

## CHANGES IN WOMEN'S NAMES AND THE (RE)CONSTRUCTION OF INDIVIDUAL AND FAMILY IDENTITY: A LEGAL AND GENDER APPROACH



<https://doi.org/10.56238/arev7n3-205>

Submitted on: 02/20/2025

Publication date: 03/20/2025

Weruska Rezende Fuso<sup>1</sup> and Aloísio Alencar Bolwerk<sup>2</sup>

### ABSTRACT

The right to a name is an essential component of personal and social identity, recognized in the Brazilian legal system as a fundamental right of personality, protected by the Federal Constitution and the Civil Code. Historically, Brazilian society has been marked by a patriarchal structure that has influenced the attribution and alteration of names, especially in the case of women, who are often forced to adopt their spouse's surname after marriage, reflecting gender inequality and affecting their identity autonomy. The advancement of civil rights and the struggle for gender equality has allowed for an expansion of rights, but challenges persist related to changes in a woman's name in the context of dissolution of marriage or stable union. This article analyzes the right to a name as a fundamental right of personality and its relationship with individual and family identity, focusing on the implications of changes in a woman's name from a gender perspective in the Brazilian legal context. The research adopts a qualitative approach, based on bibliographic and documentary analysis, examining the evolution of the rights of spouses in Brazilian legislation and critically evaluating the changes in the woman's name and their implications in the (re)construction of family identity, considering sociocultural and legal aspects related to gender inequality. It is hoped that the results will contribute to an understanding of the complexities involved in changing the name of women in the Brazilian legal context and its reflections on individual and family identity, in addition to highlighting the need for institutional policies and practices that ensure uniformity in the application of legislation.

**Keywords:** Right to a name. Personal identity. Family identity. Gender. Woman's name.

<sup>1</sup>Specialist in Civil Law and Civil Procedure  
Federal University of Tocantins / EsmatORCID: 0009-0005-2781-5239  
LATTES: <http://lattes.cnpq.br/4867972824009017>

<sup>2</sup>Doctor of Laws  
Federal University of TocantinsORCID: 0000-0003-4229-4337  
LATTES: <http://lattes.cnpq.br/2624550639155063>

## INTRODUCTION

The name is an essential element of personal, social and family identity, functioning as a unique identifier that distinguishes and individualizes each human being. In the Brazilian legal system, the right to a name is recognized as a fundamental right of personality, protected by the Federal Constitution and the Civil Code. This right not only ensures individual identification, but also reflects the dignity of the human person and his or her insertion in family and social relationships.

Historically, Brazilian society has been marked by a patriarchal structure that has influenced various spheres of life, including the attribution and alteration of names. For a long time, women were forced to adopt their spouse's surname after marriage, a practice that reinforced female subordination and the loss of part of their original identity. This imposition reflected the gender inequality present in legislation and social customs, directly affecting women's autonomy over their own nominal identity.

With the advancement of civil rights and the fight for gender equality, there have been significant changes in Brazilian legislation. The Federal Constitution of 1988 established equality between men and women, directly impacting the rules related to the civil name. The Civil Code of 2002 brought innovations by allowing either spouse to add or keep the surname of the other after marriage, promoting greater autonomy in the choice of name. However, despite these advances, challenges persist related to changes in the woman's name, especially in the context of dissolution of marriage or stable union, and their reflections on family identity.

Changing a woman's name after a marital relationship ends raises complex questions about individual and family identity. The decision to keep or resume the maiden name involves personal, social and legal aspects that can impact the children's perception of identity and family cohesion. In addition, the lack of uniformity in the application of the legislation on the extrajudicial change of the mother's name in the children's records can generate legal uncertainty and the need for judicialization to ensure basic rights.

In this context, this article addresses the right to a name as a fundamental right of personality, exploring its relationship with individual and family identity. It focuses on the implications of changes in women's names from a gender perspective, analyzing how these changes reflect on the (re)construction of family identity in the Brazilian legal context.

In view of the relevance of the name in the constitution of personal and family identity, the following question arises: how does the right to a name, as a fundamental right

of personality, relate to individual and family identity, and how do the changes in the woman's name reflect on the (re)construction of family identity from the perspective of gender in the Brazilian legal system?

Based on the theme and the problematization presented, this article aims to analyze the right to a name as a fundamental right of personality and its relationship with individual and family identity, as well as to understand the implications of changes in women's names in the (re)construction of family identity from a gender perspective. To achieve this objective, the following specific objectives were outlined: a) To examine the right to a name as a fundamental right of personality and its relationship with individual and family identity; b) To analyze the evolution of rights between spouses in Brazilian legislation to understand the construction of women's family identity; c) To analyze, from the perspective of gender, the changes in the woman's name as a reflection of the (re)construction of the family identity.

