

On the Complications of Nepali-English Legal Translation

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Abstract

This article explores the complications of Nepali-English legal translation by examining linguistic and extra linguistic complications between Nepali and English languages and proposes a solution. Law offers rights and binds people with duties within a jurisdiction, and translating law from one language to another language brings complications for equal communication. The knowledge of comparative law and the incompetence of the source and the target language culture interfere with natural communication. Even a minor mistake in translation brings major disputes and conflicts. As the theoretical framework, this research uses equivalence and cultural theories of legal translation. It collects primary and secondary data from freelance and institutional translations applying juritraductological methods used in legal translation. The significance of the study is top professionals, novice translators, and university students curious about Nepali-English legal translation. This research finds that translating law or legal documents from one language to another language brings linguistic and extralinguistic complications but a translator can resolve them using the proposed solutions. It concludes that exploring the complications of Nepali-English legal translation with solutions enhances the quality of Nepali legal translation.

Keywords: Translation, complication, juritraductology, linguistic, extralinguistic.

Introduction

Nepal as a sovereign country formulates native law to regulate Nepali people's social behavior. Nepal drafts laws in the Nepali language and translates them into English for global communication. Translating law from Nepali to English encounters with linguistic and extralinguistic complications. Legal language possesses distinct legal vocabularies, grammatical patterns, and sentence structures that communicate effectively within the legal domain. Legal language results from legal culture, historical events, politics, economics, and interdisciplinary. It regulates the social behavior of people offering rights and binding them with duties. Translating law from the source language (SL) to the target language (TL) or

from one legal tradition to another legal tradition does intercultural communication, however, it comes with complications in delivering the message equally. The major challenges appear from the linguistic and cultural differences between the SL and the TL legal systems. The linguistic challenges of Nepali-English translation are the inconsistency in grammar and equivalence in terminologies. The cultural complications are the different legal systems and inconsistency in legal institutions, behaviors, and real practices. Nepal adopts a mixed legal system, whereas, the English-speaking countries follow either the Common law or the Continental legal system. Contrary to this Nepal follows the supremacy of the Constitution and practices case law in the justice system. The decision of the higher court is binding to the lower court. Moreover, the family law of Nepal is influenced by the Hindu jurisprudence. Nepal practices the adversarial method in court proceedings where the role of a judge is neutral like an umpire. These differences between the Nepali and English legal systems affect the legal translation to communicate equally.

Background on Legal Language

The nature of legal language is complex and difficult for common readers who are outside the legal profession and academia. Legal language is the language for a special purpose (LSP) to have legal effect. It is normative, affiliated with legal traditions, ambiguous, and full of legal jargon. The technicality and culture-bounded legal language differs from the language of everyday speaking for common purposes. Some legal jargon is only meaningful within the mechanism of law and differs from the languages of other disciplines. The language of law is complex to understand for general readers. For instance, "bench" in law refers to the seat where a judge sits in the courtroom and delivers a decision. Court uses the term "single bench", "full bench", and "bar and bench" which are different from the general understanding of "bench" in the sense of "desk and bench". The language of the law is prescriptive which prescribes rights, duties, justice, the rule of law, and others to regulate social behavior informing and directing people. Cao argued that the language used in law is designed to achieve its purpose, which is predominantly prescriptive, directive, and imperative (13). Corresponding legal terminologies between SL and the TL with equal legal effect is a challenge in legal translation.

The linguistic equivalence in legal translation is not sufficient from the translation point of view and needs to achieve equal legal effect in multilingual jurisdictions such as the United Nations (UN), the European Union (EU), and the World Trade Organization (WTO). So far as the Nepali-English legal translation is concerned, the language of law used in the Nepali legal texts and the English texts differ in registrar, tenor, and text structure. In other words, different forms of language are used for different contexts and situations which are not alike between these two languages. The relationship between the text producer and text

receiver is different, and the grammatical structure of the languages is incongruous. Corresponding all these aspects of languages reasonably between SL and TL is a true complication in transition.

