

# Intangible Value of Domestic Work in Marriage: Lessons of the Chinese Legal Order for Brazil

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## Abstract

This work aims to analyze if the Chinese Civil Code, through its order of financial compensation to the spouse responsible for the family's domestic work, in the dissolution of marriage, can help combat sexual division of domestic work. It also aims to weave possible parallels of comparison and proposals for intervention for Brazil, based on the advances of China, which already has jurisprudence applying the new Law. The sexual division of domestic work dates back to the beginnings of capitalist societies and is also identified in family units, with disproportionate attribution of housework and family care to women. In marriage, the problem is latent, since the assumption of greater responsibility with the home generates asymmetry of opportunities between the spouses, while one seeks professional ascension, the other leaves aside their own to take care of the family. With the dissolution of marriage, this asymmetry is potentiated, justifying State intervention. As a study proposal, considerations are made about the role of women in the family and in marriage, as well as the concepts of domestic work and their gender crossings. Then, the new provisions of China and legislation from other countries that were also willing to deal with the problem are presented. In terms of partial conclusion, it is identified the possibility of Brazil adapting to the new reality of combating the sexual division of labor from the application of Summary N°. 380 of the Supreme Court, in a way revisited to the current social reality.

## Keywords

Domestic Labor, Dissolution of Marriage, Sexual Division of Labor, China's Civil Code, Gender Relations

## 1. Introduction

Historically, activities considered as “feminine” have been relegated to the second

class. Women, throughout the construction of pre-capitalist societies, occupied a position of equality with men, jointly moving towards economic and social development. With the consolidation of modern societies, women's presence in the labor market has been relegated to the "backstage", in professions and professions far from the big positions and wages.

It is the sexual division of work, which attributes to women financially less productive activities, although socially as relevant (or more) as those practiced, in general, by the male. Among them, the effective participation of the female gender in care activities is highlighted, hence the categories of work with children, the elderly, the disabled and household services.

Such a division, however, is not present only in the formal labor market. In marital family relations, it is also possible to identify the interference of the sexual division of work, by which the woman takes care of the home and the family, while the man becomes responsible only for his professional life. Therefore, there is what is known as the "double day of the woman" because, in many cases, the woman acts on two fronts: paid work outside the home (although less paid than that of the man) and unpaid work inside the home. The subjection of the wife to her husband and home, validated even in legislative terms until recently in Brazil, is compatible with the unequal distribution of duties and responsibilities among the spouses, causing an asymmetry when the marriage is dissolved. In separation, the work done by the wife for the benefit of the family and the husband is not compensated, even if it has made it impossible for her to ascend fully into a formal profession.

In 2021, a court in Beijing (China) sentenced a husband (re) to pay financial compensation to his wife (the perpetrator) for household work rendered to the family during the marriage. The compensation was of a different legal nature than food and is able to bring into Brazilian law important debates about material equality, family relations, social roles, among others. In this work, it is intended to analyze the intangible value of domestic work, in the light of the provisions of the Chinese Civil Code, in order to understand whether these legislative innovations can bring some lesson to the Brazilian reality. To this end, it seeks to theorize the legal location of the woman, as a person to whom it is imposed the care of the home.

In this sense, the first topic is intended for the analysis of the history of women's rights within the family, which is indispensable in order to advance the study of its influence on the development of legislation on family law. Continuously, considerations are woven about domestic work and its gender crossings, seeking to (re)construct socially the role of women in the care of the home and the family.

After that, a reflection is proposed, presenting the Chinese legislation and the latest decision of the Beijing Court, as well as hoping to relate this (which is understood as) legislative advance with other countries that are also dealing with the subject from the Judiciary, such as Spain and, at the regional level, Argentina. In the end, considerations are woven, as a conclusion, with the intention of

proposing an effective intervention in Brazil's action on the problem, without, however, aiming to exhaust the possible future debate.

## 2. The Role of Women in the Family and in Marriage

“Family”, “wife” and “marriage” are historically established categories used by the most diverse legal systems, but as a legal concept they can suffer decisive ruptures in their semantic aspect. The meaning and understanding of the same word, over time, are closely linked to the social context of each era in which it is used, which is why the sense of its meaning is eminently relational or local (Hespanha, 2005: p. 18). Thus, it is evident that the legislation that provides for marriage and family cannot be analyzed in isolation. The laws of a given society, including, and perhaps especially, those dealing with family and marriage, reflect peace treaties between various forces, treaties that are continually questioned and revised, so that, from the imposed law, one can recognize which is the victorious social force (Bray, 1953).

