护利用改革的若干意见》)

⁴⁶ Guanyu Jinyibu Jiaqiang Feiwuzhi Wenhua Yichan Baohu Gongzuo de Yijian (《关于进一步加强非物质文化遗产保护工作的意见》)

⁴⁷ Guanyu zai Chengxiang Jianshe zhong Jiaqiang Lishi Wenhua Baohu Chuancheng de Yijian (《关于在城乡建设中加强历史文化保护传承的意见》)

concepts on conservation developed in European countries and Japan. These early legislative initiatives formed the beginning of China's legal system for conserving cultural heritage in a modern sense. 'Protecting ancient sites' was included within regulations for the self-governance of cities and towns as part of the reform of the constitution and local autonomy in the late Qing Dynasty. Relevant requirements were also present in the Constitution enacted by the ROC. However, due to wars and political instability, a mature cultural heritage conservation and management mechanism was never established during the ROC era.

The CHPL, enacted in 1982, laid the cornerstone of the national system for the conservation of cultural heritage. After being substantially amended and improved in 2002, this law, together with the ICHPL, the URPL, and other state laws, constituted the existing legislative and regulatory system for cultural heritage conservation in China today. It has contributed positively to the conservation, use, and regeneration of the country's cultural heritage.

From the Song Dynasty's epigraphy studies on historic artefacts, such as steles, tomb inscriptions, and mirrors, to the concepts of 'antiquities' and 'ancient sites' established in the preservation regulations of the late Qing Dynasty, the definition of antiquities has undergone a substantial transformation. Due to the influx of Western ideological trends since modern times, radical changes from private to public collections and from serving the imperial power and its private interests to public benefits emerged in the two dimensions of 'form' and 'function'. Similar to the current CHPL, the early regulations did not provide fixed definitions of 'ancient sites' and 'antiquities', but instead, expressed the concepts through listing categories. The early regulations did not distinguish the two concepts as movable and immovable categories as in the CHPL, nor did the regulations confirm their private or public ownership.

However, the entities to be preserved by the early regulations covered a wide spectrum, ranging from 'ancient tombs and memorial halls of former sages,' valuable antiquities of 'the state' and 'fine arts,' to historic sites and scenic spots of 'arts' and 'scenery.' On the one hand, the contents of the early regulations reflect the continuous expansion of objects considered for conservation, and on the other hand, they show that a scientific classification as part of the legal system had yet to be established. The definition of these entities in the LPA as "all antiquities related to archaeology, history, paleobiology, and other cultures," was indeed very general.

After the founding of the PRC in 1949, the term 'cultural relics (*wenwu*)' was uniformly adopted in the laws, regulations, and policies. Before the establishment of the Central People's Government, documents initially issued

by the Chinese Communist Party within the areas under its authority already contained advanced concepts. These included the notion that, 'ancient cultural relics are the cultural heritage of our nation,' and 'the scenic spots and historical sites found across the country are of great value in history, culture, science, art, and other fields' (Li 2013). After 1949, the state legislation for the conservation of cultural heritage developed a more systematic and comprehensive classification of conserved entities. The designated FHCCs, FHCDs, Scenic Areas, and other significant conservation entities, which differed greatly in scale and nature compared to the individual heritage entities, have been embraced by new legislation following the special administrative regulations promulgated by the State Council for their conservation and management.

Influenced by the trends in World Heritage conservation around 2000, the term 'cultural heritage' is increasingly used in mainland China. After the *Notice on Strengthening the Conservation of Cultural Heritage* issued by the State Council in 2005 and the ICHL published in 2011, the term 'cultural heritage' became widely used in administrative management and relevant academic fields. The widespread use of the term 'cultural heritage' also reflects China's striving to align its cultural heritage conservation philosophy with international consensus and to adhere to conservation principles and standards developed by ICOMOS and other international organisations.

6.2 Proposal for improving the regulatory framework on the conservation of built heritage

Due to rapid industrialisation and urbanisation, the conservation and management of urban and rural built heritage face enormous obstacles and challenges. There is severe shortcomings in the legislation for the conservation and management of urban and rural built heritage at the national level. This has implications at regional level, given that local legislation cannot obtain sufficient guidance and support from national laws in the aspects of built heritage. Finding solutions through continually adapting and improving relevant legislation to meet the outstanding challenges faced by frequent destruction and demolition of cultural heritage is keenly anticipated.

Currently, the CHPL and RCFHCCTV are the fundamental legislation for conserving China's historic cities. However, the objectives, management modes, and targeted entities stipulated in these two laws are not entirely compatible. In terms of built heritage, the primary aim of the former is the conservation of historic buildings and restriction and management of their settings. In contrast, the latter aims to conserve the historic urban landscape comprehensively (both in terms of features and styles) on

a broader scale and revitalise historic cities, improve living conditions in old towns, and achieve healthy and sustainable development of cities.

