

Teaching the Translation of Arabic Legal Instruments: A Case Study of Iraqi Divorce Decrees

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ABSTRACT

This study is an attempt to shed light on teaching a court instrument, the divorce decree from Arabic into English taking into consideration all characteristics of legal discourse. It is a legal matter to be approached carefully, namely with reference to legal terminology related to divorce documents. Divorce instruments are enriched with religious terminological aspects that require a thorough reading and understanding before commencing a translation process. Hence, this study is an endeavor to assist governmental and private translation departments and those interested in translation studies well understating how to come closer to a legal document such as a divorce decree having an eye to the main characteristics of legal discourse. Teaching translating a legal document is not merely a linguistic and structural matter which can be accomplished easily with zero cultural and religious mistakes. It is the case of translating cultural and religious norms from Arabic into English, which is a responsibility of a translator to fill in the gap between the source language (Arabic) and target language (English). The study has made plain that Arabic divorce documents are overflowed with gaps that require a special attention of a legal translator while practicing his/her mission in translating such a divorce decree from Arabic into English, and has to wisely consider shutting off cultural and religious gaps as much as s/he can.

Keywords: Teaching, divorce decree, legal discourse, religious terminology, legal translator.

INTRODUCTION

Currently, and due to globalization and living in a borderless world, people travel for different reasons from one country to another to realize their needs and prosperity. Yet, people look for a qualified translator to transform their legal documents including ones from English into Arabic, and vice versa. In general, translation means transferring a text from one language into another, taking into account all linguistic, structural and cultural features of the two languages under discussion.

Translation does not refer to shifting a set of words combined together into another set of combined target words. A qualified translator shall be entirely indulged with all cultural, linguistic and religious aspects of both languages in concern before starting translation. It is a hard mission to translate courts documents if not well equipped with characteristics of legal discourse and knowing nothing about cultural and linguistic systematic differences between the two concerned languages (Al-Dahwi, 2023).

In a study carried out by Sabtan in 2022, he shed light on the fact that a (sworn) translator has a difficult task while translating a document full of cultural and religious hindrances aiming at transferring a source language text into a target language text successfully with zero distorted ideas. Al – Aqad (2014) paid a lot of attention to tactics in translating Arabic court documents into English taking into accounts all cultural and religious frictions between the two languages in concern as well as linguistic and structural gaps.

In her study implemented on translating Arabic divorce decree into English, Halimi (2024) was not convinced with a translation brought about by some translator, where there was no respect to cultural gaps referred to in the decree, the only thing was done there was a transliteration process to a specific cultural term (Iddah) as transliterated into (iddat). It is in-understandable by English language speaking societies, which is then considered a gap in the translation, where there should be a translation to (iddah) as being (during the waiting period). It is comprehensible among translators and those interested in the sphere of legality that obtaining full equivalency in translating cultural-related court documents including divorce ones from Arabic into English or vice versa is a mere myth due to specificity of each society as far as culture and religion are concerned.

Šarčević (1985) disentangled the fact that it is unavoidable to touch a failure to transferring the meaning into the target language when there is an attempt to translate culture-related terms of a court document. Once again, it is significant to refer to the logical fact that obstacles facing legal translators in translating court documents lie in differences occur among legal and judicial systems along with cultural and religious gaps (Ardi, 2016). Kobyakova and Habenko (2017) made it quite clear in any attempt to translate a court document, lateral translation is not welcomed as most of, if not all, cultural and religious would be neglected intentionally or accidentally.

LITERATURE REVIEW

First of all, as Kirby (2007) reinforced, communication among different societies can be accomplished specifically through using legal languages and contexts. To absorb the meaning of a certain law of a community, it is a must to get acquainted with the language in which legal technical contexts are used. Besides, as a linguist or translator, you shall be familiarized with both legal systems concerned in the process of translation from one language into another. It is also crucial to accept the fact that translating legal texts is not same as translating non-specialized general texts. It is requisite to believe that any legal text has a noteworthy culture specific term.

