



Peasants Should Enjoy Equal Social Security Right with Urban Dwellers

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Abstract

According to the Constitution of the People's Republic of China and the effective conventions therein, every citizen should enjoy equal right of social security. But in reality, a peasant has much less such right than an urban dweller, only because of their different *hukou*. Peasants, as part of the investors of state-owned property, should have the rights of owners and enjoy the benefits from their assets; the existing binary social frame which limits the rights of peasants baffles China's progress into a market economy and founding of a harmonious social society. Therefore, establishing a uniform system of security right that authorizes all citizens to enjoy it equally is one of China's urgent tasks.

Keywords: Social security right, Equal, Peasant, Urban dweller

Foreword

The social security system as a national system or social policy, refers to the institution that in accordance with legislation, state and society give a certain amount of material assistance and social services to members of the whole society in their old age, disability, illness, unemployment or suffering of natural disasters, accidents, and other difficulties, thereby guarantee their basic living and thus maintain social stability.

On the basis of the existing binary social structure in China, disparate social security mechanisms have been uniquely formed for peasants who are holding agricultural *hukou*, and urban dwellers with non-agricultural *hukou*. Up to now, the urban population has been able to enjoy comparatively perfect social security right including old-age insurance, medical insurance, unemployment insurance, housing provident fund, while what social security peasants can enjoy is much less. In reality, the gap between urban dwellers and peasants in social benefits can be mainly listed as follows: firstly, retirement treatment is universally enjoyed by the urban dwellers, but peasants are generally excluded from retirement even if they had jobs unrelated to farming. Secondly, a very small proportion of peasants can enjoy basic old-age pensions: as Ministry of Labor and Social Security (MLSS) & National Bureau of Statistics (NBS) claimed (2007), at the end of 2006, the number of people with non-agricultural *hukou* participated in the basic old-age insurance in China was 187.66 million; in contrast, the number of participated peasants was only 53.74 million, less than 1/3 of the urban number. In addition, the standard of urban basic old-age insurance and that of rural old-age insurance differentiate greatly: in the fiscal year 2006, a total of RMB 489.7 billion basic old-age insurance fund was spent on urban dwellers, while the money spent on peasants was only RMB 3 billion, less than 1/163 of that spent on urban dwellers. Considering the fact that there are more peasants than urban dwellers in the country, the disparity is staggering: at the end of 2006, the country's population was 1.31448 billion, of which 577.06 million was urban dwellers, 737.42 million was peasants, which made 56.1% of the total (NBS, 2007). Thirdly, benefits of social securities such as unemployment insurance, medical insurance, work-related injury insurance, maternity insurance and minimum life security, are still generally the exclusive rights of the urban dwellers.

1. From the perspective of law, peasants should have social security right equal to urban dwellers

Despite the astonishing disparity between the social security rights of peasants and urban dwellers in China, there is no legal foundation for this phenomenon in the statute resources therein in the hierarchy above the level of law enacted by the National People's Congress (NPC) and its standing committee.

The Constitution of the People's Republic of China stipulates the protection of social security right mainly in the following six articles:

Paragraph 4 of Article 14: 'The state shall establish and improve the social security system according to the level of its economic development.' (Note 1)

Paragraph 2, 3 of Article 33: 'All citizens of the People's Republic of China are equal before the law. The State respects and preserves human rights.'

Paragraph 2 of Article 42: 'Through various channels, the State creates conditions for employment, enhances occupational safety and health, improves working conditions and, on the basis of expanded production, increases remuneration for work and welfare benefits.'

Article 43: 'Working people in the People's Republic of China have the right to rest.

The State expands facilities for the rest and recuperation of the working people and prescribes working hours and vacations for workers and staff.'

Article 44: 'The State applies the system of retirement for workers and staff members of enterprises and institutions and for functionaries of organs of State according to law. The livelihood of retired persons is ensured by the State and society.'

Paragraph 1 of Article 45: Citizens of the People's Republic of China have the right to material assistance from the State and society when they are old, ill or disabled. The State develops social insurance, social relief and medical and health services that are required for citizens to enjoy this right.'