The justification for this study lies in the importance of the name as a central element of personal and social identity, and in the implications that nominal changes can have on family dynamics and on the perception of identity of individuals. Understanding these issues is essential to promote the effectiveness of personality rights and ensure the dignity of the human person in the Brazilian legal sphere. In addition, the analysis from a gender perspective makes it possible to identify and discuss the persistent inequalities that still affect women, even after legislative advances.

The methodology adopted for the development of this article is qualitative, based on bibliographic and documentary research. Initially, an analysis of legal doctrines, academic articles, pertinent legislation (such as the Federal Constitution and the Civil Code) and official documents that deal with the right to the name and nominal changes will be carried out. Next, a historical examination of the evolution of the rights of spouses in Brazilian law will be conducted, focusing on the changes related to the woman's name, from the Civil Code of 1916 to the Civil Code of 2002. Finally, a critical evaluation of the changes in the woman's name and their implications in the (re)construction of family identity will be carried out, considering sociocultural and legal aspects related to gender inequality.

It is hoped that the results of this study will contribute to a deeper understanding of the complexities involved in changing a woman's name in the Brazilian legal context and its effects on individual and family identity. In addition, it seeks to highlight the need for public policies and institutional practices that ensure uniformity in the application of legislation,

guaranteeing the effectiveness of the right to a name and promoting gender equality in family and social relations.

## **THE NAME AS A FUNDAMENTAL RIGHT AND ITS RELATIONSHIP WITH INDIVIDUAL AND FAMILY IDENTITY**

The understanding of the right to a name as a fundamental right presupposes a brief analysis of its nature as a right of personality. Personality rights can be conceived as a set of rights intrinsic to the individual, focused on the essential attributes and existential demands linked to human existence.

Historically, in the late nineteenth century, the development of legal doctrines in France and Germany, with a focus on the protection of human dignity and integrity, laid the foundation for the recognition of personality rights. The first legal recognition of personality rights dates back to the German Civil Code (*Bürgerliches Gesetzbuch* – BGB) of 1900, which articulated rights related to life, body, health, and liberty<sup>3</sup>.

In Brazil, the Civil Code of 1916 did not explicitly recognize personality rights, nor elements that integrated them, such as the civil name, which was not considered by that law as a personal right, because it was not exclusive to the person and because family surnames were sufficient for the individualization of the subject<sup>4</sup>.

The phenomenon of the constitutionalization of civil law has made it possible for private law institutes to migrate to the constitutional sphere, elevating the person to the maximum value of the order. Thus, the Brazilian Constitution of 1988, by emphasizing the dignity of the human person as a fundamental value in its article 1, III, establishes that it represents the cornerstone of the Republic, serving as a basis for the protection of personality rights<sup>5</sup>.

Under the influence of the integral protection of the human person provided for in the 1988 Constitution, the protection of personality must be considered globally, as a unitary value. Thus, the option to regulate and protect determined, autonomous and closed species of personality rights is not aligned with the protection of the person in its entirety, and it is necessary that the various manifestations of personality, regulated in a non-

<sup>3</sup> TEPEDINO, Gustavo, **Temas de direito civil**, 3. ed., rev. e atual. Rio de Janeiro: Renovar, 2004, p. 48.

<sup>4</sup> MORAES, Maria Celina Bodin de, Sobre o Nome da Pessoa Humana, **Revista da EMERJ**, v. 3, n. 12, p. 48–74, 2000, p. 50–51.

<sup>5</sup> TEPEDINO, **Temas de direito civil**, p. 50.

exhaustive manner in the Brazilian legal system, are expressions of the general clause for the protection of the human person<sup>6</sup>.

The name, as one of the attributes of personality, is defined as a designative sign that enables the individualization of the human person. The right to a name represents one of the attributes of the general right of personality, the manifestation of the right to personal identity and, as such, one of the forms of protection of the human person, being a fundamental right. It constitutes the right of each person to be identified, individualized and distinguished in the environment in which they live in a unique and unmistakable way. On the legal level, it is relevant because it allows, or facilitates, respect for the other rights of the person, as well as the attribution of duties<sup>7</sup>.

Therefore, the name has a double purpose: it not only personalizes and recognizes an individual within the social context, thanks to its vocative characteristic, but also fulfills a distinctive role by differentiating him from others. While there may be identical names, their roles in identifying and differentiating in a social setting are undeniably significant<sup>8</sup>.

