

# A Brief Analysis of the Improvement of the Law of the People's Republic of China on the Protection of Cultural Relics

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**Abstract:** Since the promulgation of the “Law of the People’s Republic of China on the Protection of Cultural Relics” in 1982, the law has been amended five times and revised once. Among them, the revised version adopted on October 28, 2002, has changed remarkably. On the premise of sorting out its historical background, we take “The Provisional Regulations on the Protection and Management of Cultural Relics (1961),” “The Law of the People’s Republic of China on the Protection of Cultural Relics (1982),” and “The Law of the People’s Republic of China on the Protection of Cultural Relics (2002)” as the research subject to analyze the changes in legal provisions and reveal the process of improvement in the protection of cultural relics in China.

**Keywords:** Protection of cultural relics; The law; Legal articles

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## 1. Introduction

On November 10, 2020, the State Administration of Cultural Heritage (SACH) issued “A draft amendment to the Protection of Cultural Relics of the People’s Republic of China (Draft Amendment),” which is another major amendment to the law since it was enacted in 1982. Looking back on history, three laws and regulations have been extremely important in the legalization of cultural relic protection in China. They are “The Provisional Regulations on the Protection and Management of Cultural Relics (1961)” (hereinafter referred to as “Regulations (1961)”), “The Law of the People’s Republic of China on the Protection of Cultural Relics (1982)” (hereinafter referred to as “The Law of Protection (1982)”), and “The Law of the People’s Republic of China on the Protection of Cultural Relics (2002)” (hereinafter referred to as “The Law of Protection (2002)”). In this study, we attempt to analyze the changes in the specific articles of the three laws and regulations based on the background of the times and then reveal the process of improvement of China’s cultural relics protection law.

## 2. “Regulations (1961)” in the early years of the People’s Republic of China

In the early years of the People’s Republic of China, in order to rid the country of being impoverished and destitute, the whole country was actively developing industry and agriculture <sup>[1]</sup>. In capital construction projects, many immovable cultural relics had to make way for urbanization. Similarly, there were conflicts between the protection of cultural relics and the construction of farmland infrastructure in agricultural production and construction. In addition, laws and regulations were not perfect in the early years of China;

many cultural relics were lost overseas, and tomb raiding occurred from time to time.

In order to effectively balance the relationship between capital construction and protection of cultural relics, as well as to curb smuggling and looting, the Chinese government issued a number of measures, directives, and notices on a single issue between 1950 and 1958. It was not until 1961 that “Regulation (1961),” a comprehensive law, was promulgated, with 18 articles in total. As the predecessor of “The Law of Protection (1982),” this regulation laid the foundation for the premise of Chinese cultural heritage protection. Specifically, it includes defining cultural relics, formulating a protection and management system for immovable cultural relics, and clarifying the management methods for the circulation of movable cultural relics.

### **2.1. Definition of cultural relics**

According to Article 2 of “Regulations (1961),” cultural relics can be classified into five categories:

- (1) buildings, sites, and commemorative objects related to major historical events, revolutionary movements, and important figures that have commemorative significance and historical data value;
- (2) ancient cultural sites, tombs, buildings, grottoes, stone carvings, *etc.*, of historical, artistic, and scientific value;
- (3) valuable art and crafts of all ages;
- (4) revolutionary documents and materials as well as ancient books and materials of historical, artistic, and scientific value;
- (5) representative objects that reflect the social system, social production, and social life of all times.

Such a definition not only emphasizes the importance of revolutionary cultural relics, but more importantly clarifies the three major values of cultural relics, namely historical value, artistic value, and scientific value.

### **2.2. The protection and management system of immovable cultural relics**

In Article 4 of “Regulations (1961),” immovable cultural relics can be divided into three categories. Taking this as the framework of protection and management, the contents of protection and management are further stipulated in Articles 5 and 11 of “Regulations (1961).” The contents of protection and management include four aspects, *i.e.*, clarifying the management organization, determining the scope of protection, making signs and explaining, and recording files. In China, it is commonly known as “four-haves job.”

In addition, details such as the relationship between authority and responsibility, a coordinated approach to protection and development, and sources of funding have been highlighted in Articles 6, 8, 9, 11, and 12 in “Regulations (1961).”

