

Translation Techniques Used to Transfer Legal Culture to the Criminal Offences (Sentencing and Execution) Act, 2017

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Abstract

This research examines the translation techniques used to transfer legal culture to the Criminal Offences (Sentencing and Execution) Act 2017 of Nepal, focusing on the conveyance of sentencing and execution principles to the criminal justice system. The study claims that the source language (SL) legal culture can be transferred to the target language (TL) using various translation techniques, which are determined by the nature of the text, the purpose of translation, and the readers' knowledge of comparative laws and legal systems, and explores the translation techniques applied to transfer the English penal culture to the mentioned law. It reviews the translation techniques used in words, sentences, grammar, and text at both the linguistic and extra-linguistic cultural levels using the translation technique of Vinay and Darbelnet. The significance of the study is for translation students and novice translators who learn how translation techniques are used to transfer culture from one language and legal system to another. This search concludes that competence in translation techniques enables translators to transfer the SL culture into the TL.

Keywords: translation, technique, transfer, culture, legal, source language

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Introduction

Translation techniques are the methods used to convey the SL message to the TL readers equivalently. These techniques play a role in transferring the SL culture to the TL to bring equivalence in message and equivalent effect between the SL and the TL readers and facilitate cultural mediation. A legal translator makes an effort to transfer the SL culture and legal effect to the TL through translation. The translator selects required translation strategies to transfer SL's legal culture to the TL, acquiring SL and TL linguistic knowledge and comparative law. The correct use of translation strategies conveys the SL message to the TL with fidelity and correctly. The register (varieties of languages needed to address the specific situations), tenor (relationship of text producer and receiver), and tone (overall feeling conveyed by the text, creating fear, sincerity, or any sentiment). The primary objective of a

legal translation goes beyond linguistic transcoding and transfers the knowledge, experiences, and legal behaviors of SL into TL. So, this research explores how the cultural notion of the SL (English) law is transferred to the TL (Nepali) legal system by the use of translation techniques in the translation of the Criminal Offences (Sentencing and Execution) Act, 2017 of Nepal, as a reverse translation. It is based on the hypothesis that the cultural notion of the source law, basically rooted in the SL culture, can be transferred to the TL laws and legal systems by applying appropriate translation techniques.

Statement of Problem

When the source law in the Nepali language is translated into English, the conceptual elements of the law need to be transferred into the TL. Translation is both an art and a science that requires the knowledge of translation skills, including the principles, practices, and pragmatics, and the translation techniques to transfer the source legal culture into the target language. The legal spirit of the source law inscribed in the SL requires replacement into the TL for the comprehension of the TL readers, but his job is not so easy as the translator has to make a balance between the SL information and the TL readers' knowledge and expectation. Explicating the challenges of translation, Fawcett (1997) stated:

Providing the target audience with enough information to understand the translation can be a headache because the translator has to make often difficult judgments about the readers' level of sophistication and the degree to which they can be expected to show initiative, while trying to balance out such things as information overload and readability. Again these are matters that take translational decision-making beyond the linguistic dimension into such matters as cultural judgments and publishing policy. (p. 46)

This suggests that the translator falls into the muddle either to enrich the target text or to fit the information suitable to the comprehension level of the TL readers. To emphasize one side or the other side creates a translation imbalance. In such cases, the careful selection of the translation techniques can tackle these problems to some extent. Due to the specific nature of the legal text, possible techniques can be applied to transfer the SL message to the TL readers without distorting the legal spirit that the legislators intend to convey to the SL readers. Having encountered such a problem, this research raises the following research questions.

Research Questions

- i) What translation techniques are used to transfer sentencing and execution culture in the Criminal Offences (Sentencing and Execution) Act 2017?
- ii) How do the translation techniques transfer legal culture?

Objectives

- i) To examine the translation techniques used in the translation to transfer culture.
- ii) To explore the methods of cultural transfer through translation.

