

Overt-Covert Translation Analysis in the *Interim Constitution of Nepal, 2007*

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Abstract

This article examines the application of overt and covert translation in the English translation of the Interim Constitution of Nepal, 2007. It observes how the translators have used these translation strategies to convey the constitutional provisions of Nepal. How the translator used these two strategies to communicate the cultural differences between the source and the target language is analyzed. It uses Juliane House's translation model of overt and covert strategies for quality assessment. How the functional and pragmatic equivalence is achieved by analyzing the ST and comparing it with the TT at the word, sentence, and textual levels. The major finding of the research is that the overt strategy is used to preserve the SL culture, and the covert strategy is used for the TL tradition. This research is significant for trainee translators to mitigate the mismatch in translation. It concludes that overt translation preserves native culture, and a covert translation adjusts the SL culture in the TL by filtering the culture.

Keywords: strategies, overt, covert, constitution, translation, pragmatics

Introduction

The Interim Constitution of Nepal 2007 was promulgated after the ten-year armed conflict of the Nepal Communist Party (Maoist) and the seven political parties. The 12-point agreement was signed as a step to lead the country to republican. The parliament declared Nepal a republican state and promulgated the interim constitution in 2063 BS (2007 AD). After the royal massacre, people respected the new king, Gyandra Shah, less. On the people's attitude to the king, Jonathan Gregson stated, "Apart from attending the official mourning ceremonies for their murdered relatives, the new royal family kept a very low profile during the months that followed the palace massacre" (pp. 246-47). People had no reverence for the kingship. All these grounds led to the uprooting of the kingship and established the democratic republic of Nepal. The constitution constitutionalized the system of a

ceremonial president, an executive Prime Minister, periodic elections of the parliament, an independent judiciary, the guarantee of fundamental rights of people, and a secular country in Nepal. To convey these changes, this constitution was translated into English.

This research analyzes what translation strategies the translators have used in translating the constitution, focusing on the overt and covert translation methods. How the source legal message is transferred to the TL equally and translates with fewer errors. How to bring the pragmatic equivalence while bringing the semantic equivalence? A good translation requires textually meaningful and culturally accustomed to the readers. Borrowing Kelly's concept of culture and its transfer through translation, Soriano-Barabino (2016) stated:

Culture refers not only to an encyclopedic knowledge of history, geography, institutions, and so on of the two cultures involved, but also, and more particularly, values, myths, perceptions, beliefs, behaviors, and textual representations of these. Awareness of intercultural communication issues and translation as a special form thereof is also part of it. (p. 142).

Translation makes the readers aware of the cultural differences in comparative law necessary for intercultural communication. The translation of the Interim Constitution of Nepal communicates the legal message to the readers and transfers the Nepali legal culture. It delivers the system of democracy, federalism, inclusiveness, and fundamental rights, and the norms of the democratic constitution.

Statement of Problem

Legal translation encounters the problem of equivalence due to linguistic and cultural differences. The purpose of the SL law and the translation may not be identical, which determines the selection of strategies. The Nepali constitution is prescriptive to the SL readers, but it is informative to the TL readers. The effect of the law is unequal between the SL and the TL readers. The translation is a reproduction of the ST in the TL and needs to be equivalent semantically and pragmatically. The translation is not only the translator's intelligent linguistic work, but other para-linguistic determinants- the selection of the text, the objective of translation, the publisher's direction and information to the translator, time-limitation given for the translation, and remuneration, the time gap of original and its translation also influence translation product. The equal effect between the SL and the TL readers is the main challenge of legal translation. The translator either has to use overt translation or covert translation.

Hence, the overt-covert dichotomy is analyzed in the interim constitution to examine to find the errors in terms of the degree of equivalence. Law is the subject of interpretation, and how much the translator's agency understands and interprets the ST and transfers it to the TT is crucial. On translation strategy, Scott remarked, "The choice of strategy can and should be clarified by using a translation brief, where the goal or purpose may be different for the source text, say legally binding, and the target text, say an information purposes translation of legislation destined for the general public" (246). In the translation, the translation brief is important, which gives key information to the translator on the objective and types of the readers, their background knowledge, age group, and cultural values. It helps to select the translation strategies. Pointing out these problems, this research raises the following questions:

- i) What translation strategies are used to translate the interim constitution?
- ii) How does the translator communicate cultural differences in law?

