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Research on the Judicial Relief System of Villagers' Autonomy Rights

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Abstract Starting from the division of the functions of the village committee, the use of self-government rights of the villagers was examined in view of the different functions. Judicial remedies should be screened whether or not the exercise of autonomy, as well as the main disputes in order to determine the specific litigation. The responsibility determination of the villagers' autonomy rights prosecution in different circumstances is put forward.

Key words Villagers' autonomy rights, Village functions, Judicial relief, China

Villagers' autonomy right is a right of villagers in the specific region to deal with public affairs by forming self-government body according to law and at human and financial resources of their own village. The *Organic Law of the Villagers Committees of the People's Republic of China* (hereafter referred to as *the Organic Law of the Villagers Committees*) promulgated and enforced in 1998 is a significant breakthrough in democratization of political system at rural grass roots level. However, when the State secedes from arrangement of all matters of the masses and villagers enjoy discretionary legislation and enforcement of affairs in a certain range, unexpected problems occur, and judicial relief of villagers' autonomy rights is particularly serious. I analyze value of villagers' autonomy rights and current situations of judicial relief. Through elaborating understanding of main body and relevant functions of villagers' autonomy rights, approaches are presented for judicial relief of villagers' autonomy rights, and relevant suggestions are put forward for responsibility determination in the course of litigation.

1 Value of villagers' autonomy rights and current situations of judicial relief

1.1 Value of villagers' autonomy rights

1.1.1 Democratic value. Along with enhancement of villagers' participation and consultation in government and political affairs, villagers can gradually manage affairs in a larger range. Finally, they can better participate in management of national affairs, economic and cultural undertakings. It will lay a solid foundation for the national democratic political construction. The grant of villagers' autonomy rights is a supplement to China's democratization process, and also provides an empirical paradigm for China's democratic road.

1.1.2 Stability value. Village level organizations including villager group are close to villagers and sensitive to villagers' demand. This will enhance sense of democratic responsibility, and ensure that organizations with certain authorities not only can respond to major public interests of most people in the region, but also can respond to special demands of specific communities that cannot be considered. Thus, villager autonomy can timely coordinate interest groups, conciliate social conflicts in rural areas, and promote social stability.

1.1.3 Validity value of decisions. Villagers handle public affairs in their regions at their own intention. As executive body, the villagers committee must be responsible for its people in the course of administration. Since the spatial distance with government will influence acceptance level and validity of government decisions, the decisions made by villagers themselves may be approachable. Thus, the validity is more stable, and the acceptance level is high.

1.1.4 Efficiency value. In common affairs villagers participate in their communities, the efficiency is higher than government in doing so. The autonomy can effectively arouse enthusiasm of villagers and enhance awareness of being the master and sense of duty. With enlarged scope of villagers participating, the benefits will be favorable to creating a higher level.

1.2 Current situations of judicial relief of villagers' autonomy rights Any legal issue is in fact a value problem, and is the confirmation, protection and development of certain value view. Value judgment and selection become prerequisites of our legislation, execution of laws and administration of justice. Thus, the relief of villagers' autonomy right is the confirmation, protection and development of the above values.

In general, there are two relief ways specified in *the Organic Law of the Villagers' Committees*. One is supervision and relief from local organs of state power. Local people's congresses and their standing committees at various levels should guarantee provisions of this law implemented in their administrative areas. The other way is supervision and relief from administrative organs. Article 15 of *the Organic Law of the Villagers' Committee* specifies that if a person interferes with

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the villagers in the exercise of their rights to elect and to stand for election, the villagers shall have the right to report against him to the people's congress, the people's government of the township, nationality township or town, or to the standing committee of the people's congress and the people's government at the county level or the competent department under the latter. In practice, however, the ways specified in *the Organic Law of the Villagers' Committees* may not bring about significant effect. In theory, it also has problem. Infringement from village inside belongs to the scope of villagers' autonomy. If administrative organ intervenes, there will be suspicion of interference with autonomy right by administrative power. Besides, there is no provision of administrative tort relief measures in *the Organic Law of the Villagers' Committees*. For example, Article 4 of *the Organic Law of the Villagers' Committee* specifies that the people's government of a township shall not interfere with the affairs that lawfully fall within the scope of the villagers' self-government, but no legal liability is specified for breach of this article.

