

Features of Farmer Collective Member Rights in China

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Abstract

This article analyzes the features of farmer collective member rights, then combines the general theory of member rights, and proposes that the members of farmer collectives should have four kinds of basic rights.

Key words: Member rights; Farmer; Collective

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1. FEATURES OF FARMER COLLECTIVE MEMBER RIGHTS

In China, the corporation type of member rights only is a special type of member rights. There are still many kinds of member right type in China. The member right type of farmers as collective members now is able to be a special type of member rights because it has different features. The author believes that these features can be reflected as follows:

First, it is subject to the internal function of farmer collectives. China's farmer collectives have very different features from other types of groups, namely the legal basis of existence for farmer collectives is not to directly seek personal interests for their members but provide Communal products for their members in their lives, for example, providing the basic living goods and conditions, order and stability in villages, the internal security environment of villages, roads, tractors and so on. These internal functions closely relating acquisition

and distribution of public goods determine the nature of the groups. In China, these groups are less to represent their members to participate in market transactions and maximize the member benefits outside, which lead directly to farmer collectives and member personality does not separate completely. Such the nature of Chinese farmer collectives decides many unique features of the member right structure, such as, rights of members of the body must be strictly limited in order to ensure the effective provision of public goods created by the farmer collectives to the group members; to ensure that the farmer collectives can have ability to continually create public goods, while members enjoy the rights, they should also take the burden of the corresponding obligations in the same time. While exercising the member rights, it has also more restrictions, such as, when members quitting these farmer organizations, members can not exercise the division right of collective property.

Second, the member rights depend on a strong relationship between co-members. In the ancient times, China had a tradition, "Imperial power does not rule entities which are under counties, and these entities are autonomous." After a long practicing in the history, the rural community had formed a hierarchical structure (Fei, 1998; Liang, 2004) which included links of kinship or local people, basic living units depended on family (clan) and interpersonal relationships. This pattern had very huge impact, eventually forged the nation's characters of behavior and habits of thinking. In this sense, Qin Hui said, "Contemporary Chinese people are farmers, modern China is an agricultural society" (He, 2009, p.65; Huang, 2004, p.3). This is indeed insightful. In today's vast rural areas, despite the loss of this influence, but it does not completely disappear. On this basis, the formation of rural social habits determines the features of farmer rights in collectives to a large extent. There are three cases in his book: first, the principal of rights in farmers' groups can be both an individual farmer and a farmer household.

The group members can exercise the right to vote by using farmer households as units and exercise the right for requesting land contractual management. Farmer households as units can claim for rural homestead, which obviously is generally different from individual farmers as civil right principals; second, the fact that birth can be used as a reason for obtaining the rural collective membership; third, the villages is the basic forms of farmer collectives which are recognized by farmers. Chinese farmer's double identity (i.e., family identity and village identity) structure has the same history, the reason is that China's household population has generally remained below 5 people and these small scale farmer households can not completely solve a variety of problems in the agricultural production and people lives, especially in the pre-capitalist era with backward productive forces. The villages organized by clans or local people have become the most convenient, lowest cost, the most suitable basic organizations to provide public goods.

As mentioned before, the member rights are not tiny rights, but a beam of rights, the rights of members of farmer collectives form a congregation as well. The so-called rights of members of farmer collectives are some kinds of the rights which are based on farmer's collective membership or status, and the farmer collective, village regulations or law after farmers participate to set up or joins farmer collectives. Like other kinds of member rights, the rights of members of farmer collectives also contains four kinds of rights which are the right of participating in management, the right to know, the right to benefit and the right of disposition. Since these four rights are very important for farmers, so they can become four independent rights. To ensure the realization of the four kinds of rights, we need to adapt private law norms of internal legal relationships of farmer collectives and design more detailed right norms, in particular:

2. THE RIGHT OF PARTICIPATING IN MANAGEMENT

The right of participating in management is a core right in the rights of members of farmer collectives, which relates to rights of members just like the dominion relates to ownership right of property or creditor claim right relates to creditor rights. According to Lorenz said, the so-called right of participating in management is the right to participate in a company, a community or a group management and activities, and this right comes from the position of a member, which generally is inseparable with this status. Specifically, the right of participating in management can be subdivided into: (i) the right of attending or appointing proxies to attend the member meetings; (ii) the right of participating to make resolutions; (iii) the right of convening or presiding over farmer members meetings; (iv) the right to vote and stand for election.

3. THE RIGHT TO KNOW

"The right to know" first proposed by American scholar Kent-Cooper at a lecture in January 1945, intended to refer to citizen right to access to specific information. The concept and system architecture of "the right to know" were originally directed against negative treatment for information openness by federal agencies within the U.S. government, arbitrary bureaucratic tendency to expand confidentiality privileges. Since the concept was introduced in China, there are different understanding to the concept and the nature of the issue which cause disputes. Because of the paper theme restriction, the paper has no intention to make a complete conclusion to the nature and meaning of the right, but only uses the concept to sum up the rights of knowing, suggestions, supervision and questions which are the rights of farmer collective members.

