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College of Arts

Asst.Lecturer. Alaa Hasan AbdullahE-Mail: alaa88hasan@gmail.com

Mobile: 07708428972

Department of English Language
Al-Qalam University College
Kirkuk/ Kirkuk
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ARTICLE INFO**Article history:**Received: 10/07/2019
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Translating Iraqi Personal Status
Law 1959 | Marriage as a Case
Study****ABSTRACT**

The paper attempts to investigate the key linguistic standards employed in analyzing texts in relation to legal translation. The paper seeks for finding out a specific criterion to deal with the legal text translation, and how to deal with translating such texts from Arabic to English and vice versa. The main issue of this paper is the legal translation of the cultural-religious specific terms into TL, where these Arabic terms have no equivalent in English. The purpose of the present paper is to display how linguistic and cultural considerations have an important role in legal translation and should be taken into account when translating legal texts.

The paper shows the applicability of translating legal texts of miscellaneous cultural and religious terms. The paper attempts to answer the question regarding cultural-religious specific terms in legal translation. The paper has shown that the linguistic perspectives towards legal translation can to some extent provide valuable insights to the translator's strategies, maintaining that legal translation is essentially an act of communication.

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* Corresponding Author: Asst.Lecturer. Alaa Hasan Abdullah | Department of English Language / Al-Qalam University College / Kirkuk - Kirkuk / Iraq | E-Mail: alaa88hasan@gmail.com / Mobile: 07708428972

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**"Section 1 – Forbidden Women & Marriage to Women Belonging to
the People of the Book:**

Article 12

In order for the marriage to be sound, the woman must not be lawfully forbidden to the man who wants to marry her.

Article 13

Prohibition of marriage is divided into two parts: permanent and temporary. While permanent restrictions are kinship, affinity and breastfeeding kinship; temporary ones are marriage to more than four wives, adherence to a non-divine religion, divorce effected by three repudiations, the dependence of someone's right on the marriage or *iddat* (the waiting period following a divorce), and the marriage to one of the forbidden while being already married to another.

Article 14

1- A man is forbidden from marrying, amongst relatives, his mother and grandmother, however high; his daughter, his son's daughter and his daughter's daughter, however low. Forbidden to him as well are his sister, the daughter of his sister, and the daughter of his brother, however low; his paternal aunt and the aunt of his paternal ascendants, and his maternal aunt and the aunt of his maternal ascendants.

2- A woman is forbidden from marrying men from the same category of kinship mentioned above.

Article 15

A man is forbidden from marrying the step daughter born to the wife with whom his marriage was consummated; the mother of the wife with whom he has concluded a marriage; the wife of his ascendant, however high; and the wife of his descendent, however low.

Article 16

Every woman who is forbidden for marriage for reasons of kinship and affinity is also forbidden for breastfeeding kinship reasons, except for lawful exceptions.

Article 17

For a Muslim man, marriage is permissible with an individual who practices one of the religions of the Book, while a Muslim woman may not marry a non-Muslim man.

Article 18

The conversion of one of the spouses to Islam without the other follows the laws of the Shari'a in whether marriage should be maintained or the spouses should be separated."

1.1.Legal Translation:

Regarding legal language, Cao (2007:37) shows that each legal translator in a general point should not only have knowledge about the

language, but should have a unique knowledge and familiarity with the legal system he/she deals with in the SL and TL as well. The legal translator should be more acquainted and familiar with the relevant terminology, especially legal texts, and must be well qualified in the TL-specific style of legal writing and wording his/her translation. Furthermore, the legal translator should make up all the shades of translation and deviations of SL meanings so that he/she can highly reproduce translations as naturally and faithfully as possible in the TL, and must grasp all the mechanism of law language.

Because of the wide and extended differentiation spread in linguistic legal systems from one state or country to another one, where each one has its particular law and societal rules. Husni and Newman (2015:131) also mention that legal translation, requires an expert that is not only knows about language, but also knowledgeable and practicing in legal terms and practices. Translators of legal discourses should not only have general knowledge of legal terminology and style, but what is most valuable for translators is that they should also be well experienced and skillful linguistically, in the legal complexities of foreign cultural and legal systems.