### **2.3. Measures for the administration of circulation of movable cultural relics**

In Article 13 of “Regulations (1961),” “Local departments for cultural administration shall strengthen their control over the commerce of cultural relics.” Furthermore, Article 14 of “Regulations (1961)” clearly states that “the export of important cultural relics is prohibited except those exported for exhibition or exchange approved by The State Council.” In addition, the state has the right to confiscate cultural relics when they are found to be stolen.

## **3. “The Law of Protection (1982)” in the initial stage of the Chinese reform and opening-up**

Since the promulgation of “Regulations (1961),” Chinese cultural relics had been relatively protected. However, the punishment for criminals was too general. Illegal acts such as digging and smuggling still occurred. Moreover, as China entered a new era of “economic construction as the center,” the cause of cultural relics conservation has encountered new difficulties <sup>[2]</sup>. In addition, along with the promulgation of

various international documents on heritage protection, Chinese cultural relics protection workers also began to reflect on the focus of conservation.

On November 19, 1982, the National People's Congress promulgated "The Law of Protection (1982)" on the basis of integrating various normative documents already issued. As the first law promulgated by the country's top legislative body in the field of culture, the law contains 33 articles in 8 chapters and establishes the protection principle of "not changing the original state of cultural relics." Compared with "Regulations (1961)," in "The Law of Protection (1982)," the definition of cultural relics is more precise, the protection and management system is more ideal, the management measures for movable cultural relics are more considerate, the reward and punishment measures of movable cultural relics are detailed, and the importance of archaeological work is emphasized.

### **3.1. Precise definition of cultural relics**

In terms of the precise definition of cultural relics, "The Law of Protection (1982)" embodies the definition of types and the formulation of space and time range. Specifically, in the law, vague words such as "*etc.*" do not appear (Article 2 of "The Law of Protection (1982)"). The space range is also restricted "within the territory of the People's Republic of China" and includes underground, internal waters, and territorial water. Moreover, the expression of time does not appear in such vague terms as "epochal," but "historical" instead (Articles 2 and 4 of "The Law of Protection (1982)").

### **3.2. Relatively ideal protection and management system of immovable cultural relics**

On the basis of "Regulations (1961)," "The Law of Protection (1982)" is supplemented and improved in three aspects.

Firstly, in terms of the protection and management framework, the law adds "historical and cultural city" on the basis of the original three-level cultural relics protection units, as evident by Article 8 of "The Law of Protection (1982)."

Secondly, in terms of coordination with infrastructure construction, the law supplements the examination and approval methods for corresponding construction projects and adds the demarcation of construction control zones, as evident by Article 12 of "The Law of Protection (1982)."

Thirdly, in terms of reuse, the law clarifies the approval methods for changing the use of immovable cultural relics at all levels and details the protection articles, as evident by Article 15 of "The Law of Protection (1982)."

### **3.3. Deepen the management measures for movable cultural relics**

In "The Law of Protection (1982)," the relevant articles on the circulation management of movable cultural relics amount to 7 articles in 3 chapters. First, the law defines movable cultural relics as museum collections and private collections and then grades them according to their value. Furthermore, corresponding circulation measures are formulated for different grades and categories of movable cultural relics, and various approval procedures are deepened and improved, as evident by Articles 24, 25, 27, and 28 of "The Law of Protection (1982)."

### **3.4. Refine the objects and measures of rewards and punishments**

In "The Law of Protection (1982)," the regulations on rewards and punishments have been expanded into one chapter. The objects of rewards and punishments are subdivided into 7 situations. For different objects, incentive measures include spiritual encouragement and material rewards, while punitive measures are divided into administrative punishment and criminal responsibility according to severity, as evident by Articles 29, 30, and 31 of "The Law of Protection (1982)."

### **3.5. Chapter on archaeological excavations**

In “The Law of Protection (1982),” contents related to “archaeological excavation” are summarized into one chapter. First of all, it is clear that “all archaeological excavations must go through the application for approval,” and no foreigner or foreign organization is allowed to carry out archaeological investigations or excavations without permission, as stated in Article 21 of “The Law of Protection (1982).” At the same time, the law also makes detailed articles on the proposal of excavation plans and sources of excavation funds, as evident by Articles 16, 19, and 20 of “The Law of Protection (1982).”

