RATTLING THE CAGE: TOWARD LEGAL RIGHTS FOR ANIMALS (2000). By Steven M. Wise, Perseus Publishing, New York, Pp. 362, Price INR 5171/-.

ANIMALS HAVE been kept outside the purview of 'rights-holder' or possessors of 'legal rights'. There has also not been universal consensus on conferment of rights to animals even within the animal welfare scholarship. This led to two prominent approaches, one being 'Animal Welfare' approach which propagates duty-based approach and asserts just and humane treatment of animals. It does not radically oppose use of animals by humans. The other approach is 'Animal Rights' approach which claims animals to be entitled possessors of rights and therefore any kind of use of animals by humans is looked from a critical approach and is vehemently opposed. Conferment of 'legal personhood' to animals is another dark corner in the tunnel of jurisprudential, and there is hardly any light visible at the end of this tunnel.

Scholars like 'Peter Singer'[1] take the route of 'Animal Welfare' approach whereas scholars like 'Tom Regan'[2] take the route of 'Animal Rights' approach. Amidst this conundrum, 'Steven M. Wise',[3] makes another strong case with jurisprudential richness, scientific wealth and logical virtuosity, through 'Rattling the Cage'. The book makes the reader understand about the 'cage' that has kept the welfare of non-human animals from realisation and how is cage getting 'stronger and almost unbreakable' over the years and generations. Also, why it is important to 'rattle the cage' and how this cage could be 'rattled'.

A review of existing scholarship around animal law, would help better position this tributary 'Rattling the Cage' a little better in the river of animal welfare and animal rights. Two of the most prominent modern scholars in animal law, who have impacted the theoretical framework are Peter Singer[4] and Tom Regan[5], through whom a new discussion over the two approaches

[1] Peter Singer is an Australian Philosopher. His work in the form of his book titled, "Animal Liberation: A New Ethics for Our Treatment of Animals" published in 1975, is considered a significant work in animal rights literature. "Animal Liberation" significantly impacted public perception and discourse on animal rights, initiated debates and conversations on moral treatment of animals. It inspired policymakers to address ethical issues in animal welfare and rights.

[2] Tom Regan was an American Philosopher who focused and specialised on animal rights theory. His first book, "The Case for Animal Rights", published in 1983, remains a seminal work in the field of animal ethics and has had a significant impact on the way people think about the moral status of animals. It has inspired debates and discussions about the rights of animals and the ethical treatment of non-human creatures.

[3] Steven M. Wise is an American legal scholar who specializes in animal protection issues and teaches animal rights law.

[4] *Supra* note 1.

[5] *Supra* note 2.

i.e., animal welfare and animal rights started. Peter Singer does an insightful analysis of the human-animal relationship and brings many new perspectives to the forefront of animal law discourse. Among the contemporary literature on animal welfare/animal interests, the work of Peter Singer stands out, so much so that Courts have been making frequent references to his work, while ruling about animal law jurisprudence matters.[6] Interestingly, Singer proposes a principle of equality, which though does not advocate equal or same rights as that of humans but advocates for fair consideration of the interests of the animals (in avoiding suffering). Singer's theory advocates at least a starting point that gives equal consideration to each group's interests.

On the other hand, Tom Regan opines that non-human animals do have rights.[7] Regan argues in "The Case for Animal Rights"[8] that animals have rights because they are "subjects of a life", just like humans, and therefore there is an intrinsic value in their existence, regardless of it being recognized by humans or not. In establishing the 'subject of a life' criteria, he focuses on the ability of animals to perception, memory, feelings of pain, pleasure, desires, and goals. Relying on these indicators, Regan contends that animals have value in and of themselves, and it is not fair to hold them just a property or resources for human interests. Regan contends against the use of animals in science also. Further, he objects to trapping, hunting and commercial agriculture.

