

# The Content Type Construction of the Membership Right of Rural Collective Economic Organizations

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## Abstract

The reform of rural collective property right system is of great significance to the implementation of China's Rural Revitalization Strategy. In this reform, "people" is the key. The core of this reform is to protect farmers' property rights and interests. Therefore, in order to smoothly promote the reform of rural collective property right system, we need to put the membership right of rural collective economic organizations in a higher-level framework and construct the legal system. In the system construction, the clear content of the membership rights of rural collective economic organizations is the focus. The clear rights will help to better ensure the realization of the membership rights, and the identification of membership will not lose its significance because of the unclear content of the rights.

## Keywords

Rural Collective Economic Organization; Membership Rights of Collective Economic Organizations; Typed Construction.

## 1. The Connotation and Basis of the Membership Right of Rural Collective Economic Organizations

To study the membership rights of rural collective economic organizations, we should first clarify the legal connotation and relevant constituent elements of collective membership rights from the should be level. Including its connotation and legal characteristics, the subject and object of membership right and other basic legal issues.

### 1.1. The Connotation of Membership Rights of Rural Collective Economic Organizations

The membership right of rural collective economic organizations is not a single and specific right, but contains many specific rights. The semantic interpretation of the membership rights of rural collective economic organizations is the rights enjoyed by the members of rural collective economic organizations according to their membership, but its connotation must be understood in combination with the reform background.

The reform of rural collective property rights is related to the property rights and interests of farmers. The membership rights of rural collective economic organizations have the attributes of identity, property and democratic management. According to China's current policies and reform practice, the most important thing in the reform of rural collective property right system is the share power reform of rural collective assets. The share system reform constructs the collective member right by means of stock conversion and quantification. [1] It is also in this sense that the construction of the legal system of membership right is very important. Therefore, it involves not only the land contract right, homestead qualification right and other rights, but also the share income right of collective assets. Although some scholars have proposed that the basis of the joint-stock reform of collective assets is collective operating assets or land resource-based assets, [2] we can make it clear that through the reform of the collective property right system, the ownership of collective assets is clarified, farmers become

"shareholders" through the joint-stock reform, and rural residents obtain an important income channel, And finally realize the professionalization of farmers is the general trend.

Under the background of shareholding of rural collective assets, I think it is necessary to make a comparative analysis of member rights and shareholder rights. In 2016, the State Council issued the opinions on property rights reform, which clearly stated that in order to protect the rights and interests of farmers' collective assets, carry out asset clearance and capital verification of collective assets, confirm the membership of rural collective economic organizations and protect the rights of farmers' shares in collective assets. [3] The membership right is special. It is a right formed according to the membership of the collective. The sources and contents of the two rights are different. We can't call two different things with the same noun, which will confuse some substantive things. For example, in the study of equity rights, the shareholder rights in the company law can be transferred and inherited, but the membership rights in rural collective economic organizations cannot. Therefore, the "equity" of members in the joint-stock system of rural collective assets is not equity in the sense of company law. They are both related and different.

## **1.2. Theoretical Basis of Membership**

It is generally believed that membership rights are the most important theoretical basis of membership rights, but China's current theory on membership rights is not very mature. Most scholars studying membership rights conduct comparative research with foreign membership rights. Chinese scholars who study the right of membership from the perspective of civil rights include Shi Shangkuan, Xie Huaihe and others. Xie Huaihe once proposed to study the right of membership as the fifth system of civil rights, which is juxtaposed with property rights, personality rights, kinship rights and intellectual property rights, which has also been regarded as an independent theory of civil rights. Some scholars, such as Wang Liming, believe that membership rights are a mixture of various civil rights, that is, membership rights are various rights enjoyed by members of a group according to the law and the articles of association. [4]Hu Changqing believes that the membership right is the right enjoyed according to the identity attribute, "those who cover the membership right always have the right to be consistent with the membership qualification". No matter which view, we can find that the membership right is very similar to the membership right of collective economic organizations to be studied in this paper. Therefore, when we think about the construction of the legal system of the membership right of rural collective economic organizations, we can refer to the general legal commonness and system of the membership right to analyze and guide the legal construction and Realization Mechanism of the membership right. At the same time, we should also accurately grasp the differences between the two, and grasp the construction of the membership system of rural collective economic organizations in combination with the actual situation of many rural pilot projects in China.

