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**The Notion in Equivalence in Translation: Observing the Translation of *Muluki Ain*, 1963****Achyutananda Bhattarai**

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**Abstract**

*This research examines the notion of equivalence in translation by observing Muluki Ain, 1963 of Nepal. It explores different types of equivalences used in the English translation of the Ain. Maintaining equivalence semantically and pragmatically with equivalent effects between the source language (SL) law and the target language (TL) law is challenging to the legal translator. This study searches how the SL (Nepali) law is translated equivalently into the TL (English) to communicate with the target readers. The language and legal system between Nepali and English are different and face cultural interference in conveying the SL messages equally in TL for the TL readers. This research uses Nida's formal and dynamic equivalence, and Becker's different types of equivalences at word level, above word level, grammatical equivalence, textual equivalence, and pragmatic equivalence for the theoretical framework. The primary data are collected from Muluki Ain, 2020 (1963), and its authorized English translation version. The secondary data are taken from the critical and theoretical view of translation equivalence. It uses the corpus-assisted method as the research methodology to find the textual and contextual equivalence between SL and TL. The major finding of the research is that institutional translators have applied different types of equivalences to convey SL legal messages into the TL. It concludes that a translation needs to be equivalent in every aspect of the language pair.*

**Keywords:** messages, communicate, source language, target language, version

## Introduction

Translation equivalent is the most controversial issue. However, it occupies a central place in translation. Scholars have discussed various translation equivalences and formulated the theory of equivalence in translation to facilitate the readers on the translation equivalence. The major translation equivalences are formal equivalence, dynamic equivalence, textual equivalence, grammatical equivalence, and pragmatic equivalence (Baker 1992). How the issues of non-equivalence are solved in translation is still in debate. Non-equivalence occurs frequently in legal translation that interferes communicating the author's meaning to the readers. Due to the linguistic and cultural differences between the SL and the TL, full equivalence in translation goes to an imagination. All language pairs in translation do not face the same type of equivalence challenges due to the linguistic and cultural differences of languages, which differ from language to language. Baker (1992) pointed out, "The choice of a suitable equivalent will always depend not only on the linguistic system or systems being handled by the translator but also on the way both the writer of the source text and the producer of the target text, i.e. the translator, choose to manipulate the linguistic systems in question" (p. 25). The challenges of equivalence lie in the hands of the SL author and the TL author (translator) who can manipulate the text by choosing the vocabulary appropriate in the translation. Translation equivalence also depends on how the author creates the text for the target readers. The translator equates the source text (ST) with the target text (TT) textually and contextually for equal communication to the target readers as the source language readers are supposed to understand. A translator can recreate or manipulate the SL message in TL for natural communication to the TL readers. The domestication of foreign text is natural for communication purposes. When translating Nepali laws into English, some Nepali legal concepts are culture-based and do not correspond one-to-one in English. So, the dynamic equivalence or the functional equivalence is required in translation. The translation of *Muluki Ain of 1963* used different types of equivalence to recreate the text in TL.

What equivalences are used in the translation of the *Muluki Ain, 1963* of Nepal?, how do the TL readers get equal knowledge of Nepali law? These are some research questions that this study attempts to answer. It analyzes how the translators have used different types of equivalences in the English version of the *Muluki Ain*. How Nida's formal equivalence and dynamic equivalences, and Baker's textual and pragmatic equivalences are used in the translation is searched by selecting some sample chapters of the act. According to Nida, the formal equivalence is SL-oriented and dynamic equivalence is TL-oriented. Baker suggests translation should be equivalent not only at word and above word level but also needs pragmatic equivalence.