The concept of family, despite using the same vocabulary expression since Roman Law, certainly does not follow the same. At the time, it was covered as “family” relatives much more distant from those enshrined in Brazilian law, as well as servants or slaves and even the goods that garnished the family home (Hespanha, 2005: p. 18). Again, the continuity in the use of a word to define a legal category does not imply the continuity of its semantic meaning. The legal regulation of a type of relationship between people, even if it uses the same nomenclature to define such a relationship throughout the history of an order, serves certain purposes, in the temporal and social context in which it is inserted, according to what the group holding the status quo at that time seeks, so that the meaning of this legal institute cannot be understood only from the Law.

The family is an institute that maintains an important link with the level of security in state institutions. The greater the guarantees offered by political institutions to the individual, the weaker the ties of consanguinity with the extended family. On the other hand, the fewer the guarantees offered, the stronger the family (Aries, 1986: p. 213). The family can be understood as a refuge for the individual from a weakened state. And that is why, in feelings and values, the feeling of family, as currently understood, is something relatively recent.

It can be said that, in the Middle Ages, the feeling of “lineage” was the only one to have a family character, extending to blood ties, without taking into account the values arising from cohabitation and intimacy, the lineage being that family, linked by a common origin, which shared a space (Aries, 1986: p. 214). The individual was sheltered in this extended family, linked by consanguinity, with which he shared a common space, a courtyard, a plot of land. It differs, therefore, from the feeling of “family”, linked to government and life in the house and originating from the coexistence between members within the same residence (Aries, 1986: p. 214).

Family wealth, in turn, was not always an indivisible mass controlled by the husband. In societies where the creation of social wealth was still dictated by low

productivity, it was not proposed to exclude women from the productive system, as their participation was necessary to ensure production, although this process was already instilled in the subsidiary way in which female labor was treated<sup>1</sup>. However, the course of time made the role of women as “auxiliaries” of the productive system less relevant economically, as the role of men in the labor market increased (Saffioti, 1978). In fact, patriarchal control of the family was consolidated after a process of progressive loss of female autonomy.

According to Àries (1986: p. 212), in the south of France, until the 10th century, the assets of both spouses were not yet merged into a common mass to be administered by the husband; on the contrary, each spouse administered their assets autonomously and independently. The capacity of women within the conjugal unit began to decline from the 11th and 12th centuries, which, together with the right of primogeniture, represented a way of safeguarding and concentrating family wealth (Àries, 1986: p. 213). In this sense, the greater concentration of power and authority in the pater families, as a form of control of the wife and children, began as a way to protect the family’s patrimony in times when there was no security in the patrimonial protection offered by the sovereigns.

This search for patrimonial concentration gradually weakened the importance of lineage ties with relatives more distant from the marital nucleus. Still in the French context, the commitment of royal legislation from the sixteenth century onwards to strengthen paternal power regarding the marriage of children stands out, so that this gradual weakening of the ties of lineage generated a stricter submission of women and children to the wills of the patriarch (Pelot 1955 apud Àries, 1986). This double movement, of weakening the ties of lineage and strengthening paternal authority, demonstrates a change in habits and social conditions, giving the family the social value, the importance that was previously attributed to the lineage (Pelot 1955 apud Àries, 1986). Therefore, it is in this movement of patrimonial concentration and reinforcement of patriarchal authority that legally celebrated marriage becomes the basic social cell of the State.

In the Brazilian context, this restriction on women’s legal capacity is evident, which becomes even more marked after marriage. In the Philippine Ordinances, which governed civil relations in Brazil between 1603 and 1916, it was stated that women needed permanent guardianship due to their “weakness”, an expression that is used verbatim to justify restrictions on their capacity, considering that women had a “weakness of understanding” that would put them at a disadvantage if they did not have this “protection” (Philippine Ordinances, Book IV, Title LXI, § 9, and Title CVII). But that was not all. The Ordinances gave husbands the right to lawfully kill their adulterous wives and those with whom they were cheating, even in advance, when they were “certain that they would commit adultery”, a right that did not extend to wives who had been cheated on (Book

<sup>1</sup>Since the feudal economies, the participation of women in production, even if it was in a subsidiary way, encountered important barriers, and women were relegated to subordinate and less rewarding positions, which initiated the process of marginalization of women from the productive system, as it developed (Saffioti, 1978).

V, Title XXXVIII).

This provision was only attenuated in 1830, with the Criminal Code of the Empire, which began to consider, in its article 252, adultery as a chargeable offense and no longer a permission for the husband to perform a self-protection of his honor (Brazil, 1830). More than this broad power of the husband over the wife, it merged into the person of the wife, so that the woman was depersonalized; there was only some way to protect her interests at the time when the husband was not allowed to litigate in court over root assets without the wife's consent (Book III, Title XLVII), but even this was not really aimed at protecting women, but at protecting the family in its economic dimension (Lôbo, 2018: p. 65). In other words, the few guarantees that women had in the laws prior to the Civil Code of 1916 were aimed, in practice, at protecting family assets, to prevent their dilapidation by the husband.