### **4. “The Law of Protection (2002)” in the early 21st century**

With the gradual deepening of reform and opening-up and the greater demand for spiritual needs among people, urban construction, tourism development, market expansion, and other factors have brought unprecedented challenges to the protection and management of cultural relics <sup>[3]</sup>. At that time, China has successively established cooperations with more than 30 countries or regions, and China’s cultural relics protection and management concepts have gradually come in line with international standards.

Against this background, on October 28, 2002, the “Protection Law (2002)” was passed at the 30th meeting of the Standing Committee of the Ninth National People’s Congress. For the first time, the law clarifies the sixteen-character guideline for the protection of cultural relics and highlights the importance of research and public awareness. The law supplements the establishment of a licensing system for units engaged in cultural relics protection, systematically improves the protection and management framework for cultural relics, deepens the cognition of “not changing the original state of cultural relics,” and strengthens the operability of existing regulations <sup>[4]</sup>.

#### **4.1. Licensing system for units engaged in cultural relics protection**

In “The Law of Protection (2002),” for the first time, it is clarified, in the form of legal articles, that units engaged in work related to cultural relics protection in China should have the approval and permission of relevant cultural relics administrative department. In particular, units engaged in repair, relocation, and reconstruction projects must “have obtained the qualification certificate for cultural relics protection projects” and “units engaged in archaeological excavations shall be approved by the cultural relics administrative department of the State Council” <sup>[5]</sup>.

#### **4.2. Systematic protection management framework for cultural relics**

In Article 3 of “The Law of Protection (2002),” Chinese cultural relics are divided into two categories: immovable cultural relics and movable cultural relics. Concerning immovable cultural relics, the law adds “historical and cultural blocks, villages, and towns,” as evident by Article 14. As of now, the protection and management framework of China’s immovable cultural relics—cultural relics protection units – historical and cultural blocks – historical and cultural cities—has been completed. Concerning movable cultural relics, the law clearly states in Article 3 that “... movable cultural relics are divided into precious cultural relics and general cultural relics; precious cultural relics are divided into first-class cultural relics, second-class cultural relics, and third-class cultural relics” <sup>[6]</sup>.

#### **4.3. Deepens the cognition of “not changing the original state of cultural relics”**

In “The Law of Protection (2002),” the scope of application of “not changing the original state of cultural relics” has been expanded. This principle is applied not only to the repair, maintenance, migration, and utilization of immovable cultural relics, but also to the restoration, photography, and rubbing of all kinds of cultural relics, as stated in Article 46 of “The Law of Protection (2002).” At the same time, the law also has a more in-depth explanation of the “original state” of immovable cultural relics. This “original state” is

a requirement for protecting not only the cultural relic itself, but also its surrounding environment, as evident by Articles 17, 18, and 19 of “The Law of Protection (2002).”

#### **4.4. Strengthens the operability of regulations**

The expanded contents of “The Law of Protection (2002)” is more of a refinement of the existing provisions on the authority, methods of implementation, timeliness, and legal responsibilities. For example, when stipulating how to protect the safety of cultural relics in museum collections, Article 47 of the law states in detail that “museums, libraries, and other units that collect cultural relics,” as competent and responsible institutions, should be equipped with “fire prevention, anti-theft, and other facilities” in accordance with relevant state regulations. As another example, when the law stipulates the relevant measures for the discovery of cultural relics in Article 32, it specifically emphasizes the following: “should rush to the scene within 24 hours,” “suggestions should be raised within seven days,” and other aspects of timeliness.

#### **5. Conclusion**

By sorting out and summarizing the changes in the articles of the three laws and regulations, it is clear that the legalization of cultural relics protection in China has gone through a process of improvement from initial establishment to precise improvement, followed by systematic deepening. The provisions of China’s cultural relics protection law have been progressively refined and made more enforceable. Not until recently, the SACH issued “A draft amendment to the Protection of Cultural Relics of the People’s Republic of China (Draft Amendment),” ushering in a new major revision in China’s Cultural Relics Protection Law. The new law will further strengthen the protection of cultural relics, promote the rational and appropriate use of cultural relics, and effectively improve the level of legal management of cultural relics<sup>[3]</sup>. Similarly, the new law will provide a strong backing for the protection and inheritance of the excellent historical and cultural heritage of the Chinese nation.

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#### **Disclosure statement**

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