The legal translation is to some extent treated as a culture dependent system, which usually denotes the fact that the translator should make of the cultures of Source Language community and Target Language community before translating, in addition the translator should be highly acquainted and more knowledgeable with the linguistic, grammatical and lexical differences and similarities of both languages in order for not making the text misunderstood or mistranslated, since the legal text needs a special attention when dealing with it.

(Smith: 1995:64) confirms that the successful translation is dependent on three main characteristics of legal texts, the translator must:

1. be acquainted and familiar with the legal systems of both SL and TL.
2. fully understand the terminologies of the relevant legal systems.
3. be a versed and skilled person in the writing style of TL.

(Fakhouri: 2008: 59) maintains that there are certain procedures for legal translation that could lead to pose some misunderstand the legal texts, namely; Cognates. They are used in a case when some expressions, for instance, names of certain names, do not even exist in the TL. For example, the word "Tariff" in English is "تعريفة" or "التعرفة الجمركية". The second procedure is Borrowing / loan words. These words are overtime taken from another language, when there is no equivalence of concepts between SL and TL. (Aseniso 2003: 56).

Simplification. It is another way that the text is not semantically or pragmatically affected. It is a case of deleting and omitting elements which is a recommendable strategy in certain cases as in the misuse of doublets, triplets...etc, because their misuses make the translation unreadable. For example, the item "hereby" can be omitted in such a case, because it does

not affect the meaning of the sentence, "I hereby announce..." can be translated as "اعلن" which means, "I announce".

Paraphrasing. It is another strategy of explaining and simplifying the SL item that seems unknown to TL audience. This case is preferably used when there might not be an equivalent in the TL text at all and the translator then resorts to make use of this strategy to make of the text.

As Sarcevic (2000:5) indicated, "the basic unit of legal translation is the text, not the word". The translator should be extensively able "to understand not only what the words mean and what a sentence means, but also what legal effect it is supposed to have, and how to achieve that legal effect in the other language". (ibid. 70-71).

1.1. Lexical features of the translated English-Arabic text:

In general extension, Arabic texts are plentiful and abundant of lexical and morphological features which specialize the text and the word itself. It is worth noting to show that Arabic legal discourse domain shares other features of literary Arabic such as figures of speech. Accordingly, Farahaty (2017: 23) believes that Arabic legal text features, somehow, grew out of literary language, where there was naturally a clear distinction between using legal, religious, linguistic and literary Arabic texts, because each one of these texts has its own special features and devices that characterize it. Choosing certain lexemes for such a field gives the text a specialized legal nature or a linguistic flavor, because no figurative or expressive emotions can be conveyed. Similarly, special terms are used in the Arabic text involved such the words "مصاهره", and "كتايبات" which are not easy to clarify them into English by one word and cannot be used figuratively. The translator may resort to transliterating the SL term or defining or explaining the term in question so as to familiarize the reader with the legal meaning of the term and the legal concept implied by the term concerned. In English, sometimes the strategy of 'paraphrase' is highly employed as a good technique for rendering fixed legal terms into Arabic, since they may have no direct equivalents.

As far as lexical features are concerned, a legal vocabulary item is to some extent considered as a symbolic lexicon which particularly attempts to place a great stress upon the legal word as a free entity in itself. It is a vocabulary that comprises a comprehensive system of internal meanings and have hidden content.

Tiersma (1999: 139) divides legal texts into three divisions on the basis of function rather than usage: operative documents, expository documents and persuasive documents. Operative documents are the documents that have a performative function which refers to performing an act, such as; pleadings, petitions, orders and statutes, and contracts. Operative documents, on the other hand, include a very strict structure and a clear-cut formulaic language which is difficult to understand. Expository documents have a less strict structure. A legal text is not like an ordinary speech, because it carries an obligation or it imposes certain actions or things, makes a binding legislative promise, or legislates legal penalties.