Review of Literature

The translator reconstructs the source text in the TL for the target readers using different translation strategies. Some are SL-oriented, while others are TL-oriented, though the purpose of the translation is to deliver the message naturally to the readers. House (2014) divides translations into overt and covert based on the readers' cultures. The overt translation emphasizes the SL culture without directly addressing the TL readers, contrary to the covert translation that enjoys the status of a second original. She remarked:

In an overt translation, the receptors of the translation are quite 'overtly' not being addressed; an overt translation is thus one which must overtly be a translation, not a 'second original'. The source text is tied in a specific manner to the source linguaculture. The original is specifically directed at source culture addressees. (p. 252)

The overt translation prioritizes transferring the historical and socio-cultural situation of the ST. The semantic equivalence is focused on the pragmatic proximity. An individual text functions with the language register (field, tenor, and mode) and the genre (fiction, non-fiction, literature, law) that requires equivalent. The field means the topic or subject matter, the tenor refers to the social role relationship between the addressor and the addressee in their social power (near or distant) and attitude. Mode refers to the channel of communication-spoken or written, which can be simple or complex (written or spoken). The participants are simple in monologues

or complex in dialogues (p. 250). This textual analysis contributes to matching the best equivalent in translation.

The covert translation enjoys the status of second original in the TL culture. This is unlike a translation, and the SL text is converted into TL through a cultural filter. House explained, "A covert translation is a translation which enjoys the status of a source text in the target culture. The translation is covert because it is not marked pragmatically as a translation text of a source text but may, conceivably, have been created in its own right as an independent text" (p. 252). The target text adopts its own culture in TL for fluency. The covert translation does not address the source text audience and is away from its lingua-culture.

Language is a representation of the culture that SL represents the ST. When translating from SL to TL, the culture of the ST goes to TT despite the difficulty. The SL constitution addresses the source culture readers, and the translation aims for the TL readers' culture. The constitution of Nepal aims to regulate SL readers' behaviour by law, whereas its translation is used to communicate with global readers. The functional equivalence requires transferring the culture embedded in the text. So House said, "An original and its overt translation are to be equivalent at the level of Language/Text and Register as well as Genre" (p. 250). The overt translation is the equivalence of the text, register, and genre. These linguistic determinants of the text are analyzed with the same degree of equivalence in translation. Legal translation requires linguistic correspondence, culturally appropriate to the TL readers, and has to fall into the same genre as the SL. For instance, the language of the contract differs from the oath. So, the equivalence of the language register (field, mode, and tenor), and genre is a need.

Overt translation uses the language and culture of the source text, but the covert translation reproduces the original text in the TL using the new speech event for the new readers. The discourse of the covert translation is not for the SL readers but for the target readers, and is less concerned with the SL readers. Comparatively, covert translation is less complex than overt translation but is more deceptive. The original text is twisted at the level of language and registers to achieve the cultural desires of the TL readers. Covert translation is not equivalent to the original text at the textual and register levels but only at the level of Genre and Individual Textual Function (p. 250). The dichotomy of overt and covert translation can be compared to the foreignization and domestication strategies that Schleiermacher suggested in 1813 and elaborated by Lawrence Venuti in 1995 in *The Translator's Invisibility: A*

History of Translation. The overt strategy is like the foreignization translation in which the translation is visible, even some peculiarities appear in the TL culture, and preserves "the foreignness of the foreign text" (p. 102). On the other hand, covert translation brings Nida's dynamic (functional) equivalence.