Interestingly, these two major works have been written prior to 'Rattling the Cage' which gives a good theoretical background to Steven M. Wise to analyse and ponder upon. The Opinions

[6] In *Animal Welfare Board of India* v. *A. Nagaraja* [(2014) 7 SCC 547] the Supreme Court of India referred to the work of Peter Singer.
[7] Brigette Banaszak, The Case for Animal Rights by Tom Regan: Summary & Arguments, July 18, 2022, *available at:* https://study.com/learn/lesson/the-case-for-animal-rights-tom-regan-summary-arguments-issues.html (last visited on August 29, 2023).
[8] Tom Regan, *The Case for Animal Rights* (University of California Press, 1983).

of Rene Descartes,[9] Immanuel Kant,[10] John Locke,[11] Jeremy Bentham,[12] John Rawls[13] have also contributed to the discourse a great deal. In the 21st Century, the opinions of notable scholars such as David Favre[14] and Martha C. Nussbaum[15] are contributing greatly to the theoretical framework of animal laws. Inter alia the major influence on animal law have been from earlier philosophers, namely, Rene Descartes and Bentham, when Descartes opined that animals are like objects and they don't feel pain and they are not even subjects of moral consideration.[16] Whereas Jeremy Bentham opined that they are subjects of moral consideration with his famous argument that *"The question is not, can they reason? Nor, can they talk? But, can they suffer?"*.[17] The modern philosophers, namely, Peter Singer and Tom Regan, for the reasons mentioned above.

'Rattling the Cage' attempts to add to this theoretical framework by taking up the case of Chimpanzees and Bononos (Apes) and proposing 'rights framework' to ensure dignity and autonomy to them, based on scientific observations and logical arguments. The segment above

[9] Descartes was a French philosopher, a mathematician, and a writer (1596-1650). His opinions have been discussed in detail below.
[10] Immanuel Kant was a German philosopher and a notable jurist referred extensively in legal theory in the study of law (1724-1804). He highlighted that humans have responsibilities towards both humans and animals. He argued that cruelty to animals is not only morally unacceptable for their sake, but also because it harms human morality. Kant believed that such cruelty erodes human empathy and sympathy, qualities crucial for healthy human relationships.
[11] John Locke was a British philosopher (1632-1704). He argued that cruelty towards animals was morally unjustifiable, as it desensitized individuals and made them less compassionate even towards humans.
[12] Jeremy Bentham was a renowned philosopher and jurist from England (1748-1832). Jeremy Bentham's perspective on animals contrasts Descartes' insensitive views, valuing them as "sensitive beings" deserving benevolence. His famous quote, "The question is not, can they reason? Nor, can they talk? But, can they suffer?", has influenced animal law development and global animal welfare laws. Bentham's shift from an anthropocentric standpoint to compassionate treatment of animals has shaped animal protection laws and policies.
[13] John Rawls was an American philosopher, famous in moral and political philosophy, particularly for his work, *A theory of Justice* (1921-2002). John Rawls did not extensively address animal rights. However, some scholars have attempted to extend his principles to discuss the ethical treatment of animals. "A Theory of Justice," introduces the concept of the "original position" and "veil of ignorance" to determine fair principles of justice in society. These principles, including the maximin and difference principles, aim to ensure the well-being of the least advantaged members.
[14] David Favre has extensively researched animal law theory and provided detailed suggestions for changes to improve animal welfare. Favre critiqued the idea of animals being considered property, arguing that activists of animal rights have an incorrect understanding of property law. He focuses on creating a balance between humans and animals through a systematic process which has been reflected in his book, "Respecting Animals: A Balanced Approach to Our Relationship with Pets, Food, and Wildlife (2018)" also.
[15] Martha Nussabaum's book, "Justice for Animals: Our Collective Responsibility (2021)", emphasizes the importance of allowing animals the freedom to live their full lives. She uses the "capabilities approach" to consider harm and infringing on their freedom.
[16] Ian A. Robertson, *Animals, Welfare and the Law: Fundamental Principles for Critical Assessment* 55 (Routledge, Taylor & Francis Group, 1st edn., 2015).
[17] *Id.,* at 57.

gave a broad overview about prominent theoretical contributions to the animal law discourse, the segment below discusses about the work 'Rattling the Cage' in detail.