The Civil Code of 1916 brought the figure of “patrio poder”, a power that the father had over his children, to submit them to his authority, an authority that could only be exercised by the woman in the event of the man's absence or impediment. The wife was subject to marital power, comparable to the father's paternal power over the children, so that, as provided for in Article 6, item II, of the civil legislation of 1916, the married woman was relatively incapable, as long as the marital society lasted, so that, without the consent of the husband, she was in a legal position similar to that of adolescents (Lôbo, 2018: p. 62). It was a liberal Code on the economic level, but oppressive of women within the family, albeit without the exaggerations of the colonial period (Lôbo, 2018: p. 65). The woman, therefore, was only an auxiliary of the husband, subject to his authority. The Civil Code imposed on the husband the role of head of the conjugal society, with broad powers in relation to the wife, being responsible for the administration of all assets, including those private to the woman, as well as the right to authorize the wife to exercise profession, in its article 233, items II and III (Brazil, 1916). Therefore, it should be noted that the woman occupied a legal place of withdrawal of capacity in favor of her husband, to submit to his authority. The legislation allowed an illogical situation: the unmarried woman, completing 21 years, acquired full capacity, which would be reduced at the time of marriage, returning to the status of relatively incapable, dependent on the assistance and authorization of the husband for the practice of legally valid acts.

Paulo Lôbo, when analyzing the codification of the family and the presence of women in the civil legislation of 1916, pointed out that this branch suffered, more acutely than the other branches of law, the vicissitudes of legislative inadequacy to the demands for freedom and material equality, arising from the Industrial Revolution, social movements, conflicting ideologies, social massification, technological revolution. According to the author, the prevalence, in the family legislation, was of a patrimonial concern and not with the protection of the people who composed the family nucleus, so that “the woman was the great absent in the codification. The formal freedoms and equalities did not reach her, remaining the codification of the family, in pre-Enlightenment phase (...)” (Lôbo

1999: p. 102).

There was a timid change in the scenario with the Statute of Married Women (Law No. 4, 121/1962), with the wife becoming a collaborator of the husband in the exercise of the paternal power, being granted legitimacy to resort to the Judiciary when she did not agree with the decision taken by the father in relation to the children (Tepedino et al., 2014). Major innovation came only in 1977, with Law No. 6, 515/1977, which introduced the figure of divorce in the Brazilian legal system, establishing that, in case of dissolution of the marital unit, the consent of the one in whose power the child remained would prevail (Tepedino et al., 2014). Also, the new law removed the obligation for the woman to add the husband's surname, becoming a faculty and not an imposition. However, although it has brought changes in the way of equality between spouses, the law persisted in a model of prominence of the husband in the leadership of the family (Lôbo, 2018).

The Civil Code of 2002, in the light of the Federal Constitution of 1988, eliminated the remnants of marital power and the distinct conjugal obligations for the husband and wife, bringing obligations are demandable to/from both (Brazil, 2002). It should be borne in mind that, with the constitutional order inaugurated in 1988, Human Dignity was placed as a guiding principle of the order, with the function of defining the application of other principles, densifying according to the specific situation (Ávila, 2013).

Human Dignity implies, initially, equality, which, in turn, brings the need for equality between genders; in the case of the family environment, gender equality is materialized in equality between spouses in marital society, either in the rights and duties of conducting the family, or in the rights and responsibilities regarding the creation of children in common. Based on the fundamental rights and the principle orientation that emerged with the 1988 Constitution, it was no longer possible to admit regulation of the family that implied unjustifiable distinctions between its members, from then on, we are facing a democratic family, and no longer a family of autocratic organization under the power of the husband, so that "there are no secondary attributions, nor a subordinate place for women, and for this very reason, the so-called domestic power of women gives way to the bundle of rights and duties of both spouses" (Tepedino et al., 2014: pp. 14-15).

