

# *The Implementation of the Supported Decision-Making System in Chinese Law*

Jiashu Wang<sup>1,a,\*</sup>

<sup>1</sup>Hebei University of Economics and Business, No. 47, Xuefu Road, Shijiazhuang City, Hebei Province, China

a. 1144084046@qq.com

\*corresponding author

**Abstract:** This study explores the introduction and realization path of assisted decision system in Chinese law. As the UN Convention on the Rights of Persons with Disabilities and other international conventions pay more and more attention to the decision on assistance, China has gradually introduced the system and is facing many challenges, including legal framework and social resources. This paper compares assisted decision with traditional alternative decision, and analyzes its advantages and limitations. Then, it focuses on the practice path of the assisted decision system in China, including how to deal with legal defects, cultural barriers and UN recommendations to China. Finally, this paper looks forward to the possible development direction of the system in the future, and emphasizes the importance of improving legal protection and social support.

**Keywords:** Facilitative decision, Alternative decision, Legal framework, Convention on the Rights of Persons with Disabilities.

## 1. Introduction

The supported decision-making system originates from the traditional system of interdiction, primarily applied to individuals with intellectual disabilities. However, as China's aging population intensifies, the number of elderly far exceeds that of individuals with mental disabilities, making this system ill-suited to current societal conditions. In response, many countries worldwide have reformed their existing adult guardianship frameworks, moving toward supported decision-making systems that prioritize enabling individuals to retain control over their lives, rather than depriving them of their legal capacity. Countries such as Australia, Canada, and Japan have introduced supported decision-making systems under the backdrop of replacing guardianship systems. This reflects a global trend toward reforming guardianship laws, particularly with the influence of the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Article 12 of the CRPD mandates that signatory countries recognize the equal legal capacity of persons with disabilities in all areas of life and provide the necessary support to enable them to exercise this capacity. This challenges the traditional substitute decision-making model and promotes the development of supported decision-making systems in legislation and practice across various countries.

As a signatory of the CRPD, China has also begun exploring the introduction of supported decision-making. In recent years, China has made significant progress in protecting the rights of persons with disabilities. The revised Mental Health Law of the People's Republic of China in 2013

explicitly outlined legal protections for individuals with mental disorders, emphasizing their right to autonomy in treatment and life management. Furthermore, the Civil Code of the People's Republic of China, implemented in 2020, further improved the guardianship system by introducing the concept of "assisted guardianship," reflecting an initial exploration of the supported decision-making system.

However, several challenges remain in promoting the supported decision-making system in China. First, the traditional substitute decision-making model is deeply entrenched in Chinese law, and societal recognition of the autonomy of persons with disabilities is relatively underdeveloped, leading to resistance against the implementation of the supported decision-making system. Second, the specific implementation mechanisms and operational guidelines for the supported decision-making system are not yet clear and require further clarification through legal interpretation and judicial practice. Lastly, social support systems, such as professional training and the provision of social services, need further development.

This paper will discuss the implementation of the supported decision-making system in Chinese law. The first section of the paper introduces and analyzes the concept of supported decision-making, comparing it with the traditional substitute decision-making model. It also explores comparative studies of supported decision-making systems internationally and domestically, examines the challenges and opportunities in implementing such a system in China, and seeks pathways to effectively incorporate supported decision-making into Chinese law. The goal is to strike a balance between protecting the self-determination rights of persons with disabilities and meeting their legal protection needs.

## **2. Literature Review: Domestic and International**

### **2.1. Advantages of Supported Decision-Making**

The core advantage of the supported decision-making system lies in safeguarding individual autonomy. Wang Zhihua points out that the system is significant in respecting the autonomy of persons with disabilities, ensuring they remain the primary decision-maker while receiving sufficient support to express and implement their will. Gooding further emphasizes that the system effectively balances support and autonomy, enhancing the self-determination capabilities of persons with disabilities.

In addition to safeguarding autonomy, the supported decision-making system also promotes the exercise of legal rights. Li Yan argues that the system ensures individuals are fully protected in legal procedures by establishing a decision-making support system centered on the individual. Kohn et al. also note that this system reduces undue intervention, thereby enhancing the fairness of legal processes.

Additionally, the supported decision-making system reduces conflicts and misunderstandings that may arise during the decision-making process. Liu Jun found that this system fosters communication and cooperation within family decision-making, minimizing conflicts caused by information asymmetry. Similarly, Davidson points out that the supported decision-making system can effectively reduce conflicts both within families and during legal procedures.

