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RCMOS – Multidisciplinary Scientific Journal O Saber.
ISSN: 2675-9128. Sao Paulo-SP.

Year IV, v.1, n.1, Jan./Jul. 2024. | submission: 07/29/2024 | accepted: 07/31/2024 | publication:02/08/2024

SHARED GUARDY: HISTORY AND LEGAL FORECAST

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Summary
Shared custody has gained increasing relevance in the Brazilian legal scenario as a mechanism for promoting balanced and healthy coexistence between parents and children after the dissolution of the marital union. This article analyzes the historical evolution and legal provisions of shared custody in Brazil, with emphasis on article 1584 of Law No. 10,406/2002, amended by Law No. 11,698/2008, which establishes guidelines for the implementation of this type of custody. The study addresses the historical context and legislative motivation behind the implementation of shared custody, highlighting the role of social and cultural changes in valuing parental co-responsibility. The legal analysis details how article 1584 promotes shared custody as the preferred modality, except in cases of unfeasibility, emphasizing the importance of cooperation and communication between parents for the well-being of their children. Furthermore, the article discusses the benefits of shared custody for the child, including the maintenance of emotional bonds with both parents, the continuity of a balanced family environment and the promotion of healthy emotional development. The legal provision for shared custody seeks to encourage responsible and collaborative parenting, mitigating the negative impacts of parental separation on children. It is concluded that shared custody, as provided for in article 1584 of Law nº 10,406/2002, represents a significant advance in Brazilian legislation, promoting a parenting practice that prioritizes the interests and well-being of the child, at the same time that encourages the active and balanced participation of both parents in raising children.

Key words: Shared custody; Family right; Parenting; Civil right.

Abstract
Shared custody has gained increasing relevance in the Brazilian legal landscape as a mechanism to promote balanced and healthy interaction between parents and children after the dissolution of the marital union. This article analyzes the historical evolution and legal framework of shared custody in Brazil, with an emphasis on Article 1584 of Law No. 10,406/2002, amended by Law No. 11,698/2008, which establishes guidelines for the implementation of this custody model. The study addresses the historical context and the legislative motivation behind the implementation of shared custody, highlighting the role of social and cultural changes in valuing parental co-responsibility. The legal analysis details how Article 1584 promotes shared custody as the preferred model, except in cases of unfeasibility, highlighting the importance of cooperation and communication between parents for the well-being of the children. Additionally, the article discusses the benefits of shared custody for the child, including maintaining emotional bonds with both parents, continuity of a balanced family environment, and the promotion of healthy emotional development. The legal provision of shared custody seeks to encourage responsible and collaborative parenting, mitigating the negative impacts of parental separation on children. It concludes that shared custody, as provided in Article 1584 of Law No. 10,406/2002, represents a significant advancement in Brazilian legislation, promoting a parenting practice that prioritizes the interests and well-being of the child, while encouraging the active and balanced participation of both parents in raising their children.

Keywords: Shared Custody; Family Law; Parenting; Civil Law.

INTRODUCTION

The article analyzes the concept of shared custody in light of national doctrine, so that this institute of civil law can be dynamically studied. Subsequently, a historical study of the topic will be carried out, in order to verify its emergence and evolution in Brazilian positive law.

To achieve this, three historical divisions will be made. The first of them is based on the treatment that the matter received from legislation prior to the Civil Code of 1916, going through an analysis under the bias of that legal diploma and, finally, studying the current panorama, taking as a reference Law 10,406, of 10 January 2002, the current Civil Code, and its subsequent modifications.

In this sense, it is worth highlighting that the 2002 Civil Code expressed special concern with the

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theme, reserving a chapter to deal with the protection of the person of children, composed of articles 1,583 to 1,590, which will be studied in detail below. It is understood that the dissolution of conjugal partnerships cannot cause harm to the children, who must have their guarantees preserved and safeguarded, which will be material and immaterial, in compliance with the principle of human dignity, as enshrined in article 1st, III, of the Federal Constitution of 1988 (Brazil, 1988).

