

## Reducing Apathy in the Face of Corrupt Behaviour: Whistleblowing as an Act of *'Amr bi-l-ma'ruf wa-nahy 'an al-munkar*

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### Abstract

*Islam promotes 'amr bi-l-ma'ruf wa-nahy 'an al-munkar' or 'enjoining good and forbidding wrong' as the underlying basis of human social, political and economic interactions and core precursor in maximizing human welfare. However, in the business realm today, individuals tend to operate under the rational (i.e. maximizing welfare) mode, only that the welfare maximized is his alone. To curb this tendency, whistle-blowing provisions have been introduced by more and more institutions as one possible mechanism to deter wrongdoings or corrupt behaviour and guide formal investigations of wrongdoings in corporate or public institutions. Whistle-blowing has an undeniable value within the framework of "amr bi-l-ma'ruf wa-nahy 'an al-munkar" in institutional governance, alongside other educational and spiritual enhancement efforts. Many of the problems in private and public institutions in Muslim countries can be prevented if people had acted on their suspicions and prompted the authorities to intervene. While many studies have established the importance of cultural and ethical background in determining whistle-blowing motivations and system, very few specifically whistle-blowing within the Islamic doctrine of "amr bi-l-ma'ruf wa-nahy 'an al-munkar" and its implications on whistleblowing systems. This paper attempts to fill this void by drawing from elements of the Islamic hisbah system as outlined by Imam al-Ghazali (d. 505H) specifically that can be used to guide drafting of whistle-blowing systems generally. An implication for modern-day managers is that additional investment should ideally be made to leverage on religious feelings and God-consciousness with respect to individual role in enjoining good and forbidding wrong.*

Keywords : Whistleblowing; whistleblower; enjoining good and forbidding wrong; Islamic perspectives ; internal control;

### 1. Introduction

A repeatedly expressed anxiety today is that the spirit of 'enjoining good and forbidding evil' is fast diminishing from our society, and in economic context, this phenomenon could translate into billions of dollars lost or misappropriated, rise in rent-seeking activities and subtle destruction of future resources

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available to the society.<sup>†</sup> Many of today's disastrous events did not happen overnight, nor were there no witnesses or third-party bystanders who noticed something was off. Yet many probably did not take that one step needed to caution the wrongdoer of the implications of his acts. If the situation is too risky for a direct confrontation, one should seek ways to inform the powers that be to halt the wrongdoing. Many factors determine the decision of a person whether to blow the whistle or not, not least the prevalent but false assumptions that the companies are simply 'too big to fail' or that governments are too corrupt to take heed of the information supplied.

By not making any formal complaints regarding corruptions and abuse of power, institutional governance (particularly in the public sector) continue to deteriorate and can very well lead to revolutionary waves of violent and non-violent public demonstration against the government as seen in Arab Spring countries. Of the 183 countries included under the Corruption Perceptions Index (CPI) 2010 with high score above 7 to 9 presents less corruptions, Transparency International found that two third of the countries in the world scored less than 5, while most of Arab Spring countries rank in the lower half of the index with score below 4 whilst the lowest CPI for Eurozone countries are for those currently facing a debt crisis (Corruption Perception Index (CPI) And Corruption Barometer (CB) Results, 2011). Cost of corruption was estimated to be US\$ 148 billion a year in African countries alone, an amount equivalent to 25 percent of their GDP.

More recently, leaders around the globe were alarmed by the Edward Snowden's revelation of a global surveillance activities, which has since been classified as the largest intelligence leak involving United States security agencies and their counterparts in several countries. In the private sector, the burdens of corruption and abuse are equally adverse and widespread; mainly because corruption or fraud increases the cost of doing business. When an organization engages in corrupt behavior, the costs associated extend well beyond what can be found on a balance sheet, such as fines and penalties, but can also include lost business by way of sanction or debarment, reputational damage, and organizational turmoil, not to mention the costs on consumers and the public in general.<sup>‡</sup>

Theoretically, institutional governance may take formal and informal forms. Formal control systems tend to supervise and monitor internal compliance by using explicit measures. The systems work using a series of procedures from how to lodge a report up to legal clauses concerning protection of the whistleblower. By contrast, informal control works by shaping attitudes of the actors of the company through leveraging or enhancing their values, beliefs and unwritten traditions (Falkenberg and Herremans, 1995). As Snavelly and Snavelly (1990, p. 247) argued, "informal types of control coordinate employee behavior through interpersonal, social and/or cultural influence methods" and "emphasize work group norms based on shared values and beliefs among peers and learned through socialization". Essentially, an informal control system is composed of shared beliefs, values, moral standards and traditions that influence the behavior of employees (Ouchi, 1980).

