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Legal Translation: Grace of Global Connect

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ABSTRACT

The concept of legal translation is distinctive, it can turn empires into a tale of rags and riches without any prejudice. Hence the paper-primarily attempts to understand it's refined nature and transformed approaches and strategies from historical to the contemporary era. The relative rudimentary action is to unravel the necessities and urgencies of the contemporary world for which demand for legal translation has increased drastically. Also, it strives to decode the mind map of legal translators and risks involved for the translator himself. It is much of a noble profession like that of surgeon. The way a surgeon's even slightest of imprecise cut of the scalpel can cost one's life similarly an imprecise or a mistranslation and misinterpretation can apparently cost thousands of lives in wars and loss of lucrative economic trade, bread earner for millions of ordinary people. The research paper systematically weaves the web of explanation connecting dots with appropriate examples as and when needed. The paper has rephrased the complexities of strategies and methodologies without changing any of its concrete core values for better comprehension.

Keywords: *Legal Translation, Linguistic Rights, Legal Texts, Ambiguity, Multilingual, Legal Translators.*

I. INTRODUCTION

Legal translation is a science of translations in the legal context. One shall not limit the term only to translation, It has a much broad-spectrum and intricate nature, for better understanding the term should be divided into its two different facets that are legal language and translation. The former shall be further divided to decipher the crux, i.e. legal and language. To put it into narrower sense, the discussion shall use English as a default language between (source and target text). Language is merely a more civilised way of communication influenced by culture and geography of the region hence language variant. While legal is more authoritative and paradoxical to the language of common. An ideal example would be that of consideration, in ordinary life consideration is a meticulous thought or a piece of information assessed to decide while it is a contrast to legal, where it is a promise by one party to another under a contract. It is theoretically analogous to a false friend, the word may be a standard homophone but lack

¹ Author is a student, India.

the required meaning, also known as “faux amis”, literally representing a false friend, a friend he might appear hence legal language’s humour can be charming at times but harsh during drafting tasks.

It is relatively presumed that man is a social animal, and he can't survive without communicating, but when the composition of his mates is so diverse and distinct, communication becomes a perplexing and brain flexing task. Ultimately to ameliorate the man’s insatiable appetite for socialisation arrived the luxury of translation. In its disposition, translation means converting things to the more discernible manner, for instance, the physical indications humans rendered to were trials of communication, later on, converted to cave paintings, sophisticated and decent way of communication. Which later turned into verbal and then in written forms like texts. Interestingly as the world enhanced through industrial and political revolutions it grew more globally interconnected where need to disseminate, transmit & articulate informal and formal information became urgent, to serve this purpose arrived the theory of translation, a practical practice incomplete without theoretical fraction. The language translation primarily consists of duty, one is understanding the source language, the language from which the course has to be translated for convenience, to a target language, derived from the concept of the target audience.

The history maintains various types of translation amongst which legal persists as the most notorious, refusing to obey static-like math principles but keep on changing rapidly due to its pronto changing character. They are particularly crucial, to expand the insight let us enter the modern era. Soon after 9/11, the Guantanamo Bay incident materialized, an incognito ex-prisoner in the year 2016 divulged, after availing the facility of a satisfactory lingual & legal translator, that the official translator of States (USA) mistranslated the man's utterances and statements in which he was talking about ‘Al-Qaida’, his hometown as Al Qaeda’¹ eventually making him serve 20 years of his life in an island naval penitentiary. Hence, we see that legal translation is fundamental for existence yet awfully complicated, to unveil this mysterious nature we must attempt reach depth of basic problem such as a belief according to a faithful method of translation while translating it is essential to remain Fidel and faithful with source language although doing this may mean encouraging the grammatical and lexical omissions and errors to be carried in the target language. A better and beneficial tradition has been pursued in the paper to appreciate and understand the problem in the dearth of lingua Franca, customary diction for all. It would be incorrect to say that lingua franca has no absolute presence since there have been substantial experiments to create a model for it, Esperanto was first created in the year 1887, by L.L. Zamenhof in a bid to create a second language which would in turn aid

in facilitating world peace and harmony, furthermore to stimulate its doctrine the language uses five green five-pointed stars to portend the fruition of five central continents of planet earth, traditionally listed as Europe America Oceania and Africa. Sadly, this global interest endeavour faces some immediate criticisms such as an immediate call for much-needed gender reforms.