Due to lack of judicial relief measures in legislation, some courts consciously refuse to accept disputes arisen from villagers' autonomy. It is difficult for safeguarding of villagers' autonomy right to access to judicial proceedings. Some areas even expressly specify that such cases will be rejected. For instance, Guangxi court specially dispatches document to refuse 13 types of cases, including disputes arisen from land compensation and settlement allowances between villagers and rural collective economic organization^[1].

"Where there is a right, there is a remedy" is one of basic creeds in society governed by law. When laws explicitly stipulate rights of citizens, there should be guarantee of right and remedial approaches to solving problem of right infringement. Unfortunately, our last hope, the judicial relief, is the weakest way. At present, administration of autonomous affairs is often excluded from scope of China's judicial review, causing that it is difficult to provide judicial protection for lawful rights and interests of villagers. Nevertheless, judicial relief should be the last barrier of right protection. Otherwise, the autonomy right specified in *Constitution and the Organic Law of the Villagers' Committees* will become a slogan. Right without relief mechanism is incomplete. Seeking the right of judicial relief is an important criterion for judging the degree of rule of law.

2 Understanding of main body and relevant functions of villagers' autonomy rights

2.1 Main body of villagers' autonomy rights Currently, a series of problems occur when a court accepts cases of disputes about villagers' autonomy. The most troublesome thing is whether villagers, villagers' assembly, or villagers' committee can be subject of lawsuit, and whether these parities can be subject of some kind of lawsuit.

The villager autonomy corresponds to government administration. Affairs of rural areas before implementing villager autonomy are within the scope of government administration. The government at that time can be called omnipotent government, while the government under villager autonomy limits its func-

tions in guidance, support and assistance. The villager autonomy is limited to farmers in certain areas with certain status. It is in fact a certain number of villagers manage their own affairs at their own discretion. Thus, main body exercising the autonomous right should be villagers themselves, not collective organization of villagers or villagers' committee.

As main body of autonomous right, villagers exercise rights in following external expressive forms, including right of participating villagers' assembly, right to vote and right to be elected in villagers' committee, etc. Even if villagers cannot directly participate in exercising the autonomy right, in other words, the villagers' committee exercises right of routine management, the main body is still villager, because the right is authorized by villagers.

2.2 Scope of villagers' autonomy rights For determination of villagers' autonomy rights, the general principle is no breach of law within the scope of autonomy. For instance, Article 15 of *the Organic Law of the Villagers' Committees* stipulates that "No villagers charter of self-government, rules and regulations for the village, villagers pledges or matters decided through discussion by a villagers assembly or by representatives of villagers may contravene the Constitution, laws, regulations, or State policies, or contain such contents as infringing upon villagers' rights of the person, their democratic rights or lawful property rights." These decisions or rules and regulations for the village are just internal restriction mechanism of self-government body, and are limited to internal members of the village. They may have binding force on villagers only when they are not in breach of laws.

Besides, as to matters of autonomy reference, relevant laws have categorized statement. Article 19 of *the Organic Law of the Villagers' Committees* stipulates that "When the following matters that involve the interests of the villagers arise, the villagers committee shall refer them to the villagers' assembly for decision through discussion before dealing with them: (1) measures for pooling funds for the township, and the percentage of the funds raised by the village to be retained and used by it; (2) the number of persons who enjoy subsidies for work delayed and the rates for such subsidies; (3) use of the profits gained by the collective economic organizations of the village; (4) proposals for raising funds for running schools, building roads and managing other public welfare undertakings in the village; (5) decision on projects to be launched by the collective economic organizations of the village and the contracts proposed for the projects; (6) villagers' proposals for operation under a contract; (7) proposals for the use of house sites; and (8) other matters that involve the interests of the villagers and on which the villagers assembly considers it necessary to make decisions through discussion." Villagers' assembly is an important form of villagers exercising their autonomy right. Major matters concerned with interests of villagers should be decided at villagers' assembly, and matters determined by functions of villagers' assembly shall also be assigned to villagers.