This could be considered as a cause for distinction between legal and ordinary languages (Cao, 2007). Sarcevic (2000) stressed that legal translation may be influenced by the matchless terminology among miscellaneous legal system. She added that such distinctions among such legal systems, linguistic and cultural gaps are the key hindrances to readability of a translation product of a certain court document from Arabic into English.

In translating court documents, as the case with divorce decree, as disclosed by Al-Tameemi and Farhan (2016), translating legal terms divorce Decrees stuffed with is in dire need to a functional equivalent term in the target language. However, this task is legally hard to

accomplish when there is a reference to court documents such as marriage and divorce ones. Even qualified translators are trapped in misunderstandings brought up due to non-familiarity with legal systems of both source and target languages, cultures and legal systems.

This is as revealed by Altarabin (2018) stimulated a legal product translation which is guaranteed would be distorted unqualified. In a study conducted by Jabak in 2022, results explicitly exhibited imminent mistakes misconstrued the target meaning in the target language, English, where faithfulness and quality of the translation was not accepted. This was consistent with results made by a study carried out in 2018 by Altarabin. As to results of the study effectuated by Hu and Cheng in 2016 on Chinese – English documents translation, they gained sight of obstacles made it hard to obtain trustworthy translation product in the target language, which was attributed to shortage in being fully acquainted with legal enlightenment in the target legal language.

In the same token, Phelan (2017) in a study on translating a legal text from English into Spanish laid open to view that mistakes affected quality of such translation were ascribed to an ignorance in understanding and absorbing characteristics of legal discourse in the source and target languages. To close out, Chromá (2004) demonstrated that translating legal documents hopes for a special alertness because it incorporates shifting from one legal system into another as well as transference from a source culture into a target culture. If not fully favored with, the translation of a legal document from a source language into target one would be of poor quality, and could be under rejection by those in charge of.

As to Mattila (2006), legal discourse is totally different from daily used language. Legal language is there for unique purposes, which in turn might be unrecognizable by ordinary laymen. He added that legal language has a goal of transferring lawful contents from one language into another. In her book, El-Farahaty (2016) disclosed that legal translation from one language into another is a bit sophisticated to the broad divide between the two systems of both English and Arabic languages.

In their study conducted in 2017, Kockaert, Leuven, and Rahab made firm that translating a legal document lies in the scope of a specialized which is always dealt with by those who are well trained. They added that it is official, and is pressing, complicated, not just for those who are new to this domain, but also for those who are qualified and skilled translators.

It can be said that it is the language of perverted syntactical system which is not welcomed with daily used language (Tiersma, 1999). Hence as referred to above by researchers Kockaert et al. (2017), it is a new technalized language preferred by a group of writers who deserted the one used by common people here and there.

Murici (2016) the translator's main task is to translate and make communication among different cultural and even different syntactical systems sounds possible. Besides, it is a must that all court-related syntactical hindrances shall be thrown out, otherwise the content of a translated document would be to some point unreadable. It is a mission should be encompassed wisely and in line with characteristics of legal discourse.

If linguistic criteria are to be taken into consideration, as made by Stanojevic in 2011, both lexical and syntactic expressions are widely concerned in legal discourse, where much respect shall be given to in order to accomplish a high sense of acceptability and accuracy in a target legal text, which is a demand in this major, not only for those part of this domain, but also for those looking for a qualified and accurate product of a translated segment from one language into another.

Discussing repeatedly the obstruction of rendering a legal document from one language into another is demanding because without understanding such barriers would lead to a devastating outcome, which is undoubtedly related to misunderstanding of the nature of legal language or some call it a register including it's a bunch of characteristics of legal discourse. Haigh (2004) pointed to necessity of being fully equipped with such characteristics including but not limited to the use of synonyms, archaism, Latinism, Frenchism, et. for arriving to a qualified translation of a court-related document.