Materials and Methods

This qualitative research analyzes the *Interim Constitution of Nepal, 2007*. It compares and contrasts the ST and the TT to find the errors. I read the SL text repeatedly, comparing it with the translated versions to analyze the language, register, and genre. How the legislative intent is faithfully transferred to the TT is examined from the overt and the covert point of translation. Pontrandolfo (2019) claimed, "In any legal translation, a terminological choice has to be made by weighing various considerations in the balance, and a compromise solution may be necessary" (169). I use mixed approaches, focusing on the functional-pragmatic equivalence and error analysis to grasp the legal spirit of the constitution. The former approach is used to analyze functions equivalence with text in context, and the latter is used to identify errors in translation communication.

Results & Discussion

Nepal promulgates the interim constitution of Nepal and translates it into English as well. The translators use overt and covert translation strategies to deliver the constitution to the TL readers naturally. Translation is more than linguistic equivalence, and the primary objective of a legal translation is to transfer the SL culture and writing style to the target language. The style and manner of writing is maintained as that of the original. On the style of legal writing, Kishel (2009) observed, "Language is more than single words and sentences. Language, especially legal language, also has a certain style which is a result of, as well as a reason for, certain legal culture" (p. 13). The equivalence has to be maintained at linguistic and extra-linguistic levels. Now, how the over-covert translation strategies are used to translate the constitution is examined by analyzing the given articles of the constitution.

Overt Translation Analysis

The translator uses the overt translation strategy to preserve the SL culture in the TL. The errors can be analyzed by dividing the ST into sub-categories: not translated, translated but with a slight change in meaning, significant change in meaning, distortion of meaning, breach of the language system, creative translation, and

cultural filtering (Ghafouripour & Esamich, 2018, p. 22). Based on the division of Ghafouripour and Esamich, the overt translation errors are analyzed as follows;

a. Not Translated:

Here, those words are included that are not translated either because of the translator's reluctance to translate, or borrowed, or the SL counterparts lack in the TL. For example, Article 15 (4) reads;

ST: कुनै छाप, विद्युतीय प्रसारण तथा टेलिफोन लगायतका सञ्चार साधनलाई अवरुद्ध गर्न सकिने छैन ।

TT: No means of communication, including the press, electronic broadcasting and telephone, shall be interrupted.

Discussion: The word telephone of the ST is not translated but transferred to the TL because the SL has already borrowed it from the TL.

b. Slight Change in Meaning:

The meaning of ST changes slightly in TT. The partial meaning transfers to the TT being not completely faithful, however, it does not impair the function of communication. For example,

ST: नेपालको अन्तरिम संविधान, २०६३।

TT: The Interim Constitution of Nepal, 2063 (2007).

Discussion: The year of ST slightly changes in the TT. The Nepali year *bikram sambat* is changed into the English Georgian calendar and kept inside the parentheses. The starting and ending of Nepali year differ from the English, which begins after nine and a half months of the Nepali year have passed. The year 2063 BS falls between the years 2006 and 2007 AD. However, the interim constitution of Nepal was promulgated on 2063/10/01 BS (15 Jan 2007), so 2007 is in brackets. The SL (2063 BS) year is transferred to the TL without impairing the communication.

c. Significant Change in Meaning

It gives a noticeable difference between the ST and TT. Article 4(1) defines the state of Nepal. The underlined words bring significant changes in meaning.

ST: नेपाल एक स्वतन्त्र, अविभाज्य, सार्वभौमसत्तासम्पन्न, धर्मनिरपेक्ष, समावेशी संघीय लोकतान्त्रिक, गणतन्त्रात्मक राज्य हो

TT: Nepal is an independent, indivisible, sovereign, secular, inclusive, and federal, democratic republican state.