2.3 Functions of villagers' committee The villagers' committee is a mass organization of self-management at the grass-roots

level. It comes from election of villagers, implements decisions of villagers' assembly, and exercises routine management of the village in the scope of authority. In practice, however, authorities and functions of villagers' committee are far beyond these. They also have to handle affairs authorized by law and delegated by organizations of political power at the grass-roots level. Some examples are assisting people's government in carrying out various works, implementing basic state policy of family planning, poverty alleviation and disaster relief.

In reality, most efforts of villagers' committee are not put on self-government affairs of villagers. For instance, convening function is used by villagers to realize autonomy right, but itself cannot decide any matter, the villagers' assembly may be convened for finishing production tasks assigned by government.

To sum up, authorities of villagers' committee include three aspects: authorization of villagers' assembly, delegation of administrative organ, and authorization of laws and regulations. The latter two are extension of state power in rural areas. The villagers' committee plays a role of national public right, not an executive body of villagers' assembly any more. Therefore, in practice, the villagers' committee generated in accordance with the *Organic Law of the Villagers' Committees* plays a double role in functions, not merely a self-government organization. Villagers' committee may inherit part of administrative powers and be under the jurisdiction of administrative organ. Then it may have to complete tasks assigned by government. When confronted with conflict between autonomy right and state power, the villagers' committee often shows dissimilation of function and dislocation of role. As executive body of self-government organization, the villagers' committee is provided with too many functions that are different from and likely in conflict with autonomy. Such diversity of functions of villagers' committee complicates the issue of autonomy right. In this situation, making clear functions of villagers' committee is the key to putting problem of villagers' autonomy right in order.

3 Approaches to judicial relief of villagers' autonomy rights

Approaches to judicial relief should be selected in accordance with which main body and functions are adopted in the infringement of autonomy right.

3.1 Administrative proceedings may be instituted against administrative organ Article 4 of the *Organic Law of the Villagers' Committees* stipulates that the people's government of a township, a nationality township or a town shall guide, support and help the villagers committees in their work. It makes clear the relation between township government and villagers' committee is guiding and guided, not the directly leading and led relation. However, most township governments still take villagers' committees as their subordinate units or agencies. They get used to traditional management by order and command, and use various resources in hand, or use administrative orders to directly or indirectly intervene in matters within the autonomy scope of villagers' committee. In this game between democracy in grass-roots units and government power, the

villagers' committee is obviously in inferior position. Illegal replacement and suspension of members of villagers' committee are very common. If matters within the scope of autonomy are at the command of others or government, the villagers' self-government system will lose its original value and not necessary to exist. Courts often reject lawsuit of dismissed village officials on the ground that infringement of villagers' autonomy right is not in the scope of accepting cases specified in *Administrative Procedure Law*, and there is no provision in the *Organic Law of the Villagers' Committees* that villagers can apply for an administrative lawsuit in case of infringement of autonomy right. These will certainly lead to vacancy of judicial relief, and consequently result in balance of power extremely tilted. Obviously, the handling way of courts is improper, because Article 2 of *Administrative Procedure Law* stipulates that " If a citizen, a legal person or any other organization considers that his or its lawful rights and interests have been infringed upon by a specific administrative act of an administrative organ or its personnel, he or it shall have the right to bring a suit before a people's court in accordance with this Law. " If courts solve these matters, it will be more decisive and authoritative. Within the frame of present lawsuit system, the optimal lawsuit mode should be administrative procedure. It is gratified that this situation has gained attention from all works of life. The Judicial Committee of the Supreme People's Court has incorporated *The Interpretation on whether Administrative Lawsuit Can Be Applied on the Ground of Illegal Replacement, Suspension and Admonishing* into project establishment planning for judicial interpretation.