## **2. Disputes Over the Rights of Members of Rural Collective Economic Organizations**

### **2.1. The Subject of Membership is Controversial**

The subject of the membership right of rural collective economic organizations must be clearly defined, otherwise the definition of property right in the reform of collective property right system will lose its significance. Members of rural collective economic organizations must be collective members with membership, but some people equate them with villagers. The concept of villagers is the subject concept from the perspective of villagers' autonomy, mainly self-management and service, and emphasizes the public management at the village level. The members of rural collective economic organizations are the main body formed by confirming

their membership according to the law or collective articles of association, which is inseparable from collective ownership. Now the drafting of the rural collective economic organization law has been started. After the promulgation of the law, the membership right of rural collective economic organizations will be based on the law, and the subject of the right will also be expressly stipulated by the law.

In addition to the disputes about villagers, there are also disputes about whether legal and unincorporated organizations can become members of rural collective economic organizations. I think the right subject of membership right can only be the natural person in the civil subject, not all subjects except the natural person, such as farmers. This is determined by China's institutional arrangements. At the beginning of this paper, the institutional background of the membership right of rural collective economic organizations has been described. The core of rural collective property right reform is to protect farmers' property rights and interests and promote the sustainable growth of farmers' income. This emphasis is not meaningless. In the view of some scholars, rural collective economic organizations with family farmers as the basic unit can be constructed, and family farmers can be determined as the legal subject of the membership right of collective economic organizations. I do not agree with this view. The legal status of individual farmers as members of collective economic organizations is inviolable. If individual farmers are not the legal subject of the membership right of rural collective economic organizations, promoting the sustainable growth of farmers' income may not be guaranteed.

## **2.2. Disputes between the Membership Rights of Rural Collective Economic Organizations and Farmers' Collective Membership Rights**

At present, there are not many domestic scholars studying the membership rights of rural collective economic organizations, and there are many articles on the membership rights. However, there are no laws, regulations or rules to regulate the membership rights of collective economic organizations, and the expression of the relevant contents of the membership rights in various central documents in the process of deepening rural reform is very vague. These uncertainties give Chinese scholars room to understand and give play to the membership rights. The legal definition of the membership rights of rural collective economic organizations determines what rights members can enjoy, and directly affects the actual interests of members. Therefore, the research on the legal decision of membership rights is important and essential. There has always been a discussion on whether the membership rights of rural collective economic organizations and farmers' collective membership rights are the same meaning. From the perspective of law, the terms in the legal field are rigorous, especially the member rights involve the substantive rights of members, and the legislative work of the rural collective economic organization law has also begun, so it is necessary to clarify whether there is a substantive difference between the two terms. In his article, Chinese scholar Zhang Guanghui said that the current provisions on Farmers' collective membership rights are not clear. Most scholars regard farmers' collective membership rights and rural collective economic organization membership rights as two terms with no meaning difference. In his opinion, these terms are not important, but the definition of membership is important. [5]Yang Yijie believes that the rural collective membership right refers to the membership right of farmers' collective economic organizations, but the statement of the membership right of farmers' collective economic organizations is ambiguous. [6]However, some scholars believe that there is a difference between the membership rights of rural collective economic organizations and farmers' collective membership rights, and the two should be clearly defined. Fang Shaokun scholars believe that this involves the subject category in the rural property rights reform. The subject of rural collective property rights includes members of rural collective organizations and members of rural collective economic organizations. The subject concepts of the two can not be confused. [7]We can understand that under the background of rural property right

system reform, the main body of the new rural collective economic organization is the members of the rural collective economic organization, not the members of the farmers' collective organization.

I think there is a boundary between the membership rights of rural collective economic organizations and farmers' collective membership rights. If the two are the same right, we can conclude that rural collective economic organizations are equal to farmers' collectives, but it is obvious that the scope of rural collective economic organizations and farmers' collectives is different. Members of rural collective economic organizations need to be recognized as members by law or relevant articles of association, and farmers' collective, as the name suggests, refers to the aggregation of farmers and the general name of people with rural household registration. Becoming a farmer does not necessarily become a member of rural collective economic organizations. Farmers who cannot enjoy the membership rights of rural collective economic organizations are equal to and cannot enjoy the rights of farmers' collective members. The upper concept of the rights of members of farmers' collective economic organizations is the rights of farmers' collective members, which is derived from farmers' collective ownership. It is the general name of the rights enjoyed by farmers as collective members. On the premise of having the specific identity of village collective farmers, it belongs to an independent type of civil rights.[8]

Therefore, the membership right of rural collective economic organizations is by no means equal to the collective membership right of farmers. In promoting the legislative process of the rural collective economic organization law, the definition of the boundary between the two is more important, which helps to accurately and effectively protect the rights of members of economic organizations in the reform of rural property right system.

