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Research Article

Translating Inter-country Adoption as Transcultural Communication

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Abstract

This article attempts to explore transcultural communication through the translated version of “Inter-country Adoption” of the National Civil Code, 2017 (the *Muluki Dewani Samhita*) Ain, 2074 BS). It observes the “Hague Adoption Convention, 1993” principles and the Manu’s idea of *dharmaputra* (adopted sob) mentioned in the “*Manusmriti*”, the law of Hindu, and its influence on the formation of adoption law in Nepal. The primary purpose of Nepali legal translation is to transfer Nepali legal culture for global communication. The cultural theory of translation developed by Lawrence Venuti and Marry Snell-Hornby and the equivalence theory of Eugene Nida and Peter Newmark are were used as the theoretical base for the study. The significance of this study is to the parents waiting for inter-country adoption and to the university students who have taken translation studies as their major subject. This article concludes that legal translation in Nepal is a strategy to deliver Nepali legal culture to the globe and vice versa.

Keywords: Code, translation, equivalence, culture, inter-country adoption

Introduction

Language communicates norms, conventions, cultures, and other behaviors of people in a society. No two languages communicate human ideas and feelings in

identical ways arising from different social and cultural backgrounds. The language including the legal language is influenced by linguistic and extralinguistic determinants in the process of communication. The culture, history, economics, politics, customs, value-laden concepts, and other factors affiliated with the language pose barriers to smooth communication in translation. Different legal cultures in which people live and work shape knowledge differently. Anne Wagner et al. point, out that "law shapes social knowledge within a specific language and culture" (27). People of comparative legal system shape the legal ideas that they are accustomed to. Translation does not bring enough meaning as exists in the source text results loss in translation or under translation.

When the intended meaning from the writer to the reader gets lost on the way, the translator has to play the role of mediator to fill the intended meaning that maintains quality in translation and it begins by analyzing different aspects of the source text. Janny HC Leung unfolds "the usefulness and merit of a translation are often measured by its closeness to an original in terms of several variables, including form, content, style, function and effect" (57). A translation needs to be equal both in manner and matter. In the case of non-equivalence in interlinguistic translation, the translator has to fill the gaps of knowledge by functional equivalence.

The extralinguistic elements like the translator's inability to transcode source legal concepts, the degree of low comprehension power in the readers, and the different places and times of production and reception of the work bring additional difficulties in translation comprehension. Even skillful translators and lawyers who are familiar with comparative legal systems may face challenges in transferring legal concepts from SL to TL. Govind Raj Bhattarai et al. give reference to Jean-Paul Vinay and Jean Darbelnet for their concept of translation equivalence that replicates the same situation as in the original, whilst using completely different wording (92). The linguistic and cultural determinants bring barriers to maintaining translation equivalence. This indicates that a translator needs to analyze linguistic and para-linguistic elements of SL and TL for the right selection of the nearest equivalent words that represent the original concept faithfully and avoid false friends in translation.

Literature Review

Nida divides translation equivalence into formal equivalence and dynamic equivalence. Formal equivalence carries the SL message to TL equally in terms of form and content and dynamic equivalence concentrates more on the principle of equivalent effect produced in translation (129). The formal equivalence reproduces linguistic units such as words, phrases, and sentences equivalently with no focus on the purpose of a translation, contrary to the dynamic equivalence that concentrates highly on the purpose of translation and tries best to maintain the spirit of SL in TL. The formal equivalence is ST-oriented translation and dynamic equivalence is TT-oriented translation. According to him the reproduction of grammatical units in translation is nouns by nouns and verbs by verbs, keeping all phrases and sentences intact (i.e., not splitting up and readjusting the units) and preserving all formal indicators, e.g. marks of punctuation and paragraph breaks (134). The formal equivalence is used in translating the New Testament of the Bible and translating Plato's Dialogues into English. On the other hand, the dynamic translation equivalence contrasts with the formal equivalence and focuses on "the closest natural equivalent to the source language message" (ibid). Dynamic equivalent primarily directs to the equivalence of response keeping the equivalence of the form aside. The three basic elements of dynamic translation are (a) *equivalent*, (b) *natural*, and (c) *closest*. The first element is the equivalence of the response in TL rather than the equivalence of the form of SL. The second element '*natural*' must fit the receptor's language and culture as a whole in the context of the particular message and the third is *closest* to the receptor-language audience (136). Further, Nida repeats J. H. Frere that "the language of translation ought, we think . . . be a pure, implacable and invisible element . . . all importations from foreign languages . . . to be avoided" (ibid).