Review of Literature

A legal translator faces challenges while transferring source legal concepts from one legal system to another. The translator requires competence in comparative law, legal systems, and translation techniques. Legal notions are affiliated with the legal language, history, and culture of a particular nation or jurisdiction, which differ from one country to another or from one jurisdiction to another, and create problems in the transfer of the culture through translation; however, legal transfer is a common practice for the development of law and legal systems. Speaking on the challenges of cultural transfer in the field of law, Selmi and Trouille (2003) acknowledged that many concepts used in various disciplines are shared internationally, but the law of a country cannot be separated from its culture (p. 2). However, the cultural notion of the source law as a product of the SL can be transferred to the TL by applying different translation techniques that a text demands. The frequently applied translation techniques in legal translation are borrowing, naturalization, calque, adaptation, and modulation.

The translator transfers the SL legal culture to the TL either correspondingly or functionally. When the translators do not find an exact correspondence of SL in the TL, they go to the functional equivalence to bring an equivalent legal effect. As House (1997) argued that the physical nature of signifiers in one language can never be duplicated in another, and the relations of signifiers with the signified cannot be expressed in another language (p. 48). According to her, the exact translation is impossible, but cultural transfer is a way to overcome the challenges of a translation, including legal translation. The functional equivalence is maintained to transfer the SL legal culture to the TL, focusing on the legislative intent. Even the similarities in languages face challenges in transferring the cultural non-equivalence of a native law to another country through translation. Regarding the translation of Nepali law into English, the language and legal culture are incongruous, so the translation requires applying multiple translation strategies for cultural transfer to the TL readers.

Legal translation encounters linguistic and cultural challenges when translating conceptual notions from one language and jurisdiction to another. The differences in comparative law and legal systems present a complication: the meaning of a legal term does not necessarily equate to another across jurisdictions, even if both legal systems use the same language. For example, "The High Court in the United States refers to the US Supreme Court, whereas in England, it refers to a particular court that is not at the top of the jurisdictional system" (Sonriano-Barabino, p. 99). This is due to the differences in legal systems between

countries, although both countries follow the common law system. The translator of law needs to be aware that the legal terms of English may carry diverse meanings from one jurisdiction to another. As a result, it poses translation challenges for transferring the culture-specific notions of SL into TL. Analyzing the linguistic differences and cultural variations in the translation process and its impact on the product, Rafat Yahya Alwazna (2014) revealed, "The linguistic differences found between the two specific languages may be solvable, as most of the translations require grammatical transformation. However, if linguistic items carry legal concepts peculiar to the SL legal system, which are not present in the TL legal system, fundamental issues and problems may arise" (p. 238). The cultural terms of the SL remain specific only to the source law beyond equivalence in the TL; it brings serious challenges in translation; however, the prudent use of the translation strategy gives some relief to solve this problem. One of the remedies to overcome these challenges is to maintain the functional equivalence at the textual level. Acknowledging the use of the different translation strategies based on the nature of the texts that carries the legal rules Alwazna advocated, "A single small legal text may merit a diverse set of translation strategies depending on the differences in the legal rules between the source legal system and the target legal system and the difference in the language of law peculiar to each legal system alongside the type of the target audience" (p. 237). The same legal term deserves different meanings for the varieties of TL readers and the language they use in comparative law and legal systems. The meanings of legal terms, for instance, "marijuana" differs to those who store, trade, consume, and reproduce as the law does not impose the same degree of penalty to all and also influenced by the native penal system which can be incongruous from country to country. These are influenced by the legal systems, the language of law, and the perception and knowledge of the TL readers to whom the translator aims to convey the message.