The conservation of built heritage at the local level relies on the URPL and regional conservation regulations to enforce planning control and management. Due to the insufficient support from upper-level laws, the overall conservation of historic districts often comes into direct conflict with the local administrations' land and financial policies. The transfer and auction of urban land use rights have exacerbated the destruction of many historic urban areas' overall features through new development (Zhang 2011). Furthermore, the central government has been undertaking extensive reforms on the urban and rural planning management system, which has a considerable impact on the conservation and management of the historic urban landscape.

Strengthening relevant legislation on conserving and managing urban and rural built heritage needs to take place as soon as possible. It is the only way to guarantee the simultaneous advance of built heritage conservation as public interest, improvements in livelihoods and environmental quality, the protection of stakeholders' rights, and meaningful public participation. Restoration, appropriate use, and effective management of built heritage are specific aspects to consider during the legislation's implementation. The extensive destruction and demolition of historic buildings and districts are also pressing issues to be addressed comprehensively. Policy measures and economic means to promote proactive conservation of historic neighbourhoods should be identified through legislation, encouraging local governments to address progressively the living conditions in conservation areas through restoration and renovation projects. Meanwhile, it is necessary to strengthen planning and development control measures and providing better guidance in protecting the urban grain of old towns and sustaining their urban local cultures. Besides conserving the listed FHCCs and FHCDs according to law, the conservation of other unlisted historic districts, historic areas, and traditional villages also needs to be addressed through legislation.

On 28th May 2020, the National People's Congress passed the Civil Code⁴⁸ (implemented from 1st January 2021), which merges eight previous singular civil laws, such as the General Principles of Civil Law, Property Law, Marriage Law, and Inheritance Law. The Civil Code is aimed to protect individual rights. It is the fundamental legal protection for safeguarding 'personal freedom and human dignity' and 'private legal properties,' maintaining

society's overall order, and promoting social justice and fairness.

The conservation and use of built heritage often involve managing a relationship between property rights and environmental rights. 'The dual attributes of cultural heritage and properties make *wenwu* (cultural relics) a type of special goods. As properties, they have commercial attributes, while as cultural heritage, they have non-commercial characteristics' (Cai 2000). Therefore, while protecting individual rights, the rights to heritage conservation and management for public interests also need to be addressed systemically and comprehensively in conservation legislation. The relationship between public and private rights needs to be handled sensitively.

7 Conclusion

In present times, the definition and composition of cultural heritage are becoming increasingly diverse. Its conservation and transmission are closely related to territorial planning, protection of the natural environment, and improvement of the built environment. The implementation and management of urban spatial planning has far-reaching impacts on the conservation and management of cultural heritage, especially built heritage and historic cities. It is crucial to use state legislation to coordinate relevant rights and interests and set up an effective institutional management system with a legal basis to secure favourable conservation policies, funding support, multi-disciplinary cooperation, public participation, and better coordination between institutions involved in cultural heritage management, urban and rural construction, and territorial planning. In reforming the national territorial spatial planning mechanisms, either through formulating a new Territorial Spatial Planning Law or amending the existing Urban and Rural Planning Law, it is necessary to strengthen the conservation and management of historic and cultural resources. 'Prioritising conservation' must be established as a fundamental principle. Historic districts and urban areas related to the residents' everyday life and collective memories should be considered as cultural heritage. Guidelines for built heritage conservation and management and to maintain historic landscape features should be fully integrated into the urban spatial planning system, notably with regards to urban regeneration, to achieve healthy and sustainable development of historic cities.

Abbreviations

ATSPL: Ancient Temples and Shrines Preservation Law (Japan); CCPA: Central Committee for Preservation of Antiquities (ROC); CHPL: Cultural Heritage Protection Law (PRC); FHCC: Famous Historic and Cultural City (PRC); FHCD: Famous Historic and Cultural District (PRC); ICHL: Intangible Cultural Heritage Law (PRC); IMPCHS: Interim Measures for the Conservation and Management of PCHS; IMPA: Interim Measures for Preservation of Antiquities (ROC); IRCMCH:

⁴⁸ *Minfa Dian* (《民法典》)

Interim Regulations on the Conservation and Management of Cultural Heritage (PRC); IRLPA: Implementation Rules of the Law on the Preservation of Antiquities (ROC); LPA: Law on the Preservation of Antiquities (ROC); MOHURD: Ministry of Housing and Urban-Rural Development (PRC); NCHA (SACH): National Cultural Heritage Administration (previously, State Administration of Cultural Heritage) (PRC); NPC: National People's Congress (PRC); PCHS: Protected Cultural Heritage Sites (PRC); PRC: People's Republic of China; RCFHCCTV: Regulations on the Conservation of Famous Historic and Cultural Cities, Towns and Villages (PRC); RICHPL: Regulations on the Implementation of CHPL (PRC); RMPPAS: Rules for the Measures to Promote the Preservation of Ancient Sites (Qing Dynasty); ROC: Republic of China; RPHSA: Regulations on the Preservation of Historic Sites and Antiquities (ROC); RUTVS: Regulations for Urban, Township, and Village Self-governance (Qing Dynasty); URPL: Urban and Rural Planning Law (PRC).

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