When administrative acts implemented by grass-roots administrative organs damage lawful rights and interests of villagers or villagers' collective or have administrative interference with self-government affairs of villagers, the villagers' committee may apply for an administrative lawsuit to people's court on behalf of villagers as plaintiff of administrative lawsuit. At the same time, if villagers' committee fails to apply for administrative lawsuit once administrative acts of administrative organs or staff thereof infringe upon lawful rights and interests of villagers or villagers' collective, villagers can apply for the administrative lawsuit by themselves.

In addition, for matters entrusted by government, the villagers' committee has responsibility for assisting grass-roots government in carrying out works. This assisting function of villagers' committee is based on entrustment of grass-roots government and is exercised in the name of grass-roots government. In this administrative legal relation, the villagers' committee appears as status of entrusted organization. If dispute over self-government right arises, it will be improper for villagers' committee to bring a lawsuit against administrative organ on behalf of villagers. Those villages whose rights are violated may bring a lawsuit against administrative organ by themselves, and the villagers' committee may attend the administrative procedure as a third party.

3.2 Different forms of lawsuits may be brought against the villagers' committee Similarly, villagers' self-government right may be violated by the villagers' committee. In this situa-

tion, it will have the problem that which forms of lawsuit can be applied. In view of functions of villagers' committee listed in preceding paragraphs, it is believed that forms of lawsuit should be determined on the basis that which function is exercised by the villagers' committee and which interests of villagers are infringed upon. The lawsuit form depends on functions exercised by the villagers' committee.

3.2.1 In special condition, administrative lawsuit may be brought against the villagers' committee. There are two applicable defendants in China's *Administrative Procedure Law*. One is administrative organ and the other is organization authorized by laws and regulations. The villagers' committee is engaged in administrative acts authorized by laws and regulations, so they can naturally be included in the scope of accepting cases of administrative lawsuit. Nevertheless, only in handling administrative affairs entrusted by laws and regulations, villagers' committee may act as defendant of administrative lawsuit. This can be derived directly or indirectly from relevant legal provisions. For instance, *Interpretation of the Standing Committee of the National People's Congress on the Second Paragraph of Article 93 of the Criminal Law of the people's Republic of China* firstly makes clear that members of the villagers' committee or of other rural organizations at the grassroots level who are engaged in the following administrative work shall be regarded as "the other persons who perform public service according to law" as provided for in the second paragraph of Article 93 of the Criminal Law. These works include (1) administration of funds or materials allocated for disaster relief, emergency rescue, flood prevention and control, special care for disabled servicemen and the families of revolutionary martyrs and servicemen, aid to the poor, migration and social relief; (2) administration of funds or materials donated for public welfare; (3) management and administration of State – owned land; (4) administration of compensation for requisitioned land; (5) withholding and tax payment affairs; (6) administration of birth control, household register and conscription; and (7) assisting the people's governments in such other administrative works. Here, what the National People's Congress quotes is functional standard, it determines members of the villagers' committee or of other rural organizations at the grassroots level belong to state functionary. Besides, *People's Republic of China Household Registration Ordinance* also stipulates the administrative assistance obligation of villagers' committee. On the other hand, if villagers' committee exercises the above functions of the state as a whole, the villagers' committee may abuse its power and villagers probably suffer losses, and the villagers' committee consequently becomes the defendant of administrative lawsuit^[2].

In the above situations, the legal status of villagers' committee as entrusted organization is manifested in two aspects. Firstly, the entrusted organization enjoys the same status of administrative subject as administrative organ when exercising functions entrusted in accordance with laws and regulations. Secondly, the entrusted organization exercises functions entrusted in accordance with laws and regulations in its own name, and should bear corresponding legal consequence.

It should be stressed that grant of the above function is not transference of villagers' right, but comes from entrustment of national laws. Abuse of the above function is not infringement upon villagers' autonomy right, but violation against of national normal management relation and ownership of public property. Similarly, we should not consider that if administrative lawsuit cannot be brought against villagers' committee in above conditions, it can be brought in other conditions. Whether the villagers' committee can be defendant of administrative lawsuit depends on if there is legal basis for powers it exercises, if there is administrative assistance obligation, and if it helps the State to exercise administrative function.