The application of general translation techniques for a legal text is in question from the beginning; however, the principle of fidelity of the target text (TT) to the source text (ST) is an agreed point. How the legal translation method shifted from a single translator's strict literal translation to co-drafting with the legislator, Sarcevic (1997) observed, the translation strategy to legal text was initially the strict literal translation that gradually shifted to literal, moderately literal, near idiomatic, idiomatic, and co-drafting (p. 24). Using the strict literal translation, the "Twelve Tables of Roman Law" (534 BC), the first codified law of the Byzantine Emperor Justinian I, was translated into many European languages to transfer the legal culture of Roman law. In medieval times, scholars argued that the language of law is prescriptive like the Bible, so the strict literal translation method is appropriate. The rule of the sovereign is compared to the authority of God; therefore, it should be reflected faithfully in the TL by using this strict translation or word-for-word translation method. The law of a country is the voice of the state expressed in the letter of law, like the Bible, so its voice or words need strict translation.

What are the fundamental unit of translation, and how the literal translation method increases the comprehensibility of the TT, Sarcevic opined, "In literal translation, the basic unit of translation is still the word; however, basic transformations (changes in syntax) are permitted to respect the rules of grammar in the target language, thus increasing comprehensibility while following the source text as closely as possible" (p. 25). Almost all scholars agree that a strict translation strategy is used when the two languages are closely related, such as between English and Scots and Hindi and Nepali. From a strict literal translation, the translation of law shifted into the literal translation. Sarcevic (1997) presents an example of Pierre-Daniel Huet, a 17th-century scholar who rejects strict literal translation as 'primitive,' insisting that interlinear translation requires no intellect on the part of the translator. In his opinion, the translator must respect the basic rules of grammar and syntax in the target language, yet not 'adulterate' the source text by producing a free translation (p. 31). However, the strict literal translation method is more useful for linguistic transcoding than cultural transfer. The modern co-drafting strategy is applied in drafting and translating laws in different languages simultaneously in bilingual or multilingual jurisdictions, such as Canada, Switzerland, and Hong Kong. This strategy is applicable in the UN and the EU law translation industries due to the freedom that the translator is given to translate the international laws freely, exploring the legal spirit of the ST.

The work of translation should not be taken as the reproduction of the ST, and the translators are not the copiers of the SL into TL, but they are the co-authors of the ST rewrite in the TL, calculating the needs and interests of the TL readers in various circumstances. "It can be argued that co-drafting has given translators in charge of federal legislation in Canada a kind of freedom, which did not exist before . . . they can be creative in the target language" (Alwazna, 2014, p. 240). The translator can use suitable translation strategies as the text demands to transfer the SL legal culture to the TL readers in their language and culture to transfer and convey the legal message. The translators reproduce the TT from the ST for the new readers of different knowledge and cultural backgrounds, and the readers are hungry for the content that prevails over the form. The debate of literal or free translation in legal text continues even today; however, variations in methods and strategies are adopted in different jurisdictions, even if the texts are identical (p. 239). The application of a particular translation strategy, either literal or free, is vested in the legal translator, who can use either one or both methods as the text demands. However, one should not forget that the application of translation strategies influences the transfer of the SL culture to the TL. So, the translator requires using suitable translation strategies to meet the objective of the translation.

Vinay and Darbelnet suggested applying either direct translation or literal translation, or indirect or oblique translation techniques. The direct translation method concerns the one-to-one correspondence between the SL and the TL that transfers the linguistic and cultural

terms in translation, but in the absence of direct correspondence between the language pairs, the indirect translation method is applied. The indirect translation method can be compared with the functional equivalence of ST with the TT. The oblique translation method activates the extralinguistic differences. Vinay and Darbelnet (2000) suggested how the oblique translation method works:

Because of structural or metalinguistic differences, certain stylistic effects cannot be transposed into the TL without upsetting the syntactic order or even the lexis. In this case, it is understood that more complex methods have to be used, which at first may look unusual but which nevertheless can permit translators a strict control over the reliability of their work: these procedures are called oblique translation methods. (84)

One of the principal objectives of legal translation is to transfer the cultural elements from ST to TT equivalently with equivalent effect. To achieve this, a translator uses either direct or oblique translation methods, or both as the case may require.

