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The Major Problems and the Governmental Role in Chinese Rural Land Transfer

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Abstract On the basis of clarifying and defining rural land transfer, the necessity of rural land transfer is analyzed. Land transfer is the necessity in terms of promoting agricultural scale operation and improving production efficiency; proving opportunities for narrowing urban and rural gap; realizing rural surplus labor transfer and facilitating urbanization. Major problems in the existing rural land transfer are analyzed; unclear laws and regulations and rural land transfer lacks relevant legal protection; rural social security system is imperfect and can not solve farmers' worries after land transfer; farmers and local governments are restricted by traditional ideas and it is hard to carry out the land transfer policies; rural system construction is relatively backward and the rural land transfer market is immature. Countermeasures on the governmental behaviors in rural land transfer are put forward; stipulating relevant administrative laws and regulations and perfecting the political system of rural land transfer; perfecting rural social security system and solving farmers' worries after land transfer; changing the ideas and working style of local officials and leading farmers to form the scientific land transfer outlook; and vigorously promoting the construction of system and positively cultivating rural land transfer market.

Key words Rural land transfer, Major problems, Governmental behaviors, China

Rural land transfer is the basis for promoting agricultural scale operation, increasing farmers' income, transforming rural surplus labors to urban areas and reaching the aim of urbanization. However, Chinese rural land transfer is still in a state of low efficiency, disorder and mass, which has damaged farmers' interests and has bad effect on the development of rural society and economy. In view of the problems, the paper put forward the countermeasures, so as to promote the government to well display its role in social management and public service and urge the government to provide favorable legal environment, social environment, market environment and social security for the smooth development of rural land transfer.

1 The processing and definition of the concept of rural land transfer

Three land rights in China are ownership, contract right and operation right. Among them, the ownership is owned by the nation; contract right is owned by individual and collectives and operation right can be transferred. There is no consensus on the concept of land transfer in terms of legal provisions and theory research. Scholars from different circles have given their own definitions from different perspectives, but the most widely accepted ones are the following two definitions. The first one is the transfer of land contract operation right. Article 32 of The *Land Contract Law* stipulated that "the land contract operation right obtained through household contract can be transferred by the way of transferring contract right, rent out, exchange, transfer *et al*". In the law, land transfer is to transfer land contract operation right. Under such definition, land transfer includes two specific transfer forms: farmers transfer use right

but maintain contract right and contract and obtain interests and contract; farmers transfer operation right and use right and do not maintain any right. The second one is the transfer of land rights and functions. Under such definition, land transfer is the collectives, which owned the rural land ownership, and rural households, who owned land contract and operation rights, transfer the use right of agricultural land to other main bodies. The forms of this kind of land transfer include subcontract, sublease, transfer, mortgage and investment. This kind of transfer is the change of usage in the process of agricultural land transfer.

"Rural land transfer" in the paper means the transfer of rural land use right. It means rural households, who owned land contract operation right, transfer the land operation right (land use right) to other rural households and economic organizations. That is to say, farmers maintain their contract right, but transfer use right, so as to get certain interests.

2 Inevitability of realizing rural land transfer

2.1 Land transfer is necessity for promoting rural operation scale and improving production efficiency China has not fully realized the transfer from traditional agriculture to modern agricultural production. The situation is mainly reflected on production input: small agricultural production scale, backward operation model, low information degree and low science and technology content. Thus, the problems result in the low efficiency of agricultural production and low production profits. Land transfer is a reasonable way of promoting agricultural to enter scale operation. It can facilitate the reasonable use and optimized allocation of resources and can produce trade interest effects. That is to say, it can improve land investment value through land trade, so as to improve farmers' enthusiasm on land investment. Besides, land transfer can produce marginal output level effects to reach the transfer of

land from low marginal output to high marginal output, and then, to improve the efficiency of resource allocation. Land transfer will definitely promote agricultural production to enter the track of scale operation, science and technology, information and industrialization; from traditional extensive agricultural model of "input-output" to go to intensive modern agricultural production, so as to improve the efficiency and benefits of agricultural production.