In Muslim institutions, the system of informal control can be founded on the '*amr bi-l-ma'ruf wa-nahy 'an al-munkar*' (translated as '*enjoining good and forbidding wrong*') principle ordained via a number of Quranic verses and Prophetic traditions. The importance of exposing a wrongdoing where one

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<sup>†</sup> Subject of whistle-blowing include abuse of inmates in prisons or war prisoners, unlawful arrests and false police reports, misuse of political funds and connections, project costs overruns, false billings, price fixing between companies, cover-up of safety concerns and product defects, racial and gender discrimination, breach of national security, misreporting of scientific findings, corporate espionage, opaque awarding system of government procurements contracts and so on.

<sup>‡</sup> Classic large-scale corporate whistle-blowing examples include Enron Corporation and Worldcom in 2001 which subsequently collapsed due the failure of internal control systems.

thinks it is being committed is clearly embedded in Quran, the concept of '*amr bi-l-ma'ruf wa-nahy 'an al-munkar*' is repeatedly mentioned, for instance, "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) and "Believing men and believing women are the protecting friends of each other: they enjoin right and they forbid wrong" (at-Tauba:71).

Abu Hurayrah reported that prophet Muhammad (p.b.u.h), "Whoever among you witnesses a wrongdoing, let him change it with his hand. If he is unable, then let him change it with his tongue. If he is unable, then let him change it with his heart, and his is the weakest (form of) faith." (Muslim). These *naas* established that in Islam it is the obligation of every one to remind each other to do good and forbid wrongdoing; even though the limit of one's responsibility depends on his ability but it is made clear that no one is exempted.

Sadly, Muslim societies appear to be more and more permissive towards injustice, fraud and abuse of power that they see before them in the market and in the public offices. One of the reasons for this could be the mistaken belief that Muslims should put forgiveness and compassion for fellow Muslims before public reprimand of wrong behaviour. We also note that while a large number of academic studies have attempted to understand the link between propensity to whistle-blow and personal beliefs and culture, very little has been written about '*amr bi-l-ma'ruf wa-nahy 'an al-munkar*' principle as the major motivation for whistle-blowing and should rightfully, be the guiding philosophy in designing whistle-blowing systems within institutional governance structures. The few that attempted to do so (whether directly or indirectly) include one by (Khalil, 2000).

This paper seeks to review classical literatures on the "enjoining good and forbidding wrong" principle, in particular by Abu Hamid Muhammad b. Muhammad al-Tusi, or Imam al-Ghazali (d. 505H) in his *Ihya' Ulumuddin* (The Revivification of the Religious Sciences). In the second part of the *Ihya'*, al-Ghazali devoted a lengthy chapter to '*amr bi-l-ma'ruf wa-nahy 'an al-munkar*' describing the definition of the scope of behaviour to which this call applies, as well as code of conduct for executing it. Even without going into the polemics and debate regarding *al-hisbah* implementation in contemporary Muslim communities, the elements of '*amr bi-l-ma'ruf wa-nahy 'an al-munkar*' lends themselves very well to our understanding of how Islam views whistleblowing. Specifically, this study seeks to draw some perspectives of whistleblowing with respect to the following questions:

1. Who bears the responsibility to whistleblow?
2. Why is whistleblowing necessary?
3. What type of behaviour warrants a whistleblowing report?
4. What guidelines are suggested for the process of whistleblowing and for investigating the whistleblowing report?
5. How can whistleblowers be protected from retaliation?

Examination of the above aspects are expected to contribute to broader and better understanding of whistle-blowing motivations and suggest possible enhancement of existing whistle-blowing systems, i.e., they should not be limited to systems implemented in Muslim-managed institutions but should also benefit other institutions that possess the opportunity to leverage on existing system of shared beliefs or cultural programming.

