

Current Situation and Improvement of Homestead Qualification Right in China

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Abstract The paper is to study the qualification right in the homestead system of China, and to put forward the corresponding improvement scheme. By analyzing the definition and nature of homestead land, the paper explores the historical background and development of the homestead land system and emphasizes the importance of the qualification right in ensuring housing rights for rural residents and social stability. Concerning the current status of the qualification right, the paper identifies existing problems and challenges, such as unclear rights to homestead land, difficulties in determining qualification, issues with the distribution of benefits between qualification rights and usage rights, and inheritance and transfer of qualification rights. These issues constrain the fairness and effectiveness of the homestead land system. To improve the qualification right, the paper puts forward measures such as revising legal regulations, adjusting homestead land policies, and enhancing the standardization of management of qualification rights. By optimizing the formulation and implementation of relevant laws and regulations, adjusting homestead policies, and strengthening the regulation of qualification right management, these issues can be addressed, improving the fairness and transparency of the homestead land system. Finally, the paper analyzes the impact of improving the qualification right on rural residents, land utilization, and social stability, offering related suggestions. Improving the qualification right can not only protect the housing rights of rural residents but also promote the rational use of rural land resources and the sustainable development of rural socio-economic conditions. In conclusion, this paper is expected to provide a theoretical support and practical guidance for the improvement of the homestead land system and to promote the sustainable development of rural society.

Key words Homestead land, Qualification right, Three-rights separation

0 Introduction

In rural areas of China, the homestead land system is a fundamental pillar for the housing and livelihood of farmers. Homestead land, which supports the residences and economic activities of farmers, is crucial for housing security, economic development, and social stability in rural areas. Nevertheless, the qualification rights to homestead land currently encounter several issues and challenges, such as ambiguous usage rights and difficulties in the determination of qualification. Therefore, an in-depth study on the status of qualification rights and potential improvements is of paramount importance.

This paper aims to examine the current status of qualification rights for homestead land in China and propose improvement strategies to promote the healthy development of the homestead system and the sustainable growth of rural society. The specific objectives include analyzing the current status of homestead land qualification rights, proposing measures for improving the qualification rights system, assessing its impact, providing recommendations, and offering valuable insights for policymakers and scholars.

This paper includes five sections. The structure is as follows. Section one will present an overview of the concept, nature, and historical background of homestead land qualification rights, high-

lighting their significance for rural residents' lives and social development. Section two will offer a detailed analysis of the current status of homestead land qualification rights in China. Section three will propose improvement measures for the qualification rights system, including revisions to legal regulations, adjustments to homestead policies, and enhancements in the standardization of qualification rights management. Section four will examine the impact of improving qualification rights, evaluating their effects on rural residents, land use, and social stability, and propose specific recommendations to enhance the qualification rights system. Section five will conclude the paper by emphasizing the significance of the current status and improvement of homestead land qualification rights and offering an outlook for future research directions.

1 Overview of homestead qualification rights

1.1 Definition and nature of homestead land (i) Definition: Homestead land refers to the land in rural areas collectively owned by rural communities, allocated to individuals or families for residential and livelihood purposes, in accordance with specific standards, scope, and conditions.

(ii) Nature: Homestead land constitutes a legal land use right for farmers, serving as the foundation for their housing and livelihood, and playing a crucial role in housing, economic development, and the preservation of rural culture^[1].

1.2 Historical background and development of the homestead system (i) History of the homestead system: The homestead land system originated in the early stages of rural land reform

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in China, representing a breakthrough and reform of the traditional collective ownership of rural land^[2].

(ii) Development of the homestead system: From the initial formulation of homestead policies to continuous improvement and adjustments, the homestead land system has been widely implemented and promoted in rural areas across China^[3].

1.3 Definition and importance of homestead qualification rights

(i) Definition of homestead qualification rights: The exact definition of homestead qualification rights remains unclear. There has been extensive academic debate on the nature of these rights under the "Three Rights Separation" reform, leading to two dominant perspectives: the membership-rights theory and the composite-rights theory.