2.2 Land transfer provides opportunity for increasing farmers' income and narrowing down urban-rural income gap

The successful experience of rural development models in western developed countries proved universally that "enriching farmers by reducing them". The difficulty in increasing farmers' income is a prominent and imperative problem in Chinese "three agriculture" problems. The paper points out that the major reason is that there are excessive rural labors, which have surpassed the maximum carrying capacity of limited land. However, land transfer can realize farmers' income increase through inflow and outflow sections. In inflow section, land transfer can transform traditional agriculture to modern agriculture; realize the transformation from backward individual economy and small scale operation to cooperative economy with advanced scale operation; improve information and science and technology content; decrease production costs and promote the income growth of farmers. In outflow section, surplus rural labor can separate from land and go to cities to undertake new jobs in new fields. The new salary is more than the income obtained from farming. Therefore, reasonable rural land transfer can realize the optimized allocation of land resources; produce exchange value; realize farmers' income growth, and then lay solid foundation for further narrowing urban-rural gap.

2.3 Land transfer is the basis for reaching rural surplus labor transfer and promoting urbanization progress

The small scale operation, which takes the individual household as a unit and is featured by dispersed land, has not only restricted the development of Chinese modern agricultural development, but also impeded farmers to separate from land and hindered them to transfer to cities. So it goes against the developmental target of urbanization. Land transfer provides motivations from two aspects for transferring rural surplus labors to cities. They are thrust and tension, which have accelerated the pace of rural surplus labor transfer. The tension comes from the expanded demands of rapid urban economic development on labors. The labor shortage imperatively needs rural surplus labors to realize the rapid growth of urban society and economy. The thrust mainly comes from the improvement of productive efficiency. The improvement of productive efficiency has promoted the scale-based, information-based and industrialized agriculture, so agriculture can not hold so much surplus labors. In order to survive, rural surplus labors have to go out to find new way out. Therefore, under the joint function of thrust and tension, rural surplus labors can be continuously and effectively transferred. And then, land transfer has become the basis of win-win situation of realizing farmers' income growth and urbanization.

3 Major problems in rural land transfer

3.1 Laws and regulations are unclear and rural land transfer lacks relevant security In the first place, so far, the professional laws and regulations on rural land transfer in China are absent, so it is hard to effectively normalize rural land transfer. Chinese legislative institution has not made a unified *Rural Land Transfer Law* and has not clearly defined the ownership in the process of rural land transfer and has not specifically stipulated the scope, form, rights and duties of two parties, principle and procedures, transfer contract, price and time period and ways for solving disputes, and legal responsibility of land transfer. In the second place, the ambiguity of current legal concepts has led to the poor feasibility of land transfer and right protection. For example, the concepts involved in *Land Administrative Law* and *The General Rule of Civil Law* are "collective ownership", "contract operation right", "the right of inheritance" *et al.*, but when implementing the laws and policies, local governments put forward many new concepts, for example, "occupation right", "tenancy right", "rent right", "transfer right", "disposition right" *et al.*^[1], which lead to the inconsistent of these concepts. These concepts all have not been defined by law, so it is easy to cause disputes and damage the interests of two parties in land transfer.

3.2 Rural social security system is imperfect and can not solve the rear fear of farmers after land transfer

In Chinese rural society, farmers have special feeling on land and land has special position. The research report assumes that land in Chinese rural areas has born about 51.64% of social security role^[2], for example, farmers' food, clothing, housing and transportation, funeral and wedding, education of their sons and daughters, old age security, medical care *et al.* However, due to the backward development of rural economy and impact of long term urban-rural dual system, the multiple levels social security system including old age insurance, medical care insurance, social welfare, social special care, social assistant and minimum subsistence in Chinese rural areas have not been established. The difficulties in getting old age insurance, getting medical care and in accepting education are always the prior problems among rural social problems. These problems have become the rear worries of land transfer, which restrict farmers. So, although the income from farming is low, out of rationality, most of farmers do not willing to transfer their land. They continue to undertake agriculture and rely on land to survive. The paper pointed out that imperfect rural social security system is still the major factor that decelerates land transfer and restricts the scale of rural land operation. Before perfecting rural social security system, farmers lack security out of loss of land, so it is hard to motivate farmers' enthusiasm. What's worse, after land transfer, it is hard for farmers to adapt to market risk, which will inflict bad effect on the development of rural social stability.