Discussion: The underlined SL terms possess a significant difference in the comprehension of the meaning between the SL and the TL readers. By the time this constitution was promulgated, Nepal had not been restructured into federalism and provinces. It just transferred the power of the king to the parliament that declared Nepal a republican state, with the provision of the president and the vice-president. The pragmatic and functional equivalence of the concept of federalism, dividing power between the federal and the provinces, was not there, which creates a gap for the TL readers.

d. Distortion of Meaning

The distortion of meaning indicates that it does not carry the legislative intent of the ST in the TT. For instance, Article 25 of the Constitution;

ST: नेपाल राज्यको सार्वभौमसत्ता र अखण्डता वा सार्वजनिक शान्ति र व्यवस्थामा तत्काल खलल पर्ने पर्याप्त आधार नभई कसैलाई पनि निवारक नजरबन्दमा राखिने छैन ।

TT: No person shall be held under preventive detention unless there is a sufficient ground of the existence of an immediate threat to the sovereignty, integrity or law and order situation of the State of Nepal.

Discussion: The terms of ST are underlined to match the TT. The ST सार्वभौमसत्ता र अखण्डता are joined by "and" in ST that does not match with the TT as the sovereignty and integrity are separated by a comma. The सार्वजनिक शान्ति र व्यवस्थामा is translated into "law and order situation," but the spirit of this legal text is "public peace and tranquility". "Ground for" is used in formal legal text rather than "ground of". A functional equivalence is maintained, but the semantic equivalence of the underlined terms is slightly distorted, which might affect translation comprehension.

e. Breach of the Language System

This is a violation of the SL system's rules. It can involve deviation from grammatical rules or syntactic disorder. For example, the translation of Article 166 of the Constitution deviates from the SL intent.

ST: यो संविधानलाई “नेपालको अन्तरिम संविधान, २०६३” भनिनेछ ।

TT: This Constitution may be called "Interim Constitution of Nepal, 2063 (2007)".

Discussion: In legal language, the use of "may" is permissive, and "shall" is mandatory (<https://www.law.cornell.edu>). The use of "may" deviates the TL from the intention of the SL, which mandates. Rather, the use of "shall" makes true functional equivalence of the ST. This is the title of the constitution, so mandatory but not permissive.

f. Creative Translation

The translator translates the text creatively without being tightly bound to the ST. The translator can use some additional information to clarify the ST. This free translation maintains pragmatic contextual equivalence. For instance, the beginning of the preamble;

ST: हामी सार्वभौमसत्ता र राजकीयसत्ता सम्पन्न नेपाली जनता

TT: We, the sovereignty and state authority inherent people of Nepal

Discussion: This is a free translation in which the translators maintain pragmatic contextual equivalence. The underlined SL corresponds to the TL to convey the inherent power of the Nepali people to promulgate the constitution by their representatives. The verb "inherent" is a dynamic equivalence, though other false friends, "vested" and "native," appear.

g. Cultural Filtering

Some cultural words, phrases, local names, and titles are untranslatable, so the translator searches for functional equivalence of such words in TL equivalent. For instance, Article 144(2) reads;

ST: राष्ट्रपति नेपाली सेनाको सर्वोच्च परमाधिपति हुनेछ ।

TT: The President shall be the supreme commander-in-chief of the Nepal Army.

Discussion: The underlined term परमाधिपति of SL means the supreme of the Nepal Army. Constitutionally, the president of Nepal holds this designation. The title of the supreme commander of the army is equivalently transferred to TL by the cultural filter using "commander-in-chief," as equivalent to the President of America, who is the supreme commander of the US Army.

Covert Translation Analysis

The covert translation reproduces the source text in the TL, adjusting cultural differences. It looks as if this is not a translation but an original. The SL cultural differences are filtered to create fluency and familiarity with the TL readers by functional equivalence. On House's assessment of translation, Jarmolowska (2011) critiqued, "House accounts for the interconnection of context (register, genre) and text (language). The analysis is based on the concept of context-dependent equivalence" (p. 53).

Translation equivalence depends on the situation in which a text results. It is wrong to understand the translation equivalence at the syntactic or word level, and

search for equivalent in the TL; rather, the pragmatic and functional equivalence is required. Functional equivalence brings the similarity of the function of the TT to the TL readers as equal to the SL text produced to the SL readers. The meaning of a text depends on its immediate context. So, the major components of the text to the TL readers must be identified, such as the identification of the target readers and their culture, the cultural filtration, and accurate translation of the SL legal concepts with functional equivalence and equivalent effect. Whether lexical, syntactical, and textual (loss of cohesion) mismatches occur between the ST and TT in terms of field, tenor, mode, and genre needs examining.