Newmark discusses the translation equivalence as communicative equivalence vs. semantic equivalence. He defines semantic translation as "attempts to render, as closely as the semantic and syntactic structures of the second language allow, the exact contextual meaning of the original" (Fengling 33). Besides, his communicative translation attempts to render the contextual meaning of the original in such a way that both content and language are readily acceptable and comprehensive to the readership (47). The communicative translation is social and concentrates on the message and the main force of the text. It is simple, clear, and brief, and is always written in a natural and resourceful style (48). The

equivalence aims for the TL reader to read the text more natively and originally as SL readers do.

Comparatively, communicative translation equivalence equals Nida's dynamic equivalence whereas semantic translation equivalence resembles his formal equivalence. Communicative translation focuses on the reader, aiming at making the text more native and original. Meanwhile, semantic translation emphasizes the contextual meaning of the original (Fengling 33). Communicative translation aims to have the translation effect on the readers. Most of the non-literary writings, such as scientific and technical writings, public notices, and other informative texts are designed for informative purposes and suitable for this type. The purpose of semantic translation is to create precise flavor and tone of the original preserving the author's style. The quotations, autobiography, private correspondences, minor literature, definitions, and explanations suit formal equivalence (*ibid*). Both Nida and Newmark present the linguistic theory of translation that has a remarkable influence on the Western and Eastern translation cultures.

Lawrence Venuti discusses translation from cultural perspectives applying domestication or foreignization strategy. He favors the foreignizing method of translation and suggests that translators translate a foreign text preserving the foreignness of the foreign literature. He points that:

The translation is imitative yet transformative. It can and routinely does establish a semantic correspondence and a stylistic approximation to the source text. But these relations can never give back that text intact. Any text is a complex cultural artifact, supporting meanings, values, and functions that are indivisible from its original language and culture. Translation interprets a source-text process of signification and reception by creating another such process, supporting meanings, values, and functions that are indivisible from the translating language and culture. Change is unavoidable. (8)

Translation imitates the source text to bring similarities between the ST and TT not only semantically and stylistically but also culturally. A text plays amid and around complex cultural artifacts, values, and norms for its proper functionality. The text is recreated in a new culture, values, and norms that bring some sorts of unavoidable changes in translation. A translator presents his skill of transferring source language culture into the target language by domestication strategy. He/she

can send the reader abroad to gain new cultural experience of foreign text through translation.

Venuti uses the term "cultural translation" which implies that translation is a practice that mediates between cultures. On the one hand, it separates language from culture and, on the other hand, represses the actual medium in which the translation occurs (23). The language of the dominant culture based on military power and economic prosperity dominates the minor languages in the translation process leaving traces of linguistic imperialism.

Comparatively, the domestication method of translation by Venuti can be equated with the dynamic equivalence of Nida because it emphasizes naturalness and fluency to the target reader. Not a hindrance of the foreign elements in translation gets enjoyed by the target readers in their culture. However, Venuti suggests the translator as a reader be aware in the name of cultural symmetry or creating world culture by the domestication of the foreign cultural elements of the ST "resistance against ethnocentrism and racism, cultural narcissism and imperialism, in the interest of democratic geopolitical relations" (556).

Extralinguistic Influence on Nepali Law and Translation

Before discussing Nepali legal translation it is better to discuss the influencing factors on the Nepali legal system. Nepali law is influenced by the two major legal systems of the world: the Common Law System and the Civil Law System. In addition to this, it has been heavily influenced by Hindu jurisprudence. Kanak Bikram Thapa points out, "Prior to the codification of the Country Code (*Mulki Ain*) in 1854, the legal system of Nepal was very much influenced by religion. In ancient time, there was no difference between law and religion, between law and native religion" (921). This adapted religious and cultural terms in Nepali from the Sanskrit language creates a challenge in translating equivalently into English counterparts. A translator has to overcome this challenge by acquiring linguistic and cultural knowledge of ST and TT. Moreover, translation does not only transfer culture but creates pragmatic effects on the target language and culture.

How a translation creates a pragmatic effect on the readers of the "Speech Act Theory" of John Langshaw Austin is worth mentioning. According to this theory, a speech performs three internal acts: *locutionary*, *illocutionary* and *perlocutionary* i.e. the utter of a speech, the function of the speech and the effect of the speech on the receiver (Witczak-Plisieka 63-64). The social and political background that plays a vital role in bringing the law into action, the influencing

factors in the period of law drafting, and the motives of the law are crucial to be carried to the legal translation. Law is not just a word but performs an act with effect. Iwona Witczak-Plisieka agrees with J.L. Austin that “doing things with words is a common experience” (4). For example, when a judge utters, order! order !! order !!! in the court proceeding, it makes the chamber silent. The para-linguistic element associated with the term “order! is that the chamber is disturbed and needs a court proceeding environment. The associated meaning with the word “order!” means “silence” in legal translation which is different from the general meaning of command. Both linguistic and non-linguistic equivalents require maintaining legal translation to maintain the intended meaning of the legal text.

