

## Comparative Law and Legal Translation

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**Abstract:** The history of legal translation may be traced back to the Bible translation, translation of the Egyptian- Hittite Peace Treaty of 1271 BC, which was found as the oldest known recorded evidence of legal translation, as well as the translation of the Corpus Iuris Civilis into numerous languages after its initial translation into Greek. Translation is an old art means transferring or converting speeches, words, ideas and phrases from one language to another with maintaining the spirit of speech and quoted phrases. In general, translation needs a high degree of responsibility from the translator because of its hard and innovative task, while the legal translation is type of translation between the two legal languages of two different legal systems. The importance of the foreign languages, especially English and French, the present era occupies the attention of legal researchers all over the world, as they are the key of two dominating schools of common and continental laws. In the field of translation of comparative laws, it is observed that lot of significant problems have already been identified for this present study will talk the legal translation of comparative laws by focusing on many issues that are related to its problems, applications, as well as its legal linguistics and legal data processing. Although the development of Arab league laws, still there are problems concerning the translations of legal materials in Arab countries (i.e. Arabic to English, Other languages to Arabic).

### 1. Introduction:

The approaches to legal translation have been mostly oriented towards the preservation of the letter rather than effective rendering in the target language, as a challenge to the unquestioned application of a 'strictly literal' approach to legal translation came only in the nineteenth and early twentieth centuries [1]. Legal translation has been described by researchers as a category in its own right [2]. This is mainly due to the complexity of legal discourse that is related to the literary language and the terminological precision. The translation of legal terminology requires particular attention because it 'consists primarily of abstract terms deeply and firmly rooted in the domestic culture and intellectual tradition' [3].

In actual practice, the legal translation is functional, in sense it takes the function that the translated text will have to perform in the target culture and taking into account mainly the needs of the final users [3], as well as it is not an automatic process, but it links different legal systems. To understand a legal culture of a given country the translator must focus not only on legal rules, concepts and categories, but also on customs and the social context of the legal system.

## **2. Literature Review:**

The literature on legal translation is meager indeed. Research on legal translation between English and Arabic is predominantly restricted to purely semantic or syntactic issues. For instance, Abu-Ghazal [4] outlined a number of syntactic and semantic problems in legal translation from English into Arabic, by analyzing graduate students' translations at Yarmouk University of a number of UN resolutions. He chiefly aimed at detecting the linguistic and translation problems facing translators in general and MA students in particular. He concluded that such students should be exposed to intense training in legal translation before practicing it as a career.

Emery [5] explored the linguistic features of Arabic legal documentary texts and compared them with their English counterparts. Emery ended up recommending that trainee translators should develop a sense of appreciation of the structural and stylistic difference between English and Arabic discourse to help produce acceptable translations of legal documents. Though he only made limited inroads into the area of legal translation theory or practice, Emery's article is actually one of the very few works that investigated general features of Arabic legal language, an area of research that has inexplicably been disregarded by Arab translators and theorists.

By the same token, Ioratti [6] argues that the legal translation is often a hazardous and dangerous process, full of hidden traps. Legal translation is not an approximate process which focuses only on linguistic side, since it implies the transposition of legal concepts from a system to another, with the consequent employment of comparative law and its methodology. Butt and Castle [7] burrowed into the roots of traditional legal language and its peculiar characteristics that make legal documents aloof from their users. They proposed a step-by-step guide to drafting in modern style, using examples from four types of legal documents: leases, company constitutions, wills and conveyances. Moreover, they emphasized the benefits of drafting in plain language and confirming the fruitfulness of its use.

## **3. Issues in Legal Translation:**

Legal translation is often more difficult than other types of translation because each country has its own legal terminology that is different from the legal terminology of another country.

Attorneys involved in international litigation should be aware of a recent UK case involving the translations of a party's own non-privileged documents. In *Sumitomo Corporation v Credit Lyonnais Rouse Ltd*, the Court of Appeals held that in the context of legal professional privilege, there was no relevant distinction between a translation of an unprivileged document controlled by the party claiming privilege and a copy of such document. Because the translations were not original documents, privilege would only apply under certain limited circumstances. As a result of this decision, opposing parties will be entitled in most cases to copies of translations from the other party upon payment of the copying fee, without sharing in what can be substantial translation costs[8].