Specific Issues in Nepali-English Translation

The legal translator reads and deconstructs SL laws and reconstructs them in the TL legal system. While reconstructing the text, meaning is at risk of being lost in the translation due to the linguistic and cultural disparity between the readers. The SL legal concepts are understood inconsistently and bring a communication gap. To transport complete equivalence with equivalent effect between the SL and the TL reader is not possible and is only a legal fiction. For instance, the concept of 'tort' (civil wrong) of the Common law does not equate to the Civil law system. The legal concept of *anshabanda* is not fully equivalence to "partition-share". One can divide the ancestral property without parting from the family unit. *Dharma putra or putri* is functionally equated to "adoption" as the term "adoption" does touch the religious concept of Hinduism but signifies more to social conscience. Many concepts of family laws are from the oriental legal jurisprudence in Nepal and it is difficult for the target readers to understand the concepts identically. It creates complications to have an equal understanding of the translation to the TL readers as the SL reader understands. Sarcevic (1997) revealed, "The greatest obstacle to uniform interpretation and application is undoubtedly the incongruity of the legal system" (p.5). The interpretation and comprehension of Nepali legal concepts to Nepali readers and English readers differ in their background knowledge. The comparative laws of Nepal and English-speaking countries are different. Cao (2007) argued, "The nature of law and legal language contributes to the complexity of legal translation. This is compounded by further complications arising from crossing two languages and legal system in translation" (p. 23). Scholars agree that the main difficulty of legal translation is not only linguistic differences but also cultural disparities. More than the semantics, the pragmatic equivalence between the Nepali and the English language and law translation needs to be explored. The significance is that it contributes to solving difficulties of Nepali-English translation and makes the translation communicative.

Research Questions

This research focuses on the legal translation problems that come from linguistic and cultural differences between Nepali and English languages and exploring this problem raises some research questions.

- (i) What are the complications of Nepali-English legal translation?
- (ii) How does a legal translator overcome these complications?

Objectives of the Study

The primary objective of this study is to explore the complications of Nepali-English legal translation and the ways to sort them out. The secondary objective of this study is to contribute to the translation communication to the TL readers as equally as the SL readers receive in their native language and culture. So, it aims to achieve the following objectives.

- (i) To explore the complications of Nepali-English legal translation.
- (ii) To solve the problem and make Nepali legal translation communicative.

Review of Literature

Legal translation communicates legal matters facing challenges of equal communication by incongruous legal terminologies and legal systems. The understanding between the SL and the TL readers varies. The legal professionals of one legal system cannot draw identical meanings if come from another legal system. The meaning of legal terminology is determined by the legal authorities as well. Unlike medical terms, legal terms have the same meanings and functions equally throughout the globe. The varieties of legal drafts in language and form in different jurisdictions add further challenges in translation. For example, the language of "contract" differs from the "will deeds". The language of "power of attorney" differs from the language of "partnership deed", the drafting style of "land lease agreement" differs from the first information report (FIR) for investigation. The differences in legal drafting and use of language bring a conceptual gap between the SL and the TL readers. The social, cultural, and institutional differences are the sources of the gap. For instance, the Nepali practice of using "*shree*" before the name of institutions like the ministry, court, administrative office, or academic institution is absent in English law. The term "*shree*" does not have an equivalent in English if used for the institutions.

Due to the cultural differences in the legal drafts of the SL and the TL, the legal translator encounters many challenges. Translating court decisions, and vital personal events: birth, marriage, divorce, and death in Nepali-English language pairs the challenges of equivalence terms appear. Deciding husband and wife in a same-sex marriage is difficult. Some Nepali relationships are addressed using the same term in English. The relationship of *vinaju*, *phupaju*, *jwai*, *sala*, *saddaju*, *jethaju*, *dewar* is translated into "brother-in-law" in English and the same is for the "sister-in-law" which is used for many relationships of Nepali family. Zidan (2015) affirmed, "Each genre of legal text tends to have its stereotypical format and is generally written in legal language or legalese" (p. 17). So, maintaining identical formats in legal drafts between the languages creates a challenge. The translator falls into the dilemma of either preserving the foreignness of the foreign text or giving naturalness to the translation.