Snell-Hornby repeats Reiss idea to clarify linguistic and extralinguistic determinants in legal translation pointing out that “linguistic components are defined as semantic equivalence, lexical adequacy, grammatical correctness and stylistic correspondence, while the extra-linguistic determinants are the immediate situation, subject matters, the factors of time, place audience and speaker, and finally effective implication” (30). The linguistic and non-linguistic elements of ST are to be transferred in TT to make the translated text highly acceptable in the target language and culture. It is difficult to find complete equivalence in translation but approximation. The social, cultural, historical, comparative legal system, registrar, tone, and many other extralinguistic elements of ST affect the translation, and finding any of these elements in ST needs transferring in TT to maintain the intended meaning and legal effect to the target reader. Merely substitution of SL by TL does not bring quality in legal translation. More, knowledge of the language and legal systems of SL and TL, the purpose of translation, the cognitive power of the translator as a reader, and the understanding capacity of translation by the receiver determine the translation product.

A common challenge of global legal translators is transferring system-bound cultural terms of legal language. Language is part of culture and translating means transferring the SL culture to TL. Nepali legal translation is no way from this problem so Nepali legal translator while translating from Nepali to English has to analyze the Nepali legal text linguistically and extralinguistically before translation begins. As Anne Wagner et al. point law shapes social knowledge within a specific language and culture and transferring concepts from one language to another has become a challenge. It can sometimes be fully or partially transferred from the source language to the target language (27) more applies in

Nepali legal translation. Some Nepali legal concepts of family law are derived from Hindu jurisprudence so finding complete equivalence of this concept in TL is a challenge to Nepali legal translators. These can be transferred partially giving explanatory notes in translation that fill the cultural gap of translation. For Wagner and J.C. Gemar, "translatability is an act of cross-cultural communication, which implies matching cultural elements of two different languages rather than only considering the linguistic elements" (qtd. in Wagner et al. 27).

Contrast to the scientific or technical terminology, each country develops native legal terminologies as per the national legal requirements. This makes legal terminologies different from country to country though countries use the same language. Law is a social phenomenon and product of a culture that inherits unique characteristics from the society where it produces and comes into practice. Society shapes the law or legal system as per the social needs such as the Westerner concept of marriage and divorce does not equate with Nepali legal concept in which religious features mix with the marriage law. Similarly, the translation of "*dharmapurtra*" into "adoption" of English does not carry the same meaning as the SL term because of linguistic and cultural differences available in the East and the West. The word son is '*putra*' is a Sanskrit word borrowed into Nepali language. It is divided into "pu+tra" stands means performing ritualistic works at parents' demise to release from the hellish river known as "put" in Hindu mythology. The term '*dharmaputra*' (adopted son) is not only for legal purposes but also for religious and social purposes in Hinduism so this concept of adopted son differs from the Western concept. In Western society, the best interest of the child is the reason for adoption. Westerners do not adopt children for religious purposes but from a social and humanitarian point of view as the Convention on the Right of Children (CRC), 1989 reads.

In Nepal's context regarding the legalization of adoption, one has to go to the law of the land, the *Muluki Ain* 1854 of Nepal in which there was a provision for adoption by law. Many laws have been formulated in Nepal to address Nepali social, political, financial, and cultural issues like adoption, marriage, separation partition share, etc. since then. Currently, more than three hundred parliamentary acts and a federal constitution are working effectively to address Nepali social issues. Haribansa Tripathi points Nepal has promulgated seven constitutions since 1948 to address national issues of Nepal but the result is not as expected (113-14). Nepal drafts Nepali laws in the Nepali language and later translates them into English as per the needs, unlike Canadian practice where co-drafting a

multilingual system is popular. Nepal has been translating the international conventions into the Nepali language as a party state for the information and modification of domestic laws. The Supreme Court of Nepal translates selective landmark decisions of the court into English for transcultural communication.

This research limits within the “intercountry adoption” of Nepal and analyzes the conceptual similarities or differences in comparison to The Hague Convention on adoption and the religious backup of the *Manusmriti*, the law of Manu, for the formation Nepali adoption law and its translation in English for intercultural knowledge communication of law in the legal world.