(A) History and Evolution of Legal Translation

The most ancient evidence related to legal translation was found dating back to 1271 BC. During this era two of extremely politically & militarily dominant kingdoms, Egypt & Hittite were at war & to ensure the peaceful survival of remaining civilisations on both the sides a treaty is believed to be formulated also known as “Eternal treaty”². Interestingly the culture and ways of life- livelihood of the two kingdoms were exceptionally contrasting hence it is likely that the treaty was translated into the proper target language. To support this assumption are shreds of evidence discovered in the ruins; cuneiform characters inscribed in unearthed tablets and hieroglyphic inscriptions³ in numerous Egyptian worship houses, two different intriguing versions of treatise translation yet to the utter dismay of archaeologists the original one waits to be found. Later exact legal text to be translated into various target languages such as Spanish, German, Italian, French and English were unique yet very common in the present era, an intellectual piece of work, the world’s first exhaustive & systematically interpreted civil law code known as *corpus juris civilis*⁴; produced under the imperial order of Emperor Justinian. One of the major concerns of this royal project was to interpret & define the laws since most of the citizens misinterpreted the laws that governed the lands of Byzantine empire⁵

A Fascinating aspect surrounding the creation of this document was that the era of emperor Justinian was regarded as the most prosperous and peaceful till date, also termed as *Pax Romana* and his work as ‘code of Justinian’ by the historians hence it is an assuming possibility that historians & theorists would have drawn direct relation between peace & security, law and a stable state functioning. *Corpus juris Civilis* literally means the body of civil law or body of law civil, its authentic drafting language is Latin, it also specifically dictates rules and guidelines in its fourth set for the methodology of legal translation. This code became a boon for future, prominently for the western legal system since a lot of them owe their civil laws to

² Also known as Silver Treaty or Treaty of Kandesh (1259 B.C.).

³ *History of Legal Translation*, Universal Language Solution, <https://universallanguagesolutions.co.uk/history-of-translation/>.

⁴ *ibid*

⁵ *The Justinian Law Correct.pdf* (duplinschools.net).

corpus Juris civilis as their birth seed.⁶ Especially after Samuel Parsons Scott, an American attorney translated it into English thereafter adopting it as an integral of his work “The Civil Laws

(B) The Phrase of Strict Literal Translation

During the rule of Justinian, I, it was imperative for the source text to be translated in the format of ‘word for word’ instead of ‘word to word’⁷ to target-language text. The former approach is an interlinear translation method, intends to translate exact word, for example, if ‘hair is brown’ is translated from source language English to target language Spanish according to former approach the translation would be ‘Cabello son marron’ [where Cabello stands for hair, son for are and marron for brown]. While the latter approach deals with using more equivalent terminologies. Unfortunately, the former approach may turn out to be inappropriate since it assumes to lose out on the precise meaning and even mistranslation leading to misinterpretation of statutes and laws giving birth to a chaotic state. For better understanding, a very classic example of this challenge is the translation of Spanish to English as the source and target language respectively; ‘*El convicto escapo en un carro pardo*’ here if we go by the former approach the text in target language would be ‘the convict escaped in a brown car’ but here we face ambiguity in the text, the word *pardo* in Spanish basically expresses a shade of colour between grey and light brown. There is no such literal word in English to replace it hence it is quite a possibility the true meaning would be lost; it is impossible to catch a felon who escaped similarly the word convict has specified yet different meanings in different legal systems. In Spanish system it is evidently observed that convict is someone who is undergoing trial and yet to be proved guilty whereas in English (British) legal system convict in someone who has been proved guilty in court, this challenge is briefly discussed in the latter parts of the paper⁸ According to the mandate of the royal court, the Roman Empire’s legal translators were only permitted to accept Greek as a target language. According to patristic theorists, this was majorly because of the influence of religion on state and its politics, the churchmen considered Koine Greek to be the sacred language and believed holy scriptures to be dictated from divinity and any attempt to disregard its formation would be equivalent to revolting the almighty himself. In fact, initial version of the old testament by saint Jerome, also designated as the Doctor Ecclesia Universalis, even in today’s era, the translation of a few sacred books faithfully demands the approach of an absolute literal translation.

⁶ Susan Šarvčević, New Approach To Legal Translation 23-30 (2000).