In the following sections, the paper will examine the four basic fundamental elements of whistleblowing (1) the whistleblower; (2) the information reported; (3) the procedure to report; (4) the whistleblower protection measures. In the final section, a brief summary and some recommendations are given to enhance existing efforts in improving role of whistleblowing in institutional governance.

## 2. Whose Responsibility?

Ethics, as part of Islamic teaching guides the conduct of human life both personally and in the work place. The term most closely related with ethics in the Qur'an is *khuluq* as used in Surah al-Qalam:51 where Allah (SWT) describes His Apostle: "*And verily, for you (O Muhammad) are an on exalted standard of character*". Al Ghazali defined ethics as the characteristics and moral constitution of soul, Ashraf (1963) while Beekun (2001) defined it as "the set of moral principles that distinguish what is right from what is wrong." It is from this premise that the obligation to report wrongdoing comes into realization. In fact, it begins with the concept of *Shahadah* itself (witness attestation). By professing the Islamic faith, a Muslim is ultimately only answerable to Allah the alMighty. He is obliged to discharge this duty of attestation and this includes not concealing evidence when a wrongdoing is committed. In the Qur'an's Allah said "*And conceal not the evidence for he who hides it surely his heart is sinful, and Allah, is all-knower of what you do*" (al-Baqarah:283).

"Revealing" evidence of wrongdoing or in the modern context or whistleblowing is 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). Bowden and Smythe (2009) define "whistle-blowing as the exposure, by people within or from outside and organization that are against the public interest, and that are not otherwise available". The International Labour Organisation (ILO, 2005) describes it as "reporting by employees or former employees of illegal, irregular, dangerous or unethical practices by employers". While these definitions may appear to focus on whistle-blowing acts by employees that took place (and are kept thereafter) within the confines, and authority, of the organization, whistle-blowing can include incidences where reports are made by external parties for example clients, consumers, vendors and so forth.

Many studies have found that religious beliefs and cultural programming is indeed a major predictor of whistleblowing behaviour. A person will have higher propensity to blow the whistle on others if he or she strongly believes that a particular behavior was wrong, harmful, or illegal. The basis of belief is influenced primarily by their job ethics, religious beliefs, community and family values, or some combination of them (Miethe and Rothschild, 1994, Rothschild and Miethe, 1999, Hannah, Ahmad, Smith, Ismail and Mohamed Yunos, 2011, Chiu, 2002, Cherry, 2006, Bierstaker, 2009, Avolio and Walumbwa, 2011).<sup>§</sup> Vogel (1992) argued that since whistle-blowing is particularly affected by cultural contexts, perceptions of right versus wrong, justice, morality and loyalty should differ substantially in different countries. In organized religion such as Islam, individual's values and beliefs are strongly coloured by the distinction between obligations versus altruism, lawful versus unlawful acts, personal

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<sup>§</sup> Yet, other motivations can include desire for positive attention, fame, promotion, and monetary rewards as organizations designate greater importance to whistleblowing, and in some instances, publicize the nature and quantum of reward possibly gained for critical information provided. There is also growing evidence that the motivation to report is also affected by the type of wrong-doing and the cost of the wrongdoing, the quality of evidence that is available to the whistleblower and the type of possible retaliation that the would-be-whistleblower think could be afflicted on him (Near, Rehg, Van Scotter and Miceli, 2004).

rights versus society's rights, rewards (or punishment) which are immediate versus those which meted out in the Hereafter.

According to al-Ghazali, pursuit of '*amr bi-l-ma'ruf wa-nahy 'an al-munkar*' is an obligation upon all Muslims, such that he wrote, "whoever is religious is a guardian of public morality", "enjoining good and prohibiting evil is the foundation of the religion", (Karim, 1982, p. 224). This statement implied that it is both natural and mandatory for a faithful Muslim to promote the principle, even if he himself has sinned before. Said bin Jubayr, may Allah have mercy upon him, says: "If we must execute the guardianship only when we have not sinned, then we shall never be able to do so" (Nasr, 2002, p.16). When the scholar Hassan al-Basri, was told: "A person said: 'Do not summon the people (to God) before you first purify yourself completely.'" (Karim, 1982, p.220). Hassan then said: "Satan is in the hope of nothing more than that he is able to insert such words into our hearts so as to shut the gate of safeguarding public morality." The prophet Muhammad (p.b.u.h) was asked: "Should we enjoin the good and prohibit the bad, or first implement them ourselves?" He replied: "No, if you have not implemented all of them yourselves, do not hold back from safeguarding public morality.", (Khalil, 2000).