The right to a name is classified among the rights of personality and strictly inherent to the person it represents, who individualizes it in himself in his actions (which means that each one is attributed his own actions). The surname itself, to the extent that it contributes to the formation of the individual name, serves to individualize the person. By means of the verbal sign in which the name consists, the good of identity is realized, as we have already revealed. Through it, the legal system protects personal identity, and this is a way of being moral of the person, a personal good that does not contain in itself an immediate utility of an economic order - which is enough to demonstrate that the right to the name is a right of personality<sup>9</sup>.

In the current Civil Code, in the chapter intended to regulate personality rights, four articles were dedicated to dealing with the name, with article 16 being the most specific as it provides that every person has the right to a name, including the first name and the surname<sup>10</sup>.

The first name refers to the unique or personal name of an individual, mentioned first in the indication of the full name. It serves to identify the person before revealing their family history and can be simple, consisting of a single word, or compound, formed by two or more words.

<sup>6</sup> MORAES, Maria Celina Bodin de, **Na medida da pessoa humana: estudos de direito civil-constitucional**, Rio de Janeiro: Editora Processo, 2017, p. 127–128.

<sup>7</sup> BRANDELLI, Leonardo, **Nome Civil: da pessoa natural**, São Paulo: Editora Saraiva, 2012, p. 34.

<sup>8</sup> MARX NETO, Edgard Audomar, **Os usos do nome: identidade, estado civil e ordem pública**, Tese de Doutorado, Universidade Federal de Minas Gerais, Belo Horizonte, 2013, p. 28.

<sup>9</sup> CUPIS, Adriano de. **Os direitos da personalidade**. Campinas: Romana, 2004, p. 184.

<sup>10</sup> MORAES, **Na medida da pessoa humana**, p. 151.

The surname, patronymic or family name, has the role of designating the family to which the individual belongs. Due to its indicative function of family origin, the surname is not freely chosen, and there are specific rules that govern its formation.

At birth, the first form of acquisition of the patronymic occurs, called full-fledged acquisition, which results from filiation and reflects the hereditary character of the family name. Thus, the surnames of the parents or ascendants can be attached to the first name in any sequence, and it is enough to present the documentation to validate the family names in ascending order<sup>11</sup>.

It is also possible that belonging to a certain family does not result from a blood bond, but from a socio-affective bond. This occurs when the minor has added the surname of stepfather or stepmother to his or her name, without formal recognition of socio-affective affiliation<sup>12</sup>.

Adoption is also a form of acquisition of the patronymic, since it causes the rupture of the bond with the biological family and the insertion in the socio-affective family, thus occurring the acquisition of the patronymic of the adopters<sup>13</sup>.

Another common way of acquiring the family name is through marriage. With the Federal Constitution, which established equality between men and women within the scope of the conjugal society, and with the advent of the Civil Code, either spouse can add to his or her name the patronymic of the other<sup>14</sup>.

From these constitutive and formative elements of the name, as a representative element of personal identity, it is possible to perceive two fundamental dimensions. The first is the individual dimension, which gives each person their uniqueness and originality, making them a unique and indivisible being, endowed with natural unrepeatability. This

---

<sup>11</sup> BRANDELLI, **Nome Civil**, p. 88.

<sup>12</sup> CNJ Provision No. 149/2023, Art. 515-M. The inclusion of the stepfather's or stepmother's surname in the form of paragraph 8 of article 55 of Law No. 6,015, of December 31, 1973, depends on:

I – justifiable reason, which will be presumed with the declaration of an affective relationship resulting from the stepfather or stepmother, which, however, does not matter in recognition of socio-affective filiation, although it may serve as proof of this;

II – written consent of both registered parents and stepfather; and

III – proof of the relationship of stepfather or stepmother by presenting a marriage certificate or court sentence, public deed or declaratory term that proves a stable union relationship between one of the registered parents and the stepfather/stepmother.

<sup>13</sup> ECA, art. 47. The bond of adoption is constituted by a judicial decision, which will be registered in the civil registry by means of a warrant of which no certificate will be provided. Paragraph 5 - The sentence shall confer on the adoptee the name of the adopter and, at the request of any of them, may determine the modification of the first name.

<sup>14</sup> CC/02, Art. 1.565. Through marriage, a man and a woman mutually assume the condition of consorts, partners and responsible for the family's burdens. Paragraph 1 - Any of the spouses, if they wish, may add the surname of the other to their own.

dimension reflects the individuality of each individual's physical and psychic personality. The second is the relational dimension, which concerns the insertion of the subject in the social and environmental environment, encompassing his personal trajectory, memory, image and decorum, in addition to other aspects that link his existence to the coexistence and interaction with other people<sup>15</sup>.