Thus, what we have in the current legal system regarding the family is that, in its scope, there is a duty of multidimensional responsibility and with a positive sphere, which is represented by the shared responsibility, among the members of the family relationships, of promoting each other, by performing acts that ensure conditions of dignified life (Lôbo, 2018: p. 331). Now, there is the family based on affection, this affection being the only ratio of marriage (Gomes, 1984: p. 26), and no longer the patrimonial aspects that prevailed before. The family environment should be conceived as a place of personal fulfillment of its members, so that the protection due to the family should not be thought from the logic of a single and ideal model of family formation "created to provide security and pre-

dictability to patrimonial accumulation and proprietary logic, but the concrete subject, who may develop in its inter-subjective fullness with due recognition by the Law” (Fachin, 2012: p. 94). The family, as a place of coexistence of its members, implies a social duty of collaboration with the personal and affective realization among the members, in solidarity. From this history of the location of women in the legal system, therefore, it is noted that their freedom, until the advent of the Federal Constitution of 1988 in Brazil, was placed in the background, in favor of the patrimonial predictability of the family.

Married women’s role was relegated to caring for the home and children, without the autonomy to manage their assets or work without their husband’s consent. With a diminished legal capacity until the 1960s, being included in the category of the relatively incapable, the women’s participation was restricted to the home and subject to a marital authority similar to the paternal power that her husband held in relation to the children. Thus, despite the constitutional and legislative changes in order to confer equality between spouses, one must recognize the social heritage that carries the role of the wife within the marital unit, a role of submission and assistance to the husband, so that currently, about thirty years after the promulgation of the new constitutional order, the old position of women in society still brings reflections to the daily life of Brazilian families.

### 3. On Domestic Work and Gender Relations

The construction of modern society, which relegated women to increasingly domestic and private roles, also took its toll on women who were engaged in formal work outside the family unit, who increasingly began to occupy jobs considered less economically relevant. Even after the completion of Colonial Brazil and the abolition of slavery, the label persisted that the female mission was domestic work and family care, so that work outside the home was only valued as long as it served the economic interests of the time (Serpa, 2010). This is in line with the Catholic ideology that concentrated the education of Brazil, by which the woman was seen as the Eve who induced Adam to sin, and should remain ignorant and submissive in order to guarantee the traditional and conservative values of that society (Teles, 1993).

Added to this is the sexual division of labor itself. As a concept, the category, adapted historically and socially, has as a common characteristic the allocation of productive activities to men and reproductive activities to women, while men still seize functions of greater added social value. It is based on two organizing principles: the principle of separation (between men’s work and women’s work) and the principle of hierarchy (men’s work is worth more than women’s work). These principles can be found throughout society, although they vary in time and space (Kergoat, 2003).

Therefore, according to Danièle Kergoat (2003), problematizing the labor market from a gender perspective does not imply deterministic thinking, but rather understanding variable and invariable social phenomena, studying their processes of displacement and rupture. As a result of the sexual division of labor,



therefore, women performed less complex activities that, consequently, were less remunerated, increasing the degree of discrimination and inequalities in the world of work (Oliveira, 2016). At the time of women's incorporation into the free labor market and the public sphere in general, work outside the home was frowned upon and could lead to the "breakup of the family" (Rago, 1999: p. 492), since, while the woman was working, her husband and children would be unattended. Thus, even though women were working at increasing levels, they were still perceived as responsible for caring for the family and the home, which should be prioritized to the detriment of their professional achievements.

Women in the 20th century, from this perspective, maintained an interdependence between family life and work life, which ended up merging into the same dynamic linked to the female sex (Melo & Sabatto, 2011). It was not conceivable that the man could be responsible for care, if care was inherent in the very conceptualization of the female sex. In Brazil, the presence of women in the labor market began to intensify in the 1970s, when the number of women working outside the domestic scope became relatively significant (Maia et al., 2015). This was not only due to the economic need and opportunities offered by the market, but also as a result of the demographic, social and cultural transformations that were taking place in the country and ended up affecting the Brazilian family and woman (Bruschini & Lombardi, 2002). The profile of workers, then, which was eminently composed of young, single and childless women, now has older women, married and mothers, with schooling being an essential factor in the labor market (Bruschini & Ricoldi, 2009).

With the consolidation of industrialization in the country, Brazil has become more urban (although this change represents at the same time an increase in inequalities and income concentration) and changes in behavioral patterns have allowed women to gain more space in public life, which is also due to the spread of feminist movements. The fall in fertility, especially in the more developed regions, as well as the expansion of schooling and women's access to higher education contributed to this transformation (Bruschini, 1994).

However, it is important to note again that women's work, in economic terms, was not always accounted for, although it was always present. Cristina Bruschini (1994) refers to the role of the housewife, often played by adult women, which was counted at the time as economic inactivity. Therefore, statistics on female participation in the labor market were inadequate, due to the underestimation of women's work. Even in the most consolidated democracies, an unequal division of family and domestic labor persists, which ends up influencing the labor relations of men and women (Abramo, 2010; Hirata, 2002).