## Review of Literature

Legal translation communicates SL legal messages to TL readers as they are unfamiliar with the source language and the legal system. Maintaining equivalence in law between the ST and the TT needs knowledge of both the SL and the TL legal systems and the linguistic

convention. The translator has to search for the author's meaning in the text plunging into the linguistic structure and the culture reflected in language. Scholars agree that no two languages are identical in every aspect, hence, transferring information from one language to another is always partial. To transfer all legal information of ST into TT creating full equivalence in translation is a matter of fiction. The form and content of a text reside inseparably and transferring both in the target language completely is challenging and almost impossible. So, translation is known as a game of approximation and cannot transfer all the forms and contents of ST into TT. Nida (2000) remarked, "The content of a message can never be completely abstract from the form, and form is nothing apart from content" (p. 127). A translation requires transferring the content and the form of SL into the TL. If only the content is transferred without the form, the translation is incomplete. For instance, in translating the court decision, a translator has to transfer the content of the case and the form (decision writing style). To transfer the form of ST, the formal equivalence of translation is more applicable. Nida (2000) revealed, "Formal equivalence focuses attention on the message itself, in both form and content. In such a translation one is concerned with such correspondences as poetry to poetry, sentence to sentence, and concept to concept" (p. 129). However, the translator needs to focus on the message of the ST in the TT. For example, *aputali* is a Nepali legal concept translated into "on inheritance" in English maintaining formal equivalence. However, it does not clarify the total meaning of the SL concept and needs further explanation in the footnote. Conceptually, it is a property that shall be transferred to others after death when someone does not have a legal heir. If a married man dies and he does not have his wife and children, his movable and immovable property transfers to the nearest relatives within the seven generations from the paternal side. Further, the accuracy and correctness of a translation are assessed on the comprehension of the delivered message by TL readers as equally as the SL readers comprehend the SL text. A translation needs to be equivalent linguistically and culturally.

In the course of discussing different types of equivalence, Nida presents two types of translation equivalence: i) formal equivalence, and ii) dynamic equivalence. Formal equivalence differs from dynamic equivalence on the basis of the priority given in the translation. The former gives more in emphasis on the form and content of SL in TL, while the later prefers translation to be free to convey the SL content in the TL paying minor attention to the fidelity of the translation. It believes a translation automatically invents its linguistic forms to deliver SL messages to the TL readers who accustomed to their own languages and cultures. Translation moves ahead in a straight line and only intersect somewhere with the SL at some point just like a tangent touch. Benjamin (2000) added, "Fidelity in the translation of individual words can almost never fully reproduce the meaning they have in the original" (p. 21). Due to the change in the readership and new circumstances, full equivalence of an individual SL item is almost impossible in the TL. Moreover, SL does not detect TL but only persuade to TL providing content of translation. The TL has its native language system and culture to communicate to the TL readers.

Additionally, the dynamic equivalence emphasizes the equivalent of the meaning of the whole text rather than the corresponding to a single word, phrase, or sentence. Nida (2000) noted, "A translation of dynamic equivalence aims at complete naturalness of expression, and tries to relate the receptor to modes of behavior relevant within the context of his own culture; it does not insist that he understands the cultural patterns of the source-language context in order to comprehend the message" (p. 129). There is no watertight relationship between the SL and the TL but simply a persuasive one in dynamic equivalence. The dynamic equivalence freely fulfills its purpose within the target language and culture. Nida illustrates ahead that dynamic equivalence focuses on "the principle of equivalence effect" and is not much concerned with the matching of the receptor-language message to the source-language message, but with the dynamic relationship, that the relationship between receptor and message should be substantially the same as that which existed between the original receptors and the message (p. 129). Dynamic equivalence is TL-oriented and emphasizes the TL language and culture paying insignificant attention to the fidelity of the SL culture to understand the translation.

Different from Nida's equivalence Baker insists that a translation needs to be equal linguistically and extra-linguistically. Linguistically, the SL corresponds to the TL at the word level, above the word level, and grammatical equivalence. Extra-linguistically, a translation has to be equal contextually and pragmatically (Baker, 1992, pp. vii-viii). The word level equivalence is the smallest meaningful unit of SL in speech or writing to be equivalent in TL. The meaning embedded with the SL term is taken into the TL identically comprehending the SL legal meaning higher than the understanding of the common reader. According to Baker, "Notwithstanding the 'fuzziness' inherent in language, s/he must attempt to perceive the meaning of words and utterances very precisely in order to render them into another language" (p. 17). The translator requires developing reading and comprehension habits to transfer the meaning of SL into TL despite the blurring nature of the languages. When the equivalence in the word level is in question, the translator brings the equivalence above the word at the textual level. Equivalence in grammar is to follow the equivalence in TL grammar in use. Some SL grammatical patterns do not correspond with the SL grammar. In the lack of individual grammatical equivalence, the translator brings the textual equivalence for cohesion and coherence. For instance, in the Nepali-English translation pair, the Nepali language does not consist of prepositions and articles but the translator brings equivalence at the textual level. Translation requires equivalent linguistically and extra-linguistically.