On the relational level, the name expresses the integration of a person into their family or a specific social group, contributing to the formation of their personal history and, consequently, their identity. In this context, the notion of family identity and the understanding of family unit emerge, resulting from the perception of its origin, allowing the production of personal, social and legal effects<sup>16</sup>. As it is a reflection of the family identity, the conformation of the name is impacted not only by the various family models, but also by the mutations that affect the composition of the family entity. These mutations, by conforming a new identity in the relational sphere, demand adjustments in the registry sphere.

Traditionally, the name follows the paradigm of immutability, especially due to its public character and social interest in avoiding incorrect identifications and negative consequences in social and legal life, ensuring legal certainty in the relationships established between individuals and in their interactions with the State<sup>17</sup>.

However, immutability has been progressively relativized in recent years, making it possible to adapt the name to the subject's real identity. It is also possible to highlight that the name is not the only form of personal identification, since other means are currently available, such as the Individual Taxpayer Registry, biometric recognition and the genetic code itself<sup>18</sup>.

In this context, the Brazilian Public Records legislation, especially after the amendment made by Law No. 14,382/2022, has been allowing, in a controlled manner and in justified cases, hypotheses of changing the name. Such possibilities have been generating a rupture with the traditional paradigm of immutability and establishing a new

---

<sup>15</sup> OTERO, Paulo, **Personality and personal and genetic identity of the human being: a constitutional profile of bioethics**, Lisbon: Almedina, 1999, p. 64.

<sup>16</sup> *Ibid.*, p. 71.

<sup>17</sup> BRANDELLI, **Nome Civil**, p. 74.

<sup>18</sup> AGRA, Miguel Jaime Dos Santos, Direito ao nome: análise da construção da própria identidade e a superação das premissas e diretrizes tradicionais, **Contribuciones a las Ciencias Sociales**, v. 17, n. 7, 2024, p. 2-3.

phase of protection of this fundamental right, based on the possibilities of construction and mutation of one's own identity.

With the change in the wording of article 56, caput, the registered person may, after reaching the age of majority, personally and without cause request the change of his or her first name, regardless of a court decision. Regarding the surname, the new wording of article 57 of the Registration Law now allows changes in the following situations: inclusion of family surnames; inclusion and exclusion of the surname of the spouse or partner during the marriage; exclusion of the surname of the ex-spouse or ex-partner after the dissolution of the relationship; inclusion and exclusion of surnames due to changes in filiation relationships, including for descendants, spouse or partner of the person who had their status changed.

Among these possibilities of changing the surname, this article will analyze the issues involving the change of the woman's name, after the end of a marital relationship or stable union, due to profound implications that are reflected in the family identity.

## **MILESTONES IN THE EVOLUTION OF RIGHTS BETWEEN SPOUSES IN BRAZILIAN LEGISLATION AND THEIR REFLECTIONS ON WOMEN'S INDIVIDUAL AND FAMILY IDENTITY**

The choice to adopt a new name can symbolize a change in personal identity, often reflecting societal expectations and/or individual desires that shape family dynamics and relationships. This transformation can influence not only a woman's self-perception, but also how she is perceived by her family and community, potentially reshaping family roles and expectations in both traditional and modern contexts.

The decision to keep or change the name can be an act of empowerment, allowing women to assert their identity amid social pressures, while challenging established norms and promoting dialogues about gender equality and self-affirmation. This search for self-discovery and affirmation can lead to a process of re-evaluation of family traditions, encouraging a deeper reflection on what it means to be a woman and the reflection of one's individual and family identity in different cultural contexts.

Understanding a little about the construction of women's identity through their name has a direct relationship with the evolution of rights between spouses in Brazilian legislation and is essential to recognize the progress achieved and the challenges that are yet to come in the search for true gender equality.



Brazilian legislation, which dates back to the colonial era, historically reflects the deep disparity of rights between spouses, which lasted until the 1988 Constitution. The gradual journey towards female emancipation, associated with the decline of patriarchal family structures, can be outlined through the legislative evolution presented below.

In the Philippine Ordinances, in force until 1916, women were permanently protected, fused in the person of their husbands, undergoing a process of depersonalization<sup>19</sup>. Not only married women, but all women were considered absolutely incapable, subjected to the permanent condition of inferiority. A woman who committed adultery was subject to severe punishment, loss of property to her husband, and even death<sup>20</sup>. In addition, their descendants suffered the consequences of these acts, including the loss of inheritance rights<sup>21</sup>.

