

Independent Republic

It took a boardroom brawl at Tata Sons to result in Nusli Wadia being ejected from the boards of three Tata companies as independent director after spending nearly four decades on them. More often, though, such directorship is an engagement for life



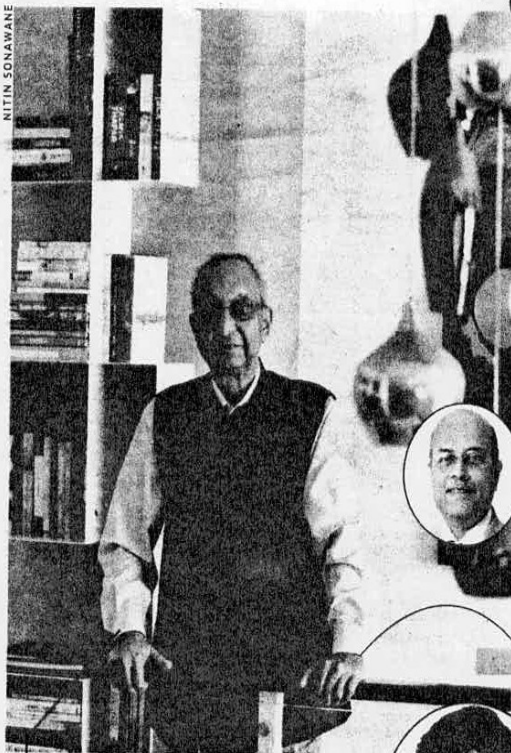
:: Suman Layak

The office of law firm Crawford Bayley & Co in Mumbai has an old-world charm. It's located near South Mumbai's Horniman Circle and the iconic Asiatic Society building with its 30 steps. The entrance to Crawford Bayley, just opposite the eatery Jimmy Boy, has the name of the law firm on a wooden nameplate, on top of all others. It is supposed to indicate that the firm's on the top floor. If you don't get it, finding the office can be a bit of a puzzle, especially if you land on a wrong floor. Elevator switches have been pulled out of their sockets on the floors in between. Once inside, tawny-brown wood-panelled corridors greet visitors. Rows upon rows of cupboards with Supreme Court case laws stare out. Beyond these corridors, in the lawyers' chambers, sit some of the busiest independent directors on Indian company boards. Sanjay Asher, 53, the youngest senior partner of the firm, sits on the board of seven listed companies as independent director. In the past, before directorships were capped at current levels (10 for listed entities, of which seven can be as independent director, and 20 overall), Asher was on the boards of more than 50 companies – as independent director, non-independent director and alternate director (someone who sits at board meets in place of another director).

Sanjay Asher's uncle, Hemraj Asher, 83, is also a senior partner at the firm and is one of the most experienced independent directors in the country. Asher senior has been on the boards of Monsanto India, Ingersoll Rand and one other company for more than 40 years each. At one point, he had more than 20 directorships. However, the real star at Crawford Bayley, is Rajendra Ambalal Shah, the most senior partner. Shah is 85, and is currently independent director and chairman of both Pfizer India and Procter & Gamble Hygiene and Healthcare. He has been on both boards for 50-plus years. Apart from being an independent director in six listed companies, he is a non-independent director on four more.

Birds of a Feather

Is Crawford Bayley & Co a school for producing independent directors for India Inc? Sure-



Big Boys of the Old Boys' Club

India's Most Popular Male Independent Directors

- Sanjay Khatau Asher **7** BOARD SEATS
- Bansidhar Sunderlal Mehta **7** SEATS
- Nasser Mukhtar Munjee **7** SEATS
- Madras Seshamani Ramachandran **7** SEATS
- Shallesh Vishnu Haribhakti **7** SEATS
- Naresh Chandra **7** SEATS
- Pradip Panalal Shah **7** SEATS
- Narayanan Kumar **7** SEATS
- Pradip Kumar Khaitan **7** SEATS

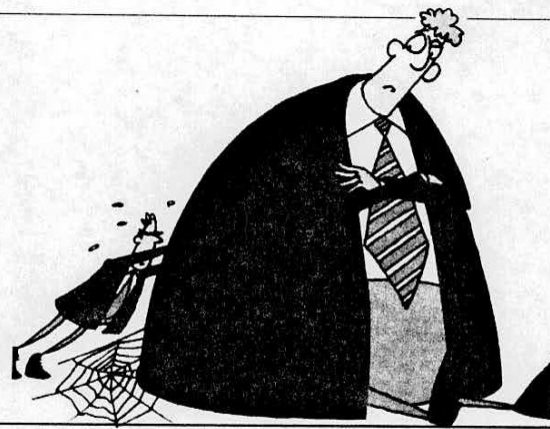
"As an independent director I must speak my mind. I may be friendly with promoters, but if they do not agree with me, they will have my resignation"

Pradip Kumar Khaitan

Is the Glass Ceiling Crumbling?