In order to accomplishing a high degree of acceptability and accuracy in a target language translation, Smith in 1995's study manifested a strong tendency towards a mechanism for realizing a high standardized translation including obtaining full acquisition of both legal system's proficiency, being familiarized with the target language captured terminology and well accustomed to writing mechanism in the target language. Then it is possible to claim confidently that a product of a legal document translation is of high quality and steadily accepted by the target readership.

It is the language of court and official documentation. Therefore, there shall be an eye on the quality and accuracy of translation. If not weighed thoroughly, the product of a translated text would be vulnerable to a huge amount of criticism. For that reason, there is no place for hesitation or reluctance as to the quality and accuracy of translated segments of a certain legal register. It is a job would be fulfilled wisely, so the readership would understand the target translated manuscript and widely reputed your efforts in this regard. It is a translator's skilled history in this regard as disclosed by Stepanova (2017) who insisted on being a knowledgeable in the domain of legality is a doorstep to a crafted skilled outcome in the sphere of a legal translation industry. According to Maley (1994) legal language or legalism is there for a specified mission, a mission to be conducted perfectly. It is utilized in order to place on duties and responsibilities. It has its own official objective to manage people's conduct and relations among them. It operates as a means of succeeding at bringing together peoples of different syntactic and cultural corners together as far as legalese is concerned. Maley made it mostly evident it is a technical language to be utilized for a special bunch of purposes, not for daily life's round the clock needs.

It is significant to shed light on the fact that legalese, as Enberg (2020) laid emphasis on, and its outcome translation is deviated from other types of translation as far as legal schemes and terminology are concerned. It is understandable that all languages across telecoms systems are not alike due to syntactic and structural differences, and resulting in miscellaneous meanings.

FINDINGS & DISCUSSION

Results made it clear that translating court documents such as divorce decrees is not without hindrances. Such hindrances are to some extent related to the culture and religious systems of

the source and target languages. It is not a syntactical and lexical process, instead it is a process of transferring a text from a certain society taking into account all matters pertaining to culture and religious systems of both languages in concern. If such criteria have not been taken into consideration through the process of translation, it could be said that the outcome would be distorted and incomplete.

As Appendix A and Appendix B have shown below, and in line with Farqhal and Shunnaq (1992) Arabic and English legal discourses are identified by the redundant use of lengthy and sophisticated texts. Here is the case with the Iraqi divorce decree (Appendix A), where there are a set of legal terms and phrases. In translating *الدين اما رجل* is to be translated into *Sharia marriage and divorce registrar*, *الاولى* is to be translated legally into *revocable divorce, in presence for the first time*. If it was *خلعيا*, it shall be translated into *irrevocable divorce*.

As far as *المرافعة الغيابة العلنية* is concerned, it can be translated legally into *pleading in absentia, in public*, *وثيقة الطلاق العرفية الصادرة من رجل الدين* a *customary divorce decree issued by the Sharia marriage and divorce registrar*. Qualified translators pay attention to all details of a divorce decree. In translating *مجلس الطلاق*, there a reference shall be given to *مجلس الطلاق*, so the translation would be *in the presence of the wife along with witnesses of the divorce council*. Further, in translating *بائن بينونة صغرى* a *divorce of minor degree*, or it might be in some divorce contexts to be *بائن بينونة كبرى* to be translated into *a divorce of major degree*.

Translating *الزوج اهلا لإيقاع الطلاق* can be made into *the husband is eligible to make divorce*. As to *انقضاء العدة الشرعية للمدعى عليها*, this can be translated into *the elapse of the legitimate waiting period*. If *وحسب حالتها* is added to the above text, this means *the elapse of the legitimate waiting period according to her state*. As for *العدة الشرعية البالغة ثلاثة قروء*, it can be translated into *the three-month waiting period*, and *وليس لها الاقتران برجل اخر* is to be translated into *shall have no right to remarry any other man*. Finally, *... حكمنا غيابيا قابلا للاعتراض والتميز وافهم علنا بتاريخ* can be translated into *a verdict made in absentia, appealable and publically informed on (date)*.

