WHISTLE-BLOWING AS AN ASPECT OF *AMAR MA'ARUF NAHI MUNKAR* IN INSTITUTIONAL GOVERNANCE

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ABSTRACT

A key challenge in preventing and fighting corruption is to detect and expose bribery, fraud, theft of public funds and other acts of wrongdoing. One of the most direct methods of exposing corruption in corporate or public institutions is whistleblowing. Many countries have introduced whistleblowing provisions to help deter corrupt behaviour and guide formal investigations into them. However, Muslim countries still lag far behind in this respect, perhaps out of structural inertia as well as the false belief that public disapprobation is not the way Muslims deal with one another. We argue that within reasonable limits whistleblowing is perfectly ingrained in Islam's "amr bi-l-ma'ruf wa-nahy 'an al-munkar" i.e., 'enjoining good and forbidding wrong' principle of social behaviour and is an important contributor to the society's overall Maqasid al-Shariah. It is also interesting that while many academic studies have established the link between cultural and ethical values and whistle-blowing motivations, very few specifically study whistle-blowing within the Islamic moral philosophy framework. This paper attempts to fill this void by drawing from important Muslim writings why whistleblowing should not be downplayed and suggests several codes of conducts principles which can be useful in guiding the crafting of whistleblowing systems. An implication for modern-day managers is that by leveraging on member's feelings of God-consciousness as well as awareness of whistleblowing obligations in religion, an organization's internal control can be greatly strengthened.

Keywords: Whistleblowing; corporate governance, enjoining good and forbidding wrong; Islamic perspectives.

1. INTRODUCTION

The injunction that Muslims should call each other to perform good deeds and refrain from committing harm is well-entrenched in the holy Quran *"And let there be from you a nation who invite to goodness and enjoin right conduct and forbid indecency"* (al-Baqarah:104). The establishment of al-Hisbah in early Muslim communities is an example how Muslim

communities institutionalized the *'amr bi-l-ma'ruf wa-nahy 'an al-munkar* (enjoining good forbidding wrong) principle. The Hisbah history began in the era of Caliphe `Umar Ibn Al-Khattab as a formal method to deal with immorality and corruption at the time (Sharifah Hayaati and Asmak, 2010). Its role is fundamental in ensuring that the society stays on the desired path and upholds the *maqasid Shari'ah* (objectives of *Shari'ah*). Unfortunately, enjoining good and forbidding wrong is no longer a concept regarded as commendable in Muslim life today as people grew more and more individualistic each day, leaving the task of creating public services and fighting evil solely on the authorities. Often times, employees who could have raised the alarm on potential harm or fraud chose to keep silent and assumed that the company is 'too big to fail' or that his observations may not lead to any meaningful outcome. Their silence have been shown to cause devastating effects on the economy for example Enron Corporation, the largest bankruptcy in American history in 2001, or Worldcom In public institutions, unresolved corruptions and malpractices are blamed for recent 'social awakening' in Arabs country such as Tunisia, Syria and Egypt.

A key challenge in preventing and fighting corruption is to detect and expose bribery, fraud, theft of public funds and other acts of wrongdoing. Despite various internal control structures, the most direct and methods of exposing corruption in corporate or public institutions is whistleblowing. Many countries have introduced whistleblowing provisions to help deter corrupt behaviour and guide formal investigations into them, but unfortunately these countries are not the ones that can benefit the most (e.g. the Muslim-majority countries). Why is whistleblowing not an important part of the fight against corruption in these countries, if Islam clearly encourages *"nahy 'an al-munkar"*? In academic literature, it is interesting that while many academic studies have established the link between cultural and ethical values and whistle-blowing motivations, very few specifically link whistleblowing with the Islamic moral philosophy framework.

This paper attempts to examine basic elements of whistleblowing and discuss how they compare with the 'enjoining good and forbidding wrong' model in Islamic *Shariah*. The second section review existing literature on whistleblowing. The third will discuss elements in whistleblowing conventional models and the "*'amr bi-l-ma'ruf wa-nahy 'an al-munkar*" model Brief comparative analysis discussed in fourth section while the final section concludes.