(ii) Importance of homestead qualification rights: These rights are the legal entitlements through which farmers obtain land for housing and livelihood, safeguarding their housing rights and contributing to social stability. The soundness and improvement of homestead qualification rights are crucial for the housing security, economic development, and social harmony of rural residents.

2 Current situation of homestead qualification rights

2.1 Issues with the functionality of homestead qualification rights

Homestead qualification rights should encompass the following key functions, distinct from the rights associated with homestead ownership and use:

(i) Qualification recognition rights (membership rights). Homestead qualification rights grant farmers the eligibility to acquire homestead land use rights. Farmers have the right to apply for qualification recognition based on relevant laws, regulations, and policies, proving that they meet the necessary conditions to qualify for homestead land use rights. In China, homestead land use rights are generally restricted to farmers who meet certain criteria, including household registration, rural residency duration, and agricultural production requirements. To ensure the reasonable allocation and effective use of homestead land, farmers must demonstrate their compliance with these conditions through qualification recognition, thereby gaining eligibility for land use rights^[4].

(ii) Participation in land management and decision-making rights: Homestead qualification rights grant farmers the right to participate in the management and decision-making processes related to homestead land. Farmers can participate in discussions and decisions related to homestead land management and land use planning through village representative assemblies, village committees, and other organizational forms^[5].

(iii) Protection of rights related to homestead land: Homestead qualification rights ensure that farmers are entitled to corresponding rights protection. When farmers' homestead qualification rights are infringed upon or improperly disposed of, they have the right to defend their legal rights in accordance with the law and seek legal protection and remedies.

(iv) Composite rights theory: Homestead qualification rights

can be viewed as composite rights. These rights encompass various aspects of benefits and powers, including qualification recognition, participation in homestead land management and decision-making, and land transfer. The composite nature of homestead qualification rights indicates that they involve not only individual rights, such as qualification recognition and land use rights, but also collective rights, such as participation in collective management and decision-making. This ensures that homestead qualification rights not only protect the individual interests of farmers but are also closely connected with the overall interests of rural communities.

It is important to note that homestead qualification rights are interrelated with, but distinct from, homestead land ownership and use rights. Homestead land ownership belongs to collective economic organizations or village collectives, while homestead use rights are rights acquired and held by farmers in accordance with the law. Homestead qualification rights, however, serve as the prerequisite condition for farmers to acquire homestead use rights. The exercise of homestead qualification rights does not involve control over land ownership or specific use actions, but pertains to rights related to qualification recognition and participation in management.

2.2 Duration of homestead qualification rights In China, the specific regulations regarding the duration of homestead qualification rights vary by region and policy, with no unified standard. Homestead use rights typically have fixed terms, such as 50 or 70 years, while the duration of homestead qualification rights can be flexibly adjusted based on actual circumstances and needs, in order to protect farmers' legal rights and ensure the rational use of land resources. The duration of homestead qualification rights should take the following factors into account:

(i) Farmers' residential and agricultural needs: The term of homestead qualification rights should meet the needs of farmers' residence and agricultural production. A term that is too short may hinder farmers' long-term investments and development, while a term that is too long could lead to land resource waste and difficulties in management.

(ii) Rational land use: The duration should be coordinated with the rational use of land resources. Different regions and types of homesteads may have varying durations set for qualification rights, based on land capacity and rural development needs.

(iii) Policy guidance and development goals: The duration of homestead qualification rights must align with national policy direction and rural development goals. The government may establish relevant policies and regulations to guide the setting of these durations based on the needs of land management and use.

Homestead ownership refers to land title, where the landowner holds the highest control over the land. Homestead owners have the right to control the land use, transfer, lease, and other related rights. Homestead use rights refer to the right of individuals or families to reside and engage in activities on the homestead land. These use rights are typically granted through government approval

or registration. Homestead qualification rights refer to the prerequisites and conditions for farmers to acquire homestead use rights. These rights typically involve criteria such as household registration, rural residence duration, and agricultural production requirements, which determine whether farmers qualify for homestead use rights. Homestead qualification rights can be viewed as a precondition; only after obtaining these rights can farmers enjoy homestead use rights.