Which gets priority in translation: function or form? The translation is like the exchange of foreign currency, where, an equal sum counts over the types of currency. Legal translation prevails over contents rather than forms but consistency in legal drafting style is also important in legal translation. Bassnett repeated to Levy that any contradicting or omitting of difficult expressions in translating was immoral. Translator, he believed, had the responsibility of finding a solution to the most daunting problems not only in meaning but also in style and form (Bassnett, 2002, p. 31). Functional equivalence or borrowing is the way to maintain equivalence of the complex texts. For instance, "sati" is translated into English as "widow burning" as functional equivalence. Here *sati* is translated into "widow burning" but it does not transfer the complete meaning of the *sati* system of the Hindu community. Etymologically "sati" means "a devotee wife" burns herself willingly for the sake of chastity in the pyre of her dead husband. Similar to the other language pairs, the crucial challenge of the Nepali-English legal translation is preserving the foreignness of the Nepali text. Newmark (1988) defined translation as rendering the meaning of a text into another language in the way that the author intended. This ought to be simple, as one ought to be able to say something as well in one language as in another (p.5). However, his definition is not fully applicable in the context of Nepali legal translation into English. Commanding over the source's legal spirit and converting it into a target legal system is crucial in Nepali legal translation. For instance, a "contract" is an agreement between the parties for doing something under the law, according to the Contract Act of Nepal. Either *samjhauta* (agreement) is a contract or not if the *samjhauta* is not possible to bring into action. Though the term *karar/samjaut* corresponds to a contract/agreement, it does not mean the same to the readers according to the different laws of the countries. Additionally, the meaning of a given word is not determined by the particular word but by the nearby words in a sentence or a paragraph. Sometimes the author's meaning resides in the whole paragraph.

The legal translator's responsibility is to explore the true meaning of the source law and convert it into the target language. As Benjamin (2000) revealed, "Meaning is never found in relative independence, as in individual words or sentences; rather, it is in a constant state of flux until it can emerge as pure language from the harmony of all the various modes of intention" (p.18). The meaning of a legal term lies in the sentence or it comes after reading a whole paragraph. Searching for the equal meaning of a source term in the target system is not always secure.

The studies show that legal translation has complications of appropriate equivalence between the SL and the TL in terms of languages and cultures. Yet, there is no meaningful research has been conducted to explore the complications of Nepali-English legal

translation. So, this research explores the challenges between these two language pairs delimiting the research.

Method and Materials

This qualitative research collects primary and secondary data from Nepali laws and their translated versions. It analyzes the collected data using qualitative research by analyzing Nepali-English translation pairs. It focuses on the difficulty and suggests for solution using translation methods. The personal experience of the researcher as a legal translator is also used. Data are analyzed and interpreted for finding and conclusion. The special method of legal translation *juritraductology* is used. This French word is used for legal translation method which has three steps functions: first, "a semasiological step" in which the details of the source concept are established; second, "a comparative law step" in which potential renderings in the target culture are scrutinized to establish overlaps and differences between concepts; third, "an ontological step" in which the translator decides on which term to choose for translation in the respective situation on linguistic and legal grounds (Monjean-Decaudin & Popineau-Lauvray, 2019, p. 122-126). This special method for legal translation is used to analyze the Nepali legal terms from linguistic and paralinguistic perspectives before transferring to English choosing the appropriate correspondence and abandoning the false friends. The non-English terms are italicized.