Austin(1962:81) believes that legal texts are, in general, used to impose and issue obligations, regulate relationships in addition to performing legal actions not only describe, report cases or telling facts. The most common problem in translating legal texts is the technical terms in addition to the cultural terms and the syntactic features of the TL. Lexis in legal discourse and legal language in a general notion, can be divided into 'technical words' such as barrister, solicitor, court, and case law, reporting a letter from a solicitor to a client, vice versa. 'semi-technical' includes terms such as assessment, enclose, compensation and 'every day vocabulary' such as report, record, examine, injury. Arabic, likewise, involves technical words 'such as اقرار, عقد, حكم, قرار. semi-technical 'as in اثبات, دليل, evidence. The text involved includes has a technical term "عقد".

Mellinkoff (1982:29) divided legal terms into: purely technical terms, semi-technical terms, and non-technical terms.

- 1- Purely technical terms: They are pure legal terms, in which ordinary people are, sometimes, familiar to some of them, while other terms used in legal extensions are only known by legal users.

Alcaraz and Hughes (2002, p. 17) state that the technical terms are often treated as culture-bound terms. They are common words with uncommon meaning.

- 2- Semi-technical terms: they are indicating the words or phrases that carry additional meanings to their common known meanings. Moreover, their translation is complicated by their connotative meaning.

- 3- Non-technical terms. The terms that stick to their everyday meaning without carrying legal sense, but sometimes occur in legal texts.

Wright (1967:109) points out that the participle expressions "ed" or "ing" can be ambiguously functioning as verbal passive participles, or adjectives, 'but they tend to be used as substantives. For Gadalla (2010:2), the "ed" "ing" participle syntactically performs a number of functions, it can be used as a noun, adjective or a tense. This case is found in the section 1 represented in the word "belonging" which is non-finite tense indicating present, past, and future, and in the article 14A there is another non-finite clause expressed in "forbidden". In the article 14A, B, and 15 participles are represented in the words "marrying", "forbidden".

1.2.Syntactic features:

Arabic text is known of a complex sentential structure which is highly difficult to be considered to another language. In the text involved, the imperfect tense in Arabic and in English target language as well is highly used to show the rules as enforcing upon all and every time not just for the time being. The use of imperfect tense and the impersonal in legal Arabic are common in legal texts, especially in drafting international documents and legislations. It should be noted that there are some syntactic features should be indicated in the text involved which are:

1.2.1. Nominalization:

Ibrahim & Makhoul (2011:67) mention that Arabic nominalization is a syntactic case which is well known as a noun phrase that has a systematic correspondence with a verbal predication including a head noun which is morphologically related to a corresponding verb. It is reduced in the sense that some of the meaning could be explicated in a sentence as leaving a particular tense unknown. So, there is no clear indication of the timing of the process; or even modality, and often an agent and/or a patient.

It is stated that Arabic language has two clear strategies in nominalizing sentences when they function as a subject, object, or a complement of a higher sentence. The first strategy uses the particle *ان* followed by a nominalized sentence. The particle *ان* is followed by a present tense in a subjunctive mood. The second strategy attempts to change the embedded sentence into a verbal noun. In the legal text, there are some nominalized constructions according to the first strategy represented in article 12, 14, 15 and 17 *ان يتزوج* and *ان تكون*. These constructions were translated as nominalized constructions, due to the fact that Arabic language construction represented in the particle *ان* and the present verb express "exegete infinitive" *المصدر المؤول* such as "يصح للرجل" *ان يتزوج* expresses "يصح زواج الرجل". Both these constructions do not affect the meaning or intention of the act.

In the text involved, nominalization is also used in as forms of changing the verb into a verbal noun, such as "التطليق", "التزوج", "الرضاع", "بقاء", "قيام", "تعلق", "تفريق". Nominalization carries the characteristics of the verb and a form of a noun. The nominal form of the word *تزوج* is nominalized from the verbal form *يتزوج* even in English, it can be translated as the following "to marry, into "marrying".

يشترط لصحة الزواج أن تكون المرأة غير محرمة شرعاً على من يريد الزواج بها.

In order for the marriage to be sound, the woman must not be lawfully forbidden to the man who wants to marry her. Or (wants marrying her).