3.2.2 Civil action may be claimed against the villagers' committee for infringement upon autonomy right. Article 4 of *the Organic Law of the Villagers' Committees* has basic provision on scope of villagers' autonomy. As to scope of autonomy, functions of villagers' committee may be divided into two types: firstly, as administrator of collective property, the villagers' committee should manage land and other properties belonging to collective of village in accordance with laws; secondly, as administrator of rural community, the villagers' committee should maintain social order and provide public products. Infringement of villagers' committee upon villagers in these matters will be deemed as infringement upon villagers' self-government right.

In the autonomy dispute, the villagers' committee being defendant of administrative lawsuit is focus, and many scholars think that villagers' committee can be defendant of administrative lawsuit. Here, it is believed that in the existing legal system, we should not take the villagers' committee infringing upon autonomy right as "defendant of administrative lawsuit". There are three reasons. First, the purpose of establishing administrative procedure system is to investigate responsibilities of the State in administrative acts. In other words, the State will only take responsibilities for those administrative acts of the subject that representing the State. Administrative lawsuit should also only be brought against such act. Second, the villagers' committee is not an administrative organ, and its power comes from transference of villagers, so the villagers' committee is not an independent legal entity. Third, acts of villagers' committee are not State mandatory. Mandatory of administrative acts is a kind of national power, and it is for this reason that the State establishes administrative lawsuit system. For example, guiding administrative acts are not mandatory, so the State excludes them from scope of accepting cases of administrative lawsuit.

Some scholars think that rights of villagers' committee are connected with public interest, so it can adopt administrative lawsuit. However, I disagree. At first, public interest should not be generalized. Since there are numerous people, they will pursue consistent interest or interest of vast majority. If all consistent interests are called public interests, there will be danger of abuse of "public interest". We can imagine that all internals of self-government organization have consistent interest pursuit. Similarly, owners' committee of urban communities, board of directors of enterprises, and class committee can be subject

of administrative lawsuit. Furthermore, the villagers' autonomy is established to help them dealing with their internal affairs. For consistency and convergence of pursuit in interests, the essence is to maximize average interests of internal members, finally to closely link interests of villagers and turn the common interests into individual interest.

Therefore, as to the present way of lawsuit, the civil lawsuit is proper and rational. Different from dealing with matters entrusted by government or administrative matters specified by laws and regulations, the villagers' committee is an executive body of villagers' self-government when it is dealing with matters in the scope of self-government. It is an organizational form of villagers' indirect participation in exercising their autonomy right, which comes from transference of right. Its essence is the combination of private right of villagers, and the basic right is private right of villagers in civil activities. Thus, what the villagers' committee exercises is some private right transferred by villagers. With these limitations, the villagers' committee is only an agent. When villagers' committee exercises administration function of autonomy, no matter towards external or internal, the agency system in civil law may be used to determine the relation of rights and obligations.

First, compared with provisions of agent in civil law, the existence of agency system is based on agent seeking benefit for principal. In the course of exercising authority of agency, the agent should be cautious and diligent. Villagers' committee should be responsible for handling public affairs and public welfare undertaking of the village, mediating disputes, and assisting in maintaining social security, etc. The purpose and basis for its existence lie in villagers (benefit of the principal), so the villagers' committee itself does not have benefit.

Second, the agent should report any important matter faithfully to the principal in the course of exercising the authority of agency. For instance, Article 18 of the *Organic Law of the Villagers Committees* states that the villagers' committee shall be responsible to the villagers' assembly and report on its work to the latter. The villagers' assembly shall deliberate on the work report of the villagers' committee every year and appraise the performance of its members."

Third, activities of the villagers' committee must comply with decisions made at villagers' assembly, which is an organization of villagers directly participating in exercising self-government right. Villagers authorize the authority of agency to the villagers' committee in the form of resolution of villagers' committee. Matters and scope of this agency comes from villagers' assembly, and the agency result will belong to villagers' collective. Similarly, this feature is consistent with the legal provision that legal effect of agency is directly or indirectly belongs to the principal.

The villagers' committee in civil law is regarded as "other organization". Thus, members of villagers' committee should have equal status with other villagers. Handling of village affairs should be applicable to legal provisions of civil agency. And these affairs should be handled through civil proceedings.