3.3 Farmers and local governments are restricted by traditional thought, so it is hard to implement land transfer policy According to the opinions of new institutional economists, the factors that have great impact on rural households'

behaviors include not only formal rules and regulations, but also information rules such as, customers, practices and traditional ideology. Although Chinese socialist market economy has been established basically, but affected by rural geography, culture and customers, farmers' thoughts are still in a traditional and conservative state. It is mainly reflected on the following aspects. Farmers still have traditional small peasant awareness, for example, deep reliance on land, conservative thoughts, extensive input; farmers' awareness on market economy is poor and they do not know how to get maximum benefits by using national land transfer policy; the land transfer of farmers is in a blind and disorderly state^[3], which restricts the implementation efficiency of Chinese rural land transfer policy. At the same time, the awareness of grass-roots governments on rural land transfer has deviation and errors, which are mainly reflected on the following aspects: incomplete understanding on national land contract policy; neglect of social management and public service in the actual work of land transfer; superficial investigation and indiscrimination on new situation and new problems of current rural land transfer. These problems lead to the spontaneous behaviors of farmers in rural land transfer. They result in the weak normalization, poor right protection and disorderly state of rural land transfer. For some local governments, the national land transfer policies have become the tool for them to fight for developmental performances. They abuse their administrative rights, violate farmers' willingness and force farmers to conduct land transfer^[4]. The behaviors of these governments have violated the real intention of laws and regulations and farmers' legal rights on land, thus, the implementation of rural land transfer becomes more harder.

3.4 Backward system construction and immature rural land transfer market The legal and orderly transfer of rural land needs the protection of perfect system and healthy market environment. But so far, the system construction of Chinese rural land transfer is obviously backward than the practical works. Besides, the immature development of land transfer market can not satisfy farmers' increasing demands of land transfer. In the first place, rural land property system is not so clear. Although different regions have stipulated the property right of farmland and forest, there is no unified standard on rural house stead and rural residence. The disparities of regions and uncertainty of system have led to the difficulties in effectively protecting the property rights of these resources. In the second place, the land management system is irrational. At present, rural land management system and urban areas in China are not uniform, system construction of rural land management is imperfect, the rational system on rural land use and transfer in view of rural actual situation can not be arranged rationally^[5]. In the third place, rural land transfer market is imperfect. In china, only minorities of developed regions have established the relatively normal land property trade market, but a large majority of underdeveloped regions do not have professional and regulated land property trade market. In the fourth place, the intermediary system in the land trade organization and market is imperfect and it can not provide smooth channels for rural

land transfer. Due to the lack of timely information, farmers are hard to find appropriate land transfer subjects. In the fifth place, the land transfer contract is informal. There are potential risks in terms of legal effect, form, trade price and responsibilities of contract. Once the dispute happens, there is no legal protection.

4 Governmental role in rural land transfer

4.1 Making relevant administrative laws and regulations and perfecting the political system of rural land transfer

In order to regulate the behaviors of rural land transfer, as the enforcer of relevant laws and policies, the governmental department should stipulate and perfect relevant administrative laws and regulations as soon as possible and take this as the direction and evidence for rural land transfer. In the first place, the governmental department should study the related legal system concerning rural land problems carefully, and then it should make professional and detailed administrative laws and regulations concerning rural land transfer by taking the *Constitution*, *Land management Law* and *Rural Land Contract Law* as guiding principles and golden rules and combining the reality of rural land transfer, to make up the vacancy and inadequacy of rural land transfer law. In the second place, the governmental department should conduct deep investigation on grass-roots areas to explore the new problems and situation of rural land transfer and fully consult farmers' suggestions. On the basis of scientific prediction, it should rationally revise the current administrative laws and regulations. Particularly, it should specifically clarify the scope, form, rights and duties of two parties of land transfer and approaches for solving disputes to make the administrative implementation targeted and feasible. In the third place, the governmental department should follow the principles of scientific regulation to make unified administrative laws and regulations and eliminate the phenomenon of different local governments have different administrative laws and regulations. The accuracy of "concepts" should be paid attention to in particular, for example, the governmental department should regulate the names of "occupation right", "tenancy right", "renting right", "transfer right", "disposition right" *et al.* according to unified standard, to avoid the inconsistency and ambiguity of concepts to reduce disputes and make accurate and feasible administrative laws and regulations for the smooth transfer of rural land.