Through these reviews on translation strategies of legal translation, this research finds the gap that scholars have shown the importance of translation strategies for translation, but they have not researched the application of these strategies in translating the Nepali laws into English. So this research raises the research questions with the objectives of the cultural transfer from Nepali law originally written in the Nepali language and later translated into English.

Materials and Methods

As a qualitative research study, this study uses both the source Nepali text and its English translation. The primary data are collected from the Criminal Offences (Sentencing and Execution) Act 2017 as the authorized translation on behalf of the Government of Nepal. It uses the textual analysis method and examines the application of translation techniques, borrowing, calque, transliteration, transposition, modulation, equivalence, adaptation, lexical expansion, and omission as proposed by Vinay and Darbelnet, to transfer the source legal culture into the TL, and discusses it from an intercultural communication perspective. The secondary data are collected from the published books, journals, and webpages related to the translation techniques and cultural transfer in laws and legal systems.

Results and Discussions

Translation Techniques

The major translation techniques used in the translation of the Criminal Offences (Sentencing and Execution) Act 2017 to transfer the legal culture are *borrowing, calque, transliteration, transposition, modulation, equivalence, adaptation, lexical expansion, and omission*. How these techniques are applied at linguistic and extralinguistic levels to translate

and transfer the sentencing and execution culture to Nepali laws is discussed selectively in the given translation techniques.

Borrowing

By this technique, the translator borrows the legal conceptual term from the SL to the TL when there is no direct equivalent of the SL concept in the TL. Usually, the SL cultural terms are transferred to TL to mitigate the conceptual gap in translation. In this Act, the concepts such as "probation" and "parole" are borrowed from foreign languages and cultures and used in criminal offences of Nepal to deploy the offenders to community service without keeping them in jail. Section 39 of the Criminal Offences (Sentencing and Execution) Act, 2017, has borrowed the concept of probation and parole culture with the provision of forming a probation and parole board. Although the purpose of probation and parole is to reintegrate in society of the offenders, a slight difference lies between them. In probation, the offender does the community service instead of going to jail, analyzing the nature of the offence, the degree of the penalty, the age of the offender, the techniques used for committing the crime, and the frequency of the crime he has committed when the case is filed against him. On the other hand, parole is the condition in which the offender is released from jail on the condition that he shows good and corrective behavior in jail, regretting his past mistakes, and intends to improve in this life, so the parole officer sends the offender to the community service under the direct supervision to the parole administrative officer for the remaining period without keeping in jail. "Probation refers to a period of time before a person is actually sent to prison, and it is a sentencing decision made by a judge. Parole refers to the period of time after a defendant is released from prison, and it refers to the administrative decision made by a penitentiary court ("Probation, Parole, and Penitentiary Law," n.d.). Additionally, it transfers the culture of probation and parole officers to inform policy on the determination of sentencing and execution of penalties, aiming to reintegrate offenders into society. These terms are borrowed and used in the Nepali law using the borrowed translation method. The culture of parole, given to the offender by the district parole board on the recommendation of the parole officer, is based on the offender having completed two-thirds of the sentence with good moral character. Using the translation strategy of 'borrowing', the translator transfers the equal SL legal cultural values to the TL and saves the readers from the loss in translation.

Calque

A calque is a translation technique that transfers the SL culture to the TL by special borrowing from the source text. Vinay & Darbelnet (2000) defined this, "It is a special kind of borrowing whereby a language borrows an expression form of another, but then translates literally each of its elements" (p. 85). It includes TL words but in SL structure; therefore, while it is unidiomatic to target readers, it is familiar to a large extent (Bhattarai et al., 2014, p. 112).