Results and Discussion

Legal language is used to achieve special legal effects and to solve legal issues in the community. Translating Nepali legal concepts into English gets obstacles by cultural incongruities of law and linguistic differences. The Nepali legal concept "*haksapha*" of the Civil Code, 2017 (§§ 556, 557) is translated into "pre-emption" in English but it does not equally transfer the SL meaning to the TL. This SL term is used to establish the right to land and house that is shared by family members commonly. If the first party sold the property (house/land) to the second party without informing in the joint family. The member of the family can buy the property from the buyer paying his amount including the registration fee. The concept of "pre-emption" in English is more used in selling and purchasing a company's share voluntarily. It does not attract to the land and house property. Thus, the SL legal concepts are linguistically non-transferrable as one-to-one correspondence but functionally transferred. This difficulty comes not only in inter-lingual translation but also in countries of identical language. The degree of complication rises considerably when translating from the mother tongue to a second language. As Sofyan and Rosa (2021) claimed "The translation problem becomes even worse when the translation direction is from the translator's first language to the foreign language" (p. 226). Translating legal documents from Nepali to

English is comparatively more difficult than the reverse translation as the translator's competence in the foreign language and culture is less commanding.

Disparity in Legal Traditions

Legal language is a technical language but not as technical as the language of science, medicine, and engineering. National legal tradition connects deeply to national history, politics, culture, economics, and international relationships. Translating law transfers legal culture for intercultural communication. Legal language is not only the language but also the collection of legal experiences and practices reflected in the language. This needs to be transferred through legal translation. As Cao (2007) stated the system-bound legal language reflects a specific legal system's history, evolution, and culture (p. 23). A native legal system also develops from indigenous customary laws and practices and the customs of one country cannot be fully transferred to another country. The partial communication of legal culture brings gaps in intercultural communication. Cao mentioned Tetley for the argument that the "legal system" is the nature and content of the law generally, and the structures and methods whereby it is legislated upon, adjudicated upon, and administered, within a given jurisdiction (24). Translating the indigenous Nepali legal culture and maintaining consistency to the Common law or the Civil law countries is tough from an equivalence point of view. For instance, the concept of the Hindu "*Raja*" equated to lord "*Vishnu*" does not equivalently correspond to the English constitutional monarchy.

The concept of Hinduism has influenced Nepali laws and affected Nepali-English legal translation. The legal provision of *dana* (donation) and *bakas* (gift) in the Civil Code of 2017 defines cash or fixed property used for religious or social purposes as non-taxable. The tax exemption concept is derived from the English legal system in which it is given to the philanthropic but this is not consistently applied in the Nepali legal practice. The rationale behind tax exemption is to promote social work which otherwise the government has to do. Often articulated argument for exempting philanthropic entities from income tax is the "base defining" rationale which argues that the surplus of a philanthropic entity is different from income and therefore beyond the scope of the income tax base (OECD, 2020, p.22). However, the Nepali concept of *danais* is limited to the salvation of the ancestors' afterlife. It does not meet the tax exemption concept of philanthropy. This is the difference in legal traditions between the SL and the TL. The concept of tax-free property is adopted from the foreign legal culture but it is not consistent with the tax relief system for charitable donations practice in the UK. The Income Tax Act, 2002 of Nepal exempts tax from the property given to the charity (*dan*) (§12) but does not clearly define the criteria. Similarly, the concept of "*bakas*" is translated into "gift". *Bakas* are the personal property given to the caregiver as a reward for love and care to the testator either inside or outside of the family.

The practice of Nepali *bakas* corresponds to "Wills" if compared to the British Wills Act of 1837 though it is translated into "gift" in the Civil Code of Nepal.

Due to this system gap between Nepali and English law translating legal concepts from Nepali into English has become tough. As David and Brierley (1985) stated, "Each legal system or family has its characteristics and, . . . has a vocabulary used to express concepts, its rules are arranged into categories, it has techniques for expressing rules and interpreting them, it is linked to a view of the social order itself which determines how the law is applied and shapes the very function of law in that society" (p. 19). It signifies that history and culture shape the meaning of legal words. The disparity of history and culture obstructs identical communication between the SL and the TL readers. Sarcevic (1997) also affirmed that the incongruence of legal systems in SL and TL is the main challenge to the legal translator (p.13). The higher the system gap, the greater the complication in translation. For instance, the translation between Nepali-Chinese is more complicated than between Nepali-Hindi. Further, Cao (2007) repeated Groot that when the two legal systems and the languages are closely related, e.g. between Spain and France or between Denmark and Norway the task of translation is relatively easy and contrary to the opposite different languages and systems of law such as the translation of Common Law into Chinese (p. 30). The comparative legal system influences legal translation, which applies to Nepali-English legal translation.