Nevertheless, it is prudent to examine the person's character whose testimony or evidence is used in a whistleblowing report. According to al-Ghazali, ideally he or she possesses three following qualities: (i) knowledge; (ii) fear of God (self-restraint) and (iii) good nature, (Karim, 1982, p. 240). Essentially, knowledge refers to the ability to distinguish between good and bad, between that is lawful and unlawful and other possible conflicts as mentioned earlier. Self-restraint in making a whistleblowing report is commendable, whilst over-zealousness and exaggeration are frowned upon.

The authorities should be wary of the information disclosed if there is even a slightest indication of ulterior motives (e.g. revenge, jealousy, bribery) on the part of the whistleblower. This principle is also embedded in various whistleblowing systems operating today. Lewis et. al (2007) noted that "the UK provisions only apply to whistleblowers who act in good faith". Similarly in South Africa's whistleblowing laws, Section 6(1) PDA 2000 only 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." Finally, a good-natured person is one who demonstrates certain qualities like patience, perseverance and free from greed, because whistleblowing is itself seldom without adverse consequences.

### 3. Why Would One Resort to Whistleblowing?

At the outset, because every Muslim man, woman and child are not exempted from the '*amr bi-l-ma'ruf wa-nahy 'an al-munkar*' responsibility, it would not be misleading to categorize it as individual obligation i.e., '*fard al-'ayn*', (Karim, 1982, p. 223). However, Ibn Taymiya and Imam al-Ghazali recognized that collective (sufficiency) obligation or '*fard al-kifayah*' is a more appropriate categorization. This is mainly based on the verse "*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).\*\* At all times, especially when individual virtues are weak and society's

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\*\* *Fard al-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.

permissiveness permeate all aspects of its economic, political and social lives, there must rise a group of Muslims to remind and call everyone towards right conduct and prevent further moral decay.

Such is the gravity of this collective responsibility that Imam al-Ghazali called it 'the greatest pillar' or *al-rukn al-'azim* of the religion, consequently its nonperformance must be viewed as an act of rebellion towards Allah s.w.t.. Nasr (2002). Only by internalizing '*amr bi-l-ma'ruf wa-nahy 'an al-munkar*' in every facet of life, the society is able to uphold and realize the objectives of man's existence as encapsulated by the *maqasid Shari'ah*. The Prophet Muhammad (p.b.u.h) had, in several traditions, warned that abandonment of '*amr bi-l-ma'ruf wa-nahy 'an al-munkar*' leads to terrible and widespread transgressions such that the people shall be punished severely and indiscriminately by Allah s.w.t.

Ibn Mas'ud reported that the prophet of Muhammad 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.*(Muslim)

Abu said Al-Khudri r.a reported that the prophet Muhammad (p.b.u.h) said : "*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.*"(Tarmizi, Nasai, Baihaqi, Bukhari, Muslim).

In another hadith, Malik bin Dinar reported that the 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)

Aishah r.a reported the prophet Muhammad (p.b.u.h) said: '*Allah punishes all the inhabitants of a land in which there were 18,000 men whose deeds were like the deeds of the Prophets.'* They asked: '*Why, O Rasulallah?*' 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).

Jabir bin Abdulah (R.A) Narrated a Hadith from the Prophet Muhammad (p.b.u.h) "*Discussions are confidential (not subject to disclosure) except in three places: Shedding unlawful blood, Unlawful cohabitation and Unlawful accumulation of wealth*". (Abu Dawud)

Zaid ibn Khalid reported the prophet Muhammad (p.b.u.h) says: "*May I tell you who is the best witness? He who testify his witness before asked to do so*".(Abu Dawud).

The final hadith suggests that reporting a wrongdoing is mandatory, whether the report is solicited or not. However, Sayyid Sabiq when commenting on this Hadith in his book *Fiqh al-Sunnah*, argued that in private cases, reporting is not mandatory unless solicited and only by the appropriate authority e.g., the *Qadhi* or the court of justice. If the wrongdoing involves the rights of others, the report should be made at all costs instantly.(Sabiq, 1996).