Finally, the supported decision-making system significantly improves the quality of life for individuals. Zhang Li highlights that by respecting the decision-making rights of individuals, the system allows them to live according to their own wishes, thereby enhancing their quality of life. Shogren et al. found that the system increases the individual's sense of self-efficacy and has a positive impact on their mental health and life satisfaction.

## 2.2. Differences Between Supported Decision-Making and Substitute Decision-Making

The most prominent feature of the supported decision-making system is its role in respecting and preserving the individual's position as the primary decision-maker. In the supported decision-making model, the individual remains the final decision-maker, with others merely providing information or advice to assist in making decisions. Dinerstein points out that the core of supported decision-making lies in empowerment, allowing people with disabilities to exercise their legal rights with appropriate support [1]. Xu Ying also believes that the supported decision-making system helps disadvantaged groups to remain subjects in legal and life matters, thus ensuring greater participation in society.

In terms of safeguarding legal rights, the difference between supported and substitute decision-making systems lies in how much they respect individual rights. Minkowitz criticizes the substitute decision-making system for being overly reliant on protectionism, which neglects individual autonomy and personal rights [2]. Ma Xiaohong argues that supported decision-making has significant advantages in promoting legal rights protection, particularly for the elderly and individuals with mental disabilities. It helps avoid disputes and injustices that may arise from substitute decision-making [3].

Moreover, the supported decision-making system significantly increases individuals' social participation by enhancing their ability to make autonomous decisions. Bach and Kerzner point out that the system enables people with disabilities to participate more actively in social life and public affairs [4]. Li Jing also asserts that promoting supported decision-making can improve the social status of the elderly and disabled people, increasing their sense of social participation and recognition.

## 2.3. Challenges of Supported Decision-Making

Despite the theoretical advantages of supported decision-making, its implementation faces certain challenges. Herring suggests that while the concept of supported decision-making has been widely accepted, its legal implementation still needs to overcome the complexity of system design and the difficulties of practical application. Zhao Ying points out that although the theoretical framework for supported decision-making has been gradually established, its promotion in Chinese legal practice still faces challenges such as an incomplete legal system and a lack of public awareness [5].

## 2.4. Conclusion

Existing research widely acknowledges the advantages of the Supported Decision-Making system, particularly in enhancing autonomy, protecting legal rights, and promoting social participation. However, studies also highlight the challenges faced in its legal implementation, especially in terms of practical operations and social awareness. Future research should focus more on evaluating the applicability and effectiveness of the SDM system in different social contexts and explore the pathways for its realization within Chinese law.

## 3. Concept and Introduction of the Supported Decision-Making System

The Supported Decision-Making (SDM) system is an emerging legal framework that respects an individual's autonomy. It is designed to assist people who may need support in decision-making due to intellectual, mental, or physical disabilities. In the SDM system, the individual remains the ultimate decision-maker, but they can rely on supporters to help them understand, analyze, and make decisions. This support can come in the form of providing information, explaining options, or assisting in communication with others.

The SDM system emphasizes the autonomy and independence of the individual, with the role of the supporter limited to assisting the person in making decisions in accordance with their wishes,

rather than making decisions on their behalf. This contrasts with the traditional Substitute Decision-Making system, where a guardian or agent typically makes decisions for the individual, which deprives the individual of their autonomy to some extent.

The concept of SDM originated from the disability rights movement and has been widely recognized in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). Article 12 of the UNCRPD explicitly states that people with disabilities shall enjoy legal capacity on an equal basis with others and have the right to access the support necessary to exercise this capacity. This provision has driven the gradual introduction and implementation of SDM systems in the laws and policies of many countries, aiming to protect the legal rights and decision-making autonomy of people with disabilities.

As a legal framework that respects and protects individual autonomy, SDM is receiving increasing attention and recognition worldwide. With growing emphasis on the rights of people with disabilities and the continuous improvement of relevant laws and policies, SDM is expected to play an increasingly important role in the future, providing legal and social protection for more individuals in need of support.

## **4. Comparison Between Supported Decision-Making and Traditional Substitute Decision-Making Systems**

### **4.1. Decision-Making Authority and Participation**

In the Supported Decision-Making (SDM) system, the individual retains full decision-making authority. The role of the supporter is to help the individual understand information, analyze options, and make decisions. Dinerstein emphasizes that SDM empowers individuals to participate in decision-making rather than stripping them of it. This system is designed to respect and uphold the individual's wishes, ensuring their initiative and subjectivity in the decision-making process.