Most Popular Female Independent Directors

- Ramni Nirula **7** SEATS
- Ireena Gopal Vittal **6** SEATS
- Bharati Manohar Rao **6** SEATS
- Indira Jitendra Parikh **6** SEATS
- Punita Jayant Kumar Sinha **6** SEATS



ly not. It's a law firm and, yet, almost all senior partners at the firm end up with multiple board seats and hold on to them for ages. Sanjay Asher explains the beginning: "It started off when multinational corporations wanted alternate directors to sit on Indian boards in place of the expat board members. They wanted men with legal and business acumen who could ensure the companies were compliant legally and ethically."

To find reasons for the longevity on boards, one may look elsewhere too – as the phenomenon is not limited to Crawford Bayley or the legal profession either. Kolkata-based Pradip Khaitan, 75, who leads the legal firm Khaitan & Co as managing partner, has been on the board of OCL India for 49 years and Electrosteel Castings for 45; he also holds five more board seats as an independent director, taking his total to the maximum allowed seven. Now, his son Haigreve Khaitan, also a partner at Khaitan & Co, heading the mergers and acquisition practice, has six independent directorships. There are more examples.

Shailesh Haribhakti, managing partner of audit and accounting firm Haribhakti & Company, is on seven company boards as independent director. His sister-in-law (brother Vijay Haribhakti's wife), Radhika Haribhakti, an investment banker, is on the boards of five companies as independent director.

Shah's friend Madhav Apte, also 85, isn't a lawyer or a chartered accountant. In fact, he first made a name for himself



Forty Years, No Less ONCE ON BOARD, FOREVER ON BOARD

Pradip Kumar Daga
Century Textiles & Industries
54 YEARS ON BOARD

Rajendra Ambalal Shah
P&G Hygiene & Healthcare
53 YEARS

Rajendra Ambalal Shah
Pfizer India
52 YEARS

Pradip Kumar Khaitan
OCL India
49 YEARS

Surender Reddy Ramasahayam
Lakshmi Finance & Industrial Corp
49 YEARS

Rajendra Ambalal Shah
BASF India
49 YEARS

Madhav Laxman Apte
Bajaj Hindusthan Sugar
47 YEARS

Brij Mohan Khaitan
Jay Shree Tea & Industries
47 YEARS

Surinder Singh Bagal
Vardhman Holdings
46 YEARS

Hemraj Chaturbhuj Asher
Ingersoll Rand (India)
45 YEARS

Pradip Kumar Khaitan
Electrosteel Castings
45 YEARS

Hemraj Chaturbhuj Asher
The Indian Card Clothing Co
44 YEARS

Hemraj Chaturbhuj Asher
Monsanto India
44 YEARS

Devendra Motilal Kothari
Kansai Nerolac Paints
44 YEARS

Pradeep Kumar Singhi
Upper Ganges Sugar & Industries
44 YEARS

Purushottam Dass Bhoot
Vikas Ecotech
43 YEARS

Russli Jai Taraporewala
Standard Industries
43 YEARS

Aspy Rustom Broacha
KSB Pumps
42 YEARS

Damotharan Sarath Chandran
Super Spinning Mills
42 YEARS

Binod Kumar Khaitan
Electrosteel Castings
42 YEARS



playing cricket. Apte played seven Test matches for India as an opening batsman in the early 1950s, walking out with either Vinoo Mankad or Pankaj Roy and he played Ranji Trophy up to 1968. Apte sits on six boards as independent director, out of which he has been on the Bajaj Hindusthan Sugar board for 47 years and Grasim for more than 20. Apte's family firm, the Apte Group, was in the textiles and sugar businesses and, as a young man, Apte practised both cricket and business. But his decades of directorships of two large companies began with sports. Apte says he met Ramakrishna Bajaj while playing badminton at the Bombay Gymkhana. He met Aditya Birla too on the badminton courts of Willingdon Club. Bonds were formed over badminton, and finally led to board berths.

Currently, in India, the longest serving independent director on a company's board is also a businessman – Kolkata-based PK Daga, 79. Daga has been on the board of BK Birla Group company Century Textiles for 54 years. Daga agreed to be photographed for this story but refused to comment.

Clearly, in India, familiarity is the big box to be ticked, when it comes to independent directors. Pranav Haldea, managing director of Prime Database Group, which has created a catalogue of independent directors and also trains professionals for independent director roles, says: "While some companies use our database to create a shortlist to choose independent directors, the final choice depends on finding someone the promoter knows within that list or at least someone known to another director on the board."