"These beliefs about the purposes of horses and oxen, women and races, ocean tides and pigs, parrots, slaves, and apes may appear to be unconnected. But they are not."[18]

Wise opens the pandora box unravelling questions surrounding welfare of non-human animals through this book. In a way, the book attempts to make us introspect that how easily we give up on the concerns for animals and pass on the stereotypical ideas and notions, generations after generations, thus, bringing little or no change in the lives of non-human animals. We must let go of our historical hypothesis concerning animals which is time to time proving to be factually incorrect. Rene Descartes opinions concerning animals have been proven wrong by science and therefore it is time for law and policy to ask a sincere question – "if animals are capable of, as we humans are, acts of brutality; they also are capable of empathy, compassion, altruism, and love. Should not they have the same kind of legal rights as those we grant to human infants or the mentally disabled, who also cannot speak for themselves in the obvious ways known to us (humans)?".

Animal law is a critical discipline wherein law and policy often look at science to understand what kind of legal protection may be conferred to non-human animals. The book is a significant literature since it is an outcome of a herculean research done both in law and science. The book in the later chapters has gone to cover extensive literature from science also, which is remarkable.[19] Wise delves into the study of Chimpanzee's and Bonobo's minds presenting enough authority and evidence to the effect that these apes do possess cognitive skills. The claims such as '*primates behave intentionally*'[20] and '*chimpanzees generally perceive the world the way we do*'[21] made by researchers extensively working with chimpanzee and bonobo

[18] Steven M. Wise, *Rattling the Cage: Toward Legal Rights for Animals* 10 (Perseus Publishing, New York, 2000). Wise employs this sentence to connote the exclusionary approach towards the interest of nonhuman animal while mentioning about the concept of "Peculiar Universe" and making the reader introspect that how did nonhuman animals got trapped in this peculiar universe created out of Anthropocene, exclusionary and discriminatory notions.

[19] For instance, Herbert S. Terrace, *et al.,* "Can an Ape Create a Sentence?" 206 *Science* 892 (1979); Herbert S. Terrace, *Nim: A Chimpanzee Who Learned Sign Language* (Washington Square Press, 1979). Also refer, *Supra* note 18 at 172 and 182-186. The book has provided instances of various cognitive exercises like the memory test to find food, the object permanence task, etc.

[20] Tetsuro Matsuzawa made such a claim who worked for 20 years with a chimpanzee. Also refer, *Supra* note 18 at 180.

[21] Primatologists like Michael Tomasello and Joseph Call made the claim. Also refer, *Supra* note 18 at 180.

species corroborate to the same.[22] Though the book keeps chimpanzees and bonobos as the focal species for making observations and arguments because they are nearing annihilation[23] due to unprincipled behaviour of humans, the concerns are equally applicable to animals in general, some nearing annihilation and many suffering the loss of freedom and dignity.

Under the part "Trapped in the Universe that no longer exists",[24] the book goes close to Peter Singer's work "Animal Liberation"[25] wherein different kinds of historical discriminations from casteism, racism, male chauvinism etc. have been talked about and "speciesism", a new kind of discrimination is placed akin to other kinds of discriminations which historically have existed. This is where humans consider themselves as superior to the non-human animals and consider that the latter exist only to serve the former and fulfil the needs and desires of humans. Also, Wise reaches almost the same conclusion as Peter Singer wherein he observes, "*yet the belief that nonhuman animals are somehow made for us lies at the root of what the law says we can do to them today*".[26]

The book presents a very clear picture of the Anthropocene notions which informed and shaped our perception and treatment towards animals and much of it forms the basis for formulation of law and policy. It is the universe of 'Anthropocene' notions, in which, unfortunately animals are trapped. The book very meritoriously takes the reader through the journey of how the 'unfortunate' non-human animals remained excluded from the Greek Justice, and then Stoic justice, and finally from Christian justice also.[27] Also, one after another, philosophy, science, theology and ultimately law got influenced by the Anthropocene ideas and with such a gripping effect that any resistance to the notions was difficult.