The anterior four provisions and the final one are applicable to all citizens, which embodies that the Constitution protects the social security right of all citizens equally. Article 44 on the retirement provisions is applicable to members of enterprises, institutions and State organs, without mention of agricultural or non-agricultural *hukou*. The former agricultural economic cooperation can also be interpreted as a form of business organization; in the current society, with the diversification of enterprises and organizations, a large number of peasants work in state-owned, collective and private enterprises or organizations, and even in the State organs, therefore, they should also enjoy retirement rights according to the Constitution. The practice that not granting the same right to retirement and post-retirement security rights to the peasants in the same organizations as to the urban dwellers is a violation to the provisions of the Constitution, especially that of Article 44. (Note 2)

According to China's Legislation Law, the social security system including social insurance should be stipulated by relevant law passed by the NPC and its standing committee. Social security system about the basic living guarantee of all citizens in their own country is an indispensable part of the basic economic system of a society. According to the provisions of Article 8 of China's Legislation Law, basic economic system and deprivation of citizen's political rights shall only be governed by law and cannot be regulated by administrative regulations. However, China currently has no law specializing in social security; (Note 3) and because of this, China's Labor Law and Labor Contract Law relating closely to the social security, can not be implemented in a wide range, which will be discussed later.

Regulations on Household Registration of P. R. China issued in 1958 is among the main legal resources of the binary *hukou* system enacted to control migration across different areas and between rural and urban regions of the country for the former planned economy. Overstepping into the scope of matters that must be governed by law, it is an administrative regulation below the law level in the hierarchy, contrary to the Constitution, and has suspicious validity as an outdated residual of planned economy, liability to be denounced in this modern world of market economy; so do other existing administrative regulations and local decrees dictating the disparities in social security rights between the two group of people with different *hukou* but of the same races, ethnic groups, and with similar religions.

Per international law, China should also give equal social security right to all citizens. Article 13 of Universal Declaration of Human Rights adopted and proclaimed by the General Assembly on December 10, 1948 stipulates that, 'Everyone has the right to freedom of movement and residence within the borders of each state.' (Note 4) In 1966, the General Assembly adopted International Covenant on Civil and the Political Rights and International Covenant on Economic Social and Cultural Rights, which, together with the Universal Declaration, are known as the 'International Bill of Human Rights'. The former Covenant was signed by the Government of P. R. China in 1998, but has not been approved by the Standing Committee of National People's Congress so far. The latter one, signed in 1997 and ratified in 2001, is already binding on China according to the international practice 'Covenants and treaties must be complied with.'

The articles of International Covenant on Economic Social and Cultural Rights concerning the social security right can be mainly listed as below:

Article 4: 'The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.'

Article 6: 'the States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.'

Article 7: 'The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant; (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.'

Article 9: 'The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.'

Article 12: The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: ...The creation of conditions which would assure to all medical service and medical attention in the event of sickness.'

The different mechanisms of social security right for peasants and urban dwellers in China are in essence restrictions to peasants' social security right, which is contrary to the nature of the right as a basic human right for living. Such restrictions based on *hukou* have resulted in disparities between peasants and urban dwellers in living conditions, social status, and many other aspects. For example, employment opportunities are differentiated hugely by the binary *hukou* system: recruitment in every city or town has *hukou* restrictions, which usually request native non-agricultural *hukou*, and sometimes in Beijing even non-agricultural *hukou* in the eight urban districts of the city; in many enterprises, although there is no expressly distinct regulation on occupation and remuneration for peasants and urban dwellers, peasants are actually much more likely to do more arduous work with lower wage even in the same positions as the urban dwellers; it is common for peasant workers to get less income, work longer, be dismissed easier, lacking of protection for employee's right. These disparities, which are not reflected in the level of the protection standard of basic living, but in the different treatments to peasants and urban dwellers, demonstrate that the institutions and practice in China do not satisfy the requirements of International Covenant on Economic Social and Cultural Rights.

Although International Covenant on Economic Social and Cultural Rights states in paragraph 1 of Article 2 that 'Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.' it should be considering the difficulties States Parties may face due to resource constraints. 'achieving progressively' can only be understood as gradually achieving higher level of the rights stipulated, not as progressively expanding the scope of benefited people from different walks of life, or with different *hukou*, because paragraph 2 of the same article reads, 'The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.' Therefore, China's different social security systems for peasants and urban dwellers do show the gap between China's performance of the Covenant and its obligations under the Covenant.