Despite recent ruptures with hierarchical and conservative notions of family, domestic and care obligations continue to be naturally attributed to women, based on a sexual segregation of the private world that impacts the world of work (Abramo, 2010; Hirata, 2002). Men, in turn, benefit daily from the large volume of work performed by women, whether free or paid. Since they are in charge of domestic and family care, including those necessary for men's own survival



(such as the purchase of food inputs and the production of such food), they have the privilege of dedicating themselves to other activities with greater economic, cultural and/or social capital (Ipea, 2016).

On the other hand, the need for working women to remain in charge of household chores means that they are perceived as a burden for employers. In the labor market, women tend to be considered a more costly labor force because, as mothers, they are more likely to be absent from work.

In addition to this, maternity is understood as an extra cost to the company, since the mother will have to be absent for a considerable period of time when the child is born, implying the need for new hiring for the vacancy that remains open (Gois, 2017). In this scenario, the female workforce is neglected, generating a structural inequality between the genders: the woman, who is responsible for the home and family, gives up productive time for education and professionalization, while the man can dedicate himself almost entirely to his career.

Within the home, women's work is unpaid, although studies of the economics of care realize that unpaid care "not only integrates the economic system but is also a precondition for its existence" (Ipea, 2016: p. 16). The invisibility of women's work, in this sense, permeates the discussion about the disqualification of domestic work, or, women are exploited in the domestic sphere by their partners because household chores are the most common type of unpaid work, since they are not an object of exchange in society (as a rule). Because of this, the broken image that women are second-class citizens is reproduced (Melo et al., 2007). The sexual division of labor, in this sense, is enforced by a concrete tool: the salary, which pays for work "outside the home", enshrining male authority over women (GAGO, 2020), under the justification of "love", unpaid work is hidden (Federici, 2021).

In statistical terms, the Brazilian Institute of Geography and Statistics (IBGE), the body responsible for collecting and analyzing official national data on work and employment, classifies as "other forms of work" the activities of caring for people and household chores. The "care of persons" would be composed of a set of six activities, necessarily performed by relatives (living in the same household or not), related to assistance in personal care; educational activities; leisure and cultural activities; companionship; transportation or accompaniment; and other tasks of care of residents.

Domestic chores, in turn, would be those exclusively domestic tasks, that is, performed within the household, but without involving any type of remuneration (money, products or goods), performed by residents (IBGE, 2019)<sup>2</sup>. As currently conceived, therefore, unpaid domestic work (UDHR) is that performed in the home, in relation to the care of the house and the people who reside in it; it represents the maintenance of housing, the care of residents and, above all, the

<sup>2</sup>For women from the upper classes of society, it is possible to outsource domestic work to women from the lower classes, generating movements of tension between the genders caused by socioeconomic differences. Also because, for the women of the lower class, there is no option to occupy either the public space or the private space: both external work and the maintenance of the home and family represent survival (NETO, 1982).

maintenance of the workforce paid for external work (Dane, 2014).

In this sense, although there are many elements that contribute to the reproduction of the workforce as a whole, it is no longer possible to deny the considerable participation of domestic work, whether at the daily level (daily maintenance of workers in the external economy) or at the general level (performance of services necessary for future reproductive agents). The salary obtained by the worker who participates in the “extra-domicile” economy, then, is not sufficient to acquire all the goods necessary for their survival and reproduction of the productive matrix, as it also depends on services that are not remunerated for this (Gelinski & Pereira, 2005).

And the TDNR represents a peculiar combination of physical, sexual and emotional services that externalizes, in a romanticized way, the achievement of women by performing domestic tasks, enabling the perpetuation of a cheap, flexible and unconflicted workforce. The devaluation of the TDNR reinforces the role of the subordinate woman, servant, who performs both heavy and invisible work (Gelinski & Pereira, 2005). In other words, although performed to exhaustion by women throughout Brazil, domestic work that is performed within the home itself is not counted in terms of national accounts and, therefore, is not remunerated.

According to the latest Continuous PNAD of 2019, the rate of performing household chores, in the household itself or in the household of a relative or care tasks for household residents or non-resident relatives was 80.6% among men and 92.9% among women (IBGE, 2019). With the outbreak of the COVID-19 pandemic, this inequality was intensified, research completed in December 2020 showed that certain challenges, particular to women, ended up reducing the female presence in the labor market. Among them, the following stand out: less flexibility at work; feeling that they must be available to work at any time of the day; domestic work and care for the family and case intensified by the pandemic; concern that their responsibilities as caregivers would be seen negatively by the company; discomfort in sharing these difficulties with colleagues and leaders; feeling of powerlessness in the face of decisions that affect daily work; feeling unable to give their best in their work (Mckinsey & Company, 2020).