If familiarity is a virtue, doesn't that raise a question on the independence? Rajendra Ambalal Shah tells *ET Magazine*: "The term independent director is an oxymoron. It is virtually contradictory." He adds: "Every director is expected to be independent and discharge his duties and obligations to all shareholders, particularly minority shareholders, objectively and passionately."

Pradip Khaitan points out: "The number of years is not an issue. A person may become cosy with the promoters in six months. Or it may not happen in decades."

Shackled by Tata-Wadia

One may not have to look too far for validation. The rebellion of independent directors on the boards of a few Tata companies, after the removal of Cyrus Mistry from the chairmanship of holding entity Tata Sons, is proof enough. The most high profile among those independent directors was Nusli Wadia, chairman of the Wadia Group. In December, the Tatas evicted Wadia from the boards of three Tata Group companies. He had been on the Tata Steel board as an independent director for 37 years; 35 years on Tata Chemicals. When Wadia had joined the two boards, Tatas were led by JRD Tata. Wadia is Tata's godson.

Madhav Apte knows Wadia well. From his flat on the 25th floor in Woodlands, a building developed on a plot of land where once the Apte family bungalow of the same name stood,



SHARAT CHANDRA

IN FOR THE LONG RUN

he points to a bungalow across Peddar Road where the Wadia family lived many decades ago. One of the companies where Apte is a director is the Wadia Group's Bombay Burmah, and Wadia has been an independent director in one of the Apte Group companies in the past. Apte has also been a director of Tata Asset Management in the past. "Wadia is a perfect gentleman. So are the Tatas. This could have been handled better," says Apte.

Hemraj Asher of Crawford Bayley feels the removal of Wadia from the board of three Tata companies is a bad precedent. "The institution of independent directors was coming along fine. But if the promoter can remove a director because he did not agree with him then where is the independence? The message that is going across is that the independent director may have to face the wrath of the promoter if he expresses his views too freely."

Khaitan feels that Tatas removed Wadia at a time when he was probably needed the most on the board. "The independent directors can often be the fire brigade on the board. I have handled a situation in a company in the past where I had to help the two promoter groups divide the company into two parts. It was possible because I was known to both the groups for a long time and they were also sure that I would not take sides in their battle. That is the value that long-time directors bring to a board."

Regulation Evolution

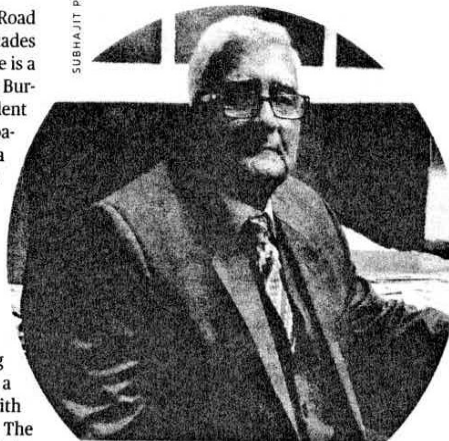
The tenure of independent directors has now been capped at 10 years. The revision in Clause 49 of the listing agreement with the stock exchanges and the amended Company's Act of 2013 have brought in the restrictions. While incumbents will continue for the time being – since tenures before March 31, 2015 will not be counted for the purpose of the cap – the practice of serving for decades on a board as an independent director will come to an end by 2024.

Some like Shah do not agree with the changes as he feels that each independent director is expected to have intimate knowledge of the industry. "It takes time for one to acquire such specialisation and expertise. Ten years is too short a time. The longer the tenure of a director, the greater the expertise he derives, which should not be wasted by cutting short or truncating his tenure."

Khaitan, meanwhile, feels that this would lead to boards shuffling their independent directors and people with varied experience coming on board. He also says that there is no bar on changing the status of a director and explains how the rules can be worked around to retain experience on the board. "In the past, a board that I was on needed an independent director. Instead of bringing in someone new, they preferred to change my status from non-independent director to independent director. Similarly, on another board my status was moved the other way, from independent to non-independent, to ensure I stayed within the cap of seven."