Thus, contemporary legislation seeks to preserve the best interests of children, in order to protect their dignity, during the process of dissolution of the conjugal partnership, which may cause various harm to children and adolescents. The law therefore seeks to promote what is understood as responsible parenting, a topic to be addressed in the last topic of this introduction, enshrined in articles 1,583 and 1,584, both of the 2002 Civil Code (Brazil, 2002).

In addition, art. 1,586, CC/2002, reinforces this concern by allowing that, if there is *serious* reasons, under the terms of the aforementioned article, the judge may decide in a manner different from that provided for by law, in accordance with the judgment of convenience, observing, among other requirements, proportionality and reasonableness, in accordance with the provisions of art. 8th of the 2015 Civil Procedure Code. (Brazil, 2015).

1.1 Concept and emergence in Brazilian positive law

Family law is a topic that makes up the large area studied by civil law. Its methodological and legislative position could not be different, since this matter is the area that regulates acts of common life, such as contracts, financial relations, property law and, no less important, human relationships, in its most intimate sphere, that is, the constitution of affective relationships with the purpose of creating a family.

This is, therefore, an eminently private law matter. However, as will be seen later, with the constitutionalization of private relations, this branch of law did not allow itself to be influenced by public law, especially constitutional law. These conclusions can be drawn from the 2002 Civil Code, which reserved Book IV of that civil legislation (Brasília, 2002).

The first human groups already constituted a family, albeit in a primitive form. Going back in time, it is possible to see primordial forms of family almost five thousand years ago: "The family, the first cell of social organization and formed by individuals with common ancestors or linked by emotional ties, emerged approximately 4,600 years ago" (Barreto , 2012, p. 206). Obviously, at that time, there was no form of organization based on written laws, with custom standing out as the foundation of social organization.

Advancing a little further in time, in Ancient Rome, there are more developed family nuclei. At the time, there was no idea of horizontality in family relationships, with all family power concentrated in the father – or in the male figure who administered it:

> In Rome the family was defined as the group of people who were under the patria potestas of the oldest living common ancestor. The pater familias exercised his authority over all his unemancipated descendants, over his wife and married women, with manus with his descendants. The family was, then, simultaneously an economic, religious, political or jurisdictional unit. Initially there was only one patrimony, which belonged to the family, although managed by the pater. In a more evolved phase of Roman Law, individual assets emerged, such as nests, administered by people who were under the authority of the pater. (Wald; Fonseca, 2023, p. 26).

At this initial moment, there was no consolidated idea of family as a unit, there must be affection and respect, modular to the relationship. In truth, women and children had little voice, playing a merely accessory role within that social organization. The interference of the Canonical law was what gradually promoted changes in the way of viewing the family, by establishing an idea of indissolubility, fidelity and love (Wald; Fonseca, 2023, p.27).

The family model as it is known today results from the processes developed after the French Revolution and the Industrial Revolution. The first proclaimed equality between men and women, decentralizing the figure of the father as head of the family unit. The second promoted a need for women to also enter the job market. Linked to this, the idea of affection as necessary for the creation of a family gained strength, largely due to the dictates proclaimed by romantic ideals in literature (Dias, p. 27, 2015).

It is worth highlighting that even after the collapse of the Roman Empire, in the Middle Ages, the

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a family model centered on the male figure prevails, but with a little more mobility for the female figure. Only after the two aforementioned revolutions did family models begin to be created that were more similar to what we have today:

> This model began in the 19th century and was preceded by the French and Industrial Revolutions, when, at that time, the world was in a constant process of crisis and renewal. From then on, it began to value coexistence between its members and idealize a place where it is possible to integrate feelings, hopes and values, allowing each person to feel on the way to achieving their personal project of happiness. This is the meaning of family in present. (Barreto, 2012, p. 208).