Extralinguistic equivalence of translation insists on transferring the SL culture into TL. When ST is translated into TT, the intention of the source author is to be transferred to the TT, or in the case of law the spirit of the SL law is to be transferred to the TL. A textual meaning requires to be inferred contextually. The translator is to be competent in transferring the main idea of ST equivalently into TT. The pragmatic equivalence, unlike the semantic equivalence, attempts for the equivalence of the contextual meaning of a text that lies beyond the individual word or sentence. Pragmatics, according to Levinson (1983), is the study of the relations

between language and context that are basic to an account of language understanding" (p. 21). He suggests understanding a text by analyzing the context of the text encoded in linguistic signs for bringing the nearest equivalence in the TL. To maintain pragmatic equivalence, the knowledge of speech act, implicature, and presupposition of the text is praiseworthy.

As far as the translation equivalence in the translation equivalence of Nepali *Muluki Ain* of 1963 is concerned, previous researchers lack meaningful research in this domain. Researchers have done research in literary translation but not in the legal translation of Nepali law though it contributes significantly by speaking the voice of the nation. The *Muluki Ain, 1963* (first amended) of Nepal was translated into English for global communication and now it is replaced by the National Civil Code 2017, and the National Criminal Code 2017. Still, it has a due influence on the new Codes as some previous legal provisions are transferred to the new codes with some modification. There is no good research conducted to evaluate the objective of the translation of this law. The translators translated the text into English and left to understand it equivalently by the TL readers. Whether the translation of this Nepali code has met its objective of translation is not investigated meaningfully. Whether the law was translated equivalently or not needs to be searched. The mistranslation or incomprehensive translation of law makes confusion to the target readers for the use of the law in practical life such as in the case of marriage, divorce, adoption, acquisition of fixed property, and many others. If a foreigner wanted to marry with Nepali nationality, he/she would have the translated version of this civil code to produce to the concerned authority for the legality of the marriage registration. It also applies in the case of divorce and adoption, therefore, translating source law equivalently in TL is demanding in this globalized world.

### **Materials and Methods**

This qualitative research collects primary data from the *Muluki Ain* of 1963 and the authorized English translation version. Scholars agree that qualitative research is especially effective in obtaining culturally specific information about the values, opinions, behaviors, and social contexts of particular populations (Mack et al., 2005, p. 1). The selected chapters of the *Muluki Ain* 1963 and its authorized translation are presented and analyzed from an equivalence point of view. The different types of translation equivalences applied in the code are examined using a corpus-assisted approach to derive the contextual meaning of the text. The visible words and sentences may not bring the author's meaning and the translator as a reader has to go beyond the words and find the context of the text for the intended meaning. It explores the different types of equivalence at the word level, above word level, textual, and pragmatic equivalence. It uses secondary data from critics' views stored in books and journal articles.

### **Results and Discussion**

Maintaining the nearest equivalence in legal translation is challenging to the translator as the translation demands different types of equivalences to transfer the SL meaning into TL in

law. The translation of the law needs to be equivalent and create an equivalent effect in the TL culture. The formal equivalence emphasizes the equivalence of form and content of SL in TL, the dynamic equivalence focuses on the equivalence effect to the TL readers as equal to the source text readers. The pragmatic equivalence concentrates on the contextual equivalence between the ST and TT which are discussed below.