4 Liability identification in the course of litigation

4.1 Liability identification in disputes over authority of agency It is needed to point out that the person liable for infringement upon villagers' self-government right should be specific, because the villagers' committee is not an independent legal entity, and it is deemed as subject of lawsuit only for the purpose of litigation. If improper acts of villagers' committee are taken during performing its duties, the legal consequence will certainly be assumed by all villagers. If improper acts are taken not for performing duties, it is required to investigate specific person liable, or members of the villagers' committee should bear joint liability, which is inner requirement of agency system. The specific information is as follows:

For damages or losses suffered by villagers due to wrong acts in exercising authority of agency, acts overstepping authority of agency or failure to perform duties in the course of agency, the villagers' committee should bear civil liability. We take diagram for benefit structure of principal-agent relation plus purchase (Fig. 1) as an example to analyze relation of all parties.

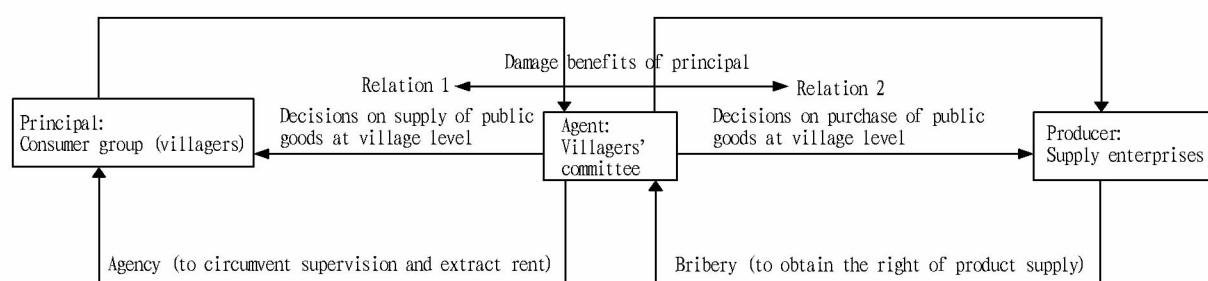


Fig. 1 Benefit structure of principal-agent relation plus purchase^[3]

From Fig. 1, we know that in the course of exercising authority of agency, the agent should be cautious and diligent, and no act of offending against or damaging benefits of principal shall occur. In case that problem shown in Fig. 1 occurs, the *Organic Law of the Villagers Committees* provides relief ways in

Article 16. Firstly, a group of at least one-fifth of the villagers who have the right to elect in the village may propose the removal from office of members of the villagers' committee. The removal from office of a member of the villagers' committee shall be adopted by a simple majority vote of the villagers who

have the right to elect. At the same time, a new villagers' committee may be elected. The new villagers' committee may bring lawsuit to court on behalf of villager collective and investigate liability of committee members who damage benefits of villagers. In this situation, the subject of lawsuit is individual infringer in the villagers' committee. It should not be attributed to the villagers' committee. Otherwise, there will be paradox that the majority suffers unfavorable consequence of infringement committed by minority, which is obviously against fairness and justice concept of laws^[4].

4.2 Liability identification of disputes between majority and minority

In the course of self-government, there is possibly of abuse of democracy. Matters of autonomy right, for instance, income distribution program, have the connotation of conflict of interests. The group with majority people may dominate collective matters of the village with the aid of superior position in number of people. If we adopt villagers' resolution or rules and regulations for the village, benefits of such inferior members as " married daughters" or " men married into the wife's family" will be deprived. Thus, the legal form in fact infringes private right (mainly property right) of inferior members. The disputes over autonomy right contains property dispute or directly are infringement of property right in the form of self-government. Such " resolution by majority" violates basic fair and reasonable principle. The basic fair and reasonable principle means " rights of the majority will be limited by commonly accepted principles, and any lawful rights should not override these principles" ^[5]. Based on status, these inferior groups in rural areas should enjoy same rights as other groups. Obviously, it is difficult to obtain recognition of most villagers through removal at the villagers' assembly. If such lawful forms as resolutions and rules and regulations for the village are used, those obtaining illegal interest will take the superior position in number of people. Judicial intervention may protect inferior groups through individual relief, with the purpose of redistributing relevant properties. This property redistribution is an adjustment of property between vested interest groups and inferior groups on the fair and reasonable principle. Specifically, it should realize the goal of inferior groups bringing lawsuit against vested interest groups. Both the damage and benefit have clear direction. However, for purpose of lawsuit, we can adopt the manner of inferior groups bringing lawsuit against the villagers' committee, and the court makes specific adjustment to acts of the villagers' committee. The judicial intervention is not infringement of democracy, but in compliance with democracy principle of limited majority, " in the context of Constitution, the key lies in minority, not majority" ^[6].