4.2 Perfecting rural social security system and solving the rear worries of farmer after land transfer

The governmental department should fully display its role in social management and public services and bear more responsibilities and duties in the construction of rural social security to provide protection services for rural land transfer. At present, the imperative and major work of rural land transfer is to increase governmental input, give preferential public fiscal expenditure on rural social security system, gradually narrow down urban-rural gap and realize the equalization and high efficiency of urban-rural social security services. The healthy old age insurance system should be established as soon as possible in particular. Be-

sides, the governmental department should promote and perfect rural new cooperative medical care system; solve the most concerned problems of old age insurance and medical care; continuously deepen the reform on education system, intensify the fiscal support on the education of farmers' sons and daughters and provide comprehensive social security such of old age insurance, medical care and education of farmers' sons and daughters for farmers' land transfer. As for the farmers, whose land has been transferred, the government should provide good services for them to ensure that they have found good job in other fields and obtained higher income. As for those farmers, who have not found jobs, the government should establish the minimum subsistence allowances according to regional economic development level and prices of local products to ensure the minimum standard of living. The governmental departments should well prepare the education and training for farmers; improve farmers' knowledge and skills and provide favorable public services for transferring rural labors to urban areas.

4.3 Changing the thought pattern and style of local officials and guiding farmers to foster scientific outlook on land transfer Local officials should set up the political performance outlook and establish the farmer-oriented idea and eliminate the conspiracy with commerce. It should not force farmers to transfer their land and promote local economic growth by damaging farmers' willingness. Under the background of launching new village construction and implementing the policies of "three agriculture", the local government should take pro-agriculture projects as a new growth point of governmental performance; well promote and educate farmers about rural land transfer; explain national laws, regulations and national policies for farmers; open the relevant work to let farmers know the policies, support the policies and seize the opportunities of policies to transfer land vigorously to get maximum profits. At the same time, the governmental department should change the traditional administrative way and realize the change from single mandatory way to persuasion and education to direct farmers to set up correct land transfer outlook. The government should try to change the conservative status of farmers; eliminate the small peasant ideology of farmers and improve farmers' market awareness, so as to eliminate thought obstacles of rural land transfer; motivate farmers' enthusiasm on land transfer and liberate farmers from land.

4.4 Promoting the system construction and vigorously cultivating rural land transfer market Perfect system is the basis for protecting the regulation and order of rural land transfer. In the first place, rural land property system should be defined and the authorized and unified standard on rural farmland, forest, home stead and house should be made to eliminate the

differences and uncertainty of systems in different areas to protect the legal property rights of resources owned by farmers. In the second place, the scientific land management system should be established. The government should make rational system arrangement in view of the actual situation of land use to intensify the supervision on land transfer; normalize the signing process and form of rural land transfer contract; direct and interfere the trade price and responsibility, establish special interest coordination and arbitration institution and provide convenient coordination channels for solving contradicts and disputes in land transfer. In the third place, the government should support and cultivate rural land transfer market and expand the demonstration effects of minor developed areas as soon as possible to continuously promote advanced experiences and establish a relatively normal land property right trade market nationwide and strike the behaviors of violating the laws and farmers' land rights. In the fourth place, the government should encourage and support the cultivation and development of land trade organization and market intermediary organization to provide smooth organization channels for rural land transfer and timely land transfer information to help them find appropriate land transfer subjects, so as to improve the efficiency of rural land transfer.

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