2. From the perspective of jurisprudence, peasants should have social security right equal to urban dwellers

It is common knowledge of Chinese history that the Communist Party first succeeded in rural areas, following a route called 'encircle the cities from the rural areas and finally seize the cities'. From the Autumn Harvest Uprising to the establishment of a Soviet power, from the Fifth Anti-Encirclement with about only 30,000 people to the re-emergence and development in Yan'an after the Long March, from the Sino-Japanese War to Chinese Civil War, the Communist Party benefited significantly from the support of peasants in every event. Mao, Zedong and Deng, Xiaoping and many other Communist leaders said on various occasions that without the support of peasants in the fighting front and the rear of the Civil War, it was absolutely impossible for the Communist Party to defeat the Kuomintang army of 8 million in only three years; and the contributions of peasants to the establishment of the People's Republic of China were prominent.

Moreover, peasants made significant contributions in the construction of P. R. China. To accelerate industrialization in the early years of the new government, huge amount of capital was transferred from the agricultural sector to the industrial sector, from rural area to urban area, by obtaining funds from peasants for industrial capital accumulation through a deep government intervention that set large 'price scissors' between agricultural products and industrial products with the support of the People's Commune system. Professor Zhong, Wei, a researcher at the Chinese Academy of Social Sciences pointed out in 2003 that the annual loss of funds of rural area in China was as much as 240 billion per year: first, with the agricultural tax about 210 billion per year, governmental financial support for agriculture about 80 billion per year, the annual net capital transfer from peasants to the Government was 130 billion; second, more stringent lending policies were implemented to peasants, individual industrial or commercial households and rural township enterprises in rural areas than

to state-owned enterprises, which resulted in an average annual savings funds of about 80 billion flowed from rural area to urban area; third, the prices of agricultural products continued to decline in comparison with the inflation, which made peasants lose approximately 30 billion per year.

Chinese peasants are the largest investor of state-owned assets, but they cannot fully enjoy the rights of investor. From 1953 to 1995, 60% of the state-owned assets in China were obtained from peasants. In the period of State monopoly for purchase and marketing of agricultural products from 1953 to 1985, the 'price scissors' took 600 to 800 billion from peasants for the industrialization (Chen, 2003). Therefore, peasants are the owner of the state-owned assets together with urban dwellers. However, peasants have not enjoyed a proper share of the profits of state-owned assets after they bear the obligations as investors.

On October 14, 2003, the third plenary meeting of the 16th Central Committee of Communist Party of China (CPC) passed the Decision of the CPC Central Committee on Improving the Socialist Market Economic System, claiming to expand the coverage of basic medical insurance system, to perfect the social medical aid and multi-level medical security system, to adopt a variety of ways, including transferring some state-owned assets to enrich the fund for social security, and to explore the establishment of minimum livelihood protection system in some suitable rural areas. But at the same time, the Decision affirmed that the rural old-age security should be family-based, with the combination of relief from the community and the state. Here, it decided to enrich the social security fund with the profits of state-owned assets on the one hand, and excluded peasants from the beneficiaries of state-owned assets by and large on the other hand, regardless of the fact that the peasants are the owners of the state-owned assets. It should be admitted that the provisions of the establishment of the minimum livelihood guarantee system in rural areas and the combination of rural old-age security with the national relief can be considered remedies for such unfair treatment to some extent, which indicate that the policy-makers of China have a good understanding of the ideal state of social security system, however, they are a bit too conservative in practices and have not made appropriate and sufficient arrangements, since as a relief, its intensity and effect will clearly be terribly limited. Today, it still merits to be a piece of good news in newspapers and websites to start a plan in which peasants can enjoy governmental medical subsidies of an average of RMB 190 per year per person since July 1, 2008 in Xiamen, where the economy and society is relatively well developed in China.

From the perspective of jurisprudence, the total volumes of the rights and the obligations of a society are equivalent (Zhang, 2004, 100). The distribution of rights and obligations should also be symmetrical and balanced: No rights without obligations; no obligations without rights. Investors are owners of the properties; and property owners are entitled the rights to possess, to use, to profit from and to dispose of the property. Peasants are the owners of the state-owned assets, same as, and even more reasonable than the urban dwellers, so, since the income from State-owned assets is a major source of funds for Social Security, peasants, for their great share of contribution to State-owned assets, are fully qualified to enjoy the same social security right as urban dwellers do. (Note 5)

3. From the perspective of actual needs, market economy and social development demand that all citizens enjoy equal social security right

First, the binary social security system which is different for peasants and urban dwellers is an obstruction to the development of market economy.

The free flow of labor is a prerequisite for market economy, which demands to allocate all sorts of resources including human resources according to the needs of the market. Then the transfer of a planned economy into a market economy is also the transfer of a binary economy into a uniform economy, because a unified market of urban and rural areas is an essential requirement for market economy, as the currently prevailing binary urban-rural mechanism is a product of planned economy.

