

ICLES 2018
International Conference on Law, Environment and Society

**WHISTLEBLOWING WHEN IT HURTS: WHISTLEBLOWER
GASLIGHTING AND INSTITUTIONAL SECRECY**

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Abstract

Whistleblowing has long been seen as an effective tool to combat many evils, among them corruption, malfeasance and the like. Whistleblowers themselves are often seen as the beacons of justice in a sea of murky misdeeds. However, there are still many instances where whistleblowers suffer as a result of their disclosures. Often seen as gaslighting, these are attempts made by agents or their institutions to silence whistleblowers, by launching a covert psychological warfare that attempts to undermine the whistleblower mentally and emotionally. Whistleblowing is the medium that can be used to ensure that good governance leads to accountability. Whistleblower gaslighting is where whistleblowers doubt their perceptions, capability, and competence, through manipulations done by the institutions involved, not unlike experienced by abuse victims. This paper discusses the relationship between whistleblowers and gaslighting within corporate governance, as whistleblower gaslighting gains more prominence within institutions in Malaysia.

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Keywords: Whistleblowing, gaslighting, whistleblower, governance, accountability.



1. Introduction

Whistleblowing has been defined as disclosures made on any misconduct, while whistleblowers are the ones who reveal wrongdoing within an organization to the public or to those who hold positions of authority. Whistleblowers could ensure that these corporations be held accountable for their wrongful actions, even though there are laws to punish corporate wrongdoings, it might be useless if the wrongful acts are not discovered in the first place. If there is whistleblowing, then this could help in almost guaranteeing that corporate misconduct would not go unpunished. Enhancing corporate governance is essential in promoting and achieving good corporate governance.

There have been reported cases, such as that of Enron, of how certain corporations are involved in numerous unscrupulous activities. Nevertheless, in most instances, they remain just that, suspicions and fears that a corporation is involved in some criminal activity, but without proof, that suspicious thought would remain as fleeting as a breeze on a hot day.

Codes of conduct are all very well and good, but it means naught if they do not protect whistleblowers. Whistleblowers face enormous pressure; before, during, and after blowing the whistle. The pressure comes in many forms, from their bosses, colleagues and even family. Whistleblowers are sometimes asked to look the other way or turn the other cheek, to ignore the misconducts occurring in front of them. This is seen as whistleblower gaslighting, whereby whistleblowers are demoralised and undermined in their attempts to expose misconducts.

Whistleblowers play an important part in exposing the various unsavoury elements in a corporation. Whistleblowing serves a dual purpose, in that, by exposing the wrongdoings of the corporation, it protects those who are in the corporation itself, as well as the society as a whole.

Whistleblowing is one of the top mechanisms which are important for implementing effective corporate behaviour in any institution or organization. Whistleblowing advances good corporate governance, which is essential to a corporation's growth and development (Sharma, Kanojia, & Sachdeva, 2018).

The term "whistleblower" was first used in the US 1963 case concerning one Otto Otopoka and this was also the first time the term whistleblowing was used in the USA (Petersen & Farrell, 1986). Otopoka was an American public servant had given classified documents to the chief counsel of the Senate Subcommittee on Internal Security, which could pose as a threat to the government administration. Mr. Otopoka's disclosure gesture was severely punished by the then Secretary of State who dismissed him from his functions for conduct unbecoming.

Ralph Nader legitimized the term "whistleblower" in 1971 to denote insiders who exposed scandal (Nader et al., 1972). Since then, the term has become widely used to describe people, more often than not employees, who exposed issues such as public health and safety, or frauds within their institutions to the outside world (Smith, 2018).

The term gaslighting originates from a 1938 play called Gas Light by Patrick Hamilton. In a later film of the same name, with Ingrid Bergman and Charles Boyer, Bergman plays a sensitive, trusting wife struggling to preserve her identity in an abusive marriage to Boyer, who tries to convince her that she's ill in order to keep her from learning the truth (Lancer, 2018). Meanwhile, gaslighting is a malicious and

insidious form of mental and emotional abuse, designed to plant seeds of self-doubt and alter your perception of reality.

Like all abuse, it is based on the need for power, control, or concealment. Some people occasionally lie or use denial to avoid taking responsibility. They may forget or remember conversations and events differently than you do, or they may have no recollection. These situations are sometimes called gaslighting, but the term actually refers to a deliberate pattern of manipulation calculated to make the victim trust the perpetrator while doubting his or her own perceptions or sanity, similar to brainwashing (Lancer, 2018).