It appears that the treatment given to the family in the face of society and legislation. Today, fortunately, the scenario is much more advanced, with the recognition of equality between men and women and a series of norms to guarantee and protect the rights of the family and its members. Note that, in antiquity, the idea of divorce was almost unthinkable (Wald; Fonseca, p.30). Today, such an institute is accepted, with a whole set of rules to preserve the interests and integrity of people who want to go through such a process.

Wald and Fonseca states that the dissolution of marriage, in ancient times, was considered a direct offense to God:

> Since marriage is not only a contract, an agreement of wills, but also a sacrament, men could not dissolve the union made by God: quod Deus conjunxit homo non separet. (Wald; Fonseca, 2023, p. 29).

Today, the dissolution of marriage is a viable solution, and can even be done extrajudicially, and the judicial route must be followed in the case of minor children. However, this was not always the case. The idea of the impossibility of dissolving the marital pact persisted for a long time in Brazilian Law (Dias, 2019). The 1916 Civil Code moves in this direction by already providing for the possibility of separation and divorce, topics which will be analyzed later. The legal diploma in question allowed the couple to separate only after two years of marriage, a scenario that underwent changes after the Divorce Law, Law No. 6,515, of 12/26/1977 (Brazil, 1977).

An issue that arises when it comes to separation and divorce is that relating to the custody of minor children. If the legislation was primitive when dealing with divorce, it was almost non-existent when it came to child custody, with the child having to remain with the spouse who did not give rise to the divorce (Rio de Janeiro, 1916).

It is worth clarifying that shared custody may arise in situations other than those described, such as stable unions or independent production. It should be noted that before the Civil Code of 1916, there was no legal diploma that regulated the matter, leaving it to the discretion of the judges and the will of the parties. With the arrival of the respective Code, a portion was reserved to deal with the topic, in articles 325 to 328 (Brazil, 1916), which will be the objectives of further analysis:

> The Civil Code of 1916 regulated the protection of children in its articles 325 to 328, which established the right to custody of minor children only for the spouse not guilty of the marital dissolution. Therefore, if the marital dissolution were through an amicable separation, what was agreed between the spouses, male and virago, regarding the custody of minor children would be observed. However, if the dissolution were by judicial separation, the innocent spouse would be the guardian of the minor children. (Bento, 2016)

The 2002 Civil Code advanced a little further, however, requiring subsequent legislation to complement it (Brazil, 2002). He listed the possibility of the children remaining under the custody of one of the parents, in the case of unilateral custody, also establishing shared responsibility in raising children, in the event of separation. Today, the use of the expression shared coexistence has been accepted to refer to the topic (Engel, 2019).

It was seen, therefore, that the maturation of the theme required time and a historical legislative journey, with significant advances only being made in the present century. The issue of shared custody is now consolidated in terms of doctrine, jurisprudence and legislation, being the subject of constant debates and discussions for its improvement (Dias, 2015, p. 461). If the previous legislation was silent, the current one does not excuse itself from the matter.

In this sense, it is necessary to address the topic of this research, that is, shared custody, in terms of challenges and possibilities in the context of domestic violence. From the sketch that was drawn up, it was found that

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there was no legislation regarding the topic previously (Dias, 2015, p. 519). It can be stated that, due to the family power attributed to the father, even in the case of domestic violence, he could admit the raising of children, given the patriarchal nature of the law.

As there was no specific legislation on the subject prior to the Civil Code of 1916, it appears that the matter was left to the discretion of family members. Taking a leap in time, to the present day, we find modernized legislation, which allows the judge, observing the particularities of the real case, to establish a regime different from that stipulated by law, even speaking of serious reasons (Brazil , 2002).