The Civil Code of 1916 maintained this patriarchal structure<sup>22</sup>, characterized by inequality of responsibilities and constant female subordination to paternal power and later to marital power. Women were considered relatively incapable, alongside their children, prodigals and foresters, remaining subordinate to their husband's power. He was recognized as the head of the conjugal society, responsible for the legal representation of the family, administration of the common and private assets of the woman, establishment and change of domicile, professional authorization of the wife and family maintenance<sup>23</sup>. The woman was responsible for assisting her husband with family duties<sup>24</sup>, needing authorization to dispose of her own assets, accept or repudiate inheritances and legacies, assume guardianship or curatorship, perform obligations that affected the marital patrimony and accept mandates<sup>25</sup>.

Marital power, understood as the set of personal and patrimonial rights attributed to the husband by virtue of his condition as head of the family, reflected a profound gender inequality in the family environment. This inequality was justified by the doctrinaires of the

---

<sup>19</sup> In the Philippine ordinances, in several passages that referred to women, it declared that they had "weakness of understanding", which is why they could not perform the acts of civil life autonomously.

<sup>20</sup> CHINELATO, Silmara Juny De A. Almeida E., **From the name of the married woman: family law and personality rights**, Rio de Janeiro: Forense Universitária, 2001, p. 25.

<sup>21</sup> MONTEIRO, Geraldo Tadeu Moreira, **Legal construction of gender relations**, Rio de Janeiro: Renovar, 2002, p. 111.

<sup>22</sup> Gerda Lerner defines patriarchy as "the manifestation and institutionalization of male dominance over women and children in the family and the extension of male dominance over women in society in general" (LERNER, Gerda, **The Creation of Patriarchy: History of the Oppression of Women by Men**, São Paulo: Pensamento-Cultrix, 2019, p. 290).

<sup>23</sup> Article 233 of the Civil Code of 1916.

<sup>24</sup> Article 240 of the Civil Code of 1916.

<sup>25</sup> Article 242 of the Civil Code of 1916.

time based on the patriarchal origins of the family regulated by the 1916 Code. Clovis Beviláqua defended patriarchy as the most consistent family model, sustained by the absolute authority of man, the despotic head, oldest ascendant and pontiff of the family group<sup>26</sup>. In this way, the family was associated with a social group that needed a command that imposed a sense of order and authority, and the man played this role<sup>27</sup>.

Lafayette Pereira also justified marital power by claiming the need to concentrate in only one of the spouses the authority to direct the family and manage the assets, avoiding endless conflicts. The choice for the husband was based on the supposed greater male aptitude to exercise such power, due to characteristics attributed to gender<sup>28</sup>.

The exclusion of women from family representation evidences their legal and social invisibility, preventing their free expression, decision-making and constitution of identity at the individual and socio-family level. The woman's identity was directly affected by the legal obligation to adopt her spouse's surname, and it was considered a serious injury to stop using it in civil life<sup>29</sup>. In addition, the impossibility of managing her own assets and the need for her husband's authorization to carry out professional activities distanced her from the public space and from economic and social relations, limiting her to the domestic environment. Such restriction directly impacted the construction of their social identity, affecting both the way they perceived themselves and the way they were perceived socially.

On the other hand, an unmarried, divorced or widowed woman of legal age could fully exercise the acts of civil life, as she does not have a family bond of dependence with her father or husband, establishing in these cases a situation of equality with men.

Law No. 4,121/1962, called the Statute of Married Women, represented an advance in reducing marital inequality, extinguishing female relative incapacity and the requirement of marital authorization for legal acts and professional practice. However, many patriarchal traits were maintained, including the conjugal head by the husband and the exercise of paternal power, now "with the collaboration of the wife", in addition to the establishment of the family domicile, despite the possibility of judicial appeal by the woman. These adjustments did not result in a real balance of conjugal rights and duties, representing only

---

<sup>26</sup> BEVILAQUA, Clóvis, **Direito de Família**, 7. ed. Rio de Janeiro: Freitas Bastos, 1976, p. 19.

<sup>27</sup> ONTEIRO, **Construção jurídica das Relações de gênero**, p. 159.

<sup>28</sup> PEREIRA, Lafayette Rodrigues, **Direitos de Família**, 2. ed. São Paulo, SP: Editora Dialética, 1869 (2023), p. 69.

<sup>29</sup> CHINELATO, **Do nome da mulher casada**, p. 45.

a symbolic softening of historical inequalities in family dynamics, contrary to contemporary demands for equality.

Although the Civil Code of 1916 and the Statute of Married Women used terms such as "collaboration" and "assistance" instead of "subordination" and "obedience" to designate the duties of women in the family environment, such changes did not result in a real balance of conjugal rights and duties, representing only a symbolic softening of the language that masked the evident distortion of treatment between spouses. contrary to contemporary demands for equality.