### **Formal Equivalence in *Muluki Ain*:**

Formal equivalence in translation is SL-oriented and preserves the SL form and content focusing on the equivalent of the SL message in the TL. Bhattarai et al. (2014) mentioned, "The formal equivalence is basically source-oriented and focuses on the accuracy and correctness. It is designed to reveal as much as possible the form and content of the original message" (p. 93). The formal equivalence attempts to preserve the foreign style of the foreign text. For instance, chapter fourteen of the *Muluki Ain 1963* regulates female share property as :qL c+z wgsf] / *stri ansha dhanko/* (women's share and property) formally equivalents between SL and TL. The source term *stri* includes three statuses of the women: unmarried, married, and widow. Hong (2006) approved Nida's concept that while preserving the meaning, the form must be changed in need. He revealed, "This is also a crucial point as it may happen in translation practice which a meaning that is expressed by a single word in one language may require a phrase or even a clause to express in the target language" (p. 14). The meaning of *stri* of SL is in a single term is equivalent to multiple TL terms unmarried, married, and widow and preserved the SL legislative intent. Section 1 allowed:

SL: कन्या, सधवा वा विधवा स्वास्नीमानिसले आफ्नो आर्जनको चल अचल आफ्नो खुश गर्न पाउँछन् ।

(*Kanya, sadhawa wa bidhawa swasnimanisale aaphno aarjanko chal achal aaphno khus garna pauchhan*)

TL: An unmarried woman, a woman having a husband, or a widow may use and dispose of the movable or immovable property which they have earned at their discretion

The SL term "*kanya*" is translated into "an unmarried woman" as a formal equivalence replacing the alternative girl or maid. This SL-oriented equivalence of "unmarried woman" refers to the fact that if a girl is unmarried and lives in her parent's home her earning of movable and immovable earning is indivisible in the partition share. She can use it willingly to sell or donate. Not only the unmarried even the married and widow can use their earnings at discretion. The married woman in SL is ;wjf/ *sadhawa/* "woman having a husband" in TL refers to a woman got married and received a partition share on behalf of her husband can use it on her choice. She can also sell, donate, or transfer the property to anyone. So, The term :qL c+z wg /*stri ansha dhan/* "women's share and property" is movable and immovable property that she received from her parents and husband individually. This shows that the translation of *stri ansha dhan* into "women's share and property" is SL-oriented formal equivalence that equivalently translates the SL term and its form into TL.

### Dynamic Equivalence in *Muluki Ain*

Dynamic equivalence (D-E) is TL-oriented and focuses on the equivalence of translation effect to the TL readers. The translator reads the SL text comprehensively to reconstruct it in the TT to bring the TL readers equal effect as the SL text have brought to the SL readers. Dynamic equivalence is the equivalence of response rather than the equivalence of the form. Nida (2000) remarked:

However, since a D-E translation is directed primarily toward equivalence of response rather than equivalence of form, it is important to define more fully the implications of the word natural as applied to such translations. Basically, the word natural is applicable to three areas of the communication process; for a natural rendering must fit (1) the receptor language and culture as a whole, (2) the context of the particular message, and (3) the receptor-language audience. (p. 136)

Nida's dynamic equivalence distillates on the equivalence of the TL reader's language and culture. When reading a translation, the TL readers feel not reading a translation but original writing by the native author. The translator brings the content from the ST but presents it naturally in the TL. The way dynamic equivalence is applied in *Muluki Ain, 1963* is presented with a sample of the translation. For instance, *लेनदेन व्यवहारको* /*lenden byabaharko*/ "On General Transactions" of section 1 of Chapter 17 is presented with transliteration and translation.

कानून बमोजिम लिखत नगरी लेनदेन व्यवहार गरेकोमा नालिस लाग्न सक्तैन । रजिष्ट्रेशन पास भै राखेकोमा बाहेक अरु कुनै लिखत दैवी परेमा सो परेको मितिले बाटाका म्याद बाहेक सात दिनभित्र दुई प्रति दरखास्त लेखी आफनु सहिछाप गरी आफना नजीकको प्रहरी कार्यालयमा दिनुपर्छ । (*kanoon bamojim likhat nagari lenden byabahar garema nalis lagna sakdaina. Registration pass vai rakhekama bahek aru kunai likhat daibi parema so pareko mitile bataka myad bahek sat dinvitra dui prati darkhast leki aaphanu sahichap gari aaphana najikako prahari karyalayama dinuparchha.*)

If any transaction is carried out without making a deed in accordance with law, no suit shall be entertained. Except where a deed has been registration passed, if any other deed is subject to a divine act, the person concerned shall set down and sign or seal an application in duplicate and submit it to the nearby police office not later than Seven Days, excluding the time required for journey, after the occurrence of the divine act.