### **3. The Necessity of the Content Type of Membership under the Background of System Reform**

Rural collective economic organization is the owner of rural collective assets and the organizational carrier of rural collective property right system reform. In the Rural Revitalization Strategy, the reform of rural collective property right system has promoted the development direction of rural collective economic organizations and the reconstruction of the content of members' rights.

#### **3.1. It is Necessary to Identify the Content of Membership Rights of Collective Economic Organizations under the "Separation of Three Rights"**

The right structure of "separation of three rights" will affect the substantive rights of members of collective economic organizations, that is, if the member rights are divided into three aspects: collective interest distribution claim, benefit right and management right, does the collective interest distribution claim include land contract right? The significance of this issue is that the determination of the legal nature of land contract right will directly affect the content typing of member rights and the interests of members.

In fact, on the basis of adhering to the separation of rural land ownership and contracted management, the reform of "separation of three rights" divides the contracted management right into contracting right and management right. At present, the academic circles mainly hold two views on the nature of the land contract right, one is the "property right theory" and the other is the "member theory". Of course, there are other views. For example, Zhu Jisheng believes that the land contract right under the "separation of three rights" is neither the right state after separating the unearthed land management right from the land contract management right, nor a qualification to contract land, It is a way for the obligee to exercise and realize the land contract management right [9]. Scholars of "real right theory" believe that the

land contract right is actually a usufructuary right, and the contract right is essentially a new right content generated by the transfer of part of the power of the contract management right to the management right. [10] However, I prefer the view of "member theory". According to Chen Xuejun's point of view and from the perspective of legislation, if the contract right is recognized as a usufructuary right and insists that the contract right is a contract management right limited by the management right, when the property law has confirmed the usufructuary right of the contract management right, the new law will recognize the land contract right as a usufructuary right, which will violate the principle of "one thing, one right", That is, two similar usufructuary rights cannot be established on the same thing, which belongs to the retrogression of legislative technology. [11] This is also the view of "member theory". Han song, a scholar, analyzes the source of the contract right and insists that the contract right is the content of the realization of the member right and the qualification right of the member to obtain the land contract management right. Its right object is aimed at the contract awarding behavior of the subject of collective land ownership, and its right comes from the collective membership of the subject of collective land ownership, Not from the separation of powers and functions of collective land ownership. [12] Therefore, the contract right should belong to the member right rather than the contract management right. Although the economic basis and legislative expression of the right to contract and the right to contract management are similar, there is still a separate basis. The forms of infringement and relief methods are different. The most important thing is that the right to land contract is the basis and premise of the right to land contract management, and their existence is not synchronic. [13]

The original intention of "separation of three rights" is to strengthen the transfer of land on the premise of adhering to collective ownership and ensuring farmers' contracting rights. The transfer of land is divided into creditor's right transfer and real right transfer, and the creditor's right transfer corresponds to the transfer of management right. After applying for land contract, collective members can transfer the land management right to people who think they can bring greater benefits. Under the background of the shareholding of rural collective assets, collective members can "take shares" to obtain the increase of property rights and interests. Therefore, the identification of land contract right as member right is not only in line with the current policy arrangement, but also can ensure clear and effective relief when member rights are infringed.

### **3.2. Under the Reform of Property Right System, it is Necessary to Make a New Definition of Rural Collective Economic Organization**

Under the reform of property right system, it is necessary to construct the type of membership right of rural collective economic organizations. The background of the reform of rural collective property right system is that the ownership of rural collective assets is not clear, the rights and responsibilities are not clear, and the loss of rural collective assets is serious. Rural collective assets are the common labor achievements of the vast number of peasant groups. General Secretary Xi Jinping has instructed farmers to be the masters of Rural Revitalization. Therefore, the implementation of Rural Revitalization strategy must first protect the rights and interests of farmers.

Domestic scholars have discussed and explored the ways and key points of rural collective property right system reform from different angles, but there is no great difference in essence. The reform of rural collective property right system must adhere to rural collective ownership. For example, scholar Fang Shaokun pointed out that there are various forms of collective economy, but in the process of rural collective property right system reform, we must adhere to the legal and policy bottom line of farmers' collective ownership. [14] Some scholars also stressed that the reform of rural collective property right system is only to choose a more efficient property right system arrangement, so as to clearly define various actual property



rights such as the use income of rural land and other collective assets, not to change rural collective ownership. [15]Therefore, the rural collective property right reform must adhere to the rural collective ownership, so we think about how to accurately protect the property rights and interests of each individual farmer under the collective ownership, and how to promote the continuous increase of farmers' personal income.