The translation of the underlined lines in this article is characterized by changing over the syntactic conformity which leads to the exactness of structure in accordance with meaning. It should be translated as "marrying" in order to conform to the Arabic structure "التزوج", while if it is translated as "to marry", then the Arabic structure should be "ان يتزوج" in order to conform the both structures. The translator shifted the syntactic structure from "nominalization" into "verb" as it is mentioned above that the particle *ان* and the present verb express "exegete infinitive".

Nominalizing nouns from verbal constructions are common in Arabic and in legal documents as well which are highly preferred in formal documents and especially in legal documents, because they are worth mentioning that the nominal form of the verb is also frequent and predominantly used in other genres of Arabic such as media discourse, and political discourse.

1.2.2. Passivization:

(Tiersma, 1999:75) indicates that passivization has some linguistic functions: (i) to obscure the agent, (ii) to focus on an element to be more prominent and (iii) to leave a fact unspecified. As far as the syntactic features are concerned, passivisation is a common case in legal Arabic texts, which provides accuracy and precision by avoiding obscurity of agents. Abdul-Ghani (2009:33) defines Arabic passive voice as a construction which is marked by the omission of the agent and has the pro-agent in agent position. Mazoz (2009:4) indicates that passive voice is a linguistic phenomenon which attracted the attention of the addressee. It's noted that passive can be characterized at two levels which are morphological level and structural level. As for the first level, the presence of Ad-Damma on the first letter of the word in passive compensates or denotes the agent in the deep structure of the sentence. Regarding the second level, it shows that the omission of agent from the structure leaves a gap. So, moving the object from its accusative position to the agent position fills this gap. In fact, Arabic passive voice depends entirely on the declination marks. Kroeger (2005:271-272) shows that passivization represents a valence-decreasing process due to the fact that it has only a subject and verb. Active voice, on the other hand, possesses a subject, verb and object. It is the process of "Detransitivizing", because transitive verbs are changed into intransitive.

The text is characterized by passivized forms in order to motivate the addressee to the text, such as "يُشْتَرَطُ", which can be translated as a passive form as "it is stipulated", "it is conditioned". "اسْتُثْنِيَ" can also be translated as "it was excepted" "يُحْرَمُ", as "it is prohibited", "it is forbidden", and "تحريم". When translating into English, such sentences, dummy "it" or "there" are allowed to be used in order for implicating the agent. In this case of passivisation, it is not known who prohibits it or who stipulates it, but it is cognitively understood as a legislative authority who acted these rules. The use of passive voice has its consequence in Arabic. Passive voice is intended to achieve many linguistic functions that active may fail to carry out. In negative passive forms, the modal "may" implies prohibition, but "must" expresses "prohibition" more than "may", due to the fact that "may" could be ambiguous.

1.2.3. Modals and Performative Verbs:

Arabic seems to have modal verbs rather than modal expressions. Arabic always makes use of modals as a form of the most frequent lexical modal verbs are - may, يجوز must (يجب). Prepositions and particles are also frequent such as (يجوز لـ ... to) which is a short version of "it is allowed for someone to" يحق لـ. Relatedly, the kind of modals used in the text involved is:

1.2.3.1. Deontic Modal:

There are three types of modal, but the one expressed in this translation is just the deontic modal, due to this type of modal expresses obligation, permission, or prohibition. Prohibition involves the expression

ممنوع, in which the text includes deontic modals of prohibition represented in *يحرم* and *يشترط* which can be treated as performative verbs simultaneously translated into English as "it is hereby prohibited", "it is hereby conditioned", and a modal as "It is a must that", "must" should", it is demanded that; it is incumbent". While permission is expressed through the word *يصح* which is translated as "it is permitted to", or "it is allowed to", "you may", "may", "it is possible to", "it is permissible to".

Palmer (1990:69) points out that deontic modals are performative in reality, or they are the language of performing an action. By using a deontic modal, a speaker could give permission by using these articles (may, can); or lay an obligation by using (must); or make a promise or threat by using (shall). Subsequently, there are two main types of deontic modality: deontic possibility and deontic necessity. Deontic Possibility can be divided into deontic permission and deontic command. The deontic modal "Shall" is considered stronger than "must". It guarantees that the obligation will happen, not only issues an obligation. More often, the future sense of the modal "shall" can be overlapped with its deontic meaning (ibid: 73).