To sum up, there is clearly a very strong ideological motivation towards calling, reminding and cautioning others not to do harm, and hence making it possible one to easily appreciate why

whistleblowing should be an essential part of Muslim work ethos. Based on the various *haadith* above, it can be concluded that disapproval of a wrongdoing can take a progressive nature, beginning with (i) mental condemnation then (ii) speaking out against the wrongdoer directly; and (iii) use of physical measures to halt the event or on-going pattern of misbehaviour. Hence, whistleblowing may fall under the second and third type of reactions to wrongdoing, albeit using a third-party (likely one to be with greater authority) to reprimand or stop the wrongdoer.

Today, well-established whistleblowing procedures in institutions are considered vital tools of internal control and governance, helping to provide early warning signs of trouble and subsequently giving the authorities time to act and pre-empt disasters from happening, Read et.al (2003), Banisar (2006). More and more companies are investing in a strong internal control system that incorporates whistle-blowing procedures and protection, in order to protect its customers, employees, shareholders and other stakeholders in the society in the long run, Vinten (2000).

The establishment of various whistle-blowing mechanisms and protection laws in many countries of late is indeed a response to the growing institutional (and the general public's) awareness and approval of whistle-blowing as an important mechanism in forbidding wrongdoing, its success often surpassing the more expensive and cumbersome methods of internal control. A good system is in itself a deterrent to future wrong-doings as employees feel they are constantly watched and consequently will try to restrain improper behavior. In other words, an effective whistle-blowing system is one that is able to instill "a culture that encourages the challenge of inappropriate behaviour at all levels," (Committee 2005). Given the vastly rich ethical and legal resources within the *Shari'ah* in regards to deterring and dealing with inappropriate behaviour i.e., '*amr bi-l-ma'ruf wa-nahy 'an al-munkar*', it would be a shame if Muslim-majority institutions or Muslim-controlled governments continue to ignore the important role of whistleblowing in internal control and be lackadaisical in encouraging a healthy whistleblowing culture in their institutions.

#### 4. What Kind of Information?

The information that a person is considering to report or disclose must be one that pertains 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, presently or in the future. Ibn Taymiya simply defined wrongful acts or '*munkar*' as anything that is forbidden by Allah and His Messenger and '*ma'ruf*' "includes everything both internal and external which has been enjoined by Allah and His Messenger." (Taimiya 2011).

Two points can be derived from this definition. Firstly, it is paramount that the information in a whistleblowing case, it must be shown that there will be harm inflicted upon others (is against public interest), and not for the benefit of the whistleblower himself. This is also stressed by Glazer and Glazer (1989) and Bowden and Smythe (2009), that a whistle-blower is one who acts to prevent harm to others, not him or herself, even though this is likely to run against standard economic assumptions of rationality and self-interest. If whistleblowing causes the person to gain in any way from its expected outcomes, then his motivation is suspect. Similarly, the authorities should be wary if the allegations are made by problematic employees (e.g. incompetent or under-performing) as a way to remove his superior or benefit in other manners.

Secondly, the information must come within the scope for regulatory intervention i.e., forbidden or *haram* in the *Shari'ah* context. For instance, if someone wants to report what he perceives as a

wrongful act, he must make certain that there are legal provisions in the law prohibiting such practices and not concoct one as he pleases. One cannot simply judge an act as unlawful or *haram* if it is not, even with the best of intentions. This principle is also emphasized in modern whistleblowing legislations. Laws of Malaysia Act 711 on Whistleblower Protection Act 2010 stipulates that the information must be about “any conduct which if proved, constitutes a disciplinary offence or a criminal offence.”. Vinten (1992) suggests that “the unauthorized disclosure of information that an employee reasonably believes evidences 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”.

Section 43B(1) ERA 1996 for example, requires that the “qualifying disclosure” must be one that can be reasonably believed 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, Lewis et. al (2007). Having examined the ‘why’, ‘who’ and ‘what’ elements in whistleblowing in both Islamic and modern contexts, the paper proceeds in the next section to outline some general guidelines for the whole whistleblowing process.