Domestic scholars have expressed their views on the development process of rural collective economy. Yan Jingbo believes that the historical changes of China's rural collective economy can be divided into four periods, and the corresponding economic model of each period adapts to different historical backgrounds. [16]Taking the reform and opening up as the time node, Professor Wang Shuchun described the evolution process of the collective economy in time periods, including the stagnation of the development and adjustment of agricultural collective ownership before the reform and the consolidation and innovation after the reform. [17]During the reform of the property right system of rural collective economic organizations, it has always emphasized the "separation of government and enterprises", but so far, rural collective economic organizations still undertake most of the management functions of the village committee while undertaking economic functions, which is a typical "one set of people and two sets of teams". Therefore, scholars Zhang Yunlong proposed that it is necessary to reconstruct the rural three-level collective economic organizations, namely Township, village and group. Each level of organization has its own members and enjoys the corresponding membership rights and interests. This new rural collective economic organization model can establish equal property right relations and clarify the collective assets at all levels and the shares and rights of the collective economy owned by farmers. [18]

In rural areas, individual farmers live in rural collective economic organizations as members of rural collective economic organizations. In front of rural collective economic organizations, individual members are obviously the weak party. In practice, the substantive and procedural rights of members are often infringed more by the rural collective economic organizations themselves. Therefore, only when the subject status of members is confirmed by law and the rights of members are expressly stipulated, can individual members obtain the opportunity of equal dialogue with rural collective economic organizations. After understanding the background of the reform of rural collective property right system, the research on the membership rights of rural collective economic organizations can be carried out more deeply.

#### **4. The Standard of the Classification of the Membership Rights of Rural Collective Economic Organizations**

The determination of the content of membership rights is the key to effectively protect membership rights. Membership rights are both personal and property, and are a composite right item. Therefore, the standards for the typing of the content of membership rights can also be considered from multiple angles.

##### **4.1. Taking the Interests of Members as the Criteria of Classification**

Membership right can be divided into self-interest right and common interest right from the perspective of interest ownership. The self-interest right of shareholders refers to the rights exercised by shareholders based on equity in order to realize their own interests, such as share interest, share transfer, etc., while the common interest right of shareholders is the management right exercised by shareholders in order to realize their own interests and safeguard the interests of the company, such as the right of supervision. Therefore, in rural collective economic organizations, the self-interest right of members can be interpreted as the rights enjoyed by members based on their membership and can control their own interests, such as the right to use homestead, the right to land contract and management, etc; The

common interest rights of members refer to the universal rights exercised to protect individual interests by participating in collective activities and safeguarding the interests of collective members, such as the right to request the distribution of collective interests, the right to vote collectively, etc.

#### **4.2. Taking the Power of Real Right as the Division Standard**

According to the standard of real right, it can be divided into use right, disposal right, benefit right and other right types. This is a very traditional classification method, which has obvious disadvantages, that is, it lacks the right of claim. The right of claim for the distribution of collective interests is the right to request the distribution of collective interests based on the partial transfer of their own rights. Under the standard of real right and power, the right of claim is not considered as the right actually enjoyed by the members' rights. Therefore, in judicial practice, it often happens that the civil litigation brought by members for not distributing the interests of the collective is excluded from the scope of accepting cases by the court. As stipulated in paragraph 2 of Article 1 of the interpretation on the application of law in the trial of cases involving rural land contract disputes issued by the Supreme People's court, "if a collective economic member brings a civil lawsuit because he has not actually obtained the land contract management right, the people's court shall inform him to apply to the relevant competent administrative department for settlement". In addition, the disposal right can be subordinate to the property rights such as the right to use the homestead, which should not be subdivided within the member rights. Moreover, some procedural rights can also be disposed by the members themselves, which is very different from the disposal of real rights.