In this context, there is an effective concern for the healthy development of minor children and their protection in cases of separation and divorce. The breakdown of the family unit may have negative impacts, which the law, through protective measures, seeks to mitigate:

> The first advance occurred in 2008, with the institution of shared custody (L 1 1 . 698/08). Individual custody was no longer prioritized, giving parents joint responsibility and the equal exercise of rights and duties relating to parental authority. The co-responsibility model was an advance, as it removed the idea of ownership from custody and favored the development of children with less trauma, through the continuity of the children's relationship with their two parents. He determined that custody would be awarded to whoever had the best conditions to serve it, giving the non-guardian the right to visit his children and supervise their maintenance and education. The change was significant. (Dias, 2015, p. 520)

The protection of children and adolescents requires a multidisciplinary effort in the context of domestic violence. It can be said that the 2002 Civil Code, the Child and Adolescent Statute, as well as the Maria da Penha Law, albeit indirectly, reflect this concern. Topics such as parental alienation and domestic violence gain voice to reiterate the legitimate interest in preserving the well-being of minors.

The principle of best interest is the guide that governs the law and its application in Brazilian law today, as explained by Felipe Monteiro Mello (2023):

> According to the origin of the concept, the principle of the best interests of the child originated in the English institute 'parens patriae', which aimed to protect incapacitated people and their property. At that time, the State assumed responsibility for limited people, such as the insane and minors. Over time, this institute evolved into the principle of 'bestinterestofthechild'. The 'bestinterestofthechild' principle was adopted by the International Convention on the Rights of the Child, in article 3, item 1, and deals with the protection of children's interests.
>
> According to experts, this Principle here in Brazil did not have an express provision in the Federal Constitution or in the Statute of Children and Adolescents, but with decree 99.710/90 there was adherence by the country, which ratified the 1989 International Convention on the Rights of the Child.
>
> With an implicit interpretation of the fundamental rights, provided for by the Constitution, with regard to children and adolescents, applying under article 227, which establishes the duties of the family, society and the State towards children and adolescents, they realized the possibility of application of Best Interest.
> The Statute of Children and Adolescents, which establishes Integral Protection, in its articles 3 and 4 of law 8,069/90, makes joint use of this with the Principle of Best Interest, coming to have value of an International, Constitutional order and also in a specialized standard (ECA).

These themes will be further explored later, it is important to highlight that the law today is modern, prioritizing the well-being of the child (Dias, 2015, p. 521). Effectively, the present study seeks to analyze whether how the courts have also decided in the specific case, in order to build a legal panorama on the issue, as well as recent legal changes, aiming at a solution to the issue in question.

1.2 An analysis in light of legislation prior to the Civil Code of 2002

In the previous topic, it was seen that the institute of shared custody has come a long way of historical development to reach the degree of legislative and doctrinal maturity that exists today. It was also verified that the topic is included in the list of subjects studied and regulated by Civil Law, more specifically in family law. In this vein, this topic seeks to analyze the historical trajectory

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in light of Brazilian law.

First, however, it is necessary to define what shared custody is, conceptualizing it in accordance with what the doctrine preaches. A definition that comes closest to what is practiced today, around the world, would be that of Joan B. Kelly and Michael E. Lamb (2000):

> Joint custody is an arrangement in which divorced or separated parents share authority and responsibility for care and decision-making regarding their children. It is an ongoing commitment by parents to cooperate and share time with their children equally, in order to promote the emotional well-being and healthy development of children.

In the Brazilian context, the lesson of Silvana Maria Cabonera (2000, p. 64) is relevant, who defines it in the following terms:

> Legal institute through which a person, the guardian, is assigned a complex of rights and duties, to be exercised with the aim of protecting and providing for the development needs of another person who needs it, placed under their responsibility by virtue of law or Judicial decision.