Relevant legislation has noted this point and made provisions of matters in the scope of villagers' autonomy on the basic fair and reasonable principle, to prevent rural superior groups abusing self-government right. For instance, Article 6 of *Law of the Peoples' Republic of China on Land Contract in Rural Areas* stipulates that " In undertaking land contracts in rural areas, women shall enjoy equal rights with men. The legitimate rights and interests of women shall be protected in contract. No

organizations or individuals may deprive their rights to land contractual management, which they are entitled to, or infringe upon such right." Article 33 of *Law of the Peoples' Republic of China on the Protection of Rights and Interests of Women* stipulates that " No organization or individual may trespass a woman's rights and interests in the rural collective economic organization on the ground that she hasn't got married, is married, is divorced or has lost her spouse. If the husband settles in the domicile of the wife because of marriage, the husband and the children of the couple shall enjoy the same rights and interests as the members of the local rural collective economic organization do." Similarly, courts shall make decisions on autonomy disputes on the fair and reasonable principle. In the same way, we can adopt this method to solve problems villager treatment, distribution of compensation for land requisition, disqualification of voters, etc.

4.3 Liability identification in infringement dispute

Now, many places have provisions of " villager autonomy" made in accordance with the *Organic Law of the Villagers' Committees*. They infringe lawful rights and interests of part of villagers under the cover of " self-government" and in the " lawful" form, mainly manifested in resolutions of villagers' assembly or rules and regulations for the village. Resolutions of villagers' assembly or rules and regulations for the village will have binding force only when they are not in breach of laws. In practice, resolutions or rules and regulations of some villages have illegal provisions, such as, " should livestock be injured during raising in a scattered way, the consequence will be accepted by yourself" , " if son is arrested for crime, his father will be punished by repairing roads for one month" , etc. For those acts manifested in the form of " autonomy" , their essences have exceeded the scope of autonomy right. They are not infringements of villagers' autonomy right, what they infringe upon is personal right, democratic right and lawful property right of villagers. So they violate private right in the name of " self-government" . Of course, these infringement acts have appearance of autonomy right and they are formed by villagers in democratic way. Article 20 of the *Organic Law of the Villagers Committees* stipulates that " A villagers' assembly may formulate and revise the villagers' charter of self-government, rules and regulations for the village and villagers' pledges, and submit them to the people's government of the township, nationality township or town for the record." Such record will not influence effect of villagers' charter of self-government, rules and regulations for the village, so it will not bring into full play the supervision function. Even if some provisions are against laws and regulations, people's government of a township cannot intervene. Therefore, judicial intervention is needed to determine if these provisions go against constitution, laws, regulations and state policies. Villagers whose lawful interests are infringed can directly bring a lawsuit against infringer to claim compensation and return of property according to other relevant laws, for example, as per provisions on encroachment of right in civil law. If the infringer is villagers' committee, we can bring civil lawsuit with the

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meet human demands, which is originated from main body of human being. To this end, the government must coordinate natural laws and social laws, practice the scientific outlook on development, and become dominant part in coordinating the relation of "harmony between human and nature".