While such challenges can be experienced by any worker, certain groups of women suffer incrementally: mothers are more likely than fathers to worry about judging performance based on sibling responsibilities; women in leadership positions are more likely to feel that they must always be available, compared to male colleagues in the same positions; and Black women are more likely than White women and men overall to feel that they are not delivering their best for the job (Mckinsey & Company, 2020).

It can be seen, then, that the journey of women in the labor market has always been crossed by a strong gender component, which assigned to the female sex the perpetual task of maintaining the family and the home, in an almost forced retention of women’s productive time. In other words, the progression and rise of the male sex towards economic development was only possible because, be-

hind these men (as a general rule), there was a woman, mother, wife, daughter, giving up her own prospects, taking on double or triple working hours, in order to guarantee the well-being of the family collective. Women were never given the option to work only for their own benefit, because their duty of devotion and dedication to the family was socially rooted, before their devotion and dedication to themselves.

#### 4. Domestic Work and Marriage: Overlapping Realities

On January 1, 2021, the People's Republic of China's first Civil Code entered into force, with 1260 articles regulating life, health, honor, privacy and protection of personal information. In its Chapter IV, "Divorce", the Code provides, in Article 1088<sup>3</sup>, for monetary compensation for domestic and care work performed by one of the spouses.

The change is welcome and demonstrates important legislative progress in a country that, as recently as 1995, Helena Hirata pointed to the persistence of the sexual division of domestic and family work, despite advances in the sexual division of professional activity (Hirata, 1995). Currently, data from the Organization for Economic Cooperation and Development (OECD) show that Chinese women spend an average of 3.9 hours on domestic and family work, while men devote 90 minutes to these activities. This is higher than the average for OECD countries, where women spend twice as much time on unpaid work as men (OECD, 2021). Although the system of remuneration for domestic work does not specifically aim to protect men or women, in practical terms, the article mainly protects the rights and interests of the female spouse, who is statistically responsible for managing the household. Although recent, the enactment of the law has already been felt by the country's courts. In February 2021, the People's Court of Fangshan District, Beijing, applied Article 1088 of the Code to conclude a divorce case initiated in 2019 and ordered the husband to pay his wife 50,000 yuan as compensation for housework and childcare.

The Plaintiff claimed that she was responsible for childcare and household chores, while her husband was only engaged in outside work (Mp Weixin, 2021)<sup>4</sup>. The Court considered that, as the woman assumed the obligation to raise the children, the application of the New Civil Code would be the most favorable for the protection of her legal rights. The decision was based on the fact that those who assume more domestic duties often have a lower income level, so that the value attributed to domestic chores can be reflected in the equal division of the husband's and wife's assets at the time of divorce. In China, despite the exist-

<sup>3</sup>Article 1.088 - Where a spouse is burdened with additional duties for raising children, caring for the elderly, or assisting the other spouse in his or her work, said spouse has the right to claim compensation in the event of divorce against the other party, and the other party shall make due compensation. The specific arrangements for such compensation shall be determined by the spouses through agreement or by judgment of the people's court in case agreement cannot be reached (China, 2021: p. 197).

<sup>4</sup>As it was not possible to access the full text of the Chinese decision, information was extracted from the MP WEIXIN website, "Chinese Women's News", in free translation, an official publication of the Chinese Women's Federation, an entity supported by the State of China.

tence of the “property system”, in which the couple makes a kind of prenuptial agreement with duties and obligations of each party in the marriage as a way of tangentializing the role of each one, this is little implemented in the country. Thus, domestic work is often not remunerated or converted into tangible property, generating patrimonial injustice between the spouses at the time of separation (Mp Weixin, 2021).

With the advent of the law, regardless of property agreement between the spouses, in case one of the parties assumes more obligations, he/she is entitled to request compensation from the other party at the time of divorce, which better reflects the value of domestic work. The application of such a provision is not an easy task, considering that it does not dispense with evidence; in the specific case in question, the man acknowledged that the woman took care of the children and was responsible for household chores (Mp Weixin, 2021). From a comparative perspective, Spain, where women spend on average 2.18 more hours on unpaid domestic work than men (OECD, 2021), also has similar compensation in its Civil Code in cases of marriage dissolution<sup>5</sup>.

Although the difference is very significant, it is in line with the average for OECD countries, and the hypothesis that Spanish civil legislation contributes to reducing the sexual division of domestic work cannot be ruled out (although further studies are needed to confirm this).