The field means the subject matter or the topic of the text. Tenor is the analysis of the relationship between the interlocutors and their different roles in power relations in the society, and their attitude to the content they are communicating. The mode is the analysis of the medium, the channel of communication (oral/written), and participation. The participation refers to the degree to which addresses are involved in the text production, that is, simple or complex. The monologue with no addressee is simple, and when dialogue occurs between the addresser and the addressee, it is complex (p. 54). The "Register" is the analysis of an individual text in a context. To connect the text with the wider cultural community, the "Genre" is identified. On the use of Register and Genre in a textual analysis, House (2014) illustrated, "While register captures the connection between texts and their 'micro-context', Genre connects texts with the 'macro-context' of the linguistic and cultural community in which the text is embedded" (p. 251).

This article from the *Interim Constitution of Nepal, 2007* discusses how a cover translation is used there. Article 24 (1) reads;

ST: कुनै पनि व्यक्तिलाई पक्राउ भएको कारण सहितको सूचना नदिई थुनामा राखिने छैन ।

TT: No person who is arrested shall be detained in custody without informing him or her of the reason for such arrest.

Discussion: This is a TL-oriented approach that focuses on the TL readers' language and culture. The SL is restructured in the TL's lexical and syntactic order. In the SL, the subject starts with affirmative, but the verb is negative; however, this is changed into the negative subject and affirmative verb in the TL to bring the functional equivalence. The "shall" verb is used for the obligation. While analyzing the register (field, tenor, and mode) of the text, the field of the text or the subject matter of the ST guarantees the fundamental right of people in the text. It prohibits detaining without notice as a right of the accused. The tenor shows the nature of the

participants, the addresser and the addressees, and the relationship between them in terms of social power and social distance, as well as the degree of 'emotional charge' (House, 2014, p.250). The social background and his personal emotional and intellectual viewpoint on the subject are analyzed through the text he produces. In this text, the addressor's relation with the reader is distant. The legislator invents this legal provision ensuring the arrest with a warrant notice to the accused, which safeguards his fundamental rights. The style of the text is formal by the use of formal legal terms, and the relation of the addresser and the addressee is unequal, which makes the social relationship asymmetrical.

The mode includes the channel of communication, and this text is written to be read, so this is a monologue and simple. It instructs the police authority to respect the rights of the accused that the International Criminal Justice (ICJ) and the Universal Declaration of Human Rights (UDHR) guarantee in all phases of adjudication. This is the legislative genre, and laws are enacted by the sovereign power to pursue the rule of law. This text does not have lexical, syntactic, and textual mismatches, and the translation is concise and coherent. One of the fundamental elements of covert translation, which Qian (2023) put, "It is required that translators make use of covert translation to make legal texts more concise and exact, which needs translators to use minimal English vocabulary to convey the meaning of source texts" (p. 15). Avoiding literal translation, this covert translation maintains functional and pragmatic equivalence. The normative purpose of the source law changes into an informative one after translation.

The legislative intent of the SL has been derived from the text in context, which preserves the fundamental rights of people, and they must be informed of the cause of arrest.

Conclusion

This research concludes that translation is an art and science, so the translator needs to be creative and objective. One cannot translate what he or she likes, but needs to be objective about what the text consists of and translate it faithfully. In reproducing a new text, the translator possesses an accountability for preserving the matter and manner of SL in translation through the analysis of the cultural nuances. Translators use an overt translation strategy to be visible in their works and preserve the SL cultural uniqueness. When they focus on the TL culture, they use a covert translation strategy and adjust the SL culture by filtering in the TL. The source and

target texts' language register, function, and genre are analyzed to find the best alternative and avoid a mismatch. The translation of the constitution uses both strategies to compensate for the shortcomings of one by the other.

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