⁷ *ibid*

⁸ *ibid*

(C) The Phrase of revised Legal Translation

This era noticed a rather more liberal way of translation, as the glory of Western Roman Empire diminished and German and various tribes rose, it was undoubtable that there would be a blend of two different worlds whether its culture, tradition or administrative system. The German tribes decided to pursue a civilised and skilfully crafted legal system of roman empire, this practice required virtuoso skills in legal translation, unfortunately the middle ages lacked the capacity to develop national languages or say national language remained underdeveloped, therefore the Latin source legal texts were translated into German target texts but there were little people who were well versed in German as well as in Latin and only handful knew the art of writing hence it was likely, legal translators were not able copy down the statutes in literal approach many of them were replaced with their equivalents, “word to word” approach where meaning and elaboration of statute for application to be important, a slow and basic standard approach for transition to free technique⁹ Much of this is attributed to the subito translations and lack of preparation, this can be very well comprehended by comparing it with present day scenario, the cases orated during court proceeding and trials are recorded in written form by clerics who usually lack the legal knowledge and fluency in target languages similarly the source language, latin was dictated in oral form and jolted down in vernacular target languages, this was an extremely expensive and sensitive practice since what was once wrote on papyrus or parchments could not be erased or undone. It wouldn't be improper to term the process as flawed and inconsistent yet it is important to note that it was a pioneer in advancing towards a liberal realm of legal translation.

(D) The Final Phrase of Free Legal Translation

Later, with the blend of Anglo-Norman law, the Britain had by then severed its ties with that of Church of Rome, the revolutionised way of translations was starkly visible in few of Saint Jerome's successive testament translations. The Anglo-Norman laws made it impossible to deal without plural languages since the administration and governance crew, common people, subjects and aristocrat belonged to different ethnicity and spoke variant languages and hence to coexist it was necessary to follow a predetermined set of rules, technically demanding the laws to be translated from source language texts such as Latin to different target language texts as per requirements of commons. Among all we observe that the main strive was to achieve a layman's comfort, rules that can be followed and understood by all alike. As the wars waged, conquests occurred, kingdoms fell and rose there was a substantial need of back and fro

⁹ Victor Frans, *What is Vulgar Latin?* , LATINITIUM, <https://latinitium.com/what-is-vulgar-latin/>

translation of legal texts, to prevent the dangers of lingual extinctions. Altogether translation of legal texts was a hectic task and keeps on evolving with emergence of new approaches and theories but the central transitional eras affecting its current and basic ideas are Roman exemplary experiment and approaches in legal sphere (later-foundation), Disintegration of roman empire, new power players and underdeveloped variant literary skills and lastly the change in western imperial powers and thrones and their attempt to achieve a flawless governance.

II. AN INESCAPABLE NEED OF LEGAL TRANSLATION

The credit of joining and interlinking the world is primarily bestowed upon lucrative giants of business and technology ultimately giving communication and language secondary or minimal significance. But it is an inevitable truth that in modern era it is impossible to do away without the spoken and written form of language because omitting it would see modern humans blank and clueless pushed back in primitive times. Hence to facilitate the need of global communication, the concept of translation is imperative.

(A) The Multilingual Market and Economy

For an economy to survive it must have its markets thriving and for its market to achieve this phenomenon, the trick lies in elegance of human to human, consumer to producer communication. It is vital for consumers to understand the benefits, drawbacks and terms & conditions of the product and services they are availing. The consumers are not secretly placed in some peculiar isolated groups but spread globally with different professions and requirements therefore it's very unlikely that the instructions of a single tongue would be comfortable to global consumers. To satisfy this urge of this close-knit world consumer community, the legal translation is called upon. The instructions and terms & conditions for use need legal knowledge and terminologies, such as while purchasing car, the customer has to sign legal documents such as transfer of ownership, agreement and loan or instalment closures, to protect the interests of consumers and avoid the loopholes in contracts which substantially lead to frauds, the companies and governments have made it mandatory to publish disclaimers in formally decided linguistics. European commission mandates its directive product warnings, such as for Toys, to be displayed in member state's (i.e. national) selective languages where it is manufactured¹⁰, any failure to comply with these directives, the company

¹⁰ Although it is necessary for the language to be adopted with accordance with the majority speakers so that the nitty-gritties of the product can be understood, it is evident that few of many languages are ignored by authorities for example, in Ireland- English and Irish are official languages with former being widely spoken and latter a national language, proposed by Directive 2009/48/EC (European Commission) to be the instruction

could be convicted under unfair commercial practices act, 2007¹¹ (lack of reasonable care) In organisation like European Union business is a risky endeavour since translation of certain contractual terms and sentences can be very perilous since it is not just transcoding but also interpretation of source text into target language text and , it is apparent through the atypical case of Rogers Communication Inc. vs Bell Aliant¹², the contractual text between the two parties to contract stated that