2. LITERATURE REVIEW

Although there is no standard definition for whistleblowing, it can be loosely defined as the act that "encompasses disclosure by employees and ex-employees of malpractice, as well as illegal acts or omissions at work"(Lewis and Uys, 2007). The International Labour Organisation (ILO) in 2005 describes it as " the reporting by employees or former employees of illegal, irregular, dangerous or unethical practices by employers".

The aforesaid definitions refers to whistleblowing by employees, yet report or complaints by external parties outside the organization are also considered as whistleblowing. In government context, Bowden and Smythe (2009) define "whistleblowing as the exposure, by people within or from outside and organization that are against the public interest, and that are not otherwise available" (Bowden and Smythe, 2009, p.114). Whistleblowing systems are now set up in organizations to encourage employees to be more accountable and restrain improper behavior, but fundamentally, to instill "a culture that encourages the challenge of inappropriate behaviour

at all levels" (Committee on Standards in Public Life Tenth Report, 2005). Whistleblowing procedures are vital tools of internal control environment within corporate organization, and provide "early warning signs" for the organization to act before greater disaster occurs (Read and Rama, 2003, Banisar, 2006). Of the 175 countries included under the Corruption Perceptions Index (CPI) 2014, we note that majority of participating Organization of Islamic Cooperation (OIC) countries scored less than 50 which indicates the perceived level of public sector corruption is at the high index. The cost of corruption has been estimated at US$ 148 billion a year in African countries alone which accounted 25 percent of their GDP (Jorge, Smith and Piet, 2007). All of the aforementioned statistics understate the need to incorporate whistleblowing into internal control systems to help identify individual wrongdoings which potentially present multifold effects on the organizations' customers, employees and other stakeholders.

In literature, a large number of studies have been conducted to investigate factors that drive a person to blow the whistle on corrupt behaviour or fraud. Important factors identified include job ethics, nature of the profession, religious beliefs, communal and family values grounded in their religious or humane traditions (Rothschild and Miethe, 1999). Other motivations can come in the form of sudden positive attention, fame, promotion, and monetary rewards as organizations may designate greater importance to whistleblowing as a mechanism for exposing and controlling organizational misconduct. Miethe and Rothschild's (1994) survey of 311 supervisors, showed that work experience and ethics training are significantly related to whistleblowing intention. Meanwhile, Ahmad, Smith, Ismail and Yunos (2011) and Abd, Ghani, Galbreath and Evans found there is no significant relationship between internal locus of control and whistleblowing intention. In contrast, there is significant relationship between ethical judgment and locus of control with whistleblowing intention in regards to mainland Chinese MBA students (Chiu, 2002). Vogel (1992) argued that whistleblowing is particularly affected by cultural contexts, as perceptions of right versus wrong, justice, morality and loyalty may differ very much in different countries.

While whistleblowers's disclosure help to save lives, protect human rights and safeguard the rule of law, they did so by taking on high personal risks. They may face victimization or dismissal from the workplace, their employer may sue (or threaten to sue) them for breach of confidentiality or libel, and they may be subject to criminal sanctions or other forms of retaliation (Brody, Coulter and Lin, 1999). Other forms of retaliation include ostracism by coworkers, long-term economic harm, and psychological injuries. Retaliation takes place even if the whistleblowing disclosure had been instrumental in preventing a crisis or great harm to the public. Even with protection provided by the law, retaliation threats are ever-present (Fels, 2012). These ethical dilemmas inherent in the decision for individuals to whistleblow are basically decided by the overall costs and benefits associated with the whistleblowing (Hwang, Staley, Chen, and Lan, 2008).

According to Vinten (1992), case studies have shown that although there has invariably been a strong public interest angle to the whistleblowing, the whistleblowers themselves, far from receiving the recognition and acclaim they deserve, have had to pay the sacrifice of persecution and often loss of livelihood. Positive whistleblowing should be recognized in its proper context, especially when viewed with religious lenses.