There are lexical calques and structural calques used to transfer SL culture to TL, such as the English-Nepali calque, supervision-suparibekshan (Lexical), and Nepal-police-Nepal-*pulis* (Structural). Lexical calque respects the syntactic structure of the TL but introduces a new mode of expression. The structural calque introduces new constructions into the language. As with borrowings, there are many fixed calques which, after some time, become an integral part of the language into which they are being translated (Vinay and Darbelnet, 2000, p. 85). For instance, the term "*nambar*" is used, borrowing from the English word "number" to count the act number of the Nepali law. Later, it is used as an integral part of the Nepali language for counting the act number, such as *ain nambar* 38 (Act number 38) in the Criminal Offences (Sentencing and Execution) Act, 2017 (p. 306).

Transliteration

This involves directly transferring SL-specific terms into TL, transcribing them in the TL alphabet. These words do not have an equivalent in TL. Transliteration transfers the names of institutions, special designations in the army or police that do not exist in the TL, such as the *Singhadarwar* (chief administrative building of the Government of Nepal), *Probesan bord* (probation board), *Pyarol bord* (parole board), *Subedar* (a rank of the Gorkha regiment), *Tikat* (tiket), and *Daka* (dacoit). The TL readers are introduced to the SL language and culture to facilitate understanding of the text. Bekbabayi & Amirzabeh (2019) put, "In Translation Studies, transliteration is seen as a translation procedure which is used to convert a word from one writing system to another. . . to translate proper nouns, brand names, religious terms, etc." (p. 87-88). It transfers the SL concept to the TL when it gives another meaning if translated, or has no corresponding meaning in the TL. When the *Singhadarwar* is translated into English, its literal translation is the "lion palace", but it goes beyond the SL meaning, so the transliteration technique is used to transfer the SL concept into the TL directly.

Transposition

It is the grammatical changes in TL that transfer culture by maintaining grammatical differences of the languages used in translation, preserving the SL original meaning. "A different (TL) form is used to convey the (SL) message applied when the meaning content of the source and target units corresponds, but the translation requires a shift in word class, category, or syntactic identity. The purpose of transposition is to achieve natural expression in the target language at the level of word and sentence structure" (Fathi, 2012, p. 11). Transposition does not change the meaning, but shifts the structure. Some obligatory transpositions appear due to the difference in linguistic systems, and other optional transpositions occur for naturalness. For example, the mentioned name of the Nepali Act, "This Act may be cited as the National Penal (Code) Act 2017," can be transposed into "National Penal (Code) Act, 2017" to bring naturalness in sentence and grammatical

structure. The translator uses this technique to filter the grammatical and structural differences of SL to ensure the translation is coherent and effective for the TL readers.

Modulation

The technique of modulation helps to change the perspective of the TL readers. The readers cannot understand the message due to the language and cultural differences between the SL and the TL. So, using the technique, the SL message is constructed differently and transferred to the TL in such a way that the TL readers understand the SL message equally to the SL readers. Vindicating this method, Vinay and Darbelnet (2000) stated, "This change can be justified when, although a literal, or even transposed, translation results in a grammatically correct utterance, it is considered unsuitable, unidiomatic, or awkward in the TL" (89). The SL message cannot be expressed in the same way in the TL, not because of the form but because of the cultural disparities. Showing the difference between transposition and modulation, Fathy (2012) clarified, "Whereas transposition is a shift between grammatical categories, modulation is a shift in cognitive categories" (11). Even the semantically and syntactically correct translation of SL is not comprehended in TL due to the cultural differences between languages. For instance, the English translation of Nepali text as "the priest was burnt after death," creates inelegance to the TL readers who are only familiar with cremation after death. The custom of burning a dead body after death in Hinduism is reflected in the translation is unfamiliar to the TL readers.

Another example of the modulation is the provision of an "open prison" (sec. 28) of the Act, which is more or less equivalent to the "resettlement prison" practice in the UK. "In an open prison, some prisoners can leave to go to work or training, or to visit their families" ("The Prison Estate in England and Wales" p. 9), whereas section 28 defines, "Open prison means any place specified by the Government of Nepal in a manner that a prisoner may work during the specified time even outside of the place where he or she is held". The translation is semantically and syntactically correct, but due to the disparity of the prison cultures, the TL reader naturally understands the "resettlement prison" rather than the "open prison".