Intercultural Aspects of Intercountry Adoption

‘Adoption’ is a legal process for transferring children from biological home to adoptive home. Most of the downtrodden or abandoned children by poverty or social stigma to the unwed mother are waiting for intercountry adoption. From the beginning of human civilization the culture of adoption avails in the world either from a humanitarian or religious point of view. The provision of intercountry adoption legally opens the door for the opportunity to transfer children from one country to another for the security of nutritious food, a safe home, and better education to the children that helps to promote the dignity of life in children. After the statutory adoption, it creates some obligations and responsibilities between parents and children. Both are bound to each other by law and social accountability.

The Hindu religious law encourages Hindu parents to adopt a son better than a daughter. They take the son necessary in life and perform ritualistic work after life. The daughters are authorized for the ritualistic work known *shradha or pinda dana karma* (offering funeral cake to the demised). The English term “adoption” is translated equivalently “Dharma Putra/Putri” in Nepali which is borrowed from Sanskrit term “Dharma +Putra”. Putra can be subdivided into pu+tra. According to Manusmriti (9.138), if you have a son, he makes you not go to the hellish river “put” at death by his earthly ritualistic work *shradha or pinda dana karma*. Etymologically, the term derives its meaning from Sanskrit as *put namanarakattarayateiti "putra"* (a son releases dead parents from the hellish river “put”. Son performs funeral ceremony and offers *Sraddha* twice in a year in accordance with Hindu religious customs. Rami Sivam, who is known as a priest, religious preacher and government advisor, suggests to have a son quoting Manu’s word that a man who does not give birth to a son should appoint a “son”

to perform ritualistic work to go out of “put” river. This shows that “adoption under the Hindu law is primarily for religious act” (Menon 212). Either natural or adopted Hinduism demands a son and adoption has taken place since the beginning.

Manu further points if a man who has adopted (*datrima*) a son possessing all good qualities, the son shall take the inheritance from the adoptive parents (9.141). The adopted son terminates the biological father’s caste, *gotra* (unbroken descendant from a male ancestor), and property but inherits all from the adoptive parents and provides them funeral cake (*pinda dana*) (9.142).

Continuing this religious norms, Nepali law of the land, *Muluki Ain* 1963, makes the provision of "Adoption" reads that “a person except one who has his or her son or daughter may adopt a son or daughter by executing a deed to that effects” (chap. 15, sec.1). This law restricts the persons to give their single son or daughter for adoption. The law rules that a person who has a single son or daughter shall not give and take in adoption. If done this is voidable (sec. 12). There is a provision of "Inter-country Adoption” in section 12(a) which reads if any foreign nationality wishes to adopt any Nepali child as his/her son or daughter in accordance with the law, the government of Nepal may, after considering the character and economic condition of such a foreigner and on recommendation of the concerned foreign government or embassy permits for the adoption if such terms and conditions the government of Nepal finds appropriate. Considering the best interest of the child the government of Nepal only gives the children for foreign adoption if the law of the receiving country does not discriminate the adopted son or daughter as their natural children for their legal and cultural rights (sec. 12b).

When the "Protection of Children and Co-operation in Respect of Inter-country Adoption" appeared in 1993 (known as "Hague Convention"), this international instrument motivated global parents for inter-country adoption and countries invented or amended domestic legislation as per the Hague Convention. It is good news for the global children who will get not only national but also international attention for adoption. The focus of the law is the affection, charity, and responsibility to the children beyond the border. Lynn D. Wardle points out:

International adoptions make the world a better place; there are few international transactions that compare with the selfless, charitable, and compassionate act of responsible adults taking stranger children from

foreign countries and cultures into their homes, as members of their own families, and assuming the obligation to feed, clothe, house, teach, love, nurture and protect the children until they become adults. Intercountry adoption is usually a magnificent and wonderfully humane commitment of service and love. (113)

For the settlement of the abandoned and unsettled children, intercountry adoption functions under the jurisdiction of international private law. Humanitarian support, charity, and love for the children are the guiding principles to the intercountry adoption. Nepal makes provision of intercountry adoption in the National Civil Code, 2017 (part 3, chapter 9).

When Nepal enacted the intercountry adoption as per the Hague Convention, this was translated into English for global communication. The SL legal provision is equivalently translated in TL, however, there are some different native provisions such as the minimum age difference between the adoptive parents and the adoptive child, the prohibited degree of adoption, the nature of the family, appropriate home to a special care child, the social stigma for unwed mother, the subsidy given to the poor family if adopted, the cultural trend of intercountry adoption, the social security, abuse on child are some differences between Nepali law and Hague Convention.