In summary, homestead qualification rights themselves cannot be directly inherited by descendants, as they do not involve specific land ownership or use rights. However, homestead use rights can be transferred through inheritance, allowing descendants to inherit or receive the homestead use rights already acquired.

2.3 Issues with the transfer of homestead qualification rights

(i) Transfer of rural homestead qualification rights. Rural homestead qualification rights refer to the eligibility of farmers or rural residents to build houses and use homestead land in accordance with legal and policy regulations. The transfer of homestead qualification rights refers to the process in which these rights are transferred from the original holder to another individual or entity, enabling them to acquire the qualification to build and use the homestead. The transfer of homestead qualification rights may involve the transfer of conditions such as household registration, rural residence duration, and agricultural production requirements^[6].

(ii) Rural homestead use rights transfer market: Rural homestead use rights refer to the rights of farmers or rural residents to use homestead land, including the rights to reside in housing and engage in agricultural production. The rural homestead use rights transfer market refers to the market for trading rural homestead use rights, which allows farmers or rural residents to sell, transfer, or lease their homestead use rights to other individuals or entities. This transfer market typically involves mechanisms such as contracts for the transfer of rights, property transactions, and the protection of interests.

It is important to clarify that the transfer of rural homestead qualification rights and the transfer of homestead use rights are two distinct concepts. The former involves the qualification for farmers or rural residents to build and use homestead land, while the latter pertains to the transaction and transfer of homestead use rights farmers or rural residents already possess.

3 Improvement of homestead qualification rights

3.1 Improvement and refinement of laws and regulations

It is recommended to revise relevant laws and regulations to clearly define the homestead qualification rights, their scope, and the rules for their transfer, strengthen the protection of homestead qualification rights to ensure the legitimate rights and interests of farmers or rural residents, and establish and improve a registration and filing system for homestead qualification rights to ensure the verification and traceability of these rights^[7].

3.2 Adjustment and innovation of homestead policies It is

recommended to improve homestead policies to enhance the pathways and conditions for farmers or rural residents to obtain homestead qualification rights, explore the establishment of a succession mechanism for homestead qualification rights, allowing legal holders to pass on their qualification rights to future generations, and support the transfer of rural homestead qualification rights to promote the efficient use of homestead resources and the development of the rural economy^[8].

3.3 Enhancement and standardization of homestead qualification rights management

It is recommended to establish and improve the management mechanisms for homestead qualification rights, strengthening supervision and evaluation of the transfer of these rights, provide relevant training and guidance to improve farmers' or rural residents' understanding and awareness of homestead qualification rights, and strengthen law enforcement and rights protection for homestead qualification rights to safeguard the legitimate interests of farmers or rural residents^[9].

By improving and refining the above measures, the homestead qualification rights in rural areas can be further regulated and protected, enhancing the rights and interests of farmers or rural residents in their homestead land. This not only contributes to the development of the rural economy and the stability of rural society, but also promotes the rational use of homestead resources and the sustainable development of rural land. In addition, the government and relevant departments should actively promote and implement these improvements to ensure their effective execution and tangible results.

4 Impact of the improvement of homestead qualification rights

4.1 Impact on rural residents The improvement of homestead qualification rights can enhance the level of protection of homestead qualification rights for rural residents, strengthen their housing rights and the stability of land resources, increase the land transfer and management decision-making powers of rural residents, promote rural economic development and increasing farmers' income, improve the social security and welfare of rural residents, and enhance their quality of life and sense of well-being^[10].

4.2 Impact on rural land use The improvement of homestead qualification rights can optimize the allocation of rural land resources, promoting the intensive and efficient use of rural land, enhance the sustainable utilization of rural land resources, contribute to the protection and restoration of the rural ecological environment, promote the clarification of land ownership and active land transfer, and improve the flexibility and efficiency of land resource allocation^[11].

4.3 Impact on social stability and sustainable development

The improvement of homestead qualification rights can strengthen rural social stability by reducing land disputes and conflicts, maintaining social harmony and stability, drive rural economic development, promote employment and entrepreneurship among farmers, and enhance the competitiveness and sustainable devel-

opment capacity of the rural economy, promote integrated urban-rural development, reduce the urban-rural gap, and achieve rural modernization and rural revitalization.

