

What's the Ruling If Committee Money is Stolen From Organizer?

Darulifta Ahlesunnat

(Dawateislami)

Question

What do the noble scholars and jurists of Islamic law say about the following: What is the ruling if the money of the savings pool is stolen from the treasurer? Can the members demand their money from the treasurer or not?

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الْجَوَابُ بِعَوْنِ الْمَلِكِ الْوَهَّابِ اللَّهُمَّ هِدَايَةَ الْحَقِّ وَالصَّوَابِ

Before learning the ruling, it must be known that the money in the savings pool will either be considered a debt or Amanah (safekeeping) in the hands of the treasurer. If the savings pool members have directly or indirectly given the treasurer permission to use the money, it will be considered a debt. But if it is explicitly said that the money deposited by the members must be kept safe and the treasurer cannot use it, this money will be considered Amanah. If no such explicit statement indicates whether the money is a debt or Amanah, the 'Urf (common practice of people) will be observed. If the 'Urf is to deposit the money and give permission to the treasurer to use the money, it will be considered a debt, as is commonly done in the savings pool of the markets. However, if the 'Urf is to deposit the money as an Amanah, the money must be kept safe. This is the type of savings pool that is generally in people's homes. This money isn't used, and that same money is returned to the members.

After having understood this introduction, the answer to the question is: if the money is given as a debt, or the 'Urf is that the people deposit the money with permission to use and the money gets stolen, the treasurer will be responsible. This is because if a debt is stolen from a debtor, it will not affect the debt, and the creditor has the right to demand the money. When paying back the debt, a Misli (alike) item must be returned. Therefore, if the members demand their money, the treasurer must pay them.

If the money is given to the treasurer as an Amanah or the 'Urf is that the people deposit their money so the exact money can be kept safe, as is the case of the savings pools in most homes, the ruling of paying compensation is as follows: If the deposited item was lost or stolen due to the carelessness or shortcoming of the guardian, he will be accountable, whether the shortcoming was intentional, accidental, or forgetful. However, if there was no shortcoming in protecting the Amanah on the guardians part, he kept it in a safe place, even then it was stolen, the guardian will not be responsible. Therefore, if the money was stolen from the treasurer due to his carelessness, he must compensate for the stolen money. But if the treasurer kept the money safe and took all the necessary precautions to protect the money, yet it still was stolen, the treasurer would not have to compensate for it.

Defining debt, it is stated in *Tanwir al-Absar, Al-Durr al-Mukhtar*, and *Radd al-Muhtar*:

ما تعطيه من مثلى لتتقاضاه (كان عليه أن يقول لتتقاضى مثله) خرج نحو ودیعة وهبة أى خرج ودیعة وهبة (ونحو هما كعاریة وصدقة، لأنه یجب رد عین الودیعة والعاریة ولا یجب رد شیء فی الهبة والصدقة)

(Radd al-Muhtar 'Ala al-Durr al-Mukhtar, Book of Trades, Chapter of Debt, Vol. 7, p. 406-407, Publ. Quetta)

The safeguarding of the Amanah must be done as per the 'Urf. This means that all the precautions must be taken to safeguard the Amanah which people generally take. Otherwise, it must be compensated for if lost. Thus, it is stated in *Al-Fatawa Al-Hindiyah*:

اذا ربط دابة الودیعة على باب داره تركها ودخل الدار فضاغت ان كان بحیث یراهها فلا ضمان وان كان بحیث لا یراهها فان كان فی المصرف فهو ضامن وان كان فی القرى فلا ضمان وان كان ربطها فی الكرم وذهب قیل ان غابت عن بصره فهو ضامن وقیل یعتبر العرف فی هذا واجناسه هكذا فی الظهیریة

(Al-Fatawa al-Hindiyah, Book of Safekeeping, Vol. 4, p. 344, Publ. Quetta)

Compensation of Amanah isn't limited to intentional shortcomings. If the shortcoming in safekeeping the Amanah was mistakenly or forgetfully, even then it must be compensated for. It is stated in *Al-'Alamgiri*:

ان ظن أنه جعلها فی جیبه فاذا هی لم تدخل فی الجیب فعليه الضمان كذا فی المحيط

(Al-Fatawa al-Hindiyah, Book of Safekeeping, Vol. 4, p. 345, Publ. Quetta)

Even if the shortcoming in safekeeping is forgetful, it must be compensated for, as stated in *Al-Fatawa al-Hindiyyah*:

لو قال المودع وضعت الوديعة بين يدي قمت ونسيتها فضاغت ضمن وبه يفتي

(Al-Fatawa al-Hindiyyah, Book of Safekeeping, Vol. 4, p. 342, Publ. Quetta)

If the Amanah is lost because of the carelessness of the guardian, he is considered a Ghasib (seizer) and he must compensate for it. It is stated in *Fatawa Razawiyah*:

اگر دعویٰ استہلاک کا تھا یعنی اتنا زیور اسے عاریہ دیا تھا، اس نے تلف کر دیا تو اب یہ بعینہ دعویٰ غصب ہے اور اس کا حکم وہ ہے جو اوپر مذکور ہوا: ”وذلك لان الامانات تنقلب مضمونات بالتعدي والامين يعود به غاصبا“ یعنی یہ تاوان اس لئے ہے کہ امانتیں تعدی کی وجہ سے مضمون ہو جاتی ہیں اور امین اس تعدی کی وجہ سے غاصب ہو جاتا ہے۔

Translation: If one claims that the jewelry was given to so and so for safekeeping and he intentionally lost it, this in fact is a claim of Ghasab (steeling). The ruling for this is mentioned above: This compensation is necessary because an Amanah must be compensated for if lost due to carelessness, and the guardian will be considered a Ghasib (seizure) because of his carelessness. (Fatawa Razawiyah, Vol. 18, p. 411, Publ. Raza Foundation, Lahore)

وَاللّٰهُ اَعْلَمُ عَزَّوَجَلَّ وَرَسُوْلُهُ اَعْلَمُ صَلَّى اللّٰهُ تَعَالٰی عَلَیْهِ وَاٰلِهٖ وَسَلَّم

(Allah Almighty knows best and His Messenger صَلَّى اللّٰهُ عَلَیْهِ وَاٰلِهٖ وَسَلَّم knows best.)

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