Studies specifically linking whistleblowing and Islamic teachings appear to be very scarce. Zulkifli (2009) showed that Islamic corporate governance, as adopted within Islamic financial institutions, provides better structural framework compared to the western corporate governance

perspectives. Iqbal (2001) compared Islamic and conventional banking institutions and showed that in general Islamic banks have done fairly well (in governance) during the period under study. That there is only one study directly on whistleblowing and Islamic sources by Nasir Wada Khalil clearly illustrates the absence of research on this matter.

The following section will briefly describe the concept and workings of a whistleblowing system as we might find it today. It will subsequently be followed by a section in which we discuss how whistleblowing fits into the "*'amr bi-l-ma'ruf wa-nahy 'an al-munkar*" social framework.

3. WHISTLEBLOWING IN CORPORATE GOVERNANCE PRACTICE

A whistleblowing system is essentially made up of four elements which we shall explore; (1) the whistleblower; (2) the information reported; (3) the procedure to report; (4) the whistleblower legislation and (5) code of conduct.

3.1. The Whistleblower

The whistleblower must adhere to rules and regulation required by organizations. Lewis and Uys (2007, p. 78) stated that "the UK provisions only apply to whistleblowers who act in good faith" that is similarly in South Africa Section 6(1) PDA 2000 protects a disclosure ''which is made in good faith; and substantially in accordance with any procedure prescribed, or authorized by the employee's employer for reporting or otherwise remedying the impropriety concerned.".

3.2. The Information

The information that needs to be reported must be one that pertains to a specific wrongdoing that has occurred or needs to be stopped. The information disclosed might be very sensitive involving improper conduct of people related (professionally) to the whistleblower. Laws of Malaysia Act 711 on Whistleblower Protection Act 2010 defines the critical information as one that concerns "any conduct which if proved, constitutes a disciplinary offence or a criminal offence.". Also, Vinten (1992, p. 78) suggests that the unauthorized disclosure of information that an employee reasonably believes points to the contravention of "any law, rule or regulation, code of practice, or professional statement, or that involves mismanagement, corruption, abuse of authority, or danger to public or worker health and safety". According to Section 43B(1) of United Kingdom's Employment Rights Act (ERA) 1996, the ''qualifying disclosure'' must be one which a worker reasonably believes tends to show a matter falling into one or more of the following categories; (1) a criminal offence; (2) a failure to comply with any legal obligation; (3) a miscarriage of justice; (4) danger to the health and safety of any individual; (5) damage to the environment; and (6) the deliberate concealment of information tending to show any of the matters listed above. From the definition by Bowden & Smythe (2009, p. 115), the information brought up is the act that must against the public interest which refers to "an action that brings or has the potential to bring harm, directly or indirectly, to the public at large, or to institutions of a just society, now or in the future, is an action against the public interest."

3.3. The Procedures

Internal whistleblowing refers to a report made to authorities within the same organization coming from employees, vendors, consultants, contractors, trainees, volunteers, temporary workers, former employees, job seekers and so forth. In special circumstances when the whistleblower feels the internal route is not safe and trusted, he might opt to report to parties outside the organization e.g., media, regulators or law enforcement agency, legislators, professional media and civil society organizations (Dehn, 2001). Companies should encourage their employees who suspects any improper conduct, wrongdoings, corruption, fraud, waste, or abuse to lodge a report in writing, by telephone, fax or e-mail.

3.4. The Legislation

An effective set of laws can facilitate disclosure and encourage open and accountable workplaces. The whistleblower protection legislation aims at shielding whistleblowers against possible retaliation and often includes, at the very minimum, measures to ensure that the identity of the whistleblower is not disclosed and that the whistleblower does not suffer from any social or material disadvantage as a result of his disclosure. International conventions such as The UN Convention against Corruption (UNCAC) (article 33), the Council of Europe Civil Law Convention on Corruption (article 9), the Inter-American Convention Against Corruption (article 3), the African Union Convention on Preventing and Combating Corruption (article 5), the Anti-Corruption Action Plan for Asia and the Pacific (pillar 3), the Southern African Development Community Protocol Against Corruption (article 4) commit the signatory countries to draft and implement whistleblowing regulations within their country's legal framework.