In contrast, the Substitute Decision-Making system typically transfers decision-making authority to a third party, such as a guardian or legal representative. This system is based on the protectionist assumption that the individual is unable to effectively exercise their decision-making rights due to certain reasons, thus requiring someone else to make decisions on their behalf. Minkowitz criticizes the substitute decision-making system for depriving individuals of their autonomy, often leading to the neglect of their personal wishes[2].

### **4.2. Legal Rights Protection**

The Supported Decision-Making (SDM) system ensures the protection of an individual's rights through empowerment. During the decision-making process, individuals receive sufficient informational support, enabling them to make independent decisions based on a full understanding. Bach and Kerzner argue that SDM provides people with disabilities with the opportunity to autonomously express their will in legal matters, ensuring that their legal rights are not violated.

The Substitute Decision-Making system typically includes stringent procedural safeguards to prevent abuse of power by the legal representative. However, due to the transfer of decision-making authority, this system often leads to the neglect of the individual's personal will in practice. Li Jing notes that while substitute decision-making can protect individuals from external harm to some extent, its over-reliance on third-party decision-making weakens the individual's legal subject status.

### **4.3. Social Participation and Inclusivity**

The SDM system enhances the individual's ability to make autonomous decisions, thereby increasing their social participation. Bach and Kerzner further highlight that SDM not only improves the quality

of life for people with disabilities but also promotes their active participation in social and public affairs, fostering greater social inclusivity.

In contrast, the Substitute Decision-Making system often excludes individuals from the decision-making process, reducing their social participation and further marginalizing them. Jonathan Herring argues that the implementation of substitute decision-making may reinforce negative stereotypes about people with disabilities, thereby limiting their opportunities for social participation.

## **5. Comparison of Domestic and International Supported Decision-Making Systems**

### **5.1. International Legal Framework for Supported Decision-Making**

The international legal foundation of the SDM system is primarily derived from the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and its relevant provisions. Article 12 of the CRPD clearly stipulates that signatory states shall take measures to support people with disabilities in retaining and exercising their legal rights during the decision-making process. The UN Committee on the Rights of Persons with Disabilities has provided detailed interpretations of this, emphasizing that SDM is a key mechanism to ensure that people with disabilities enjoy equal legal rights. The Committee further stresses that signatory states should establish systems that provide individuals with support in understanding information and making decisions, rather than substituting their decisions. This institutional framework provides the legal basis for countries to implement SDM systems [6].

### **5.2. Domestic Legal Experience with the Supported Decision-Making System**

In the international community, different countries have implemented the supported decision-making (SDM) system in unique ways, resulting in a wealth of experience.

For example, Canada is one of the early adopters of SDM in its legal framework. In 1996, the province of Manitoba passed the Vulnerable Persons Living with a Mental Disability Act, which grants adults with disabilities the right to designate a supporter. This legal framework not only safeguards the autonomy of people with disabilities in personal matters, financial management, and healthcare decisions but also ensures that their decision-making rights are fully exercised through support agreements and supervision mechanisms.

Similarly, Australia has made significant progress in promoting the SDM system. In 2013, the state of South Australia passed the Advance Care Directives Act, which formalized the legal status of supported decision-making. This act allows individuals with disabilities to appoint a supporter through advance directives, ensuring that support is available when needed. This legal arrangement not only enhances the social participation of people with disabilities but also strengthens their autonomy in everyday life.

In addition, Sweden has implemented the SDM system through its “God Man” model. This model allows disabled people to apply through legal procedures for a personal agent to assist them with financial, legal, and daily life matters. Unlike traditional guardianship systems, Sweden’s personal agent system emphasizes respecting the individual's will throughout the decision-making process, ensuring that their autonomy is fully protected. This model has had a positive influence across Europe, gaining widespread recognition for its effectiveness in safeguarding the legal rights of people with disabilities.



### 5.3. The History of Supported Decision-Making in China

In China, the implementation of the Supported Decision-Making (SDM) system is still in its exploratory phase. Compared to the more mature systems in other countries, China's SDM system is just beginning to take shape and faces numerous challenges.