*“Subject-----force for a period of 5 years from the date it is made, and thereafter for successive 5-year terms, unless and until terminated-----either party”*¹³

The very minute error here which costed both the parties 262,500 dollars each was a little chirpy comma (,). The Rogers sided with their argument that the comma was only applicable if the contract was renewed after the commencing period of 5 years but Aliant assumed the part stating the termination applied to initial 5-year period only. Comma here then was observed simply as style used in French which did not make a slightest of difference to the original meaning of contractual text body. The previous case is minute example of exemplary errors spotted in legal translation, a small mistake of translation has the potential to cost more damage than thought of, language has can be considered a soft trade barrier to global trade, about 11% small and medium sized enterprise complain of losing out on trade business due to the enormous amount of time cost and money cost and lack or absolute absence of language competencies especially in legal sphere of commercial texts. The consumer’s side too does not enjoy a lot of privileges as of, not all languages are included & they demand more of interpretation-based understanding of contracts and clauses.

(B) Politics in Plurilingual State

Politics is brewed with manipulation and guidance, honouring the will of the people, both impossible to function without language especially after comprehending Aristotle’s theory on Pathos, Ethos and Logos. The contemporary politics stand on two concrete pillars of elections and political reputation. Interestingly, a political entity has to reach a mass of people belonging to varied cultures and traditions, he must not limit himself at national level since the world has

language ignoring Irish much to the native’s dismay. Recently, in an interesting incident Liadh Riada resorted to “language strike” to highlight the deliberate ignorance of Irish and the forcing English everywhere thereby diminishing the status of minor (Irish) language.

Sam Morgan, *Language Discrimination Rife Across E.U.*, Jun. 9, 2016,

<https://www.euractiv.com/section/languages-culture/news/language-discrimination-rife-across-eu/>

¹¹ Consumer Protection Act, 2007, No.19, Directive no. 2005/29/EC of the European Parliament and of the Council, 2005.

¹² Bell Canada v. Bell Aliant Regional Communications 2009 SCC 40.

¹³ Ken Adams, *Costly Drafting Errors- Rogers Communications and Aliant*, ADAMS ON CONTRACT DRAFTING (Aug.7, 2006) <https://www.adamsdrafting.com/costly-drafting-errors-part-1/>

immensely evolved with the emergence of hegemon and superpowers at nuclear and economical levels. Elections of few although major or minor have basic and slight impact on the world politics, and to reach such a wide audience media, digital and printed both play an important role bitterly there is very little play of ‘legal translation’ in this aspect, it is more of a lingual translation. The concept of legal translation comes into play during elections, it is generally used to translate from source language, the instruction to target language for ballot voting, since voting and right to free and fair elections¹⁴ are fundamental and human rights (although regionally they are subject to the countries constitutional requirements, they are recognised fundamental right of citizens in countries like India, Britain and United States of America) and to achieve the milestone of free and fair elections it is necessary to understand procedure of casting votes and approach to attain the final, statutes, bills and legislation the election candidate worked or passed during his or her term or approach towards various issues, all of these are translated into target language texts either to be orated aloud or read silently. During U.S. elections (2000), erupted an absolute concern demanding situation, the Chinese-American¹⁵ voters were engaged into voting wrong candidates, i.e. the instructions pamphlet had been wrongly translated and the ballots names or indicators for Democratic and republican were reversed, many groups viewed this as lack of attention and disregard towards the Asian community- for Chinese votes are more dependent on the translated instructions they receive either through helpline or pamphlets. In ballot manuals the basic terminologies were misinterpreted and translated let alone legal and political. In fact the concern for bilingual ballots arose only in mid 90s with regards to the voting rights act¹⁶.