The translation maintains the dynamic equivalence as the SL term *लेनदेन* /*lenden*/ is translated into "deed" that the TL readers understand naturally in their language and culture. It abandons the alternative term "loan" or "lend" that common SL readers understand simply. "Deed" is a business term used for business transactions between the parties. *लेनदेन* /*lenden*/ consists of giver and receiver so "deed" equivalents dynamically in translation. The next *रजिष्ट्रेशन पास* /*Rajistresan pas*/ is translated into "registration pass" creating dynamic equivalence. However, these SL terms are borrowed from TL and translated back as a back-

translation into the TL. This particular law has an equivalent effect on TL readers if they need a registration pass in Nepal. It brings equal effect and consequences to the TL readers as to the SL readers.

Similarly, the translation of सात दिनभित्र /*sat dinvitra*/ is translated into "not later than Seven Days" flows natural equivalence to the TL readers. "Naturalness" to the TL readers is a component of the dynamic equivalence. Language keeps on changing the meaning of a word over time. So, the meaning given to a word at a particular time may change after a time gap. For instance, the meaning of "offence" given in a particular time is not equal today, and a new meaning is added or deleted. For instance, kissing in a public place was a crime in the past but it is common now. So, the meaning of "kiss" is not identical now and then. Venuti argued, "Meaning is a plural and contingent relation, not an unchanging unified essence, and therefore a translation cannot be judged according to mathematics-based concepts of semantic equivalence or one-to-one correspondence" (p. 18). If the meaning of the SL term changes, the meaning in the TL changes and requires new correspondence. The meaning of a word is socially and culturally constructed.

#### **Pragmatic Equivalence in *Muluki Ain***

Pragmatic equivalence is the equivalence of the implied or contextual meanings of the text. What a text delivers in words and sentences is explicit but more than this the text consists of the implied or the contextual meaning hidden and not represented in linguistic signs. So, the translator needs to infer from the ST and reconstruct it into TT. Pragmatic equivalence is first introduced by Baker (1992) presenting different types of equivalence in translation in her book *In Other Words*. According to her, pragmatics is the study of language in use, and meaning is generated not only by linguistic systems but conveyed and manipulated by the participants in a communicative situation (p. 217). For instance, if a police announces, "You are under arrest" the explicit meaning is that the addressee's freedom is limited, but its implicit meaning is that his liberty is suspended temporarily, he is under trial, and the rights of accused activate on him. A text is made up with explicit and implicit meaning to perform a communication. Even the same utterance or sentence may have different meanings to different persons who are from diverse conditions. For example,

A: The parliament is dissolved.

B: Good!

The explicit meaning that B expresses is happiness for the dissolution of the parliament, but it also has an implied meaning as well. If the interlocutors are from the opposition, they are happy to increase their seats in the immediate election. If they are monarchist, they mean the weakness of the parliamentary system. If they are employees, they mean they can additional income in the election. Hence, the meaning of an utterance/sentence is not identical to all people in all situations. It differs from person to person and from one situation to another situation. How meaning is formed Farwell and Helmreich (1993) summarized:

Language, however, is used not simply to report events in the world. It is also used to convey the rich mental models that individuals and cultures bring to bear on the communication process. It is the claim of a pragmatics-based approach that texts do not have meanings, but rather that in producing texts, people intend meanings. Thus, a text can only be approached through an interpretation. That is to say, the translator attempts to understand the author's intent in creating the source text for the original audience and then recreates, to the extent possible, that intent for the target audience using the target language. (p. 2)

Pragmatic equivalence in translation comes when the translator understands the content and context of ST and reconstruct it equivalently in TT. It is possible for manual translation but impossible for the machine translation lacks understanding the context of the text. The knowledge of pragmatics is essential in language and translation to understand the context of the text and search for the nearest pragmatic equivalent in translation. Here, how the translation of the *Muluki Ain* used the pragmatic equivalent is analyzed from a sample translation of the Code on वेरीतसंग थुन्दाको /beritsang thundako/ "Illegal Detention" (part 4, chap. 8, sec. 1) .