### **3.1 Problems of Legal Translation:**

Legal translation is often more difficult than other types of technical translation because of the system-bound nature of legal terminology. Unlike scientific or other technical terminology, each country has its own legal terminology (based on the particular legal *system* of that country), which

will often be quite different even from the legal terminology of another country with the same language.

In solving international legal problems, a lawyer will be dealing with words, and the accuracy of a written legal document depends largely on word selection, syntax and good sentence structure. According to A. Samuel Adelo, “the lawyer must then depend on a translator to render the words he uses in a legal document into another language.” Hence, the spread of human rights values, international conventions at the time of peace and war, transparency, anti-corruption efforts, international advancements on political, social, economic and technological levels made the topic of legal translation as a global demand in the present globalized world.

### **3.2 Qualifications and Skills of Legal Translators:**

The professional legal translator must be: part linguist, part legal scholar and part detective, willing and able to search out and define legal concepts expressed in the source language of a document. A good legal translator also knows that even within the legal field there are completely separate areas of law that require specific translation techniques by consultation not only a monolingual legal dictionary, but also a treatise, and that bilingual dictionaries.

The professional legal translator must understand the terminology, phraseology, syntax; register (tone) and a myriad of other parameters. When faced with international disputes involving different languages and legal systems, legal counsel and their clients would be well advised to obtain the services of translators able to successfully bridge the divide of legal systems, as well as language and culture, in order to provide *literate* rather than *literal* translations[9].

Sylvia A. Smith explains that the successful translation into another language requires competency in at least three separate areas: first, a basic knowledge of the legal systems, both of the source and target languages; second, familiarity with the relevant terminology; and third, competency in the specific legal writing style of the target language[9].

In summary, the professional legal translator must be:

- Part linguist, part legal scholar and part detective
- Aware about the separate areas of law that require specific translation techniques: a contractual document has little in common with a will, an administrative certificate, a judicial decision or a statute, to name a few examples.
- Consulted with a monolingual legal dictionary, as well as a treatise regarding the subject matter, and those bilingual dictionaries.
- Knowledgeable about the terminology, phraseology, syntax, register (tone) and a myriad
- Able to successfully bridge the divide of legal systems, as well as language and culture, in order to provide *literate* rather than *literal* translations.

### **3.3 Legal Translation and Right to Translator:**

An accused person has the right to an interpreter or legal translator during pretrial and trial stages, the major task that imposed on the legal translators during these stages are firstly to understand the terms used in legal proceedings, explain and interpret them in several used foreign languages, as well as to be disinterested in the proceedings. Finally it is upon the trial judge’s discretionary power to determine the qualifications of the legal translator in legal proceedings [10].

Such legal protection is designed for suspects and accused persons, who do not speak the language used in legal proceedings; in order to assist them during criminal proceedings is laid down in Article 6(3) of the ECHR [11]. In Most legal systems, anyone who cannot speak or understand the language used in court, may have the right to receive the free assistance of an interpreter or translator, it is provided also in Article 5(2) ECHR that anyone who is arrested to be promptly inform, in a language which he understands, of the reasons for his arrest and of any charge against him. Therefore, the accused person cannot defend himself unless by understanding the language of accusation and having knowledge about what are the things he is accused of. [12]

### 3.4 Translating contracts between English and Arabic:

Some observations on translating contracts between English and Arabic are made as following[13]:

- it is shown that, in general, mastering the technical terminology of the source and the target languages is insufficient to make a legal translator competent.
- Pragmatic considerations are important in legal translation and should be taken into account when determining translation strategies.
- In translating purely technical terms, literal or standardized translation can be adequate.
- In translating legal formulas, literal translation is very ineffective. Thus, replacing these with their functional equivalents can be much more efficient.
- References, which are often highly redundant in contracts, can be omitted or replaced by grammatically simpler and/or shorter references without affecting the intended meaning. *Here- and there-* compounds are usually used excessively and most of the time unnecessarily.
- In translations with a shift in function, the translator has practically much freedom to adapt the text to meet the expectations of the target receivers for a text with a new practical function. Thus, functional approaches to legal translation are not only feasible, but also effective thanks to their breadth and flexibility.