Analyzing the legislation pertaining to shared custody of minor children in the event of dissolution of the marital partnership, from a historical perspective, requires division into three fundamental moments. The first of them under the aegis of the Civil Code of 1916, as this diploma represents a milestone in the regulation of private life and Brazilian civil law. Hence why the analysis begins with this legislation. Another legal landmark came with the so-called Divorce Law (Brazil, 1977), which modernized Brazilian legislation, making the divorce process and the consequent and no less relevant custody of minor children more viable and easier. And, subsequently, the promulgation of the Federal Constitution of 1988, and the need to modernize the law so that it adapts to the dictates of the constitutional text (Gonçalves, 2020, p. 452).

Today, the principle that governs shared custody is in the best interests of the child. Thus, there is a primacy of what is most interesting to the child and adolescent, in terms of material aspects (food, education, protection, safety, health) and immaterial aspects (affection, care, healthy environment) (Tartuce, 2020). But, it wasn't always like that. It was understood that whoever gave cause for divorce would be denied custody of the children. Custody is characterized by being unilateral, in the Code of Beviláqua:

> According to art. 326 of the Civil Code of 1916, “if the separation is judicial, the minor children will remain with the innocent spouse.” It is evident here that custody of one parent was attributed, when there was no custody agreement between the spouses, to the one who did not give rise to the separation. In other words, the fault of the parents was taken into account, with custody being awarded to the spouse who was not at fault for the divorce. (Chagas, 2012, p. 62)

Regardless of the analysis of any other factor, whoever gave rise to the divorce would consequently be deprived of guardianship of their children. The custody was therefore unilateral in nature, disregarding any other factor of interest. This unilateral element brought countless losses, as one of the parents was overlooked in caring for the child. According to Chagas (2012, p. 66 apud Welter, 2009, p. 56): “unilateral custody does not guarantee the development of the child and does not give parents the right to equality in the personal, family and social sphere, as those who do not holds custody, receives merely supporting treatment in the children’s development process.” In view of the above, we cannot talk about shared custody at this point due to the unilaterality of this institute.

Legislation subsequent to the 1916 Civil Code was only enacted six decades later. There was, definitely, legislative silence on the issue, prevailing, in any case, the understanding of that the child would remain under the guardianship of the person who did not cause the dissolution of the marriage. Small changes were promoted, therefore, with the enactment of Law 6,515, of December 26, 1977. Although this still enshrined unilaterality, in its midst it brought the possibility of children remaining under the guardianship of both parents, with, however, the prevalence of one of them (Dias, 2015, p. 518 and 519).

The unilaterality in the respective law was due to the so-called fault of one of the spouses for the divorce. If there was a consensual dissolution of the marriage, an arbitrary criterion prevailed, that is, what was agreed between the parents would prevail, with no interference by the law in this regard. Article 9 provided that in the case of dissolution of the conjugal society through consensual judicial separation, what the spouses agree on regarding the custody of the children will be observed (Brasília, 1977).

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Article 10 of Law 6,515/77 defined that in judicial separation based on the "caput" of article 5, and Minor children will stay with the spouse who has not given cause for divorce in this case (Brasília, 1977). There was, therefore, preference for the spouse who had not initiated the divorce process. However, the main advances were embodied in articles and 15. In its literal sense, article 13 said: "If there are serious reasons, the judge may, in any case, for the sake of the children, regulate in a manner different from that established in the articles previous to their situation with their parents" (Brasília, 1977).

Article 15 of Law 6,515/77 listed the possibility for the spouse who did not have custody to live with the child as well. It should be noted that custody remained exclusively with one of the spouses, with the other not being deprived of visiting him or her and taking care of his education. The text of the law said that parents who do not have custody of their children will be able to visit them and have them in their company, according to what the judge determines, as well as supervising their maintenance and education (Brasília, 1977) .

The promulgation of the 1988 Federal Constitution caused few changes in this scenario. However, it generated a doctrinal discussion about the model in force at the time, which was the target of much criticism. The special concerns with children and adolescents within the constitutional text led to the changes that were verified in the Civil Code of 2002 (Law 10,406, of January 10, 2002), which will be the subject of detailed studies below (Gonçalves, 2020, p. 405).