The book uses several pointers to convey those Anthropocene notions - 'The Great Chain'[28], 'the divine plan'[29] and 'Aristotle's Axiom'[30]. The part 'the legal thinghood of non-human animals'[31] very succinctly explores how such notions permeated jurisprudential ideas and

[22] *Supra* note 18, Chapter 10.
[23] *Supra* note 18 at 6.
[24] *Supra* note 18, Chapter II.
[25] *Supra* note 1.
[26] *Supra* note 18 at 10.
[27] *Id.,* at 10-19.
[28] *Id.,* at 13.
[29] *Id.,* at 14.
[30] *Id.,* at 17.
[31] *Id.,* at 23-34.

gained so much stability that they influence the jurisprudential notions even now.[32] The 'thinghood' of animals, the treatment of animals as 'property' and not 'person' are still glaring challenges before the 'jurisprudential and legal' to extend remedy to the animals.

The biblical acknowledgment of man's dominion over animals went a very long way. The book explains the impact of this "dominion approach" in the framing as well as interpretation of initially passed anti-cruelty statutes across jurisdictions. The Courts frequently use the dominion approach and cite it to exist "over the fish of the sea, and over the fowl of the air, and over every living thing that move upon the earth."[33] The twentieth century judicial decisions did not bring any less misfortune for the fate of animals within law since they "confirmed and reconfirmed the legal thinghood of animals".[34] The disservice to the interests of animals, through the precedents and *stare decisis* has been explained as follows:[35]

> They mechanically cite earlier cases, which cite still earlier cases that inevitably reach back to Kent or Blackstone or further still to Locke and Hobbes, then to Coke, and Bracton, until we arrive at Justinian and the Old Testament. It is time that judges consider that as the ancient foundations have begun to rot away, so the law of animals that rests upon them should be changed.

The book delves so deep in understanding 'how judges judge' that at one point in time, the reader may forget that he is sailing through an animal law literature and assumes to sail in the literature for 'judicial process'. The common law chapter is a lengthy and detailed approach to "rattling the cage" or perhaps understanding the "cage" before attempting to "rattle" it. It discusses how common law could be viewed as having types of judges who dealt with it, the precedent judges, the policy judges, the substantive judges, etc.[36]

The "Machiavellian" social intelligence of the Apes/Chimpanzees revealed through a research by Frans de Waal[37] in the 1970s mentioned in his book 'Chimpanzee Politics' was so

[32] *Id.,* at 24.
[33] *Id.,* at 45. The views delivered by Indiana Court of Appeals in 1892 and New York Municipal Court has been discussed.
[34] *Id.,* at 47.
[35] *Ibid.*
[36] *Id.,* at 97.
[37] Frans de Waal is a Dutch/American biologist and primatologist known for his work on the behavior and social intelligence of primates. His first book, Chimpanzee Politics (1982) compared the schmoozing and scheming of chimpanzees involved in power struggles with that of human politicians. Also refer, *Id.,* at 162 and 163.

compelling that the book was placed on the reading list of the U.S. House of Representatives for new members.[38] Even the engagement of the monkeys and apes in reconciliatory behaviour glimpses the feelings of 'forgiveness' amongst them.[39] A detailed analysis of testing cognitive skills, for e.g. through a decade-long sign-language experiment[40] is reflected in the book. The yardstick of 'pain and suffering' as reflected in the part "*If you prick us, do we not bleed*?"[41], compares humans (*all of us*) to chimpanzees and bonobos and in doing so, the book discusses the concept of 'pain' and 'suffering'[42] and with scientific evidence (in the manner of biology).[43]

The observation of Louis Leakey that "*Now we must redefine tool, redefine man, or accept chimpanzees as human*" is enough to evidence how clearly the skill of 'tool using' & 'tool making', skills connected to humans only, have been mastered by chimpanzees.[44] Wise mentions of 'legal fiction' and that it has allowed judges to attribute legal personhood to even 'nonautonomous, nonconscious, non-sentient humans' but also to entities like "*ships, trusts, corporations, even religious idols*".[45]