Law No. 6,515/1977, which regulated Constitutional Amendment No. 9/1977, introduced divorce in Brazil, preceded by legal separation, allowing spouses to dissolve the marriage by mutual consent or individual manifestation, in the situations provided for by law. Despite these changes, the marital imbalance persisted with the maintenance of the head of the family by the husband. A significant advance was to make it optional, rather than mandatory, for a woman to adopt her husband's surname. The addition of the husband's surname has always symbolized the transfer of paternal power to marital power, although this custom still persists without reflection on its historical origin.

The most effective transformation occurred with the Federal Constitution of 1988, establishing marital equality and parity between children, driving a profound reformulation of Family Law aimed at the protection of family dignity<sup>30</sup>. The Civil Code of 2002, in line with constitutional norms, suppressed specific obligations attributed to the husband or wife, reinforcing the egalitarian and solidary exercise of conjugality.

The unequal historical division of roles, functions and powers established by state law was inevitably reflected in the construction of women's individual, social and family identity. The female position of inferiority in relation to men, initially justified by the supposed reduced capacity for understanding, led to the exclusion of women from public social life, limiting them to the domestic environment and submission to family and marital powers.

Limitations on access to formal education or specific restrictions for women were arguments often used to reinforce the intellectual inferiority attributed to women. As Gerda Lerner pointed out:

For centuries, women allowed themselves to think and write, even though religion, tradition, and conventional wisdom had informed them that these activities were not

---

<sup>30</sup> TEPEDINO, **Temas de direito civil**, p. 348.

suitable for a woman. They needed to overcome their internalized sense of inferiority and strengthen themselves to do what they said was improper, unlikely, if not impossible. [...] By attributing to men their special tasks and superior talents for leadership, courage, and authority, women argued that even so, the reasoning ability and intellectual potential of men and women were the same<sup>31</sup>.

This framework of subordination generates direct implications for the conformation of the female identity, which is only socially and familiarly recognized only as a member of the parent's or husband's families. In this context, only unmarried, divorced, or widowed women were able to achieve legal equality with men, enjoying autonomy after overcoming many social, economic, and educational obstacles<sup>32</sup>.

From the moment that the legislative distancing of this patriarchal paradigm occurs and there is an opening to new family compositions and egalitarian marital relations, it became possible to construct and reconstruct female identities, regardless of marital status or established family and conjugal relationships.

## **CHANGES IN THE WOMAN'S NAME AS A REFLECTION OF THE (RE)CONSTRUCTION OF FAMILY IDENTITY FROM A GENDER PERSPECTIVE**

The situations authorized by the current legislation for name change apply to people regardless of gender. However, historically, influenced by patriarchy, the Law established different rules in the formation and change of the name that have repercussions to this day on the construction and reconstruction of the individual and family identity of women.

Marriage and stable union, in addition to being causes for the acquisition of the patronymic, are also causes for its alteration. Although this change is optional, even today this practice is maintained as if it were a legal obligation. In several situations, the woman partially or totally removes the family surname to include her husband's, resulting in a family name totally different from before the union. With the change of the woman's surname, the new conformation becomes an element of her identification within that family, and therefore integrates her personality, not just the husband's name<sup>33</sup>.

The historical persistence of the obligation for women to adopt their husband's family name, combined with the influence of the patriarchal model, results in a low adherence of men to the reverse practice, even in the face of the existing legal possibility. A survey by

---

<sup>31</sup> LERNER, Gerda, **A Criação da Consciência Feminista: A Luta de 1.200 das Mulheres para Libertar suas Mentes do Pensamento Patriarcal**, São Paulo, SP: Editora Cultrix, 2022, p. 241.

<sup>32</sup> MONTEIRO, **Construção jurídica das Relações de gênero**, p. 327-328.

<sup>33</sup> TEPEDINO, **Temas de direito civil**, p. 381.

the Association of Registrars of Natural Persons of the State of São Paulo revealed that in 2021, marriages in which there was a change exclusively in the man's name, with the adoption of the woman's surname, represented only 0.6% of the cases, a percentage that reached its maximum point in 2005, with 4%. The change of surnames by both spouses represented 7.1% of the choices in 2021, having reached a peak in 2014, with 23.6%.<sup>34</sup>

Separation, divorce and annulment of marriage also motivate the change of the patronymic, configuring situations that have generated several controversies in the protection of the woman's right to identity. The Divorce Law, when regulating the use of the name in legal separation, initially provided that the husband's surname could be kept, unless the woman was considered defeated, if the fault was attributed to both spouses, or if she had brought the action. Law No. 8,408/1992 changed this provision, determining that the judgment converting the separation into divorce would determine the return to the previous name, unless there was evident prejudice to its identification, a manifest distinction between its name and that of the children, or serious damage recognized by the court.