To close out this point, it is unquestionable that translating court legal documents is a task should be approached carefully. As a legal (sworn) translator, you are requested to be fully aware of the differences between the two legal systems in concern. It is not a mere linguistic or structural process, instead, it is a cultural religious transference process from one language into another.

Cultural gaps between the two languages in concern is a significant issue, Loiacono (2013) carried out an analysis on the strategies for translating legal instruments from Australian English into Italian. He decided on dealing with cultural legal utterances as proper names mention in a legal document for translation which could help reduce such imminent cultural divides.

CONCLUSION AND RECOMMENDATIONS

This study was an endeavor to understand why translating divorce Decrees from Arabic into English was not a mission without impediments. It has been stated above in this study that there are some traits shall be taken into consideration in any attempt to translate court

documents from Arabic into English or vice versa. Translating a legal text from a source legal text into a target text does not mean transferring syntactical and structural aspects of a source legal text into identical target legal text. Instead, translating legal texts from one language into another entails transferring cultural and religious specific terms of one language into another. As far as divorce Arabic items are concerned, legal translators shall be fully equipped with understanding of both legal systems in concern as well as cultural issues might affect quality of a target product of translation.

As made it clear in translating the divorce decree from Arabic into English, the translation of court-bound instruments is not after creativity or literal understanding, in lieu of that it is a kind of a specialized translation, where there is no room for literary understanding of a certain court-bound text. It is the translator's job to get knowledge of the two competent language before commencing the task of translation. To be qualified in dealing with both cultures and legal systems would facilitate transferring a court document from one language into another adequately and accurately. If not being acquainted with terminology and phraseology of both legal systems, the accomplished translation of such documents would be to some extent distorted and not appreciated, and you, as the translator of this act would be under criticism by people interested in this domain.

First of all, in line with above disclosed findings, it is logical to come up with a bunch of recommendations that could enhance and upgrade the quality of legal translation to court-issued documents. It is recommended that trainers and trainees of legal translation to be certified and/or sworn translator have to become acquainted with legal systems of the two languages in concern. Not only this, they also have to get enough knowledge about cultures and to some degree religious vocabulary in touch with legal documentation issue.

Being familiarize with these two issues would make a bit effortless to deal with such official court documents for translation purposes. In a study implemented by Gotti (2016) on legal translating texts, after making analyses of legal texts, he held up to view that translating law-bound contexts is a sophisticated phenomenon remarkably relying on culture-bound items.

Secondly, It is your mission to translate such documents into English with zero cultural gaps. Yes, it is possible that this mission, translating from Arabic into English, is a burden on your shoulders as a legal translator, but people contact you for this purpose put confidence in you, accordingly, you expert all efforts to come up with a pure legal religious-bound translation into English.

Thirdly, English legal discourse is full of characteristics that you shall pay attention to during the process of translation from Arabic into English including but not limited to archaism, syntactic discontinuities, common use of passive voice, formality (impersonal style usage), abundant use of formulaic expressions, etc. On that account, full mastery of the legal discourse characteristics is a must as far as you carry out translation businesses. It is not a translation of literary texts where you as a translator would be to a great extent creative, in lieu of that there is no place for creativity, and you are highly encouraged to stick to the domain of legality and fully respect legal discourse characteristics.

Fourthly, in a study executed by Jabak, Abdullah and Mustapha (2016) revealed that there are lack of cultural concord between the English and Arabic languages which should be systematically taken into account when there is a try to translate a text from, say, English into Arabic or vice versa. It is implicit and comprehensible that cultural gaps between languages could be distorted if no action regarded as to not only syntactic and stylistic cracks but also other criteria including societal traditions. Jabak et al. (2016) also shed light on the fact that legal translation of an official instrument would be rejected and criticized by those who are senior in the domain of legalese if respect is only given to linguistic aspects of a target legal text. There is always a linkage between language and culture when there is a cry to a translation to a certain court related document.

