

# [Nominee on which the work is done by](https://assignbuster.com/nominee-on-which-the-work-is-done-by/)

Nomineedirector had been for a long time referred to as institutional director, after 1971; there were numerous numbers of nationalized institutions such as IDBI, IFCIandICICI which established their names. Generally, though the story is notdifferent from the current scenario too, it could be seen that they bythemselves had and now, have a glorious account. While engaging in the processof mobilizing and distributing the hard-earned saving of their customers andinvesting the same savings in the companies through the investment is obviouslyassociated with some form of risk but indeed now has gained positive image inthe eyes of the investors, and hence the financial institution to match theinterest of the company and also the institution itself, need to appoint someonein the board who take a look in their interest. The financial institution notonly looks for  the nominee director butalso make sure that the dealing of the company is not in such a way that thereis a compromise between the interest of the parties of the contract that is thefinancial institution and the company. The principles of the contract and theterms and condition of the same, actually along with the various  guidelines of Ministry of Corporate Affairs, 2003 and 20111, the Companies Act, 2013, and   for the nominee director are basis on whichthe work is done by Nominee Director. It is also important to analyze that inwhat ways they can be criminally liable and what all things the nominateddirector need to keep in mind while working in the interest of the II.

ANALYSIS OF CASE LAWS ANDJUDICIAL INTERPRETATION OF THE CASELAWS TO ASCERTAIN THE LIABILITES OF THENOMINAL DIRECTOR. 2. 1 Is nominal word “ real or amisnomer”? Nominalword in itself a disguise and a misnomer, the appointment of the Nominal directoris itself based on inter institutional basis by rotation, and barring exceptionregarding share, qualification, age limit as contemplated in and guided by section 6A of the Life InsuranceCorporation of India. Thoughpeople and the cooperate thinkers, generally do discuss that that the directornominated are nothing but are puppets of the institutions, and the election ofsuch nominee director is an empty formality. Thoughthe role and the duties of the directors have been envisaged by the Company LawAct, 2013 and there have been enough guide available about the same, it isquite easy that the role of the director who accept there directorship isnothing but a mix of statutory, regulatory and also partly depending on thelaws of agency along with partly that of a fiduciary relationship.

Underthe Companies Act, as it stood before the Companies (Amendment) Act, 1988, anofficer of an company who is default is, shall be liable to punishment orpenalty , whether  by way of imprisonment, fine or both. Theexpression has been clear in this regard and there is as such nodifferentiation between director, and say anyone else. In regards with companylaw, the officer who is knowingly guilty of the default, non-compliance, failure, refusal or contravention mentioned in that provision. Thoughthe general criminal law, the criminal liability result from the fault whichhas a personal touch or is personally committed by the person, and in thisregard it is just not an overt act but also contains omissions, the criminallaw regards the person responsible for his own crimes only. InDharma Prathistham vs. Union of India2, there was a prosecution which was launched against the trust and it wasreported that they falsely showed the expenditure and the purpose was to escapetax on its income. The President, along with the Vice-President was chargedunder the income tax act as they were those who were in charge of thestatements of the company.

They were charged under Section 2763 ofthe Income Tax Act, 1961. The trust also contended that it would not be liablefor any offence in which the offence requires mens rea. TheDelhi High Court held that-“ Those who manage or control the affairs ofthe company can be regarded as the legal mind of the company, because their actdefines the acts of the company, whenever they are managing the company’s affairsor acting in the capacity of the company. If the higher directorate has theguilty mind it is the guilt of the company.

Theanalysis of the case law suggest this clearly that  whoever manages the “ affairs of the company”  andthe “ affairs of the company” can beone which may be assigned to any one, and hence , one who has been assigned theparticular affair , if he or she commits the error or say a blunder, whilemanaging the affair company will be laibvle, similarly if the nominee directorhas been allotted a work and he while acting for the company or acting withinthe conbtractual limit, and the memorandum of association . 123