The current urban-rural binary system of social security hindered the free flow of labor. After the Reform and Opening-Up policy was adopted by the country in 1978, a large number of peasants left their lands and engaged in non-agricultural works. As well as do jobs in township enterprises in rural areas and work as individual industrial and commercial households, they come into the city and make up the majority of each city's construction workers, cleaning workers, waste material recycling workers, and cooks and waiters in the catering industry. According to statistics from related government departments, peasant workers in cities have become more than 100 million (He, 2006). However, China's urbanization process is still lagging behind the process of industrialization. The exclusive urban welfare system derived from the binary system of *hukou* registration effectively blocked the laborer flow among different sectors of industry, different geographical areas and enterprises of different types of ownership (Cai, 2007).

The diversity of social security rights attached to variant *hukou* makes the population only move from rural to urban areas in one direction, which in turn exacerbated the urban-rural division. Designed on the basis of planned economy, China's social security system covers urban dwellers only, so, if someone wants to give up his non-agricultural *hukou* in order to get an agricultural one, he will be deemed as a plainly fool. Thus, urban dweller is actually deprived of the right to transfer his non-agricultural *hukou* for an agricultural one, to move from city to rural areas: the urban dwellers will not become a peasant even if they like farming or the living environment of the countryside. Disparate social security rights, together

with disparate educational opportunities and college entrance examination score requirements, have made the urban population of Beijing and Shanghai the least free population in their own country in the world. The observation of domestic population flow shows that people only bring their *hukou* into the two cities, hardly ever out of them. In such a system, very few people choose to leave these two cities, even fewer choose to bring their *hukou* out, although they have better job opportunities in other areas of the nation. Restrictions on the supply of *hukou* in major cities limit the population growth rate in Beijing and Shanghai on the surface; but in essence, it is the *hukou* system itself that ensue the huge demand of the *hukou* of the municipalities.

Indeed, the binary social security system tied up to *hukou* limits the free flow of labor and reduce the efficiency of resource allocation by market, results in that the reform of production factor market, including the restructuring and the development of labor market, is regarded as a relatively backward reforming area, which has dragged on the hind legs of the reform and impede the establishment and development of the market economy system.

Also, it should be noted that the hindrance of the binary social security system to the market economy is definitely not limited to its adverse effects to the flow of the labor. From an economics point of view, the fundamental factor of production promotion is consumption demand rather than investment, for the growth of the ability to consume is the ultimate driving force for economic development. The situation that more than half of the population does not enjoy basic social security right in China severely hinders the growth of domestic demand, which leads to the deficiency in the driving force in the economic progress of the country. The weak consumer market under the strong stimulation shows that the overwhelming majority of the consumers have instable expectancy about future life guarantee (Li, 2006, 218-219). China's economic policy to accelerate growth by investment treats only the symptoms, does not fix the root cause, and will definitely lead to the waste of investment and to the irrationality of economy structure, leaving insidious dangers for a sustainable development of the nation. In addition, with more than half of the population excluded from basic living security, China has too much specificity in its situation so that the foreign experience of effective economic control can hardly work out for China, which brings undue difficulties to the assimilation of the advanced experiences of foreign countries. To effectively solve the social security problem of peasants with due support from the state, is a fundamental way to expand domestic demand, to improve the effectiveness of economic adjustment, and to promote the healthy development of economy.

Second, the binary social security system adds instable factors to the society.

Undoubtedly, *hukou* system was established partially to facilitate the management of country's population. As large number of peasants come into cities but cannot obtain an urban *hukou*, and urban population come to rural areas or people from Beijing or Shanghai to the other parts of the country without changing their *hukou*, the phenomenon of the separation of a person and his or her *hukou* exists in a tremendous quantity in China. Therefore, the existing *hukou* system not only brings inconvenience to people's life, leave many of the children of migrant workers in their hometown, but also increases the cost and difficulty in effective population management, which deteriorates the security situation everywhere, and aggravates social instability to a certain extent. At the same time, when the peasants came into the city in the wave of market economy learn the disparity of social security right between peasants and urban dwellers, learn the discrimination they are suffering for their agricultural *hukou* without even a racial or religious basis, they will mostly likely to question the social justice and to criticize the government, thereby add disharmonious factors into the society.