Fifthly, as El-Sadik in 2018 stressed translators must be forced to endure to unlimited number of legal texts. This would in turn get them encountered with different types of official contents, which would magnify their productivity. Moreover, translators who are novice in this part of legal communication are recommended to seek counsel from professional and qualified senior translators.

Finally, it is meaningful to bring into view that there is a necessity to commence training courses for those who are already in the market of translation in order to boost their skills and qualification. Not only that but also there shall be a focus on university translation students as to building up their intent and capabilities in the field of translation locally and abroad. Furthermore, as to legality, governments shall take seek the opinion of amplifying relationships between translation schools and judicial institutions in order to share ideas pertaining to the significance of understanding the target culture before starting translating a text to it.

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Appendix A: Divorce Decree (in Arabic) – Source Text

بسم الله الرحمن الرحيم
جمهورية العراق
مجلس القضاء الأعلى
رئاسة محكمة استئناف البصرة
محكمة الأحوال الشخصية في البصرة

رقم الدعوى : ٤٧٨٩ / ش / ٢٠٢٣
التاريخ : ٢٠٢٣ / ٧ / ٣١

تشكلت محكمة الأحوال الشخصية في البصرة بتاريخ ٢٠٢٣ م من قاضيتها
المأذون بالقضاء باسم الشعب وأصدرت الحكم الآتي :

المدعي /
المدعى عليها /

القرار / أدعى المدعي أن المدعى عليها زوجته الداخل بها شرعاً وقانوناً وطلقها خارج المحكمة أمام رجل الدين بتاريخ ٢٠٢٣/٣/١٦ طلاقاً رجعيّاً حضورياً للمرة الأولى وطلب دعوتها للمرافعة والحكم بتصديق الطلاق وتحميلها الرسوم والمصاريف، وللمرافعة الغيابية العلنية ولاطلاع المحكمة على عقد زواج المدعي من المدعى عليها الصادر عن محكمة الأحوال الشخصية في البصرة بالعدد ٢٧٢٨ في ٢٠١٩/٩/٢٢ ، وعلى وثيقة الطلاق العرفية الصادرة عن رجل الدين الكناني والمتضمنة طلاق المدعي لزوجته المدعى عليها طلاقاً رجعيّاً بتاريخ ٢٠٢٣/٣/١٦ بحضور الزوجة وشاهدي مجلس الطلاق ، ولأقوال شاهدي مجلس الطلاق المستمعة ضبطاً والمؤيدة لواقعة طلاق المدعي لزوجته المدعى عليها طلاقاً رجعيّاً للمرة الأولى بتاريخ ٢٠٢٣/٣/١٦ وبحضورها وحيث أن الطلاق رفع قيد الزواج بإيقاع من الزوج أو من الزوجة أن وكلت به أو فوضت ولا يقع إلا وفق الصيغة المخصوصة له شرعاً ويشترط لصحته أن يكون الزوج أهلاً لإيقاع الطلاق وأن تكون الزوجة محلاً له، ولعدم وجود مانع شرعي أو قانوني يحول دون تصديق الطلاق الواقع، عليه ولكل ما تقدم وبالطلب قرر الحكم بتصديق الطلاق الواقع بتاريخ ٢٠٢٣/٣/١٦ بين المدعي والمدعى عليها