(C) Legal Text and International Treaty

Here, finally we find the opportunity to deal with the crown of legal translations, without this crown resting on the head of translation literature, it would be absurd to imagine the feasibility and existence of legal translation as a unique kind of translation. Before entering the depth of this topic, it is vital to understand the nature and types of legal dealt on daily basis. The discussion below aims at giving a plain and easy insight to its essence in layman terms without any complicated perspective as of now. Lawyers, who are trained to legal warriors often find legal texts either a treasure of errors where they can put their argumentative skills to work or a masterpiece of mystery and perfections but to a layman, legal texts nothing but rules, rules governing a deal, governing marriages and private lives of people and punishing the

¹⁴ US CONST. amend. V, § 1

¹⁵ Ashley Dunn, Boards Agree on Ballots in Chinese, N.Y. Times, Aug 25, 1994

¹⁶ Voting Rights Act 52 USC § 10101 (1965)

wrongdoers. True, legal texts contain rules but they much more than that, they are a piece of literature, astonishingly contrast to that of Shakespeare who talks of love, emotions and sacrifice having the tongue of sinister authority. It is to be noted the legal texts are not rules or binding on anybody until a person decides to enter scope of the legal text, for e.g. Chris is a student of XYZ Law school, he has Jamie as a friend in ABC Law school, the dress code and behavioural policy of no smoking and drinking, etc of ABC Law school as rules are applicable only on Jamie and not Chris, he is free to wear shots, pants, frock or whatever he feels like but if he gets admitted in ABC Law School, it will be his implied consent to obey the rules, desired decorum of the university. Here, Chris has himself decided to enter the jurisdiction of university's legal directive. Legal text satisfactorily attains its meaning only if it has acceptance and acknowledgment of statutory and judicial authority and a relative consensus of the general public otherwise it is nothing but a parchment with preposterous directives scribbled on it. As a citizen, there is no compelling nature to follow the constitution, one can anytime choose to withdraw his citizenship or leave the land resting under jurisdiction of legal text, these are examples of ordinary capacity to avoid the arduous task comprehension from intellect specimen. These examples satisfy the theories of Newmark (directive), RieB (informative) and Sager (precise & imperative). To narrow down the range of discussion, it shall be enlightened only on judicial aspects such as that of courtroom. Court room drama is not just a genre for television entertainment it is also found in real lives too, but in this respect, they can be highly consequential. The proceedings are usually carried out in local with a blend of native language, this milkshake is further roasted as appointed clerics and typists record the arguments and counter arguments of each party, this might cause ambiguity in further case reference. In countries like India which follow the concept of normative principle, have extremely complicated translation strategies. The civil code is governed by family, thus lacking structural uniformity in procedural code, many have argued that this signifies the fact that religion is more dominant concept in the subcontinent than law but presently we must only deal with the translation theory. The Islamic community (generally) is governed by the sacred Sharia law, Legal translations in it can a perplexing task, since it has system and cultural bound legal terminologies. For example, the official languages adopted by India are British English and Hindi, a native and widely used language hence it is a necessity to translate the code and the courtroom discussions and debates in the official language. Ultimate evolving nature of world witnessed an increase in trade and migration and to smoothen this flow into the status of uninterrupted, agreements were made. The later times of wars and shared relationship of deterrence called for a soft approach hence agreements were made between warring parties.

Altogether these agreements were basically treaties which were signed out of or not within nations therefore called 'inter-national' treaty. As one is aware that nations can be starkly contrast from each other, they may differ in language also but since they are party to agreement it is obligatory for them to firstly understand clauses and term and later interpret and amend it according to their convenience through diplomatic network, this process is possible only if the treaty itself is drafted in the multilingual source languages similar to functioning of European Union or later on translated to multi-target language texts. This would be easier to discern after going through the episode of drafting, translating and eventually signing of Warsaw convention or pact of 1955. The Warsaw convention plainly put into words was a treaty of friendship signed by USSR and few other socialist republics of central and eastern Europe.¹⁷ Its original authentic language of drafting was French whose a single and only copy was stored by Polish authorities in its old archives intending it to be the only one genuine draft of the treaty, to avoid any chances of mistranslation and to answer question as to why French was chosen as the source language of treaty lies in the contemporary idea of diplomacy, French was not only dominant and widely accepted during that era but also cited as language of diplomacy in today's world too, in fact United Nations recognises French due to its diplomatic dominance and English as its two official languages, the remarkable thing about this convention was that though there were no translated hard copies, the oral versions of this bulky entente were read, discussed and debated in individual parliaments of signatories. This treaty strategically dealt with military, international and cross-border trade and diplomacy. After the coming of Carriage by Air act of 1932¹⁸ which governed laws of human migration by air, the French version had to be translated into English version under the request of English parliament. Once translated, the convention was subject to more legal ambiguities surfacing in cases like 'King v. Bristow Helicopters' and 'Corocraft v. Pan American Airways Inc.'¹⁹

(D) The Dawn of *Linguis Iura / Lingua Iustum*

From the very beginning of time, whether humans had shelter or not, means to survive or not they always had means to communicate, through sounds, actions and subsequently through paintings. Animals too, comparative to whom humans are levelled superior, have a way of communication, whales relate and navigate through pulsed calls and whistles while birds use

¹⁷ Goedhuis D. The Warsaw Convention. In: National Air legislations and the Warsaw Convention. Springer, Dordrecht(1937).