1.2.4. Complex sentence structure:

Legal Arabic texts display syntactic structure complexity by using two or more clauses; coordinated clauses, embedded and relative clauses which are initiated by one of the relative pronouns *الذي ، التي* (who, whom, which, that) to express more complexity by compounding sentences together. The text involved is plentiful with coordinated structures creating complex structures even when translating into TL. In the article 14 and 15 two structures are treated as complex, due to using the coordinated forms represented in *وإن* by adopting omission device which in fact the sentence includes reiterated constructions represented in

يحرم على الرجل ان يتزوج من النسب امه.....بنته.....ويحرم على الرجل ان يتزوج من النسب اخته.....الخ.

1.3.Textual features:

Arabic is characterized by certain textual tools and distinctive devices which are adopted to bring about some flavor on the text. Arabic has textual tools of its own which can be used as linguistic devices that achieve cohesion in all text types. It is concerned with investigating the different textual features of Arabic and their direct impact on translation.

1.3.1. Lexical repetition:

Lexical repetition is a discursive tool that attempts to enforce the text by putting and arranging it orderly and in a cohesive way the connectives may do so. Baker (1992:189) states that lexical repetition may refer to a case of emphasis and stressing and it has to do with the expressive meaning that a reiterative pattern attempts to bring out. Repetition occurs within one sentence or across sentences. In the 12th article, in Arabic, there is a textual device represented in reiteration in the form of *زواج* "marriage" and *تزوج* "marriage" which are both denote the same meaning and can be translated into English as "marriage" and "marrying". As to the sentences as a whole, there are five repetitions represented in *زواج* "marriage" in the

13th article, تزويج in the 14th article. Other nominal items are repeated in the text such as امرأة woman, lawful شرعا, daughter بنت, man رجل, wife زوجة, kinship مصاهرة, mother ام, and verbal items as يصح "it is permissible to" and يحرم "it is forbidden to". Thus, the text is plentiful of repeated items which are denoting same meanings. Conjunctions are reiterated in the article 9 times and 12 times in the article 14. It is to be noted that there are certain lexical items repeated in form which are semantically expressing the same sense, but syntactically differ, such as the word "زواج" and "تزويج" where they are not the same syntactically, for the word "تزويج" is the word that refers to make someone marry, while "زواج" refers to the act of marrying, or the word "يتزوج" is not like the word "يزوج", since the former refers to get him/herself married, while the latter refers to make someone marry to someone.

1.3.2. Reference:

Arabic language prefers pronominal references for following up participants and constructing cohesive links in general. Baker (1992:189) points out that text reference has two main types of reference, namely: endophoric reference and exphoric reference. Each of these references can be figured out through the context of the situation the reference occurs. Endophoric reference indicates inside the text, it consists of anaphora and cataphora; anaphora refers to reference that follows the word, while cataphora indicates pronominal reference that comes before the noun. In this text, many cataphoric references are mentioned indicated by, المرأة, الرجل, which are the referential elements discussed in the text. The reference الرجل is implicated by the suffix addition هـ to the noun of each word ends with هـ such as جدته, بنته, امه, all these nouns are linked by a suffix referring to the word "الرجل". While the suffix ها refers to the المرأة, since Arabic distinguishes between the feminine and masculine genders by suffixed pronoun هـ for masculine, and ها for feminine, or feminizing T تاء التانيث.

1.3.3. Ellipsis:

It is a syntactic phenomenon which is highly used in Arabic in respect to stimulating the addressee to bring out the information involved by de-implicating it through the context of situation. The text involved is

characterized by certain kinds of ellipsis represented in the line below:

أسباب التحريم قسمان مؤبدة ومؤقتة فالمؤبدة هي القرابة والمصاهرة والرضاع والمؤقتة الجمع بين زوجات يزدن على أربع.....الخ

Ellipsis of the Subject is noted in the text in the underlined words as characterized by omitted forms represented in the subject ellipsis أسباب المؤبدة, التحريم المؤبدة, the subject أسباب التحريم is omitted and is denoted by the المؤبدة and also omitted in the appositive clause والمؤقتة which is noted as أسباب والمؤقتة. Such kind of ellipsis is used for reducing redundancies of the text and avoid being repeated. As far as ellipsis is concerned, the infinitive

ان can also be omitted and such a case is presented in the article 14 where the particle ان and the verb phrase are omitted.