باعتباره طلاقاً رجعيّاً واقعاً للمرة الأولى بينهما وانقلابه إلى طلاق بانئن بينونة صغرى لانقضاء عدة المدعى عليها دون حصول الرجعة بينهما بحيث لا يحل للزوجين المطلقين استئناف الحياة الزوجية مجدداً إلا بعقد ومهر جديدين، ولا عدة على المدعى عليها لانقضاء عدتها الشرعية البالغة ثلاثة قروء وليس لها الاقتران برجل آخر إلا بعد اكتساب قرار الحكم درجة البتات، وتحمل المدعي الرسوم ولم تحكم المحكمة بأتعاب محاماة لوكيلة المدعى لعدم وجود طرف رابع بدعوى الطلاق وصدر الحكم استناداً لأحكام المواد ٥١ ، ١٥٤ ، ١٥٦ ، ١٦١ ، ١٧٧ ، ٢٠٣ من قانون المرافعات المدنية و ٢٢ ، ٢٥ ، ٧٦ من قانون الأثبات و ٣٤ ، ٣٨ ، ١/٣٩ ، ٤٩ من قانون الأحوال الشخصية حكماً غيائياً قابلاً للاعتراض والتميز وأفهم علناً بتاريخ ٢٠٢٣/٧/٣١ م.

القاضي
صلاح عبد الله العبد الجليل
طبع القرار من قبلي
٢٠٢٣ / ٧ / ٣١

مجلس القضاء الأعلى
رئاسة محكمة استئناف البصرة
محكمة الأحوال الشخصية في البصرة

أكتب لقرار المدعي لطلبه لتبلغ
المدعى عليها حيث شفع مبلغ
مركز المحكمة بطلبه لقراره
١٨٧١ في ١٤ / ١ / ٢٠٢٣
٢٠٢٣ / ٧ / ٣١
القرار اكتفي به التاريخ
٢٠٢٣ / ٩ / ١٨

CS CamScanner

Appendix B: Divorce Decree (in English) – Translated Text**In the Name of Allah, the Most Gracious, the most Merciful**

Republic of Iraq
 Supreme Judicial Council
 Presidency of Basra Federal Appeal Court



Civil Status Court in BASRA
 No.: 2023/SH/4789
 Date: 00/00/2023

The Civil Status Court in BASRA has been formed on 00/00/2023, headed by its judge Mr., authorized to judge in the name of people, and have decided the following:

Plaintiff:, his attorney Mrs., Lawyer

Defendant:

VERDICT

For the claim made by the Plaintiff that the Defendant is her wife with whom she had consummated marriage pursuant to Sharia and law, and divorced her outside the court in the presence of the Sharia marriage and divorce registrar (.....) on 16/03/2023, in presence revocable divorce, and has requested to summon the wife (Defendant) for pleading and a verdict to ratify the divorce verdict and get her borne fees and expenses of the court, and as the court has reviewed the Marriage License issued by the Basra Court. The divorce event has occurred in the presence of both witnesses of divorce council each of (..... &), who both confirmed the occurrence of the divorce event a revocable divorce for the first time on 00/00/2023 at her presence, and as there was no legitimate or legal impediment, and for all above mentioned facts, it has been decided to ratify the divorce license. The court as well checked the Civil ID Card of the Defendant which disclosed that the Plaintiff is her husband, and checked the marriage record of the Shariia marriage registrar where there was a mention to the divorce occurrence between claimants on 16/12/2023 between the Plaintiff and Defendant, and is considered a revocable divorce for the first time, and the wife was absent from the divorce council, and she has not observe the prescribed waiting period, provided that she shall not get re-married unless the verdict becomes final.

The verdict has been issued according to the provisions of Articles 51, 154, 156, 161, 177 and 203 (Law of Proceedings), 37 & 38 (Civil Status), 22, 25 & 76 (Law of Evidence), and 34, 38, 1/39 and 49 Civil Status.

We hereby certify the validity of issue of the DIVORCE LICENSE on 00/00/2023 issued by Civil Status Court in BASRA.

The VERDICT has become final and made in public on 00/00/2023.

Judge
 SALAH A. HAYDER – SIGNED
 00/00/2023

**SUPREME JUDICIAL COUNCIL
 PRESIDENCY OF BASRA FEDERAL APPEAL
 COURT
 Fees of BASRA First Instance Court
 Transaction Fee: 0000
 Receipt No.: 0000000
 Date: 00/00/2023**

Stamp of
 BASRA Civil
 Status Court

TRUE COPY