¹⁸ Jody Bryne, *Caveat Translator: Understanding the Legal Consequences of Errors in Professional Translation*, 4-6 (2007)

¹⁹ Mankiewicz, R. H. "Conflicting Interpretations of the Warsaw Air Transport Treaty. *Corocraft Ltd. and Another V. Pan-American World Airways, Inc. (England: Queen's Bench and Court of Appeal).*" *The American Journal of Comparative Law*, vol. 18, 1970, at 177-88.

songs and call notes. It is an unerring observation that the basic raw ingredient of human civilisation is communication later evolved as language. Disappointing is the fact that very little has been done to observe lingual rights as requisite, since people identify themselves with uniqueness of their tradition, accordingly they also perceive language as a part of their individual crosscutting identities, Consequently it's unjust on state and international unions not to include them in citizen's fundamental and human rights, the results of depriving one of his natural heritage's language would be equivalent to oppression and outright dominance. There is hardly any need to go far to understand the dire results of such an attitude, the very sign of inception of despotism and repression of Shrilankan-Tamils started with ignorance of their foster or mother tongue Tamil, the official documents, academics and administration were drafted, written and expressed in Sinhalese, language of majority. The then turn of events drastically affected the political course of two separate nations, loss of lives and properties and economic collapse. To relate the concept of rights and language, one must briefly go through the case of 'R V. Beaulac (1999)' for better understanding.

The original case was titled as "Jean Victor Beaulac V. Her Majesty The Queen"²⁰ to decide the decision making judgement of this peculiar case many international statutes, conventions and treaties, such as *1992 UN Declaration on the Rights of persons belonging to national or ethnic, religious and linguistic minorities*²¹ The basic facts of this case state that Belacus, female Canadian citizen was accused of cold blooded-first degree murder, while under trial she requested to activate the provision of rights in criminal code which allowed her to stand trial in any one the language she desired provided they were include in Canada's list of official languages. Her requests were initially declined with the excuse that she knew adequate English to defend herself and argue as well, finally during her third appeal, the request was honoured. This caused a lot of commotion was challenged by the crown, but the court held that it was the accused's right to free and fair trial, it meant where she herself could 'understand', 'analyse', 'argue' and 'plead' the case, the court also stated that usage of own language is also a part of freedom of speech and expression, a crux right and principle of French revolution. It was suspected that the accused's feelings towards the use of language were subjective due to the influence of culture she was bought up in. It was one of the very first instances where Canadian court had decided to undergo complexities to practice the due process and ultimate declaration of absolute rights different from that of Britain. It necessary to talk about Canadian bilingual

²⁰ Jean Victor Beaulac v Her Majesty Queen S.C.R. 768 [1999]

²¹ Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), art. 2 & art. 4(2)(4)

legal system practices since it literally required legal translations and were most accurate to do so, possibly due interlinked nature of English and French languages. The first importance was betrothed to Canadian case law even though European union was premier in recognising language rights, its congruence with peace and security and preserving lingual diversity but it is from above case that the ‘right to leistungsrechte’ (interpreter) evolved at a very later stage.

III. TWO CS: CHALLENGE & CONCERN IN LEGAL TRANSLATION

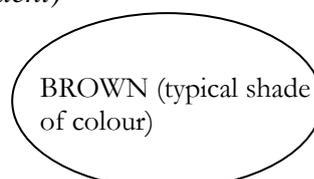
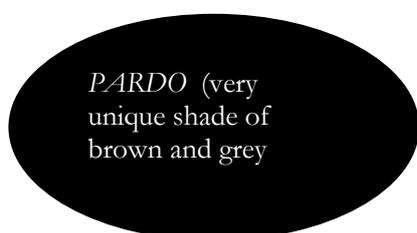
The two primary challenges a translation of legal nature is to convey a message, meaning essence and originality of the word and text. This is basically a terminological challenge. While another one is to overcome the unclear aspect, and obscurity whether it is due to cultural influence or erroneous paraphrasing or rephrasing.