## 5. Code of Conduct

Al-Ghazali outlined a number of steps in to be followed in the general case of “*nahy ‘an al-munkar*”, which lend themselves easily to a whistle-blowing system. He recommended that the steps are adopted in an incremental fashion to best avoid or minimize any backlash or resistance arising from a given report. Based on Al-Ghazali’s code of conduct for ‘*nahy ‘an al-munkar*’, we propose a unique set of codes for the whistleblower and the authorities to which the report is made. Some insights from contemporary whistleblowing literature are blended into the discussion to make it more meaningful and practical.

### 5.1 Code of Conduct of the whistleblower

#### 5.1.1 Learning the situation

This involves acquiring a thorough knowledge of the alleged unethical act, as well understanding the effects of such acts if not stopped. The whistle-blower must be satisfied that the information he is about to disclose is reasonably verified and critical to prevent or punish a wrongdoer from committing harm. However, al-Ghazali cautioned that the alleged act of wrongdoing must be one that is manifest (*zahir*), hence circumstantial evidences are simply not sufficient on their own. Equally important in whistleblowing cases, the wrongdoing must be established without spying (*tajassus*) and observable without requiring independent legal reasoning (Karim, 1982. p 237). If ultimately nothing can be proven or traced to the alleged perpetrator, and only circumstantial evidences exist, al-Ghazali advised that a more appropriate action is to counsel the person against the crime suspected of him.

#### 5.1.2 Ascertaining the perpetrator

In determining the person instigating or committing the alleged wrongdoing, it is beneficial to try to establish his motivations for it. In addition, the authorities must endeavour to ascertain the right



persons responsible (and their respective roles in the act) as reasonably possible. Vague and random allegations would not serve the institution well, as the authorities' witch-hunts and "guilty by association" approaches are often disruptive and have a lasting adverse effect on the morale of the members.

In this respect, the above guidelines do not vary substantially with codes of conduct offered in contemporary context. 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.<sup>††</sup>

## 5.2 Code of Conduct of the Authorities in dealing with Wrongdoers

### 5.2.1 Giving counsel gently, if unsuccessful, then sternly

In giving counsel to the perpetrator, the authorities can uncover the root causes of his dissatisfaction (e.g. poor working conditions, seemingly unfair promotion policies or rewards and supervision systems). This should be followed by advising him against continuing with the wrongful act, mainly by helping him to find ways to secure remedies for his dissatisfactions. If the approach fails, it is permissible to adopt a sterner stance, but only to instill fear and feelings of accountability in the perpetrator's mind about the consequences of his acts in this world and in the hereafter. There is no cause or room for the use of foul language or torture in this or any stage of the "*nahy 'an al-munkar*" process.

### 5.2.2 Changing (behavior) by causing fear of injury and warning

Where possible, the perpetrator should be physically stopped in his act. Threats may be used if kind advice and counsel has no effect on the wrongdoer. However, it is prohibited to threaten someone with something that is unlawful in essence, for instance, "I will hurt your wife and son." Similarly, according to al-Ghazali, it will unacceptable for the authorities to use lies in their threats, saying things that they do not intend to do, simply to frighten the person.

### 5.2.3 Applying physical force

Physical force is permissible but only if the wrongdoer does not want to cease his actions despite all the efforts undertaken by the authorities prior to this. Beating or other forms of physical acts are allowed, however, only upon non-vital body areas, and only to stop the person forcefully from committing further harm.

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<sup>††</sup> Internal whistle-blowing whereby the person makes a report through person inside the organization in writing, by telephone, fax or e-mail, while external can be made to parties outside the organization by means through media, regulators or law enforcement agency (Park and Blenkinsopp, 2009). Typically, people are forced to choose external disclosure only when they feel the internal route is not safe and trusted (Dehn, 2001) or all internal procedures have been exhausted to no avail.

Despite having a sufficiently comprehensive set of procedures and code of conduct for the whistle-blower, an institution must be ready to give specific countenance to whistle-blowers. While the guidelines above address the sequential approaches recommended for the whistle-blower and the investigating authorities, additional set of recommendations can also be inspired from Al-Ghazali's work with regards to protection of the whistle-blower. The next section looks into the issue of whistle-blower protection, drawing from both Islamic and contemporary conventions.