5 Conclusions

5.1 Summary of the current situation of homestead qualification rights In China, rural homestead qualification rights serve as an important form of entitlement, ensuring the housing rights of farmers or rural residents and the use of land. Currently, homestead qualification rights face several challenges, such as unclear definitions of rights and restrictions on land transfer.

5.2 Emphasis on the importance of improving homestead qualification rights The improvement of homestead qualification rights is crucial for safeguarding the housing rights of farmers or rural residents, promoting rural economic development, and achieving rural modernization. Measures such as revising laws and regulations, adjusting policies, and enhancing management practices can further standardize and protect homestead qualification rights, while also fostering social stability and sustainable development in rural areas.

5.3 Prospects for future research direction Future research can focus on the following fields: (i) in-depth study of the legal basis and rights definition of homestead qualification rights, to clarify their legal status and boundaries; (ii) exploration of the relationship and coordination between homestead qualification rights and other forms of land rights (such as homestead ownership and use rights), in order to establish a comprehensive rights system; (iii) research on the mechanisms and limitations of homestead qualification rights transfer, with a focus on balancing farmers' rights and land resource utilization; (iv) investigation and analysis of the implementation effectiveness of homestead policies, evaluating their impact on rural socioeconomic development; (v) study of the role of rural homestead qualification rights in the rural revitalization strategy, exploring the collaborative mechanisms between homestead qualification rights and rural development.

Through the improvement and study of homestead qualification rights, the housing rights of farmers or rural residents can be better protected, which will contribute to rural economic development and rural revitalization. This requires attention and support

from the government and relevant departments, as well as active participation from academia and society to jointly promote the sound development of the homestead qualification rights system.

References

- [1] SUN JW. Re-examination of the nature of qualification rights in the 'three rights separation' of homestead land: A discussion with the theory of special usufruct rights[J]. *Exploration and Free Views*, 2023(3): 102–108, 179. (in Chinese).
- [2] LI H, CHEN MH. Policy implications and practical models of the 'three rights separation' reform of homestead land under the background of rural revitalization[J]. *China Circulation Economy*, 2023, 37(4): 72–80. (in Chinese).
- [3] SUN JW. Distinction and analysis of qualification rights and use rights in the 'three rights separation' of homestead land: A discussion with associate professor Xi Zhiguo[J]. *Politics and Law*, 2019(1): 125–139. (in Chinese).
- [4] SONG ZH. Homestead qualification rights: Connotations, practical exploration, and system construction[J]. *Legal Review*, 2021, 39(1): 78–93. (in Chinese).
- [5] ZHANG Y. Policies and practices of paid withdrawal from rural homestead land: A comparative analysis based on pilot areas since 2015[J]. *Journal of Northwest A&F University (Social Science Edition)*, 2019, 19(2): 83–89. (in Chinese).
- [6] CHEN XJ. Institutional predicaments and solutions of homestead use rights[J]. *Legal Research*, 2019, 41(3): 48–72. (in Chinese).
- [7] LIU SJ. The power structure and realization path of the 'three rights separation' of homestead land[J]. *Gansu Social Sciences*, 2018, 236(5): 228–235. (in Chinese).
- [8] LI LL, ZHOU ZX, CUI CX. The legal logic and optimization path for the protection of homestead qualification rights for new generation migrant workers[J]. *Journal of Northwest A&F University (Social Science Edition)*, 2023, 23(1): 77–85. (in Chinese).
- [9] LIU HK. Policy implications and institutional realization of the 'three rights separation' of homestead land[J]. *Jurists*, 2021(5): 43–56, 192–193. (in Chinese).
- [10] ZHOU JM. Exploration and deepening paths of the rural homestead 'three rights separation' system reform[J]. *Modern Economic Research*, 2019(11): 117–125. (in Chinese).
- [11] DING GM, LONG SJ. Obstacles and solutions to the 'three rights separation' of rural homestead land under the rural revitalization strategy[J]. *Journal of Northwest A&F University (Social Science Edition)*, 2019, 19(1): 39–50. (in Chinese).

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