Farmer collective member's right to know refers to members have the right to know and supervise the status of the property and collective matters managed by the collective decision-making organization, executive organization, supervision organization and other members. Farmer collective member's right to know mainly includes: (i) knowing the fact; (ii) advice, inquiry; (iii) the supervision. The article 62 of "Property law", and article 30, 31 of "Village Committee Organization Law" are the legal norms for farmers collective member's right to know in the present stage of China, according to the regulation, the system architecture shows the following characteristics: first, the right to know includes knowing the fact which is the core right in the right to know, but from its own purposes, knowing the fact does not completely represents the right to know. The purpose of knowing the fact is the understanding of the fact, then members combine with own experience to propose some objections on the collective matter management, require the collective execution or supervision organization to provide a reasonable explanation and sometimes members provide own opinions and suggestions. Through inquiry, advice and supervision and so on, members build a reasonable basis for they exercising their voting rights, right of election and the right to participate in management. Therefore, a complete right of "right to know" should at least include the four rights: knowing the fact, inquiry, advice and supervision; second, the right to know can only be exercised in a negative way. In terms of exercise of right to know, there are a negative way and positive way. Negative exercise the right, which refers to the law requiring the collective execution and supervision organization carry out information disclosure obligations to protect the collective member's right to know. Active exercise the right, which refers to the law giving the collective members rights to consult, copy documents and so on to protect the collective members' right to know. In accordance with article 30, 31 of "Village Committee Organization Law", legislation requires the

farmer collective members to exercise their right to know in a negative way. This legislation mode obviously narrowed the collective members to exercise the right to know, it has not taken two systems of the organization law norms, which are more effective proved in practice, namely the members have the right to query or copy documents of decision-making organization, executive organization, supervision organization as well as members have the right to claim rescinding the decision made by these organizations (Li, 2000, p.219).¹

4. THE RIGHT TO BENEFIT

As stated earlier, China’s rural situation is complex, and some members of farmer collectives have no longer depend on agriculture as their main source of income, and some land of farmers’ collective possession is no

longer used as farmland. Farmer collective members’ salary income has become the mainstays of family income, and collective assets are mainly used to create collective benefits in these areas, these typical farmer collective examples: like Huaxi village in Jiangsu province, Nanjie village in Henan province, and some farmer collectives in Foshan, Dongguan of Guangdong province and other places and so on. In these farmer collectives, land is the collective production resources and is already monetization, and farmer collective members’ right to benefit is often simplified into a claim to money or monetization.

Of course, to look across the country, more farmer collective members still use agriculture as the main source of their income, especially the Midwest rural areas. A statistical data can illustrate this problem (He, 2010, pp.38-39).²

Table 1
Income of Urban Residents in China

Region	Salary income	Net income of household operation	Property income	Transfer income	Total income
State	1596.22 0.39	2193.67 0.53	128.22 0.03	222.25 0.05	4140.36
Beijing	5605.65 0.59	2303.72 0.24	803.22 0.09	727.04 0.08	9439.63
Shanghai	7353.42 0.72	753.58 0.07	690.06 0.07	1347.56 0.13	10144.62
Guangdong	3202.13 0.57	1838.60 0.33	312.60 0.06	270.72 0.05	5642.04
Hubei	1454.50 0.36	2379.82 0.60	37.70 0.01	125.46 0.03	3997.48
Henan	1267.70 0.33	2398.24 0.62	52.66 0.01	133.00 0.03	3851.60
Jiangxi	1611.45 0.40	2212.73 0.55	55.97 0.01	164.55 0.04	4044.70
Anhui	1470.05 0.41	1820.86 0.51	101.96 0.03	163.40 0.05	3556.27

¹ The regulation of claiming to rescind decisions refers to the collective members file for the authority to cancel collective decisions which violate collective regulations, legal processes, or wrong decisions made by the collective.

² The salary income in the form refers to the peasant migrant workers earned income; net income of household operation refers to the farmers operating contract land of household and obtaining physical and monetary income; property income refers to farmers directly earning income from their assets based on equity investment, currency deposit and so on; transfer income refers to all kinds of subsidies from the government, and relatives and friends gifts, such income is generated from property transfer between individuals.

These farmer collectives' main function still is to provide public goods for their members' agricultural production. The members' right to benefit has not simplified into a claim to money or monetization. According to "Property Law", "Land Management Law", "Rural Land Contract Law" and "Village Committee Organization Law", the right to benefit for the collective members mainly include: (i) the right to use collective facilities; (ii) claim for collective property operating income, allocation of land compensation; (iii) claim for rural land contract; (iv) claim for distribute the homestead; (v) the priority right to contract for" four kinds of wasteland".

5. THE RIGHT OF DISPOSITION

Because there is a different personality between farmers and the collective, farmer collective members have no direct right to dispose of the collective property, only through the exercise of the right to participate in management, indirectly to dispose of farmer collective affairs. A collective member can only dispose of his membership and membership rights based on his membership status. Therefore, the right to disposition

refers to a member has the right to dispose of his membership in accordance with the provisions of the law or collective prospectus (pacts) based on his membership status, specifically including members' claims for quitting from the collective, members' claims for the dissolution of collectives or establishing of discrete collectives.

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