## 6. Whistleblower Protection

In the Quran, Allah s.w.t. said: *"Keep up prayer and enjoin the good and forbid the evil, and bear patiently that which befalls you; surely these acts require courage."* (al-Luqman:17). The verse reminds Muslim that the road to *'amr bi-l-ma'ruf wa-nahy 'an al-munkar'* is fraught with challenges and hardships. However, he must fight this course even if it might feel like he is throwing himself to destruction. A whistleblower knows that his actions can lead to him being ignored and ridiculed by his colleagues and superiors or subjected to more serious forms of retaliation (e.g. harassment, job loss, prosecution, ex-communication and so on in a long list of possible acts of reprisal).<sup>\*\*</sup>

In a classic work by Miceli, Rehg, Near and Ryan (1999), data collected over three time periods, from 1980 to 1992, show that while there have been massive improvements in whistleblowing procedures in U.S. federal offices, whistleblowers report higher rates of perceived retaliation and consequently demanded for greater anonymity. Threats of retaliation must not be completely ignored or avoided because they strongly affect the cost-benefits balance of whistleblowing ((Brody, Coulter and Lin, 1999, Rothschild and Miethe, 1999) Vinten, 1992, Hwang, Staley, Chen and Lan, 2008, Fels 2012). In their study, Qusqas and Kleiner (2001) concluded that the majority of employees who were aware of individual or corporate wrongdoings did not disclose their observations to anyone, mainly because they do not believe that corrective action will be taken effectively or because they do not wish to appear disloyal to the institutional unit they belong to.

What does Islam suggest with regards to whistleblowing protection? Based on the Quran in the verse quoted above, the whistleblower should come to expect retaliation on his physical self, his position, property, family, and relatives, for his incriminating testimony. Al-Ghazali classified the various forms of potential retaliation into three. Firstly, his superiors might deprive the whistleblower his salary or work promotion. To al-Ghazali, such threats, even if carried out, are not strong enough to stop the whistleblower from making the necessary disclosure. However, he made an exception where the deprivation is expected to happen immediately and can cause grievous harm. For example, a man rebukes (or reports) a doctor for an unethical gesture, and because of this, the doctor refuses to provide him the needed medical attention.

Secondly, if the whistleblower is threatened with loss of job, position, or with bodily harm or damage of property, he should consider the gravity of the consequences before deciding whether or not to make a disclosure. Finally, in the circumstance where his family and relatives' safety and welfare can be compromised (whether immediately or in the future e.g., the accused is likely to take revenge on his

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<sup>\*\*</sup> It is indeed the nature of man, that he enjoys pleasing others, more so if the other persons are closest to him and hold direct and indirect powers over his past and future well-being.

family), al-Ghazali argued that the whistleblower is no longer bound to carry out his responsibility. He wrote, “to endure (the troubles) with respect to himself is lawful, but not with respect to others.” (Nasr, 2002, p.16).

His view is supported in Ibn Taymiya’s discourse regarding ‘*amr bi-l-ma’ruf wa-nahy ‘an al-munkar*’, where he opined that the responsibility must be executed only when, “the benefit therein outweigh its negative consequences.” In summary:

- (i) If the good from an act is greater, then one must be enjoined to do it, even if it causes evil at a lesser degree.
- (ii) If the evil is greater, it must be forbidden, even though that means the loss of some good at a lesser degree.
- (iii) If the good and the evil cannot be separated and are of equal degree, both of them should neither be enjoined nor forbidden.

Ibn Taymiya made a very profound commentary regarding the right of the whistleblower to protect himself. He wrote that Allah enjoins “*maslahah*” (acts that are beneficial) and praises the “*musliheen*” (the person who performs “*salah*”). It follows that Allah does not like the opposite, “*fasad*” (acts that bring harm) and “*mufsidun*” (the person committing the “*fasad*”). As such, even in carrying out ‘*amr bi-l-ma’ruf wa-nahy ‘an al-munkar*’ responsibility, if the resulting *fasad* should be greater than its *maslahah*, a Muslim is absolved of this obligation. This can be taken to include the obligation to whistleblow if the would-be-whistleblower has overwhelming reasons to believe that the net outcome is *fasad* to him and his loved ones (e.g., due to insufficient legal physical protection against retaliatory acts and revenge) .(Taimiya, 2011, p 24).