In 2017, China's General Principles of Civil Law introduced the concept of "assistance in expression of intent" for the first time, laying the groundwork for the future legal framework of SDM. However, the existing legal provisions remain quite general, lacking specific implementation guidelines and operational instructions, which creates significant challenges in practice. Despite these challenges, certain regions, such as Beijing and Shanghai, have begun exploring the introduction of SDM elements in elderly care services and support for people with disabilities. For instance, in Beijing, community service centers and social work organizations are attempting to provide support for elderly individuals and disabled people in their daily lives and medical decision-making. These initiatives have provided valuable experience for the nationwide implementation of SDM.

In summary, while China has taken an important step toward promoting SDM, its legal framework still needs further refinement compared to the more advanced stages of development in countries like Canada, Australia, and Sweden. Additionally, societal awareness and acceptance of SDM in China need to be improved, especially given the deeply rooted traditional guardianship concept. How to effectively promote SDM in the future remains a significant challenge.

## 6. Pathways for Implementing the Supported Decision-Making System in Chinese Law

### 6.1. The Necessity of Introducing the Supported Decision-Making System in China

First, the introduction of the Supported Decision-Making (SDM) system is crucial for fully safeguarding the legal rights of people with disabilities. The traditional guardianship system often strips individuals of autonomy, while the SDM system enhances both autonomy and sense of social participation while ensuring equal legal participation. This, in turn, can improve their quality of life[7].

Second, despite the theoretical advantages of SDM, its implementation in China faces multiple challenges. The existing legal framework is still incomplete and lacks specific provisions regarding the duties and rights of supporters. Additionally, traditional Chinese cultural values, such as familism and collectivism, are deeply ingrained, and society doubts the capabilities of those people. This cultural context may impact the acceptance and effectiveness of SDM's promotion.

Finally, the effective implementation of the SDM system requires substantial resources, including professional training for supporters and continuous legal oversight. This presents new demands on China's current social service system and poses practical challenges for the full-scale implementation of SDM in the future.

### 6.2. Integrating the Supported Decision-Making System into China's Existing Legal Framework

The General Principles of Civil Law of the People's Republic of China, passed in 2017, was the first to introduce the concept of "assistance in expression of intent" into Chinese law, laying an initial legal foundation for the SDM system [8]. This provision allows people with disabilities to seek assistance from others when engaging in major civil actions to express their true intent. However, the law does not yet specify how this system should be implemented, and key issues such as the duties and rights of supporters remain unclear.

Additionally, the Law on the Protection of the Rights and Interests of the Elderly of the People's Republic of China contains clauses related to SDM. This law requires children and other family members to provide necessary assistance and support when elderly individuals make decisions.

However, this form of assistance is primarily viewed as a moral obligation rather than a legal one, lacking systemic and legal safeguards, which hinders the formation of a comprehensive SDM system.

### **6.3. Practical Challenges in Implementing the Supported Decision-Making System in China**

Despite the preliminary support provided by the legal framework for the implementation of the Supported Decision-Making (SDM) system, several practical challenges remain in its application. First, there is a disconnect between legal provisions and social realities. Although the General Principles of Civil Law theoretically recognize the possibility of "assistance in expression of intent," the absence of detailed implementation guidelines means that many disabled people still struggle to obtain real decision-making support in practice. To address this issue, China should further refine the operational standards for SDM through legislation and judicial interpretation, while actively promoting the system's practical application.

Second, the successful implementation of the SDM system requires a significant amount of specialized social service resources, which China currently lacks. To facilitate the effective operation of the system, the government should increase investment in social services, particularly in areas that provide support for persons with disabilities and the elderly. Additionally, non-governmental organizations (NGOs) and social enterprises should be encouraged to participate in the development of a diversified social support network.

Finally, traditional cultural beliefs pose a significant challenge to the promotion of the SDM system. Many families still tend to make decisions on behalf of their disabled relatives, rather than providing support to help them make autonomous decisions. To overcome this obstacle, in addition to strengthening legal provisions, long-term social education and awareness campaigns are necessary to gradually shift public attitudes, ensuring that the concept of SDM becomes widely accepted.

### **6.4. Social Safeguards for the Implementation of the Supported Decision-Making System in Chinese Law**

First, China should promptly introduce dedicated legislation on Supported Decision-Making (SDM), clearly defining the duties, rights, and obligations of supporters, along with a legal supervision mechanism. Drawing on the experiences of Canada and Australia, China can establish detailed implementation guidelines, such as requiring supporters to undergo specific training and obtain certification, as well as ensuring that they are supervised by courts or other institutions during the decision-making process. This would guarantee that the will of persons with disabilities is respected and protected [9].