In Latin America, since 2015, Argentina has had an article in its Civil Code that authorizes the claim for compensatory income in the event of divorce that produces an imbalance in the financial relationship due to separation<sup>6</sup>. In 2013, the total participation of Argentine men in domestic work (including household chores, school support and care work for children, the disabled, the elderly or the sick) was less than 24%, while women participated in 76% (Indec, 2014). Along with Brazil and Paraguay, Argentina also has the highest proportion of women employed in domestic service in Latin America and the Caribbean, 16.6% of its female population (Ilo, 2020).

In 2019, the National Chamber of Civil Appeals confirmed the judgment of Civil Court No. 92, ordering a man to pay eight million pesos to his ex-wife, who, due to the marriage, abandoned her profession as an economist and dedicated herself entirely to domestic chores for 27 years. In the decision upheld, Judge Victoria Famá applied Article 441 because of the economic imbalance caused by the divorce, from a gender perspective, recognizing that the economic dependence of wives on their husbands is one of the central mechanisms by

<sup>5</sup>Article 1.438 - The spouses shall contribute to the maintenance of the costs of the marriage. In the absence of an agreement, they will do so in proportion to their respective financial resources. The work for the house will be computed as a contribution to the charges and will give the right to obtain a compensation indicated by the Judge, in the absence of agreement, for the extinction of the separation regime (Spain 1889, free translation).

<sup>6</sup>Article 441 - Financial compensation. The spouse to whom the divorce produces a manifest imbalance which means a worsening of his or her situation and which has as its just cause the marital bond and its rupture is entitled to compensation. It may consist of a one-off benefit, an annuity for a fixed period or, exceptionally, for an indefinite period. It may be paid in cash, with the usufruct of certain assets or in any other way agreed by the parties or decided by the judge (Argentina, 2014).

which women are subordinated in society. It also took into account the age of the Plaintiff (60 at the time), at which Argentine women can apply for retirement. Thus, the marriage would have deprived the Plaintiff's re-entry into the labor market (El Día, 2019).

China's effort to regulate the protection of spouses who are responsible for unpaid domestic work is compatible with the legislative and jurisprudential advances identified in other countries, notably Spain and Argentina. Brazil is also lagging behind these advances, especially since its Argentine neighbor has been seeking compensation for domestic work from a gender perspective for more than half a decade, while Brazil has done little for women in family units.

Taking into account the reasons for the Chinese legislative innovation and the similar provisions in the Spanish and Argentinean legal systems, a paradigm of judicial interpretation is possible, as long as there is no similar change in the national civil law. From the Brazilian doctrine and, more than that, from the jurisprudential history in Brazil, sufficient elements are extracted that authorize the use of similar interpretation for the recognition of the domestic work of the woman during the union, with the corresponding attribution of pecuniary value. Compensation for the intangible value of domestic work is defensible from an updated reading of the precedent set by the Brazilian Federal Supreme Court (STF) in Precedent 380 of 1964, which states that "if the existence of a de facto partnership between concubines is proven, its judicial dissolution with the sharing of the assets acquired by common effort is appropriate". In other words, this precedent recognized the need to share assets in situations that constitute a de facto partnership between unmarried people, precisely to prevent the woman, responsible for domestic work, from being unfairly deprived of receiving part of the assets built by her partner throughout the union.

In a brief review, it is necessary to situate the social and historical context in which the above-mentioned summary entry was established. The stable union<sup>7</sup> was only recognized in the Brazilian legal system with the Federal Constitution of 1988, and, until 1977, divorce was legally prevented. For this reason, people separated in fact, or, commonly, single women with men who were previously married, were configured in a "concubinage" relationship.

From then on, the legislative gaps ended up victimizing mainly women, who suffered the social stigma as "concubines", subjected to the patriarchal society that hindered their access to the labor market, placing them in a position of economic dependence on the man with whom they resided. Not being married, it was not allowed to share the assets acquired during the union if it was dissolved, disregarding the efforts of the partner in the professional and patrimonial progress of the partner "assuming the family responsibilities and the stability

<sup>7</sup>Stable union is here used as a translation to the Brazilian legal institute of "*união estável*". It is recognized as a family entity between two people, characterized by the public, continuous and lasting relationship, established with the intent to constitute a family. This type of union does not require a documental formalization between the couple to be recognized, since it is considered a legal fact, demanding only its factual configuration. The Brazilian law considers the stable union comparable to marriage, hence the application of the marital property and inheritance systems.

he needed to develop his activities” (Lôbo, 2018: p. 163).

Faced with this scenario, which mainly disregarded the patrimonial aspects of the relationship, the Federal Supreme Court sought to find an equitable solution, to avoid true unjust enrichment of the partner. Using the Law of Obligations to, based on the figure of the *de facto* society, recognize the right to share the assets that, presumably, were acquired through common effort of the partners (Lôbo, 2018).