## 7. Conclusion

The role of whistleblowing in institutional governance cannot be over-emphasized. In the Shari’ah framework, whistleblowing fits very well into “*amr bi-l-ma’ruf wa-nahy ‘an al-munkar*’ category of actions to bring about a safe and ethical society. This is consistent with the concept of “*maslahah*” as defined by al-Ghazali as an expression for the acquisition of benefit or the repulsion of injury or harm, leading to the preservation of the *Shari’ah*’s objectives (Raysuni, 2009). To summarize the points made in the paper, we draw a comparison between ‘whistleblowing’, as we know it in the modern context, and the *amr bi-l-ma’ruf wa-nahy ‘an al-munkar*’ concept in Table 1 below.

Table 1: Comparison between ‘whistleblowing’ and ‘*amr bi-l-ma’ruf wa-nahy ‘an al-munkar*’

Aspects	Whistleblowing	Enjoining Good Forbidding Wrong
Mandate	Enacted through the legal provisions.	Ordered by Allah s.w.t. through Shariah provisions.
Significance	Part of formal internal control mechanism in institutional governance	A ‘culture’ of constantly trying to realize <i>maslahah</i> and prevent <i>fasad</i>
Obligation	Voluntary	Collective obligation
Objective	To combating corruption, fraud or malpractices which are against the law	To uphold the <i>maqasid shari’ah</i> in realizing beneficial and preventing evils that based

	and harm public interests.	on Shariah law.
Intention	Influenced by belief, work experience, ethics training and cultural conditioning.	Guided by Quranic injunctions in al-Imran: 110 and at-Tauba:71, amongst others.
Code of Conduct	Internal reporting through a well thought-out whistleblowing system OR External disclosure i.e., reporting to the media and law enforcement authorities	The steps recommended by al-Ghazali to guide the actions of a whistleblower and the authorities to which the report was made.
Protection	Confidentiality, immunity from civil and criminal action and protection against retaliatory acts	A would-be whistleblower should carefully consider the net consequences of his decision. Either way, he leaves the rest to Allah s.w.t. as the All-Knowing, the Most Just and the Almighty Protector.

Trends in institutional governance show that legislators are working on successive levels of coercion to achieve an ideal of internal control. Each major scandal often brings about new layers of formal procedures and checks, reflecting the institution's willingness to improve its management (Heier et al., 2005). Nevertheless, internal control mechanisms including that concerns whistleblowing procedures and laws can work better if supplemented by informal (soft) controls drawn from members' belief, work experience, ethics training and cultural conditioning.

Most interesting of these factors is religious obligation of enjoining good and forbidding wrong. The paper has shown that whistleblowing in Muslim society is not an alien and certainly is not frowned upon, if guided by the many principles described above (e.g. not through spying, not for personal gains or revenge, no random accusation or witch-hunt and so on and so forth). More importantly, with the current state of Muslim organizations and governments, the courage to whistleblow on corrupt and unethical behaviour should be all the more lauded, as decreed in the verse "*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).

Nonetheless, in contemporary settings, whistleblowing mechanisms must always be devised in line with modern institutional framework for justice. For instance, Malaysia's Whistleblower Protection Act 2010 (WPA) does not recognize evidence (data or communication materials) that is stolen. Therefore the whistleblower will not obtain any protection under the WPA. Under this law, a whistleblower can provide evidence only if it is 'legally available through the course of his or her work'.

Therefore, data theft, which is a serious crime in many countries, will not be considered under the WPA. Furthermore, the WPA stipulates that protection is only given to the whistleblower if the report is lodged with any one of seven government agencies, namely the Royal Malaysian Police, the Malaysian Anti-Corruption Commission, the Royal Malaysian Customs Department, the Immigration Department, the Road Transport Department, the Companies Commission of Malaysia and the Securities Commission. Many of the sensational whistleblowing cases today in the country are in fact first exposed via local, albeit alternative media and some based on alleged stolen data (a crime which no society should be encouraging). Hence, there is actually an enormously interesting opportunity for future research and debate on the compatibility of Malaysian WPA, and indeed other countries' whistleblowing laws with Islamic principles of *amr bi-l-ma'ruf wa-nahy 'an al-munkar* in more thorough detail.

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