To develop translation competence, translators need [13]:

- To focus on the application of pragmatics, which is a relatively modern science, to legal translation?
- Translation competence presupposes not only in-depth knowledge of legal terminology, but also thorough understanding of the communicative legal function of such texts.
- To emphasize more on the communicative and functional nature of legal translation.

## 4. Law, Language and Translation:

The translation of legal texts of any kind, from statute laws to contracts to courtroom testimony, is a practice that stands at the crossroads of legal theory, language theory and translation theory. The issues related to legal translation, law and language can be highlighted briefly as following:

### 4.1 Features of Legal Language:

Legal language can be defined as a customary jargons that used by lawyers, judges, prosecutors, as well as legal jurists, such language may take different types and forms, and it can be English for countries adopting common law systems or Arabic language in Arab countries disrespect of its adopted legal system [14]. However, the main question here is that whether the legal language differs from the language of law?

It seems that there is quite clear difference between both the language of law and the legal language, where the first one may be referred to the language used in formulated provisions and texts within the written codes of law, while the second is referred to the language used by professionals of law. In short, the language of law is always written, but in contrary the legal language is almost written and spoken by lawyers or judges.[15] On the same context, the language of law is not totally separated from the legal language, because the specialists of law use always the written language of law as it is preserved in the codes of law and the legal language in this term is influenced by the power of language of law [15].

Accordingly the language of law is embodied in various forms of written legislations, conventions, codes, wills, contracts and other documents. The legal language is found in written decisions of courts and legal textbooks or in spoken formal speech of lawyers, witness questioning and other types [16].

#### **4.2 Types of Legal Discourses:**

There are many types of legal genres, one of the most known primary genre is legislation, which means a group of the general and obligatory rules that adopted by the parliament, or executive power in term of exercising its legislative power under some circumstances, with purpose of regulating the relationships of people with each other, or the relations of those peoples with the state[17]. Under the common law system, law cases and court's judgments may be considered as an interpretation of the will of the legislator, as well as legal academic works like written books of law, legal articles and essays are considered as types of legal genres. Moreover, judicial precedents, contracts, agreements, archived court's documents and testimonies of several types are deemed also as legal target genres [18].

In brief, the types of legal discourse may be classified into four types, these are namely primary (i.e. codified laws and legislations), secondary (i.e. court's decisions, law cases and courtroom's archives), enabling (i.e. legal writings for academic or professional purposes) and target sorts (all types that may include agreements, contracts, testimonies and affidavits, as well as other legal documents).

#### **4.3 Essence of the Legal language:**

Legal language is characterized with special features that distinguish it from the standard language; such characterizations are well related to some lexical and syntactic features. All languages, including Arabic and English are based on historical and cultural background which make them different from many points, such as the technical terminology, common and uncommon words, old and formal phrases, qualifying expressions, repeated concepts, and formulaic expressions that used in specific languages [19].

For this reason legal concepts across nations and cultures is always complex, and need also complex languages, which may not be understood by lay peoples. Thus, it is the task of legal professionals of lawyers, judges and legal jurists to construe and explain it. In such way, the importance of the codifications and other legal documents emanates not only from the granted rights and imposed duties, but also because they have the power to empower judges with taking necessary decisions for the achievements of justice[20]. Therefore, the use of certain technical terminologies by several languages grants some sort of authority and power to law men, as it embodies some social remedies, the provisions of law have always solutions and remedies for the vast range of human behaviors in real life. Briefly, the legal provisions are entitled to face not only the problems of presence but also the anticipated problems of future; because of this the language of law expresses the intentions of the legislator clearly and unambiguously [21].