ऐनले थुन्नु पर्ने मुद्दामा पक्राउ भएका मानिसलाई थुन्दा अन्न पानी समेतको खानेकुरा खानपीन दिई वा ऐन बमोजिम सिधा लगाई खान दिई मात्र थुन्नु पर्छ । सो बमोजिम नगरी वा ऐनले थुन्न नहुने मानिसलाई खानपीन दिई वा नदिई थुनेमा समेत बात लाग्छ । (Ainle thunnu parne muddhama paktrau vayeka manisalai thunda anna pani sametako khanekura khanapina dii wa ain bamojim sidha lagai khana dii matra thunnu parchha. So bamojim nagari wa ainle thunna nahune manisalai khanpin dii wa nadii thunema samet bat lagchha)

In cases where a person has to be arrested and detained under the Act, the person shall be given food and water to eat and drink or the victuals (Sidha) as referred to in the Act. If a person is detained otherwise or against the provisions of the Act with or without providing food and beverages, it shall be considered to be an offence.

Whether this translation is pragmatically equivalent or not is examined by analyzing the translation textually and contextually. Textually, it warns that detention becomes illegal if someone is detained without providing food and water, and against the Act. The context of the text is people were in detention or jail without food and water, and occasionally State detained persons without a crime. The translation has contextual equivalence as the translator has understood the context of the SL and transferred it to the TL. The detainee has the right to have victuals (*sidha*) as per the law. The implied meaning of the law is that nobody shall be detained against the law and the accused's right activates in custody. The translator has conveyed the identical message of SL to the TL readers inferring from the source text. The translation is comprehensive to the TL readers and it has maintained cohesion and coherence. The TL "shall" denotes the prescriptive nature of the legal language. The normative language of SL is equivalently matched with the TL. The language of law aims to achieve the special purpose of law. Cao (2007) revealed, "Laws are written in language the function of which is

not just to express or convey knowledge and information, but also to direct, influence or modify people's behaviour, whether it be a legal enactment, judicial pronouncement or a contract" (p. 13). Legal language delimits people's behavior as well as it reports the legal events. This text of translation is pragmatically equivalent from this point of view. The SL term "*sidha*" is kept inside the parenthesis to foreignize the SL culture embedded with the legal terms

### Conclusion

The notion of equivalence in translation is a highly controversial but evergreen discussion from the beginning. The main objective of a translation is to communicate the ST by code-switching in TT, however, the types of equivalences applied in translation differ from text to text or from text to context. Some translations are formal while others are dynamic equivalence. Nida advocates translation equivalence from formal and dynamic equivalence perspectives, while Newmark classifies it as semantic and communicative equivalence. Baker's textual and pragmatic equivalence are crucial for analyzing the translation. No translation is completely equivalent due to the linguistic and cultural differences between the SL and the TL. The translation of *Muluki Ain, 1963* of Nepal has brought different types of equivalences to communicate Nepali law to the TL readers.

The legal translation that maintains only textual equivalence is not enough and needs to create an equal legal effect for the TL readers either in monolingual or multilingual jurisdiction. However, the objective of the translation of the *Muluki Ain 1963* into English is not normative but informative purpose. Newmark (1988) pointed out that the "equivalent effect" is the desirable result rather than the aim of any translation. The equivalent effects are unlikely to result when the purpose of the SL text is to affect and the TL translation is to inform (p. 48). The translation of the *Ain* aims to inform the TL readers so an equivalent effect is not desired in TL. So, the institutional translators have used different types of equivalences in the translated version of the code to communicate to the TL readers to their best. This mini-research only analyzes some provisions of the *Ain* so it needs further research to investigate the other types of equivalences practiced in the legal translation.

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