Linguistic cum Stylistic Differences

Legal language differs from everyday use and effectively works within the legal system. It communicates legal ideas among lawyers, judges, professors, students, court employees, and clients. The degree of understanding of legal language between professionals and non-professionals varies. Legal professionals understand legal terminologies more comprehensively than common people. Legal terminologies are jurisdictional and some are so unique to find equivalence in another jurisdiction. Cao wrote, "A basic linguistic difficulty in legal translation is the absence of equivalent terminology across different languages. This requires constant comparison between the legal system of the SL and TL" (p.29). Legal translators need to have additional knowledge of comparative law and legal systems besides the linguistic competence of SL and TL. Like other language translation pairs, Nepali-English language translation pairs have the complications of linguistic equivalence. For instance, the Nepali legal and political terms *loktantra*, *prajatantra*, and *ganatantra* are translated into "democracy" in English but practically many democratic values are lacking.

The stylistic disparity is another challenge between Nepali and English translations. The legal drafting style practice in Nepali drafts such *askapali tamasuk* (unregistered home transactions), *warisnama* (power of attorney), and *ghar bahal samjhauta* (house-rent agreement) differ from English drafts of the same purposes. The Nepali convention of beginning legal drafts by '*likhitam*' (it is written) is unique and differs from the English drafts. Cao stated, "In terms of legal style, legal language is a highly specialized language used with its style" (p. 29). The stylistic incongruities of the legal draft complicate the legal translation. Legal drafts are language and country-based.

Additionally, the grammatical disparity between Nepali and English complicates the translation. The Nepali language uses various terms for a second person "you" to denote the social hierarchy. These are *tapai*, *hajur*, *timi*, *timro*, and *tero* translated into "you or your" in English. The verbs of the Nepali language are selected to match the family or social status and gender of the subject. For instance, *garnuhunchha*(do) for high status, *garchhau*(do) for equal, and *gar*(do) for junior, *garchhin* (do) for female, but English uses the same verb "do" are for all status and gender. Even a judge or a layman is addressed with the same subject and verb. Besides, the Nepali language does not have auxiliary verbs like in English to differentiate the tense of an action.

The use of archaic words brings complications between Nepali and English translations. Sanskrit archaic words are used in Nepali, whereas English uses Latin and French archaic words. Nepali *dharmaputra/putri* are borrowed from Sanskrit equivalent to "adoption" in English. The word "adoption" is used for son and daughter in English equally and is not specific to gender as in Nepali which uses *dharmaputra* for male and *dharmaputri* for female. Hence, the linguistic and stylistic differences between Nepali and English languages complicate the translation.

Overcoming the Complications

Nepali-English legal translation encounters linguistic and extralinguistic complications like the translation of other language pairs and needs a solution. To solve the challenges the translator needs professional skills, knowledge of comparative law, and command of SL and TL. Cao (2007) recommended the linguistic; grammatical, textual, and pragmatic competence; the illocutionary, and sociolinguistic competence of SL and TL (p. 42-43). The knowledge of comparative legal systems, the purpose of translation in TL, and the analysis of the ST before translation contribute to translation. The objective of translation determines the production of a translation and if it alters the translation differs from one another such as the translation of the same advertisement differently in different languages.