3 Conclusions

From the above analyses, it can be known that the positions and functions of nature, society and government are different during the realization of ecological civilization. However, they are interacted, mutually influenced by each other, and coordinated and unified. Therefore, we should sort out the relationship of nature, society and government, coordinate natural and social laws using scientific outlook on development, and form a harmonious regulating network consisting of nature, society and government, so as to realize the real ecological civilization. In this situation, we put forward the concept model of ecological civilization network regulated by nature, society and government. In this ecological civilization network, government is dominant, nature plays leading role, and society is the main body. Nature acts on government and society through natural laws, society acts on nature and government through social laws, and government uses scientific outlook on development

to have an overall planning of nature and society. Finally, the ecological civilization appears in the regulating network of nature, society and government.

References

- [1] LOELOCK. *Gaia: a new look at life on Earth* [M]. [s. n.], 1979.
- [2] GAO XP. *Government eco-management* [M]. Beijing: China Social Sciences Publishing House, 2007. (in Chinese).
- [3] GAO XP. Analysis on market socialism [J]. Chinese Public Administration, 2004(5): 45–49. (in Chinese).
- [4] GAO ZH. Decision on environmental issues—ecological civilization of rational thinking [M]. Beijing: Social Sciences Academic Press, 2004. (in Chinese).
- [5] HUANG AB. A primary exploration of the "Ecotype Government" [J]. Social Sciences in Nanjing, 2006(1): 55–60. (in Chinese).
- [6] HUANG AB. Government administrative innovation and low-carbon eco-construction [J]. Social Science Research, 2010(5): 11–16. (in Chinese).
- [7] LU YX. Grasp the relationship between man and nature, the harmonious development of the law of real depth [M]. Beijing: Science Press, 2004. (in Chinese).
- [8] SHI LN. The comment on theory research of eco-civilization [J]. Socialism Studies, 2008(1): 11–13. (in Chinese).
- [9] WANG Q, CHEN YN. *The government of learning type—the government management innovation reader* [M]. Beijing: China Renmin University Press, 2003. (in Chinese).

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villagers' committee as defendant. On the principle of "non trial without complaint", for investigation request of villagers' charter of self-government, rules and regulations for the village, courts should take collateral examination in specific lawsuit. For those provisions in violation of constitution, laws and regulations, and state policies, courts may annul relevant provisions, and order infringer to bear corresponding civil liability.

References

- [1] LIU Y. Thoughts about remedies of villagers' self-governance [J]. Journal of Henan Normal University: Philosophy and Social Sciences Edition, 2005(3): 83–85. (in Chinese).
- [2] The People's Court of Langxi County. The village committee refused

to fulfill its obligation to assist and had been the defendant [EB/OL]. (2008-04-28). <http://www.lxxfy.gov.cn/News>Show.asp?id=962>. (in Chinese).

- [3] ZHONG YM, LIU KS. Village-level rural development in the new supply of public goods incentives and monitoring [J]. Truth Seeking, 2008(3): 92–94. (in Chinese).
- [4] HAYEK FA. *The constitution of liberty* [M]. Translated by DENG ZL. Shanghai: Joint Publishing Press, 2003: 130. (in Chinese).
- [5] GIOVANI SARTORI. *The theory of democracy revisited* [M]. Translated by FENG KL. Shanghai: The Shanghai People's Publishing House, 2009: 151. (in Chinese).
- [6] JIANG YJ. Legitimacy of thinking the protection of village regulations [J]. Studies on the Socialism with Chinese Characteristics, 2005(3): 74–76. (in Chinese).
- [7] XIAO GY. *Rural sociology* [M]. Beijing: Chinese Society Press, 2001: 260. (in Chinese).

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The Rural Development Foundation (RDF), founded in 1996, is an Indian nonprofit organization with the mission of providing quality education for underprivileged rural children. RDF founded and continues to operate five schools and one junior college in Andhra Pradesh State, taking a unique holistic approach to education through innovative programs and methodology. Rather than using the conventional method of rote memorization, RDF focuses on cultivating critical thinking skills and encouraging students to understand and apply concepts. RDF does this through special programs such as Social Awareness, Youth Empowerment, Student Leadership, and Sports. RDF strives to develop students who will become empowered leaders of their communities, thus working towards the vision of a transformed and prosperous rural India.