This legislative modification represented a setback to the protection of women's personal identity, especially in light of the 1988 Constitution, which establishes broad protection of personality rights. The removal of this surname acquired by marriage directly affects her personal identification as a mother, often consolidated by years of union, and who has already suffered, previously with marriage, the exclusion of the name of the family of origin.

The Civil Code of 2002, although it expanded the possibilities of changing the name, admitting that both spouses reciprocally adopt each other's name, maintained a conservative stance in relation to the treatment of the name of the separated and divorced, forcing the change of the name of the guilty spouse and repeating the same exceptions provided for in the Divorce Law. Thus, although it has established as a general rule the possibility of keeping the married surname, the Civil Code determined that, if there is a request by the innocent spouse, the other, declared guilty in the separation action, loses the right to use the spouse's surname, unless the change causes evident prejudice to his

---

<sup>34</sup> The number of women who adopt their husband's surname at marriage in São Paulo has fallen by 30%. *Association of Registrars of Natural Persons of the State of São Paulo*, July 13, 2022. Available at: <https://www.arpensp.org.br/noticia/105635>. Accessed on: 8 mar. 2025.

identification, a clear distinction between his family name and that of the children born of the dissolved union or serious damage recognized in judicial decision.

In the face of real contexts of name change due to marriage, in which the adoption of a woman's surname by men is still rare in Brazil, this rule fundamentally affects the personal and family identity of women. In cases where there was a total suppression of the woman's original family surnames, divorce and the return to the previous name result in a clear distinction between her name and the name of the children, in addition to the need to update all personal documents and record this change in the children's birth records.

In June 2022, Law No. 14,382/2022 amended article 57 of the Public Records Law, facilitating the inclusion or exclusion of the spouse's surname. This change allowed some possibilities of changing the name extrajudicially, as provided:

Article 57. The subsequent change of surnames may be requested in person before the civil registry officer, with the presentation of certificates and necessary documents, and will be recorded on the birth and marriage certificates, regardless of judicial authorization, in order to:

I - inclusion of family surnames;

II - inclusion or exclusion of the spouse's surname, during the marriage;

III - exclusion of the surname of the former spouse, after the dissolution of the conjugal partnership, for any of its causes;

IV - inclusion and exclusion of surnames due to changes in filiation relations, including for the descendants, spouse or partner of the person who had his or her status changed.

This rule brought as an innovation the possibility of extrajudicial change of the surname during the term of the marriage, as well as the rescue of the ancestry of family surnames, measures that can contribute to the reconstitution of the identity affected by name changes due to marriage.

Considering the various legal possibilities for name change, especially in the specific context of a woman's name, it must be recognized that the decision to change her name after marriage or during significant life transitions has profound implications for her family identity, cultural perceptions, and personal autonomy. The name, as an attribute of personality, should reflect female individuality and her identity in society and family. It is exclusively up to women, due to the full protection guaranteed by the Federal Constitution to the person and human dignity, to build and rebuild their own identity.

Often, the change of name after the end of the marital bond represents a mechanism for expressing women's freedom, their equal rights in relation to men and the reconstruction of their identity, often hidden and inferiorized during the constitution of the

marital bond. The analysis of these changes from a gender perspective shows that, despite legislative advances, patriarchal practices and perceptions that reinforce historical inequalities still persist.

## **CONCLUSION**

The analysis of changes in women's names and their influence on the (re)construction of individual and family identity reveals the complex intersection between law, identity and gender in the Brazilian legal context. The name, as a fundamental right of personality, plays a crucial role in personal identification and in the insertion of the individual in society and in the family. Legislative changes over the years reflect society's evolution towards gender equality, but they also highlight persistent challenges.

Historically, Brazilian society has been marked by a patriarchal structure that has influenced various spheres of life, including the attribution and alteration of names. For a long time, women were forced to adopt their spouse's surname after marriage, a practice that reinforced female subordination and the loss of part of their original identity. This imposition reflected the gender inequality present in legislation and social customs, directly affecting women's autonomy over their own identity.

The evolution of rights between spouses in Brazilian legislation demonstrates a trajectory of search for gender equality. From the Philippine Ordinances, which placed women in a position of subordination, through the Civil Code of 1916, which maintained this patriarchal structure, to Law No. 4,121/1962, known as the Statute of the Married Woman, which represented a milestone for the reduction of the existing imbalance in the marital relationship, there has been a gradual movement towards equality. Law No. 6,515 of 1977 introduced divorce in Brazil, providing spouses with the possibility of dissolving the marriage and forming a new family.