(A) The Equivalence and Incongruency

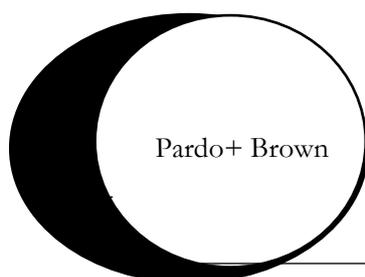
It is indeed true that branch of mathematics is a mystery and so are the terms related to it, equivalence is a term of mathematical origin. The concept of translation struggles primarily to give out translated texts of same meaning instead of similar. Equivalence erupts especially when the legal systems source and target language’s terminologies or phrases are similar, but the translation of legal terminology is a complex task, as noted above the word is equivalence and not equal. The word ‘*maal*’ in Islamic law means property in English but here it has a more contrast meaning, even in layman terms of average speaker it means materialistic property but technically in law it means the right to acquire some materialistic property. The meaning of two words and meanings are extremely close yet the remain indifferent to each other, since the right to ownership to items remain limited like Islam’s school of thought prohibits possessing of items such as canine four-legged animal and wine hence they can never be subject to sale, deed or contract. Legal scholars too have provided for deal with different techniques one of which is borrowing or loaning word, here the target language word is incongruent with that of source hence the term itself is elaborated carefully with a partial homonym and not an absolute one.

Case 1: we have got no literal word translation and hence we go for the approach of equivalence

Before Translation (both of them are incongruent)



After Translation with the principle of Equivalence

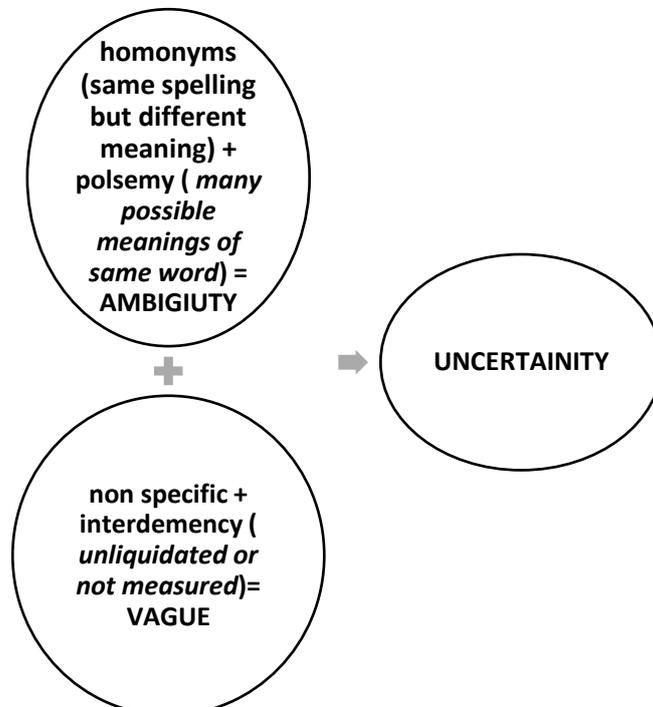


The black portion is nothing but the portion which is not in consonance with target language, this is because the terms from source and target language are similar but not the same i.e., they are congruent and not equal.

[Here it is important to notice that only a few percent of term translated achieves the actual meaning of source language term.]

Case 2: it is viable to use the approach of equivalence in case where there is absolute absurd meaning of same term, for e.g. in Indian context few women don't address their spouse by their first name and hence address through references, if asked about her husband's whereabouts she may answer "I don't see his turban" where his is an ambiguous term and may refer to anybody therefore, the target language of text should go hand in hand with cultural attitude and expectation of the public.

(B) Abomination of Ambiguity and Vagueness



Researcher has formulated the above diagram, in order to gain and provide better understanding of similarity of the concepts of ambiguous and vague yet highlighting their differences

It is would be foolish to think that vague and ambiguous seem same, here too before entering into details of the challenge is to understand the meaning of the two; in case of vague the

meaning is unclear but ambiguity means there are more than one comprehensible meaning. Now to understand the problem of in legal translation we must go back to the episode discussion of Warsaw pact, we saw there was a translation in order support the carriage act, the act dealt with terms & condition, safety protocols and regulations of migration of humans through air travel what was ambiguous was power to sue the airlines in case of injury or harm, a slight turn of words changed the whole scenario.