Whistleblower gaslighting was first coined by Ahern, where she outlined the process of how a whistleblower is gaslighted into submission (Ahern, 2018). It is a repeated pattern of threats and behaviour that is used to instil fear in the victim without any physical violence needed, and it causes long-term trauma for the whistleblower. Gaslighting is an insidious form of abuse and is, by its very nature, sometimes difficult for victims to determine and recognise (Ghose, 2018).

One gaslighting strategy is to use this trust to force whistleblowers to repeatedly defend themselves against bogus disciplinary charges presented as genuine complaints. As a gaslighting strategy, the dual purpose of false charges is to both discredit and exhaust whistleblowers. Petty, spiteful acts are an important component in whistleblower gaslighting because the general public's assumption is that it is patently implausible for institutions, especially elite ones, to indulge in high school antics. The multiple minor social aggressions can be explained away, so when targets eventually react to repeated provocation, the depiction of whistleblowers as mentally and emotionally unstable is reinforced (Oransky, 2018).

The existence of a proactive whistleblowing system will encourage employee participation companies to be more daring to report the occurrence of fraud within the institution. The presence of a whistleblowing system brings significant changes, because the employees indirectly can supervise each other. The enforcement of existing whistleblower rules, especially of credible protection schemes for whistleblowers and communication channels for whistleblowing should be strengthened (Purnamawati, 2018).

One is reminded of the caution sounded by scholars of organizational behavior that progressive laws may be adopted from other jurisdictions but the organization charged with the enforcement of that laws may not be able to meet the standards of efficiency demanded by that law (Davis & Trebilcock, 2001).

2. Problem Statement

Whistleblowing has long been seen as an effective tool to combat evil, among them corruption, malfeasance and the like. However, there are instances where whistleblowers suffer due to their disclosures. To attain excellent corporate governance that would result in improved corporate accountability, whistleblowing is needed.

The term whistleblower is thought to originate from Victorian England whereby, when a crime was committed, the policemen, or as they are more commonly known in England, the 'bobbies', would blow a whistle while chasing the criminals to alert the public of the crime. Today, much like these past officers, modern whistleblowers that spot crime would "blow the whistle" and seek to alert the public.

The term 'whistleblowing' is becoming more and more commonplace. However, a proper understanding as to what constitutes whistleblowing is still needed (King, 1999). Despite the various

attempts made to promote whistleblowing, and even when whistleblowing is acknowledged to be meritorious, it typically results in victimization of whistleblowers.

In an environment of downsizing and new industrial relations laws even public servants having legal protection are warned to think more than twice before walking the whistleblower road (Connors, 1996). Whistleblowers are popularly associated with disloyalty and are called sneaks, spies, squealers and other despised forms of informer.

Therefore, judicious usage can help to isolate whistleblowers from other informers, and clarify that legitimate whistleblowing merits encouragement for its social benefits (Jubb, 1999). This distinction is important to ensure that honest whistleblowers would not be penalized when making disclosures.

3. Research Questions

- 3.1. How is whistleblowing perceived in institutions?
- 3.2. What are the protections available for whistleblowers in institutions?

4. Purpose of the Study

This study aims to identify how whistleblowing is perceived in institutions and if whistleblowers can expect any legal protections within these institutions. This will allow stakeholders to understand the extent that whistleblowing is or is not encouraged within institutions. This could also further lead to setting up disclosure channels in organisations, based on the prevailing best practices at that time.

5. Research Methods

This study will employ several methodologies that are inter-related.

- 5.1. A jurisprudential analysis involves an examination of the jurisprudential beginning for whistleblowing. The application of whistleblowing to other specific areas can only be justified on a jurisprudential basis, in that by using case law as the basis for the doctrinal analysis. This is especially relevant when looking at the possible doctrinal limits to the duty of confidentiality.
- 5.2. Legislations and judicial decisions from various countries such as the United Kingdom, United States, and Malaysia were studied, as well as legal writings and journalistic articles by academicians and scholars.
- 5.3. This is imperative in order to better understand the application and functions of whistleblowing in other countries and to determine how they can be inserted into local law. The area of whistleblowers protection in achieving effective governance along with its continued relevance or otherwise, were given utmost priority.