Second, the effective implementation of the SDM system depends on the awareness and acceptance of the system by various sectors of society. The government should intensify its efforts to raise public awareness by using media, community activities, and educational programs to enhance understanding of the rights of persons with disabilities and reduce negative stereotypes about their capabilities. Simultaneously, knowledge about SDM should be promoted within the judicial system, increasing awareness among judges and lawyers.

Third, the success of the SDM system also relies on the establishment of a multi-tiered and diversified support system. The government should invest more resources to develop a comprehensive support network that includes legal aid, psychological counseling, and social services. Drawing inspiration from Sweden's personal agent system, China could gradually build a professional and standardized team of supporters across the country, providing high-quality decision-making support for persons with disabilities.

Finally, China should actively learn from international experiences with the SDM system and strengthen cooperation in the field of disability rights protection globally. By participating in

international conferences and collaborating with relevant United Nations agencies, China can absorb advanced legal practices from abroad. Additionally, China can share its experiences with other developing countries to jointly promote the development of the SDM system on a global scale.

## 7. Conclusion

The introduction and implementation of the Supported Decision-Making (SDM) system is of great significance for safeguarding the decision-making rights of disabled people, the elderly, and other groups in need of support in China. It is not only an international responsibility in response to the demands of the United Nations Committee on the Rights of Persons with Disabilities, but also an urgent measure to address China's own practical needs. China has the largest population of disabled people in the world, with a significant number of people suffering from mental disorders, whose rights urgently need protection. However, China faces multiple challenges in promoting the SDM system, including deficiencies in the legal framework, a lack of social resources, and deeply rooted cultural beliefs.

First, the current legal framework does not fully consider the actual needs of people with mental disorders, and the existing capacity and guardianship systems lack specific provisions for decision-making support for persons with disabilities [10]. Although the General Principles of Civil Law of the People's Republic of China introduced the concept of "assistance in expression of intent" in 2017, there remains much uncertainty regarding its implementation. Therefore, China should further improve its legal system, particularly by revising the capacity and guardianship systems to ensure that persons with disabilities can receive the necessary support when making important decisions. This is not only a fulfillment of international obligations but also a significant step forward in the development of China's rule of law.

Second, the shortage of social resources presents a major obstacle to the implementation of the SDM system. China's current social service system is not yet developed enough to support the widespread implementation of SDM. Many regions, especially rural and underdeveloped areas, face a severe lack of social services, leaving people with disabilities and the elderly with limited support. To address this issue, the government needs to increase investment in social services, particularly in providing support for persons with disabilities and the elderly, and establish a comprehensive social support system. Moreover, the participation of non-governmental organizations (NGOs) and social enterprises should be actively encouraged to form a diversified and comprehensive support network, ensuring the effective implementation of the SDM system. These measures will not only enhance the accessibility of social resources but also improve societal inclusiveness for persons with disabilities.

Finally, cultural transformation is equally crucial. Traditional Chinese values of familism and collectivism are deeply ingrained, with many families inclined to make decisions on behalf of their disabled relatives, rather than supporting them to make autonomous decisions. Overcoming these cultural barriers will require long-term social education and advocacy efforts. While improving the legal framework is important, changing mindsets and forming a social consensus are equally indispensable. Through education and awareness campaigns, society can gradually shift its stereotypes about the abilities of persons with disabilities, fostering a better understanding and acceptance of the SDM system.

To address these challenges, China should adopt a multi-faceted strategy. First, within the legal framework, it is essential to further refine the capacity and guardianship systems, clearly defining the duties and rights of supporters, and establishing an effective supervision mechanism to ensure that the will of persons with disabilities is respected and protected. Second, the country should leverage social forces, particularly by developing and promoting the involvement of NGOs and social enterprises, to provide multi-level support services for persons with disabilities. This diversified support network will not only facilitate the comprehensive implementation of the SDM system but



also offer continuous social safeguards for persons with disabilities. Furthermore, the government should intensify social advocacy and education efforts to raise public awareness of the rights of persons with disabilities, encouraging all sectors of society to participate in the promotion of this system, thereby gradually overcoming cultural barriers.

In conclusion, the implementation of the SDM system is not only a necessary step for China to fulfill its international obligations, but also an essential measure to meet domestic needs and safeguard the rights of persons with disabilities. Through improving the legal framework, enhancing social support, and driving cultural change, China is poised to gradually overcome the existing challenges and fully realize the implementation of the SDM system, providing a solid legal foundation for the equal participation of people with disabilities in social life.

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