3.5. Code of conduct of whistleblower

Vinten (2000) provides a valuable summary of codes of conducts suggested by human resource experts including a rather detailed one by James (1994): (1) make sure that the situation is one that warrants whistleblowing; (2) examine your motives; (3) verify and document your information; (4) determine the type of wrong-doing involved and to whom it should be reported; (5) state your allegations in an appropriate way; (6) stick to the facts (not presumptions); (7) decide whether the whistle-blowing should be internal or external; (8) decide whether the whistle-blowing should be open or anonymous; (9) decide whether current or alumni whistleblowing is required; (10) make sure proper guidelines are followed in reporting the wrongdoing; (11) consult a lawyer; and (12) anticipate retaliation.

In order to appreciate how modern whistleblowing concept fits into the *'amr bi-l-ma'ruf wa-nahy 'an al-munkar* decree, we examine two most prominent works on the subject i.e., "Alchemy of Happiness" by Imam al-Ghazali (d. 505H) and "al-Hisbah" by Ibn Taymiya (d.728H). Drawing from guidelines suggested in these books, we hope to unveil some gems that can be used to strengthen existing corporate governance practices with respect to whistleblowing.

4. WHISTLEBLOWING IN *'AMR BI-L-MA'RUF WA-NAHY 'AN AL-MUNKAR* CONTEXT

Although the Holy Quran never explicitly described whistleblowing, the responsibility to constantly uphold good and forbid evil is well-emphasized in Al-Quran. Allah said in describing Prophet Muhammad (p.b.u.h)

"Those who follow the Messenger-Prophet, the Ummi, whom they find written down with them in the Taurah and the Injil, (who) enjoins them good and forbids the evil, and makes lawful to them the good things and makes unlawful to them impure things, and removes from them their burden and the shackles which were upon them; so (as for) those who believe in him and honor him and help him, and follow the light which has been sent down with him, these it is that are the successful" (al-A'raf:157).

According to Ibn Taymiya (1987, p.74), through this Allah indicated that His religion is perfected via His Messenger Rasulullah (p.b.u.h) who called towards goodness and forbade wrongdoings, made lawful only what is good (and pure) and prohibits people from what is bad (and impure). In other verses, Allah mentioned,

"You are the best nation brought forth for the people of the world; you enjoin right and you forbid wrong, and you believe in Allah" (Al-Imran:110)

"The believers, men and women, are awliyyaa' (helpers, supporters, friends, protectors) of one another: they enjoin good and forbid evil". (at-Taubah: 67)

"And Allah Most High said "Believing men and believing women are the protecting friends of each other: they enjoin right and they forbid wrong" (at-Taubah:71)

"Let there arise out of you a band of people inviting to all that is good, enjoining what is right, and forbidding what is wrong: They are the ones to attain felicity" (al-Imran:104).

Whilst *hisbah* which is usually referred to the act of promoting *'amr bi-l-ma'ruf wa-nahy 'an al-munkar* is often prescribed as an inherent characteristic of the believers, Ibn Taymiya and Imam al-Ghazali both agreed that it is primarily is collective obligation (or *jihad* i.e. struggle) or *fardhu kifayah*[1], ultimately leading to total good and benefit not just for Muslims but for all peoples of the world. Failure to carry out this obligation, without reasonable justifications, is akin to an act of rebellion towards Allah, according to al-Ghazali. The Prophet Muhammad (p.b.u.h) warned that permissive societies shall be punished with calamity; striking everyone without exception.