Equivalence

This translation method is used to transfer the SL culture to the TL system by creating an equal situation when the ST does not find a counterpart in the TT. To transfer the equivalent situation of two different languages, Vinay and Darbelnet (2000) suggested, "The same situation can be rendered by two texts using completely different stylistic and structural methods. In such cases, we are dealing with the method which produces equivalent texts" (90). For instance, a pain is expressed with the sound "Aiya!" in Nepali, but "Ouch!" in English. Equivalence is found in proverbs, such as "*Aaphaita mahadev kasledela bar,*" which is equivalently translated into "himself the beggar at his door" in English, creating an equivalent

situation. The English culture of compensation to the victim is transferred to Nepal through the Criminal Offences (Sentencing and Execution) Act 2017, which calculates the condition of a victim for the reimbursement.

Adaptation

Adaptation is a translation technique that appropriates the SL culture in the TL to bring the SL effect equivalently. The English legal culture of sentencing (*kasurnirdharan*) and execution (*sajaya*) is adapted into the Criminal Offences (Sentencing and Execution) Act 2017, which analyzes the factors of a particular offence before determining the penalty and executing it. For instance, the system of collecting a party's legal document in a file known as "misil file" in English is adopted in Nepali court decisions using the same term, which transfers the foreign legal culture to the act.

Lexical expansion

The technique of lexical expansion is used to compensate for the cultural gaps between SL and TL and to make a translation more comprehensive and effective for the TL readers. The linguistic and cultural differences create a knowledge gap between SL and TL readers, so the lexical expansion defines the cultural meaning of the source law in plain language and transfers the SL culture to TL, compensating for the gap. This strategy adds extra details of the ST in the TT writing in the footnote, endnote, or a glossary section. For example, the Nepali lexis *rastra sewak* corresponds to "civil servant" in simple English translation. However, this is further expanded with a legal definition for those persons who hold public posts as appointed, elected, or nominated by the government of Nepal, including the State and Local governments. (National Penal (Code) Act, 2017, ch. 1, sec. 3.j). The lexical expansion enriches the information for the readers if it defines something different in their language, law, and culture.

Omission

This translation technique deletes the SL words no longer needed in the TL for communication, intending to make the translation precise and natural. Angelina et al. (2020) recommended that if the meaning conveyed by a particular item or expression is not necessary to mention in the understanding of the translation, translators use this strategy to avoid lengthy explanations (p. 31). For example, "*Muluki Dewani Samhita Ain, 2074*" is translated precisely into "National Civil Code, 2017". Here, the translator omits the SL term *Samhita* (collection/anthology), which he/she think is unnecessary to communicate in the TL.

The translation strategies discussed above are applied to transfer SL culture to the TL as the means of transmitting ideas and experiences. Some strategies focus on the SL, and some others on the TL. The legal translator can use either one or another translation technique based

on the nature of the texts and the situation they represent. A translator requires a good analysis of the ST before translating it into the TT. Only the bilingual diction of SL and its conversion into TL does not translate, but there must be a pragmatic equivalence for the alternative text.

Conclusion

As a means of cultural transfer, the translation techniques that I analyzed above are used to transfer English legal culture to the Nepali law, language, and culture. The institutional translator of the Criminal Offences (Sentencing and Execution) Act 2017 has used one or another technique to transfer sentencing and execution culture for an Interlinguistic translation communication. The techniques of borrowing, calque, and transliteration are the direct translation, and the transposition, modulation, equivalence, adaptation, lexical expansion, and omission are the oblique or indirect translation methods. Using these translation techniques foreign legal culture of sentencing and execution is transferred to the Nepali legal system and made consistent with international practices. The selection of the translation techniques is not only determined by the linguistic determinants but also by the extralinguistic parameters.

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