National Civil Code of Nepal is silence on the lesbian or civil partners for the adoption work. This law does not limit the child age but the Hague Convention limits the age under 18 (art.3). The intercountry adoption from Nepal is that the foreign couples completing ten years of their marriage have no birth and falls under 45-55 years old. The unmarried man, woman, widow, divorcee, and the person with judicial separation having no child can apply for the intercountry adoption. The person with a criminal record inflicted penalty by the decision of the court shall be illegible for adoption as per the Nepali law. If the receiving country law allows adoption more than single child despite their biological children, Nepali law permits for the adoption (sec. 192(1)(2)(3)(4).

Further, we can analyze the provision that a couple completing 10 years of married life with no children is unlikely to have their biological children and this may bring a reverse effect in conjugal life. A female between the age of 45-55 years and living unmarried or divorcee or judicial separation can love and rear a child well. The judicial proved criminal is restricted for the adoption in the sense that the child will not learn good things from such parent and is likely to be

abused. The best interest of the child is the pivotal for adoption. The appropriate matching between the child and the family helps to make a permanent home for the child.

Additional cross-cultural communication of this law is the formation of central board for the recommendation of the intercountry adoption. It can be formed either by publishing a notice in the Nepal Gazette or giving the work to a government office under the social sector. The person who spent a minimum of 15 years in the social welfare can be eligible for the board member (sect 193.2). The applicant can adopt a Nepali child or a foreign child living in Nepal applying through the Embassy of Nepal works for his/her country. In the absence of such an embassy, he/she can apply to the given embassy or the central body of the country that allows intercountry adoption by submitting the necessary documents.

The necessary documents for the application are the applicant's birth registration certificate, recent photo, passport photocopy, certified marital status, health certificate, moral character certificate, certificate against criminal and moral offence, property and income source, the social, psychological and home study report, the age and sex and other details for child adoption including no objection letter from the applicant's Government to adopt child in Nepal, the letter of guarantee issued by the government of the concerned country or by the embassy of that country based in Nepal or designated for Nepal indicating that according to the law of the applicant's native country the status of the person to be adopted is equal to that of the applicant's biological children, the letter of guarantee issued by the government of the applicant's home country, embassy of that country based in Nepal or designated for Nepal indicating that, according to the law of the applicant's home country, the applicant is qualified to make adoption and has the financial capacity to bear all responsibilities including maintenance, health care and education and protection to the minor being adopted. (sec.194).

The legal provision for intercountry adoption suggest that Nepali intercountry adoption is more guided by Hague Child Adoption Convention in the later phase of Nepali law. In addition to these, there is the provision of selection committee (sec. 195) that recommends the Board to the types of a child being adopted after an in-depth study of the parents and the child's background. The permission for adoption is granted as per the section 197 of law if all the requirement are met. The special provision for selecting appropriate families requiring special care to the minors consists in the law. Section 198 reads for the children who need special

care for the immaturity gained by the age, physical or mental abnormal state, orphans, voluntarily abandoned children, and handicapped ones. Section 199 is for the recognized persons such as the head of the state/executive, chief of the international organization, noble prize laureate and a person or entrepreneur who has more than three hundred thousand American dollars in annual income.

The report of intercountry adoption shall be submitted to the Government of Nepal at half yearly for the first two years and annually thereafter through the concerned country's Nepali Embassy or Consulate Office or Nepali mission regarding Nepali children adopted by the foreigners (sec. 200). The monitoring can be done by the Board itself either the adopted Nepali children are being cared well in terms of their health, education and maintenance until they attend the age of 18 years or not (sec. 201).

If the intercountry adopted children are not properly cared as per the legal spirit of the delivered and accepted countries or inconsistency to the Hague Convention, the adoption can be terminated by filing a case in the court of the concerned country within one year from the violation of the law (sec. 203). If Nepali parents become victims by this law, he/she can sue in the court of Nepal within one year being victimized (sec. 204).

Conclusion

This research concludes that Nepali legal translation of intercountry adoption maintains equivalence between ST and TT and communicates Nepali intercountry adoption legal culture to the globe using English as a lingua franca. Despite the unique language, culture and legal system of Nepal the institutional translators attempt to maintain equivalence between the ST and TT in matter and manner. In principle, one country's law is not translated into other country's law due to the different language and legal culture (system) and it leaves some gaps in cognitive understanding, however, a legal translator can fill these gaps by his extralinguistic knowledge such as comparative legal system and legal culture of SL and TL. Legal language is also a part of legal culture and can be transferred to the target language and culture through translation. Even the non-equivalence SL term can be transferred to the TL legal system by dynamic equivalence properly analyzing the SL concept and giving conceptual equivalence to TL preserving the foreignness of the foreign legal culture with explanatory notes. So, critics satirically compare translation with a girl: beautiful not faithful, faithful not beautiful.

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