"Ibn Mas'ud reported that prophet Muhammad (p.b.u.h) said, "There was never a messenger (from God) who did not have disciples, that is, Companions who did not work after him with the Book of God and Practice (of the Prophet) until the time after them that some people appeared who mounted the pulpits and spoke fine words, but committed filthy deeds. It is the right and religious obligation incumbent upon every believer to fight against them by hand; if one is not able, then in words; and if one is not able, in his heart, there is no Islam beyond this." (Muslim)

In another hadith, Malik bin Dinar reported prophet Muhammad (p.b.u.h) said*"Allah Most High sent a revelation to an angel: 'Overturn such and such a city.' (The angel) said: 'O Lord God, How can I do this when such and such a person who has never committed a sin by even a winking of the eye is in there.' (Allah) said: ' Do it, for he never once frowned at the sins of others."* (Ibn Abbas, Tabrani, Baihaqi)

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[1] Fardhu Kifayah refers to obligations the fulfillment of which is not mandatory on every individual Muslim, but when it is done by other Muslims is the obligation falls from the rest.

Abu Bakar reported that prophet Muhammad (p.b.u.h) said *"There are no people in whose midst acts of disobedience are habitual, and who can change these habits but not change them, except that Allah visits them with a sweeping punishement."* (Abu Dawud, Tarmidzi, Ibn Majah)

Narrated by Aishah, prophet Muhammad (p.b.u.h) said *'Allah punishes all the inhabitants of a land in which there were 17,000 men whose deeds were like the deeds of the Prophets.' They asked: 'Why, O Rasulullah?' He said: "Because they were not angry at others for the sake of Allah Most High and they did not forbid their conduct.".* (Ibn Abi Dunya, Abu Syaikh, Ibrahim, Umar Sanai)

It is not difficult to see that the dire state of many Muslim countries today is a result of years upon years of 'silence' in the face of corruption and abuse of power in public and corporate organizations; which have now affected the human resource and capital growth for their economics. Internal and external whistleblowing cases are very rare and practically no whistleblowing system and protection laws are in place.

In the following discussion, we outline how Islam views whistleblowing's five elements in light of al-Ghazali and Ibn Taymiya's treatises on the subject of *alhisbah*.

4.1 The Guard

Al-Ghazali explained official mandate is needed the higher the degree of the guardianship responsibility. For instance, no official appointment is necessary when advising (first gently and then in stronger tones) a person against committing harm, or even when using physical force to stop the wrongdoer in this tracks. It follows that if all these fails, or are expected to fail, one would do better to report the wrongdoing to higher authorities, hence whistleblowing.

According to Ibn Taymiya, the mandated authority should comprise possessors of political and temporal power, and the people of knowledge and intellectual influence. In turn, members of the 'authority' must demonstrate certain qualities (i) knowledge (of the wrongful act and its implications) (ii) self-restraint and (iii) good nature. Ibn Taimiya gave two additional qualities (iv) gentleness and (v) patience. He also emphasized that *hisbah*, and by association, the whistleblowing report made, must only be done for the sake of Allah (in the interest of the public and not to gain attention or to exact revenge) and conforms to *Shari'ah* recommendations.

4.2 The information

The whistleblowing report must concern some perceived wrongdoing, or *'munkar'* which is anything that prohibited by Allah and His Messenger, not limited to criminal offenses or *haraam* behaviour, but includes breaches of legal obligation or trust, miscarriages of justice, causing danger to health, safety or the environment. Essentially, Muslims are obliged to protect the interests of people from harm or *mafsadah* in particular with respect to the five basic needs: religion, life, intellect, lineage and wealth as established in the *maqasid al-Shariah* framework. Imam al-Ghazali (d.505H) specified that the act must demonstrate four characteristics: (i) the act is reprehensible meaning it is prohibited by law or is indecent; (ii) the act is occurring or has occurred, meaning no report should be made based on suspicion alone; (iii) the act is observed without resorting to spying or intrusion of another person's

privacy; and (iv) it is truly obvious that the act is improper, not based on suspicion or personal judgment.