The part 'similar autonomies'[46] reveals that the campaigners against primate research and the scientists conducting primate research share the same reasoning for the basis of their work: *the biological and behavioural similarities of primates to humans*.[47] A case for 'cognitive autonomies' proposes that animals with sufficient cognitive abilities be granted basic legal rights such as the right to bodily integrity and the right to be free from unnecessary pain and suffering. Perhaps, jurisdictions of the world must consider that 'when we borrow the past law, we borrow the past', as a caution and be extremely judicious in such borrowings.

'Rattling the Cage' is not the first scholarly literature contesting for the interests of animals, certainly not the last of those,[48] but an important one to be viewed, reviewed, cited, and remembered as an important contribution in the field. One which attempts to take so many

[38] *Id.,* at 163 and 164.
[39] *Id.,* at 164.
[40] *Id.,* at 169.
[41] *Id.,* at 181.
[42] Suffering is the emotional response to perceived pain.
[43] *Supra* note 18 at 182 and 183.
[44] Louis Leakey was an anthropologist. Refer, *Id.,* at 190 and 191.
[45] *Supra* note 18 at 248.
[46] *Id.,* at 251.
[47] *Id.,* at 252.
[48] The first part of the review has discussed about the work of many scholars who came before Steven M. Wise and even after him.

disciplines within its sweep, philosophy, science, law, history etc. to present a strong case for bringing to the forefront the issue of just and humane treatment of animals generally and chimpanzees and bonobos particularly.

The book makes an important case for 'dignity rights' and makes us look beyond the horizons of 'human rights', a phrase which for the longest of times kept extending it limits and remained inclusive is appearing exclusive to the interests of non-human animals although the rationale for extending the moral consideration is logically compelling. This transition from 'human rights' to 'dignity rights' would make the interests of non-human animals be positioned within the largely human-centric legalism and would make the shift from anthropocentricism to ecocentrism a little more realistic. The exclusionary nature of law is not new. Treating Chinese as mentally and morally inferior to whites as done by California Supreme Court in 1854[49] or considering women as naturally unqualified to practice law (as held by Wisconsin Supreme Court in 1875[50] are just few instances. Wise reveals many 'naked prejudices'[51] through this book which have informed the law and the courts about the nonhuman animals.

When it comes conferring legal personhood, animals are not the first ones for whom this abstraction of legal personality is argued. For several purposes, corporations, idols & deities, and vessels etc. have been conferred legal personality. It is concerning that legal systems still hesitate to confer legal personality to non-human animals for protection of their interests and with sufficient legal analysis. Those who can't approach the courts and sue for their interests is not such a big obstacle in conferring this abstraction. It has not been an obstacle for idols or corporations also.

Wise could have been accused of making the case for Chimpanzees and Bonobos, but he redeems himself when concluding the book, he mentions:[52]

> I also never meant to imply that chimpanzees and bonobos are the only nonhuman animals who might be entitled to the fundamental legal rights to bodily integrity and bodily liberty. Judges must determine the entitlement to dignity-rights of any nonhuman animal the same ways they determine the

[49] *People* v. *Hall*, 4 Cal. 399, 405 (1854).
[50] *Motion to Admit Miss Lavinia Goodell to the Bar of this Court*, 39 Wis. 232, 245–6 (1875).
[51] *Supra* note 18 at 255.
[52] *Id.,* at 268.

entitlement of chimpanzees, bonobos, and human beings- according to autonomy.

The book does a great work towards analysing the "*Great Wall*" that divides humans from every other animal. It claims that this wall is biased, irrational, unfair and unjust. The just-ness of this division has been questioned by several animal law scholars, including Peter Singer and Tom Regan. This book stands as a '*sine qua non'* literature for animal law scholarship for the kind of elaborate analysis it does with the human-animal relationship.

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