Women on the Board

Khaitan, however, is sceptical about the other most visible change, the introduction of women directors on listed company



Pradip Kumar Daga, 79

A Kolkata-based businessman, he has been on the board of Century Textiles for 54 years. He heads the Deepak Group of companies that include Deepak Spinners

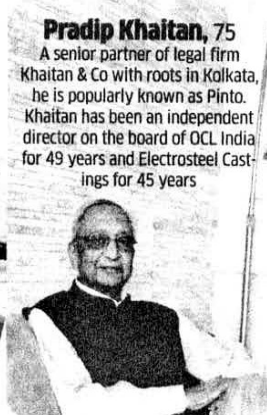
Rajendra Ambalal Shah, 85

A lawyer by profession, he is probably the most experienced among independent directors in India. He has been on the boards of Procter & Gamble and Pfizer for 53 years and 52 years respectively. He has also served on the BASF board for 49 years



Hemraj Chaturbhuj Asher, 83

A senior lawyer with Crawford, Bayley & Co, he has been an independent director on Ingersoll Rand board for 45 years and on the boards of Indian Card Clothing and Monsanto India for 44 years each



Pradip Khaitan, 75

A senior partner of legal firm Khaitan & Co with roots in Kolkata, he is popularly known as Pinto. Khaitan has been an independent director on the board of OCL India for 49 years and Electrosteel Castings for 45 years

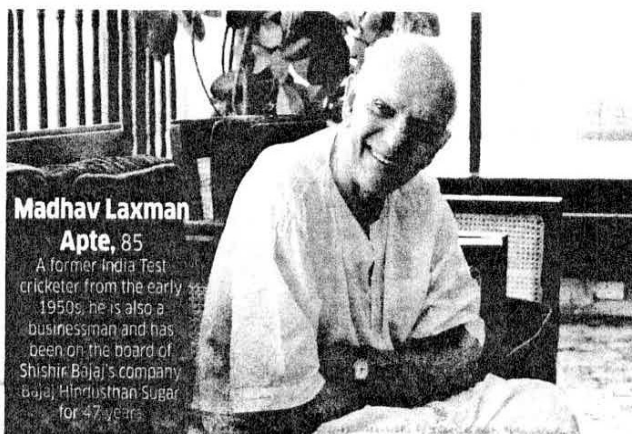
BM Khaitan, 88

Chairman of the Eveready Group of companies that include the world's largest tea producer McLeod Russel, he is also an independent director of Jaya Shree Tea for 47 years



Nusli Wadia, 72

The man in the eye of the storm, he has been on the Tata Steel board for 37 years and has served a combined 90 years on Tata boards when one counts his stints in Tata Motors and Tata Chemicals



Madhav Laxman

Apte, 85

A former India Test cricketer from the early 1950s, he is also a businessman and has been on the board of Shishir Bajaj's company Bajaj Hindusthan Sugar for 47 years

boards. "It has become a joke. I have seen promoters introduce women who are family members on the board but without any ability to contribute."

Haribhakti, however, feels it is a welcome change. He has worked on mentoring women directors in a programme with Ficci, apart from running a training programme at his own firm for preparing women for board seats. "The old boys' club is history," says Haribhakti about the new mandate for Indian company boards. Companies are looking far and wide to find new independent board members, women board members, and international search firms have also started working in India to help companies fill board seats, he adds. "The regulations on independent directors have been superbly cleaned up."

But has it made a difference? The question becomes important, especially with the Tata-Wadia spat in the background. A director like Apte would prefer to resign from a board if the management proposes to do something he cannot agree with. Khaitan says he has resigned from a few for such reasons in the past. The regulation mandates today that the director mention a reason for his quitting.

There are other sticky issues like the one of protection of income for the independent directors. Former bureaucrats or public sector officials who take on these roles often depend on the fees they earn as independent director on various boards. These annual fees can range from ₹10 lakh to ₹30 lakh, going up to as high as ₹2 crore for the top companies – incentive enough to not raise a dissenting voice.

Says Khaitan: "The role of the independent director is not envisaged to be one where they take over the company. The company has to be run by the promoters or the people who set it up. But I, as an independent director, must speak my mind. I may be friendly with them, but if they do not agree with me, they will have my resignation."

Haribhakti adds: "While independent directors are not supposed to be confrontational, they are supposed to guide the management in the right direction." He recalls a strong debate on the board of a company facing government action on forex derivatives in the last decade and the management wanted to fight it out in the courts. However, the board managed to persuade the management to own up to the problems and inform the press. "Today the company trades at 5x the value. It would not have if it had decided otherwise."

This delicate nature of the relationship between the promoter and the independent directors, who collectively have the power to red-flag or block related party transactions on company boards, still leads companies to seek out old favourites, someone they know or trust. It brings us back to Crawford Bayley, and Horniman Circle. The Asiatic Society Library's one claim to fame is that it has one of the two original copies of Italian poet Dante's *Divine Comedy* in its archives. In the book, Dante takes the reader through seven levels of hell, the lair of the devil. An Indian promoter, when choosing a new independent director, clearly follows an old proverb about the devil. Or, should we put it thus: the director you know is better than the one you don't know. ■