Further, the drawback effects of binary *hukou* system to social stability exist not only in the interaction between urban and rural areas, but also in the countryside per se. For example, because the living and medical care of elderly peasants are still depending on the support from their children, instead of borne by the community or ensured by the government in a unified way, disputes of maintenance for old folks exist in large quantity in rural areas. This is not an issue peasant's quality or moral character, but an issue of system design, because there are no substantive differences in the need of food, clothing, housing, transportation and the instinct to seek advantages, to avoid disadvantages between peasants and urban dwellers, neither between ancient and current people or Chinese and foreign people. That heritage disputes happen often in cities is enough to confirm the above viewpoint.

Third, the binary social security system is not conducive to the rule of law.

Different treatments to peasants and urban dwellers in their social security right also lead to a serious consequence that some effective laws cannot be fully implemented. Taking Labor Law implemented since January 1, 1995 as an example, it's stipulations on the labor contracts, working hours, rests, leaves, wages, social security and welfare are dead letters in the majority of rural areas. It is unrealistic to assume that most peasants will pick up the weapon of law to protect their rights as workers of P. R. China when the employment opportunities for peasants are extraordinarily narrow. Hardly having any social security is a factual basis for peasants to be forced to accept discriminating or illegal treatments. It is the unreasonable binary social security system that causes some laws enacted by the National People's Congress generally inapplicable to more than half of the population of the country.

But to build a harmonious society without the rule of law is absolutely impossible, because the rule of law is an important indicator of the degree of civilization in the current context; but rule of law also has its own rules. The internal harmony and

unity of the law system is a requisite for the rule of law, for the internal factors of any system are all interactive or cross-depending. The unity of the legal system is an important symbol of a unified regime; and the disunity of legal system will endanger the regime's unification.

Now, it can be said affirmatively that the urban-rural binary system of *hukou* will gradually withdraw from the stage of history, and the freedom of movement of our citizens is a not-so-distant right. In order to encourage population movement, a number of measures have been taken by some provinces of the country. According to statistics of the Ministry of Public Security, Hebei, Liaoning, Jiangsu and other 9 provinces (or autonomous regions or municipalities) have established unified 'residents *hukou*' registration systems for urban and rural areas. But the disparate natures of agriculture and non-agriculture *hukou* have not been changed yet: if the 'added value' linked to the original *hukou* system is not removed, if the different treatments to peasants in urban dwellers on social security continue to exist, all measures are impossible to have real effect.

Conclusion

The existing Constitution, laws and international conventions valid in China require all the citizens to equally enjoy social security right. Peasants made tremendous contributions to the establishment and the construction of the People's Republic of China. As same as the urban dwellers, peasants are among the owners of the state-owned assets and should have proprietors' right. Moreover, the binary social security system is a huge obstacle to the development of the national economy, to the promotion of the welfare level of the entire society, to the increase of social harmony, and to the foundation of the rule of law.

Therefore, we must reform the existing social security system, carry forward the spirit of equality in the Constitution and International Bill of Human Rights, construct a unified social security system for peasants and urban dwellers, formulate laws that clearly prescribe the social security right which shall be enjoyed by all citizens and its enforcement procedure, make peasants enjoy social security right thoroughly equal to urban dwellers as soon as possible. Any hesitation and waiting in this regard will embarrass the development of China's market economy, the progress of the whole society and the happiness of all the people.

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Notes

Note 1. This paragraph is missed in the English version of the Constitution of PRC posted on the website of the National People's Congress of PRC. For detail, please compare web pages of http://www.npc.gov.cn/npc/xinwen/node_505.htm and http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372963.htm.

Note 2. Until now, China has not established an effective review system for the Constitution.

Note 3. Since 1994, Social Insurance Law has been included in the legislative plan of the NPC Standing Committee and the State Council for several times, including once in the session of the Ninth National People's Congress when it was a really hot topic. Although the law has not been promulgated yet, the start-up activities related to the social security legislation can be seen as the dawn of the rule of law concerning China's social security system.

Note 4. 'Within the borders of each state' has been often translated as 'across the borders between any states' in most Chinese version of Universal Declaration of Human Rights, which is certainly misleading. See <http://www.un.org/chinese/hr/issue/udhr.htm>.

Note 5. Besides, farmers have rural collective assets, including collective-owned rural lands, therefore, they are the owners of more assets, and should have more rights. Unfortunately, their rights are awfully vulnerable because of the operational problems in the process of the realization. For example, in the transfer of rural land from cultivated field to construction land, the compensation peasants get from the government for land requisition is usually much less than the land transferring fee paid by developers to the government.