Further, the pragmatics analysis of a text enhances finding the contextual meaning of the text. It analyzes the development of law and the effects of the translation on the TL readers. The function of the text in TL is not necessarily identical to the function of the text in SL. The obligatory function of the source law can change into an informative function in translation. The Constitution and laws of Nepal are prescriptive for Nepali but informative to the TL readers. The sociolinguistic aspect of the text is also important to mitigate the translation problem as it gives knowledge of the sociolinguistic convention, and the translator knows how the language communicates differently in different situations. Having command over the sociolinguistic contexts of SL and TL, the translator searches right matching of meaning and form regarding the languages and cultures concerned (Cao 2007, p. 43). It improves the translator's knowledge of placing the right word in the right place in TL. Not only these but the translator's awareness of the field, tenor, tone, and modes drag near to solving legal translation challenges. Developing bi-cultural habits of the translator by reading TL books, newspapers, and magazines, watching movies, living with TL culture people, using modern technology, and interacting with lawmakers are some ways of solving the complications of legal translation.

Additionally, developing the habit of using legal dictionaries, and being familiar with the Google translation also help mitigate translation complications. For instance, the date converter converts Nepali year *bikram sambat* (BS) into English AD quickly and exactly. The translation memory (TM) can be used for the conversation of SL into TL. This is the database that stores segments (usually sentences) of the source text and their corresponding segments of target texts from previous translations (Tekeda & Sekine 2014, p. 231). Though a machine translates faster than men, sometimes they cannot bring the author's meaning to the text. Translators' training is the next way to mitigate translation complications. It exchanges the translators' work experience among the groups and discusses the solution. Tekedar and Sekine (2014) insisted that "Translator training should be an integral part of the effort to improve the quality, efficiency, and consistency of law translation" (p. 232). Organizing regular translation training for the translators and participating in legal drafts as co-drafter can minimize legal translation complications. Drafting in multiple languages simultaneously in Canada, Switzerland, and Hong Kong justified minimizing legal translation challenges.

Using "domestication" and "foreignization" methods solve the complications of Nepali-English legal translation. Domestication brings the TL practices through translation, whereas foreignization resists the domestication practices and registers the foreignness of the foreign language in translation. Venuti (1995) said "domestication" brings the author to the readers and "foreignization" sends the readers to the author (p. 20). Domestication accepts

the TL culture but foreignization attempts to register the SL culture in translation. The co-drafting strategy of the legal draft gives a solution to the complications of Nepali-English legal translation. Each strategy has its pros and cons but the shortcomings of one can be compensated by the other.

Finally, the translator needs intensive reading of the source text to reach near to the author's spirit. Every reading is a new reading and adds new meaning to the readers. If two translations are read side by side, the loss of the rhetorical silences of the original can be felt from one to another (Spivak, 2000, p. 315). A translator has to surrender to the text to bring the true meaning of the text before reproducing it into another language. Spivak (2000) added, "Translation is the most intimate act of reading. Unless the translator has earned the right to become the intimate reader, she cannot surrender to the text, cannot respond to the special call of the text" (p.315). Close reading of the text meets the calling of the text to understand the author's meaning in the text. The translation techniques of borrowing, adaptation, descriptive substitution, free translation, lexical expansion, description by definition, and functional equivalences solve Nepali-English legal translation complications.

Conclusion

Legal translation transfers the source legal message to TL for intercultural and interpersonal communication despite the multiple linguistic and extralinguistic complications it faces on the way. The translator should read a text closely in the pre-translation, translation, and post-translation phases. He requires analyzing the texts linguistically and extra-linguistically in the pre-translation phase which follows the translation phase to transfer the text equivalently. The post-translation phase is the assessment of the communicative purpose of the translation to the target readers. The initial recognition of the translation complications of Nepali-English prepares a translator for the solution in the translation and post-translation phases. A good translator explores the problem and goes to the solution with the knowledge he/she collected in this domain. Linguistic and cultural challenges are the major complications of Nepali-English legal translation similar to the other language pairs. Using principles and practices of translation brings a solution. The discussions with the lawmakers (if possible) support minimizing the translation complications in addition to the knowledge of the comparative law in the translator. This mini research on Nepali-English legal translation cannot bring all the solutions of Nepali-English legal translation, however, it works as a foundation for further exploration of this domain.

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