#### **4.3. Taking the State of Rights as the Division Standard**

Procedural rights and substantive rights. Procedural rights means that according to the provisions of the law or the articles of association, they must express their own interest demands or safeguard their own interests through their own true meaning according to a certain procedure. Procedural rights are active rights that need to be actively exercised by members. Procedural rights correspond to collective activities and involve collective interests. There are strict provisions on the exercise, operation and results of rights, which reflect the collective will and protect the collective interests. The substantive rights of members involve the property rights of members, such as land contract right, homestead use right, etc. Of course, from an external perspective, some scholars divide the membership rights into the original rights guaranteed by national laws and the derived rights guaranteed by collective resolution autonomy. Different classification standards focus on different points, which will also lead to differences in the content of membership.

### **5. The Typological Construction of the Content of Membership Rights of Rural Collective Economic Organizations**

According to the above discussion, I think membership rights can be divided into substantive rights and procedural rights. In order to make the classification more clear and centralized, the types of membership rights can be specifically divided into the following categories.

#### **5.1. Substantive Rights**

##### **5.1.1. Claim for Land Contract**

In the system reform of "separation of three rights", the legal nature of land contract right has always been a hot topic of discussion. As mentioned earlier, I think it is more appropriate to include the land contract claim into the scope of member rights. The land contract right under the "separation of three rights" is actually a claim. The right to claim for land contract is the right of collective members to request the collective economic organization to obtain the

contracted land when they meet certain conditions. From the theoretical perspective of membership right, the premise for the realization of land contract right is to have the membership to become a member of the collective economic organization, and the members need to apply actively to obtain the land contract right, This model can prevent the term of the land contract right from becoming a decoration, and can also protect other members who have not obtained the land contract right from obtaining the same application opportunities. Moreover, the land contract right has been stipulated as early as the rural land contract law, so it is not the result of the separation of the land contract management right, which is closely related to the membership. Therefore, the nature of the land contract claim as the premise of the land contract right should be defined as the membership right.

### **5.1.2. The Right to Request for Distribution of Residential Land**

Homestead distribution claim is also called homestead qualification right by some scholars. According to the reform practice of "separation of three rights" of homestead in China, the property right allocation pattern of homestead ownership, homestead use right and homestead qualification right has been formed. Farmers' collective, farmers and social subjects enjoy homestead rights. At present, there are mainly two views on the qualification right of homestead in the academic circles. One is the view of member right. Scholars who hold this view believe that the qualification right of homestead is the same as the land contract right under the "separation of three rights", which needs to be based on the membership. The qualification right of homestead is the prerequisite for obtaining the right to use homestead. Only by obtaining the qualification right of homestead first can we obtain and enjoy the right to use homestead. Another view is that the homestead qualification right is the homestead use right after the establishment of secondary use right, which has the attribute of real right. In my view, the purpose of establishing the homestead use right is to ensure that members can have a place to live, prevent outsiders from enjoying the homestead use right by purchasing houses, and prevent the passage of collective land resources over the years. Therefore, if the homestead qualification right is not recognized as the member right, the original acquisition of the homestead use right will not be connected with the members of the collective organization, and the living needs of the members will not be met, which also violates the inherent attribute of the homestead use right.

### **5.1.3. Claim for Collective Income Distribution**

The claim right of collective income distribution is the right of collective members to request the distribution of collective income according to their membership. Collective income includes the operating income from collective assets investment in collective enterprises, the income from unified operation and transfer of land, and the income formed by national financial assistance. The legalization of collective income claim is related to how members of collective economic organizations obtain the increase of personal property rights and interests through the conversion of collective income. The right of collective income distribution belongs to the property right exercised by collective members. It is a kind of expectation right and claim right.

## **5.2. Procedural Rights**

Procedural rights can be called the right to participate in collective affairs and the right to manage collective democratic affairs. They are expressed as the right to participate because in front of collective economic organizations, the rights of members are mainly reflected in participating in resolutions and supervision, which belong to participatory rights; It is expressed as the management right of democratic affairs because the collective economic organization is composed of members, members are the main body of the organization, and members manage the organization, so it can also become the management right. The right to participate in collective affairs is mainly divided into three rights: the right to resolution, the right to supervision and the right to know. The right to resolution refers to the need for



collective members to vote in plenary when it involves major collective interests, so that members can decide their own distribution of interests and the rules and systems of the organization. The right to resolution includes the right to democratic election. As the name suggests, the right of supervision is to supervise the collective economic organization and its managers, because in practice, the collective organization and its managers are often the most serious source of infringement on the interests of collective members. The right to know means that members have the right to know the truth about collective affairs, which is also the premise for members to enjoy the right to make decisions and supervise. If the right to know is not guaranteed, the right to make decisions and supervise will be blind or even wrong.

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