4.3   The Procedure

There is no specific recommendation about to whom a complaint or report is submitted, but from Muslim history during the four pious Caliphs, we learn that the public are free to voice their problems direct to the Caliphs or the governors of the region. Hence, circumstances provided for easy external disclosure and it is indeed common, perhaps because the public trust in the ruling institutions were high. In responding to the report about a wrongful act, the authorities must make every effort to uncover the actors leading to such behaviour, give proper counsel and sort out the underlying grievances of the perpetrator. Failing which, stronger methods can be employed to stop the act or punish the perpetrator.

4. 4   The protection

"Keep up prayer and enjoin the good and forbid the evil, and bear patiently that which befalls you; surely these acts require courage." (al-Lukman:17)

The above verse cautions would-be whistleblowers to anticipate retribution or rebuke and therefore, he should be strong for indeed Allah will reward him, and he is the Most Just. Al-Ghazali described three types of retribution, which we can draw inspiration from to help determine suitable responses. Firstly, the whistleblower should make the report even if it means possible loss of income or discrimination, except when the deprivation is immediate and he cannot cope with it. For instance, a man in need of immediate medical attention complaints about a doctor's behaviour or act, and since there is no other doctor available, there is possibility he will not obtain satisfactory and swift medical attention from the doctor. Secondly, the whistleblower need not make the report if there is strong reason to believe that the retaliation will involve major physical and financial loss, that is not tolerable with his existing ability and circumstances. The final type of retribution is one that causes harm on family members and relatives. If there is genuine risk someone can hurt his family to revenge his incriminating testimony to the authorities, he should not proceed to whistleblow. According to al-Ghazali, "to endure (the troubles) with respect to himself is lawful, but not with respect to others." Similarly, Ibn Taymiya emphasized that a good act is obligatory only when its benefit outweighs its negative consequences.

5.   CONCLUSION

Modern movements to promote whistleblowing laws are founded on the belief that the fight against corruption and fraud will be more effective if people are willing to give their direct accounts of the misdeed. Their selfless actions will help to save lives and money, protect public rights and safeguard the rule of law, all of which are consistent with the concept of "*maslahah*" in Islam i.e., whatever that brings benefits and repel harm. Imam al-Ghazali defined "*maslahah*" as "essentially an expression about the acquisition of benefit or the repulsion of injury or harm, but that is not what we mean by it, because acquisition of benefits and the repulsion of harm represent human goals, that is, the welfare of humans through the attainment of these goals. What we mean by *maslahah*, however is the preservation of the *Shari'ah's* objectives." (Ahmad Raysuni in Asyraf and Nurdianawati, 2007). In other words, by seeking *maslahah,* we will be able to uphold the *maqasid Shari'ah* at all times.

The paper summarizes the similarities and differences between modern whistleblowing and the religion-sanctioned *amr bi-l-ma'ruf wa-nahy 'an al-munkar* concepts by examining the main pillars i.e., the whistleblower or the guardian, the type of information that warrants a report to the authorities, the procedures involved, the system or legislation and the recommended codes of conduct. While the two systems shares the same purpose which is to expose wrongdoing that threatens public health and safety, financial integrity, human rights, the environment, and the rule of law. By disclosing information about misdeeds, whistleblowers help save countless lives and billions of dollars in public funds while preventing emerging scandals and disasters from worsening. In Islamic context, the function of *amr bi-l-ma'ruf wa-nahy 'an al-munkar* is one that is obligatory and should be carried solely for the sake of seeking Allah's pleasure. Given the number of injunctions that appeared in the Quran and *ahaadith,* as well as evidences from Muslim history and literature, it is rather baffling why whistleblowing is very rare in Muslim communities, where corruption, miscarriage of justice, fraud and other issues of corporate governance prevail. Future studies can examine this issue, and also how whistleblowing contributes to *Maqasid Sharia'ah* taking into account the three levels of wants: degree; *daruriyyah* (essential), *hajiyyat* (complimentary) and *tahsiniyyah* (embellishment).

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