In this regard, it is noted that the Brazilian jurisprudence already has guidance that is receptive to interpretations in the same sense as the Chinese legislature. Precedent 380 of the STF came precisely to recognize the common effort present in the relationship and avoid the unjust enrichment of one of the parties, in the sense that the woman, responsible for domestic chores, provides the man with the necessary environment for him to develop professionally and thus acquire assets. This is an understanding that can be reread from the current social reality: today, men and women are both inserted in the labor market, and it is no longer the rule to dedicate themselves exclusively to the home and family so that the other can prosper. However, it should be recognized that, even so, there is an unequal division of domestic work that falls more heavily on women, who, as a result, have a total working day about eight hours longer than men (Sousa & Guedes, 2016: p. 131). This time, in turn, is appropriated by women without remuneration, when they could be using it to seek further education or professional advancement.

Therefore, although the figure of the “housewife” is now rarer, women still have a heavier domestic workload, even if they work in the formal market like their husbands. Despite social and cultural changes, men continue to have a more privileged position in this respect, since they spend less of their free time on domestic work and can devote themselves more continuously and more focused to their education and professional integration, but also to their own social and economic relations, outside marriage.

Thus, this article proposes a paradigm of interpretation based on the updating of the understanding expressed in Precedent 380 of the STF, based on the recognition that domestic work, when performed in a majority way by one of the spouses or partners, has an indemnifiable value, in case of dissolution of the stable union or marriage. The commitment of time and energy to care takes time away from other work. The loss of opportunities for professional or educational advancement, due to the unequal burden of domestic work, causes, conversely, an unjust enrichment of the other spouse who can use this time for himself, and not spending it on the family unit. It should also be noted that it is not to be confused with the maintenance due between spouses or partners, since these, in addition to presupposing the need of one in relation to the other, which does not necessarily occur in situations in which this unequal division of domestic work is faced, do not serve to compensate for these services rendered, but rather for the maintenance of the person being fed for a sufficient time until he can support himself without assistance. The compensation of domestic work performed

throughout the union, through indemnification, goes towards the repersonalization of Family Law and, in particular, its focus on the personal fulfillment of each member of the family entity, which, in the hypothesis of this work, was affected throughout the relationship because there was no equality in the responsibility for the maintenance of the home.

## 5. Final Reflections

From the above, it can be concluded that there is a movement in some countries around the world to recognize the economic inequalities to which the spouse responsible for domestic work is subjected, and to determine that this work is duly compensated when the marriage ends. It is a search for material equality between spouses, based on the realization that in the absence of an equitable division, one of them assumes most (or all) of the household chores and childcare, not only fulfilling unpaid working hours, but also with loss of opportunities for personal and professional growth. Therefore, the other is unequally benefited during the period in which this family arrangement lasts.

China's codification of the issue, which is similar to legislative provisions in countries such as Spain and Argentina, is aimed at realizing the democratic family. It recognizes the time spent working in the home during the marriage, to include this value in those due upon termination of the relationship between the couple and the need to share assets between them. It serves as a point of reflection for Brazil, where there is still significant gender inequality in society. Women, once relegated to the home and marital authority, now enter the labor market and contribute economically to the family, yet remain primarily responsible for maintaining the home and raising children. The existence of a family member working an extra, unpaid day justifies weighing up the economic value of the role assumed.

The compensation for the years of unpaid domestic service throughout the marital union represents a reparation to the spouse who was deprived of opportunities, as well as recognizes that the other spouse, not having been subjected to this workload, would incur in true unjust enrichment if he does not replace the value at the end of the relationship. It is essential to recognize the social and legal history regarding the treatment of women in Brazil, as well as all the unequal opportunities due to gender roles in the division of labor, factors that hinder the realization of gender equality and material equality among family members, equalities that are in line with the existing society program in the 1988 Constitution.

This would not be an absolute novelty in the Brazilian legal system. It is possible that the understanding of the Federal Supreme Court set out in Precedent 380 could be taken up again, in an updated way for the social conditions of today's society. Nowadays, it would be necessary, as it was required in China, to prove this unequal burden of domestic work, especially in view of the insertion of women in the labor market and that the situation of exclusive dedication to domestic tasks is less common. An understanding in this sense would allow a



further step in the elimination of gender inequalities in the family sphere, precisely by recognizing that domestic work and childcare are the responsibility of both spouses and that, being unequally and excessively imposed only on one of them, the lack of remuneration over the years of marriage has social, economic and professional impacts, deserving to be compensated at the end of the marriage or stable union.

### Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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