يحرم على الرجل أن يتزوج من النسب أمه وجدته وإن علت وبنته وبنت ابنه وبنت بنته وإن
نزلت يحرم على الرجل أن يتزوج من النسب أمه وجدته وإن علت ويحرم على الرجل أن يتزوج
من بنته وإن يتزوج من بنت ابنته وإن نزلت.

The omitted elements could be like this construction before omitting.

يحرم على الرجل أن يتزوج من النسب أمه و يحرم على الرجل أن يتزوج من النسب جدته و
يحرم على الرجل أن يتزوج من النسب.....

The English translation for this text included the omitted element by non-finite clause "forbidden to him".

1.4.Culture-Specific and System-Based Terms:

Language and culture are closely overlapped, integrated and interdependent. Halliday (1975, p. 66) defines "culture" as "a semiotic system which carries societal rules" and "a system of meanings" or a kind of information that is presumably encoded in the life potential behavior of the individual him/herself. Snell-Hornby (1988: 39) states that language should not be seen, in translation, as an isolated phenomenon, but as a key part of culture, and the text embedded in a certain given situation, is itself conditioned somehow by its sociocultural background that determines its denotation (ibid.42).

(Sarcevic 1985, p. 127) maintains that law is an expression of the culture which is expressed through the legal language, because law reflects the rules of a societal habituation carried out by people of the community. He adds that "Each country has its own legal language representing the social reality of its specific legal order". Generally speaking, legal translators must undermine the cultural obstacles taking place between the SL and TL societies, especially when translating a TL text of a legal written form. In this connection, Weston (1983, p. 207) states that for the different cultural traditions and national legal canons, it could be a key reason why legal language for each national order is not the same as ordinary language at all.

Differences across cultures are more difficult to overcome due to the great gap between them. Specific lexical items of different cultures may have different functions and meanings at another culture. Moreover, Arabic official documents or texts such as marriage or divorce certificates involve exact and more clear-cut explanations before translating. There are numerous culturally-specific terms used in the text involved represented in terms which are specific to Islamic Jurisprudence with no equivalence in English such as (عدة - iddah), (خاله, aunt), (عمة, aunt). These terms can be translated by borrowing, i.e. transliterating them, as well as explaining, possibly in a form of a footnote. (عدة) iddah refers to the prescribed period of waiting for women before remarrying. Accordingly, translation of the above-mentioned Islamic terms requires paraphrasing to correspond directly and accurately to the SL word and render its connotations to the TL reader. As far as culture is concerned, divorcing a woman in western culture does not count on pronouncing it three times as in Islamic

Jurisprudence. So, the word "التطليق" in Arabic pragmatically differs from the English term "divorce".

Translating terms of different cultures require a high degree of experience in the translation craft due to its importance when conveying the TL equivalence. The text involved includes many culture-specific terms which are culturally determined because they do not give the exact meaning. In the article 13, the word "مصاهرة" may not be found in English or even if it was found, it might not lead to the same meaning as in eastern-Islamic culture. As far as culture is concerned, the word "عدة" which means (the prescribed period for remarrying), does not have an English equivalent, unless it is paraphrased, explained, or margined.

Conclusion:

The study has come up with conclusions that many Arabic terms have no equivalent into English and the terms given in their translation are not fully equivalent, but they are approximate. It is also concluded that culture plays an effective role in determining the terms of non-equivalency and the way to reach to their meaning. Linguistic criteria have shown a definite role in determining the translation of legal texts in their internal semantic meaning. Most of the cultural and religious terms in Arabic are considered difficult to be figured out, or to get to the point, while others can be figured from the context.

The study has reached the conclusion that the strategies of translating legal texts represented in simplification, paraphrasing, margining, and cognates have a great role in providing a close equivalent translation of the legal culturally and religiously bounded texts specifically and translation in general.

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