1.3 Article 1584 of Law 10,406/2002, and its encouragement of healthy parenting

The promulgation of the 1988 Federal Constitution promoted profound changes in the way family law is understood, prioritizing balanced relationships, in which all its members are components. The constitutionalization of private relationships is nothing new. However, it was in this area of civil law that the greatest impact of constitutional dictates was noted, largely due to the principled systematics of the constitutional text:

> Thus, of this constitutional normative supremacy, the following are detected as consequential: i) the need and re-reading of classical legal concepts and institutes (such as marriage and filiation), ii) the elaboration and development of new legal categories (no longer neutral and indifferent, but dynamic, vividly present in social life, as in the example of the union between people of the same sex) [...] (Farias; Rosenvald, 2010, p. 32)

From reading the excerpt, it appears that constitutional law promoted a need to re-read the old institutes of civil law, remodeling them in the manner of the Federal Constitution:

> It can be seen that Constitutional Law has moved away from a neutral and socially indifferent character, ceasing to care only for the political organization of the State and moving closer to real, concrete human needs, by taking care of individual and social rights (in arts. 226 and 227, for example, the Constitution regulates the organization of the family). This is, without a doubt, the affirmation of a new and fruitful constitutional theory (Farias; Rosenvald, 2010, p. 32)

Of the constitutional principles applied to family law, those of the plurality of family entities, equality between men and women, equality between children, family planning and responsible parenthood and the facilitation of the dissolution of marriage stand out (Brazil, 1998).

The first contemplates the different forms of family that exist in society. The second established equality between spouses, so that they have equal duties and rights. Equality between legitimate and illegitimate children was admitted by the constitutional text. Finally, facilitating the dissolution of marriage was to meet a social desire and not force the continuity of worn-out relationships (Brazil, 2002).

It can be seen, therefore, that there was a massive rooting of constitutional law in civil law. This discussion proves to be relevant to the issue of shared custody, given the changes promoted in this institute, taking constitutional dictates as a starting point.

Today, shared custody does not fail to comply with the provisions of the Federal Constitution of 1988. And yet, in the modern context, the understanding of the old Divorce Law still prevails. This, therefore, when the Civil Code was published in 2002, which in its articles 1,583, 1,584 and 1585, reproduced much of what Law 6,515/1977 said. It is only with the advent of Law 11,689/2008 that we begin to talk about shared or pendulum custody in the context of Brazilian civil law:

> It is important to highlight, at this moment, that, before the entry into force of Law 11,689/2008, there was no express provision for the institute of shared custody

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> nor alternate custody. Both institutes, even without express provision, were applied to certain cases, taking into account the possibility of using other devices, such as art. 226, § 5, of CRFB/88, which enshrined the principle of equality between spouses in the marital relationship and the principle of the best interests of the child or adolescent, enshrined as a fundamental right by art. 5th, § 2°, of CRFB/88, with the signing of the International Convention on the Rights of the Child, carried out by the UN in 1989. After the new wording of article 1,583, the application of shared custody only becomes viable, as a general rule, and, exceptionally, unilateral custody. It is no longer possible to assign alternate custody (or pendulum).
> (Chagas, 2012, p. 69)

Under the terms of the Civil Code of 2002, prior to the changes promoted by the aforementioned Law 11,689/2008 that custody would be attributed "to whoever reveals the best conditions to exercise it", as stipulated in article 1584 of the Civil Code (Brazil, 2002). The idea of unilaterality still prevailed, more than eight decades after the Civil Code of 1916. The provision for mutual responsibility was almost non-existent.

With the changes promoted by the law in comment 11,689/2008, a new wording was given to the legal text, which came into force with the following wording: "Art. 1,584. Custody, unilateral or shared, may be" (Brazil, 2008) For the first time in Brazilian legislation, the use of the expression "shared" was admitted to refer to custody, making it clear that the responsibility should not be for just one of spouses, encouraging responsible parenting, which involves the work of both spouses in raising and educating children (Brasil, 2008).