By its nature, the legal writing is achieved by using range of linguistic techniques: qualifications and nominalized expressions like a complicated and long noun phrases and subordinate clauses that create some sort of ambiguity in the meaning of legal rules. Other linguistic devices used in the setting up the structure of the provisions of law are the use of decontextualized and impersonal language in order to make the interpretation of law more liberal and flexible by judges and lawyers under all conditions and circumstances in all aspects of real life [20].

#### **4.5 Comparative Law and Its language:**

In general, there are two major types of law, the national law which is enacted within the limits of each national state, and the international law that has its impact on global levels of the entire countries. The first law regulates relations between individuals and national state with its citizens and subjects, as well as it is designed on the way that reflects national values and cultures of specific countries, while the second regulates relations between states, states and individuals as well as relations between international organizations and it is characterized with global nature and features [22].

The question here is that whether there is deference between international law and nation law? The answer is positive, in sense there are lot differences between both types of law[23]. The sources of international law are not the same for national law, as it takes its sources from conventions, treaties, customary laws and legal principles, in contrary the sources of national law are derived from the real social, economic and political developments and conditions, legislation, customs, jurisprudence, principles of justice...etc

Both international law and national law are different for many reasons; the subjects of the international law are states and organizations, while the subjects of national law are individuals. The object of both laws are different, the international law regulates relations between state in the times of peace and war, while the national law regulates relations of the state's individuals, as well as the structure of both types of laws are also different, in sense the national law managed by the three powers of the state, executive, legislative and judicial branches that represent a guarantee for it implementation, while in the international law case, those powers are not existed [23].

Among other six languages which are recognized within United Nations Organization is Arabic language, but still the English language is considered as the official language of the world. Most of the international treaties, conventions and documents are written in English and then translated to other languages including Arabic.

#### **5. Comparative Law and Linguistic Problems in Arab Countries:**

The topic of legal translation is a complex task that needs to be carried by professional translators having knowledge about the structure and function of the legal terms of several legal systems, they may performe the task of translation with using technical skills.

##### **5.1 Reception of Law:**

Reception of law means that indigenous rules of the legal systems are transferred from other languages, for many reasons such as less experience of the received legal system, political and social dominance, or in other cases the students and graduates of law bring the values, concepts and some times provisions used in the legal system of the country of their study [24].

The problem of reception of law are related to the ways of copying, browning or translating of foreign laws, which may not fit the cultural and social variety of the two legal systems [24]. For example most of Arab countries, especially Jordan and Syria have browed the legal provisions of its criminal laws or

punishments laws from French criminal legal system despite the variety of cultural, social and ideological aspects of the people in those countries [14]. Moreover, the provisions of any law, as laws are always the spirit of society, are designed to solve local and national social, economic, political and other sort of problems within specific periods of history. [14] Hence, the French criminal legal system that borrowed by the late of eighteenth century is applied till now in some of Arab countries with slight amendments.

## 5.2 Categories of Translated Concepts:

Generally, there are three categories that translation of legal concepts and term may be achieved within, these are first the identical equivalent in the target language, irrespective of the similarity or dissimilarity of the used words in deferent legal system [25], such as these Arab legal worlds along with their English equivalent: القتل / murder, homicide; السرقة / theft; العقد / contract, agreement; الإفلاس / bankruptcy; الزواج / marriage; and المحامي / lawyer.

In the second category, the legal concept may have no easily identifiable equivalent, but it can be made out by roughly searching any similar concept [26], such as Canon in French language is equivalent to the world of قانون in Arabic language or law in English language, also such as *Sharia* in English which means شريعة in Arabic language.

The third categories are legal concepts without any rough equivalence in the target legal system [26], such as the word of اللعان in Arab personal laws that it has no equivalent word in English, in such case the translator may, with high degrees of cautious and carefulness, explain it as necessary as possible.

## 5.3 Common Misleading Mistakes:

In the translation of Arabic legal texts into English, translators commit many mistakes as regard misusing of the vocabulary, as some legal words within English legal system give different meaning in using them under different branches of law, in sense the same word in constitutional law indicates another meaning in criminal law for instance [27].