French Translation	English Translations
“.... the case of death, wounding or any other bodily injury suffered by the passenger...” ²²	“....the death or wounding of a passengers....and of any other bodily injury suffered by the passenger” ²³

Here in English version, by adding a comma the translator has split the sentences in two, placing death into different category in light of legal grievance. Also usage of wounding which is less severe in terms of hurt and can be accommodated in the broad definition of injury only increases company and airlines liabilities.

In case of ambiguity, it is generally present because certain legal terms share same spellings and pronunciation, homonyms like civil way a crane can be a long-necked bird but also a weightlifting vehicle use in commercial sights similarly malice aforethought though a simple legal term has altogether two different means

- 1) the conscious intent to cause death or great bodily harm to another person before a person commits the crime. Such malice is a required element to prove first degree murder.
- 2) a general evil and depraved state of mind in which the person is unconcerned for the lives of others.²⁴

The concern of legal translations is different from challenges since they don't need a concrete solution, they basically mean apprehensions whether the translated text will turn out to be futile or due to more emergence hybrid language and different interpretation court the texts may lose out on its apt meaning

(C) Untangling the Role of a Legal Translator

²² Supra note 17

²³ *ibid*

²⁴ Legal Dictionary | Law.com

According to tradition followed in throughout the paper, we must go through an episode or example for a more intermediate level of understanding. The first female prime minister of South Korea, Su Chung was profusely called out for supposedly misrepresenting the facts of her curriculum and fabricating her qualification to the citizens as a result of which she was implied to be unfit to contest elections however Su Chang²⁵ blamed this on translation errors, It's indisputably dramatic that a professional translator mistook but giving into the fact and things happened we can learn a few things from this scandalous episode.

Firstly, it is not the duty of translator to add or delete anything he must believe whatever said in the given legal text is irrefutable true and shall not challenge or supplement it

Secondly, one must observe the negligence on part of the translator, a few believe it to be a breach of duty and commission of tort, It is convenient to say that the liability and duty of care is diminished if the prospect himself forgets to give a clear path of idea to information must intend on paving through texts to understand the legal system, purpose of translation, genre and language of both the source language text and target language text without any bias

However, we can observe in the above case that the translator failed to do so since the translation of the legal text, curriculum vitae was very crucial and to change the reference of things could bring disastrous results, It is very unfortunate that the translator apparently misconstrued the wordings i.e. Chang had received her doctorate from Princeton Theological Seminary but translator (as claimed by the authorities) translated it to Princeton University.

The researcher has designed the diagram below so that it represents an actual web of shackles that legal translator must go through; it is an extremely comprehensible diagram for the paper to achieve its aim.

IV. CONCLUSION

The theories, history and evolution have very little to say about the expanding scope and future of legal translation, since it, itself is based on the text of evolution. The very term law has wider scope, it changes every day with court's decision, of legislation, emergence of new loopholes in the treaty and passing of new statutes and acts, inferring that legal translation with its parental components, language and translation has infinite openings. Language, is an integral part of human civilisation's cultures, once it is deprived of this lingual pleasure, it starts losing on its invaluable and rare characteristic of diversity, civilisations will perish along with it. To avoid this catastrophe the concept of translation blends in. Ancient Kings to corporate giants of modern times enlist the help of translation, amongst which legal genre is distinctive. The paper maturely dealt with basic idea of legal translation, an extremely fruitful

²⁵ Supra note 21

approach to start with as fresher venturing into this field or a layman with general curiosity additionally the context of the study is not focused on a single system or a country since it wouldn't an appropriate approach at such initial stage. Traditionally every topic is supplemented with diverse examples which an effectively developed a root understanding of the theme and its problems. Analysing the core problems of legal translation and understanding its importance, it is now evident that the major concern should protecting and maintaining the quality of the source language text as while converting the text translators tend to use more of the literal translation techniques even the models which translators generally tend to use have been in favour of recognising literal translations more often. The core of free translation is yet to turn into the epitome of perfection but its more desirable when it comes to the question of interpretation hence feasible to balance the two together and adopt a mixed model. The paper consists of authentic diagrams which deal in a more comprehensible way than textual ones and determinedly argues for the need of legal translation while examining the complications of the subject which can also be taken as guise of argument against legal translation. Finally, we can argue that legal translation is an ultimate linguistic challenge with its own merits and demerits and it is delicate in its legal spirit and letter but an essential in the globally enhancing world.