Article 1854 of the Civil Code already establishes that custody may be unilateral or shared, which may be requested by consensus or in an autonomous action in the case of separation, divorce, dissolution of the stable union or, finally, as a precautionary measure, in accordance with subsection I of the aforementioned article (Brasília, 2002).

The judge may also determine it ex officio, taking into account the impositions of factual reality. In addition, if there is no agreement between the parents, whatever the judge defines will always prevail, who must prioritize shared custody, and never unilateral custody.

It should be noted that the law is concerned with protecting the best interests of children, with a legal framework, which may be custody, requested or determined by the judge, based on observation of the practical case. Minor children receive special attention from the legislation to avoid losses and damages in the event of the dissolution of the marital partnership. This concern is relevant, as they cannot be affected by such a dissolution, and this article represents a significant advance in responsible parenting.

CONCLUSION

Shared custody, as provided for in article 1584 of Law No. 10,406/2002, represents a significant milestone in Brazilian legislation, reflecting social and cultural changes that value parental co-responsibility. The historical and legal analysis of this study shows that shared custody not only promotes a balanced and healthy family environment, but also prioritizes the well-being and interests of the children involved.

The legislative advance, driven by the change brought by Law No. 11,698/2008, has the main objective of ensuring that both parents actively participate in their children's lives, even after the dissolution of the marital union. The implementation of shared custody is seen as an effective means of mitigating the negative impacts of parental separation, providing children with continuity of emotional bonds and more stable emotional development.

This article highlights the importance of cooperation and communication between parents, essential elements for the success of shared custody. Furthermore, it shows that shared custody is the modality preference in Brazilian legislation, except in cases of unfeasibility, promoting responsible parenting responsible and collaborative.

Therefore, it is concluded that shared custody, as established by article 1584 of Law No. 10,406/2002, is a significant advance in protecting children's rights and promoting balanced parenting. Brazilian legislation, by encouraging this practice, contributes to building a fairer and healthier future for families, ensuring that the interests of minors are always put first.

REFERENCES

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BARRETO, RA**Family History**. 3rd ed. Rio de Janeiro: Forense, 2012.

BENTO, JA**The Evolution of Family Law in Brazil**. São Paulo: Saraiva, 2016.

BRAZIL.**Constitution of the Federative Republic of Brazil of 1988**. Brasília, 1988.

______.**Brazilian Civil Code**. Law No. 10,406, of January 10, 2002. Brasília, 2002.

______.**Code of Civil Procedure**. Law No. 13,105, of March 16, 2015. Brasília, 2015.

______.**Divorce Law**. Law No. 6,515, of December 26, 1977. Brasília, 1977.

CHAGAS, SM**Shared Custody in Brazilian Law**. Rio de Janeiro: Lumen Juris, 2012.

DIAS, SP**Family Law**The. 6. ed. São Paulo: Revista dos Tribunais, 2015.

ENGEL, T.J.**New Paradigms in Child Custody**. São Paulo: Saraiva, 2019.

FARIAS, FC; ROSENVALD, E.**Civil Law: General Part**. 3rd ed. São Paulo: Saraiva, 2010.
GONÇALVES, AS**Family right**. 12. ed. São Paulo: Saraiva, 2020.

MELLO, FMA**The Principle of the Best Interest of the Child in Brazilian Law.**Revista de Direito da Criança, São Paulo, v. 12, no. 1, p. 123-145, 2023.

TARTUCE, F.**Civil Law Course: Family Law**. 7. ed. Rio de Janeiro: Forense, 2020.

WALD, G.; FONSECA, M.**Family Law in Roman Law**. São Paulo: Atlas, 2023.

WELTER, P.A.**Historical Evolution of Family Law**. São Paulo: Editora do Brasil, 2009.

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