The word of interrogation in English means الاستجواب in Arabic, but the same word refers to deferent meaning if used under criminal law or constitutional law, thus it is used as a parliamentary means for accounting ministers in the parliament, and at the same time it is a criminal procedure practiced by the public prosecutor in criminal proceedings.

## 5.4 The Role of Comparative Law:

The major question here is that what are the applicable means for solving the problems of legal translation, whether the solutions could be brought by using linguistic theories or merely interdisciplinary approach? For answering such question some points have to be highlighted as following:

The explanation of the topic of comparative law and legal translation could generate general sense that the discourse regarding the substance of international comparative law, which was basically an important, has become less significant, where the focus was given to the descriptive patterns and pure linguistic approaches [29]. However, the primary impression is deceptive, as the topic of legal translation by its nature is well associated with the legal institutions [28].

From the comparative law prospective, the debate on the problems of legal concentrates on the concept of “denotation”, which means in the indicative meaning [29]. Thus, any legal term within the jurisdiction of a foreign law may be realized as a systemic term and then translated into other local language by searching out a term that corresponds with aims and functions of legal term under the

local legal system. This permits, for instance, the English legal term of law to be interpreted into Arabic language as Qanon or قانون in specific areas of legal system.

In the translation of legal jargons or words, some translators mostly restore to mat between vocabularies and terms which are already revealed to have some sort of an association by a connection of equivalence[29]. For those how apply denotation in a descriptive approach, they appear of having the same legal meaning. The production of denotation may give us always the same function of legal terms, but the similarity of the function of the same legal term under different legal systems may not result in reproducing a case of synonyms [30], because the term of law for example has its equivalence in Arabic at least by function with term قانون , as well it may be understood by lawmen exactly, but still these term could not be identical. The legal term of قانون in Arabic language and Canon in French language have the same meaning, and the indicate to similar meaning, but still they are not similar in fact because of their existence under different language and legal systems. This means that the application of functional method of comparative law in the context of legal translation might be helpful through finding the connotations of legal terms under different legal and language systems of the globe.

In fact, the real structural differences between legal languages of several legal systems amount to the creation of additional problems for the translation of foreign languages of certain legal systems into nation legal systems, which sometimes seems to be easy task and in others hard mission[30]. However, translators are used to deal with this problem by using words that are lexically linked, but inadequate from comparative law standpoint[28]. For instance, based on variation of meaning in French language and legal system, the general term infraction has three subcategories in Arabic language, these are الجنائية (felony), الجنحة (misdemeanor) and المخالفة (violation). This happened despite the fact that the criminal law has its historical source from French legal system.

Upon the above mentioned discussion, it can be concluded that the topic of legal translation is a complex task, which cannot achieved by jurists or lawyers, but it need some sort of specialization through specialized and professional translators. Legal translator must be professional and well knowledgeable about the structures and function of the legal terms under different legal systems and they must be more technical in using terms and equivalences during performance of legal translation in order to solve the problem of this type of translation by depending on comparative legal institutions case by case ground[30].

## 6. Conclusion:

From the above discussion, it can be concluded that the legal translation is not a new topic; it has its roots in ancient Egypt at the time of Pharaohs. This topic is very important in the new area of humanity as the impact of globalization and the spreading of vital values and principles all over the world, such as the respect of human rights, principles of transparency and the efforts of anti-corruption, the increment the size and scope of international trade transactions and contracts, as well as the international cooperation in fighting new types of transitional crimes, such as cyber crimes, terrorism, organized crimes ...etc

The scope of the present study embodies several issues regarding legal translation, those are meaning, scope and purposes of legal translation, which have been explained under literature review, issues in legal translation, including the problems of legal translation, qualification and skills of the translator, right to translation and translating contracts into Arabic. Aspects on law, language and translation, as well as comparative law and its language have been discussed in the current study[28].

The findings of the study concentrate on an idea of solving the problems of the legal translation from both functional and structural parts of the problem depends on professional of legal translators and not on lawyers or jurists, because this type of translation need more specific techniques and specializations as the existed legal and language systems have its own structural and functional differences, as the historical, social and political sources of specific language of law that to be translated into other language should be pre studied by the translator before the initiation of task[28].

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