6. Findings

It is crucial to have in place an effective support system that can quickly receive, process and support victims (of organisational misbehaviour), whenever and wherever they may be. On 29th July 2018,

Malaysians were shocked by the headline in a national newspaper, The Star, entitled, “A Sex Predator is in the House”. The paper reported that several trainee doctors or housemen had fallen prey to the sexual advances and threats of the Head of the Orthopaedics department in a hospital in the Klang Valley. He targeted young female housemen, whom he felt were powerless against him as he ruled the department with an iron fist and had the power to fail them. As housemen would need good reviews and recommendations to becoming a full-fledged doctor, and relying on that power, the Head of Department (HOD) relentlessly pursued these ladies (Hanis & Chung, 2018a, 2018b). The HOD was then investigated and suspended from his place of work. No further action was taken, as the victims themselves melted into obscurity. This could have been caused by the unwanted attention by either the authorities or the media, but the fact remains that whistleblowers find it very hard to blow the whistle, due to the lack of protection given to them in Malaysia.

- 6.1.** Employees who flag problems or wrongdoing are quickly counter-investigated, almost always charged with creating a hostile work environment or other vague charges. Then the employee is then isolated, literally (Westervelt, 2018). Negative consequences to whistleblowers include occupational, legal, financial, socioemotional, and other (e.g., physical health, character assassination) effects (Pohjanoksa, Stolt, Suhonen, Löyttyniemi, & Leino-Kilpi, 2019). In the end, the victims shut down and keep their silence, let down by a system that was itself created to help others. This is then a form of whistleblower gaslighting, whereby the whistleblowers disclosures are disregarded and ignored, to a point where they feel that even if they were to blow the whistle, there is no point in doing so.
- 6.2.** When information is given in confidence, a duty of confidentiality arises at common law but the Act reemphasizes this duty by providing it as a statutory duty. Section 8(1) of the Malaysian Whistleblower Protection Act (WPA) 2010 provides the scheme of this confidentiality protection by inter alia, prohibiting the disclosure of the confidential information in any civil, criminal or other proceedings in any court, tribunal or other authority. In fact, sub-section 3 goes even further by providing that in any books, documents and papers which are in evidence or liable to inspection in any civil, criminal or other proceedings in any court, tribunal or other authority whatsoever, contain any entry in which any whistleblower is named or described or which might lead to his discovery, the court, tribunal or other authority before which the proceedings is had shall cause all such passages to be concealed from views or to be obliterated so far as is necessary to protect the whistleblower from discovery, but no further.
- 6.3.** Breach of this duty of confidentiality attracts a fine not exceeding fifty thousand ringgit or imprisonment for a term not exceeding ten years or both.
- 6.4.** Duty of confidentiality under the WPA 2010 is both statutory and equitable. Direct personal criminal sanction is imposed on the person who is the repository of that confidential information if he/she breaches his/her statutory duty but the WPA 2010 is silent as to the whistleblower’s right to resort to injunction against anticipated breach or unauthorized disclosure. The ultimate guarantee of confidentiality depends primarily on the competence and discretion of the investigation agency.

- 6.5. It is undeniable that the WPA 2010 (WPA) was inspired by the legislative experience of US and UK in dealing with the difficult question of whistleblowing and whistleblower protection.
- 6.6. Hence, a study of all the legislations above, together with the WPA 2010 Act is inevitably comparative in order to see if there are any flaws, and if so, what can be done to avoid them in the near future.

7. Conclusion

Recognizing the significant role played by whistleblowing, Malaysia has provided a comprehensive and very specialized legislation on whistleblower protection. This legislation attempts to provide protection to honest whistleblowers from the unimaginable range of reprisals made infamous by the tragic anecdotes. While protecting the whistleblowers for public disclosures, these legislations also act as a reminder to potential whistleblowers that someone is out there protecting and watching over them.

- 7.1. Sadly, as illustrated by the medical sexual harassment issues in Malaysia recently, there is still a long way to go. Whistleblowers would only be given due acknowledgment and recognition only when it's too late. Even then, it does not come without a price. As a result of whistleblower gaslighting, many whistleblowers suffer emotional and psychological scars, that might take a very long time to heal, or not at all. This will also affect their lives and their interaction with others.
- 7.2. Thus, many whistleblowers are still very hesitant to blow the whistle, in any circumstance. This is then why, even with such strong legislative measures in place, public apathy must be completely eliminated, to ensure that whistleblowing and whistleblowers alike, are given the respect and justice that they absolutely deserve.

Acknowledgments

This work was supported by Universiti Kebangsaan Malaysia under GGPM-2018-020

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