With the advancement of civil rights and the fight for gender equality, there have been significant changes in Brazilian legislation. The Federal Constitution of 1988 established equality between men and women, directly impacting the rules related to the civil name. The Civil Code of 2002 brought innovations by allowing either spouse to add or keep the surname of the other after marriage, promoting greater autonomy in the choice of name. Law No. 14,382/2022, for example, brought innovations by allowing the change of name extrajudicially, reflecting greater flexibility and respect for individual autonomy, recognizing the importance of personal and family identity in the formation of the individual.

However, despite these advances, challenges persist related to changes in the woman's name, especially in the context of dissolution of marriage or stable union, and their reflections on family identity.

A woman's decision to adopt or not her spouse's surname after marriage is loaded with personal and social meanings. The research highlights that, although current legislation allows for name changes in a more flexible way, there is still a strong influence of patriarchal patterns that affect the perception and practice of these changes. Thus, although current legislation allows both spouses to adopt each other's surname, in practice, this change is predominantly carried out by women. Data indicate that the adoption of the wife's surname by men is rare in Brazil, reflecting the persistence of traditional cultural norms. This choice can impact the children's perception of identity and family cohesion, especially in cases of dissolution of the union.

The analysis of changes in women's names from a gender perspective reveals that, despite legislative advances, practices and perceptions that reflect historical inequalities persist. The adoption of the spouse's surname is still mostly female, and the resumption of the maiden name after the dissolution of the union can be seen as a process of reconstruction of individual identity. These choices have implications not only for women, but also for family dynamics and the social perception of identity.

The contributions of this research are multiple. First, it offers an in-depth understanding of the complexities involved in changing a woman's name in the Brazilian legal context and its reflections on individual and family identity. In addition, it highlights the need for public policies and institutional practices that ensure uniformity in the application of legislation, guaranteeing the effectiveness of the right to a name and promoting gender equality in family and social relations.

In conclusion, the name is a central element of personal and family identity, and nominal changes, especially of women, reflect the evolution of social and legal norms towards gender equality. However, it is essential to continue promoting awareness and reflection on the implications of these changes, ensuring that individual choices are respected and that legislation keeps pace with social transformations, ensuring the dignity and autonomy of all individuals.





## REFERENCES

1. Agra, M. J. dos S. (2024). Direito ao nome: Análise da construção da própria identidade e a superação das premissas e diretrizes tradicionais. *Contribuciones a las Ciencias Sociales*, 17(7), e8800.
2. Associação dos Registradores de Pessoas Naturais do Estado de São Paulo. (2022, 13 de julho). Cai 30% o número de mulheres que adotam o sobrenome do marido no casamento em São Paulo. <https://www.arpensp.org.br/noticia/105635>
3. Bevilacqua, C. (1976). *Direito de família* (7ª ed.). Rio de Janeiro: Freitas Bastos.
4. Brandelli, L. (2012). *Nome civil: Da pessoa natural*. São Paulo: Editora Saraiva.
5. Chinelato, S. J. de A. A. e. (2001). *Do nome da mulher casada: Direito de família e direitos da personalidade*. Rio de Janeiro: Forense Universitária.
6. Lerner, G. (2019). *A criação do patriarcado: História da opressão das mulheres pelos homens*. São Paulo: Pensamento-Cultrix.
7. Lerner, G. (2022). *A criação da consciência feminista: A luta de 1.200 das mulheres para libertar suas mentes do pensamento patriarcal* (L. Sellera, Trad.). São Paulo: Editora Cultrix.
8. Marx Neto, E. A. (2013). *Os usos do nome: Identidade, estado civil e ordem pública* [Tese de doutorado, Universidade Federal de Minas Gerais]. Belo Horizonte.
9. Monteiro, G. T. M. (2002). *Construção jurídica das relações de gênero*. Rio de Janeiro: Renovar.
10. Moraes, M. C. B. de. (2000). Sobre o nome da pessoa humana. *Revista da EMERJ*, 3(12), 48–74.
11. Moraes, M. C. B. de. (2017). *Na medida da pessoa humana: Estudos de direito civil-constitucional*. Rio de Janeiro: Editora Processo.
12. Otero, P. (1999). *Personalidade e identidade pessoal e genética do ser humano: Um perfil constitucional da bioética*. Lisboa: Almedina.
13. Pereira, L. R. (1869). *Direitos de família* (2ª ed.). São Paulo: Editora Dialética.
14. Tepedino, G. (2004). *Temas de direito civil* (3ª ed., rev. e atual.). Rio de Janeiro: Renovar.