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Legal Translation**

Some Shari'a Terms Translation from Marriage and Divorce Chapters in  
Iraqi Personal Status Code

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## Transliteration

Arabic script	English symbol
ء	'
ب	<b>b</b>
ت	<b>t</b>
ث	<b>Th</b>
ج	<b>J</b>
ح	<b>h</b>
خ	<b>Kh</b>
د	<b>D</b>
ذ	<b>Dh</b>
ر	<b>R</b>
ز	<b>Z</b>
س	<b>S</b>
ش	<b>Sh</b>
ص	<b>ṣ</b>
ض	<b>ḍ</b>
ط	<b>ṭ</b>
ظ	<b>ẓ</b>
ع	<b>'</b>
غ	<b>Gh</b>
ف	<b>F</b>
ق	<b>Q</b>
ك	<b>K</b>
ل	<b>L</b>
م	<b>M</b>
ن	<b>N</b>
ه	<b>H</b>
و	<b>W</b>
ي	<b>Y</b>

## *Dedication*

*“People do not die when they are buried but they die when  
they are forgotten”*

*To the soul of my father.*

*Rest in Peace.*

*I dedicate this work.*

*There is no way I can express how much I owe to my mother  
for her love, kindness and support during all years of my  
education.*

*I dedicate this research to my mother.*

*To my brothers and sisters.*

*To the dearest friend **BOURAS AMEL**.*

*To all people in my life who touch my heart.*

*Oumhani Zouari Ahmed*

## ***Dedication***

*By His Grace, Kindness & Help, Allah has made easy the compilation of this research. I bear witness that there is no God but Allah alone.*

*And I bear witness that Muhammad is His slave & Messenger*

*I dedicate this modest work to:*

*Algeria, the best.*

*To the dearest people to my heart, my parents.*

*To all my family especially "Ahmed and Ali".*

*Special gratitude is due to the extraordinary SISTER who has supported me and encouraged me, "ZOUARI AHMED OUMHANI", with her I have shared ideas, happiness and sadness.*

*To the most precious to my heart; to the unforgettable person in my life; to the one who taught me patience and who gave me strength in order to go further..?..*

*Special thanks to Mr. H. FOAD with respect and gratitude for his kindness.*

*To all those who prayed for me and besought God to help me.*

***Amel Bouras***

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## **Abstract**

This study intends to investigate the difficulties in achieving terminological equivalence in legal translation. It compares between Islamic Shari'a terms inspired from marriage and divorce chapters in the Iraqi personal status Law in Arabic (SL) and English (TL). It first exposes the theoretical framework in the features of legal language and legal translation, terminological equivalence and the difficulties of translating legal specific terms as well as the suggested strategies by theorists to solve those difficulties. According to the comparison and analysis of the selected terms in the document, we conclude that the nature of legal systems is the main reason behind the difficulties in achieving terminological equivalence, hence culture-bound terms, especially, Islamic Shari'a terms are the most problematic terms to be translated, this study recommends that the translator must be acquainted with the target culture approach, also s/he should be aware of choosing adequate strategy which enables him/her to achieve the terminological equivalence between the SLT and TLT.

**Key words:** *legal language, legal translation, terminological equivalence.*

## **List of abbreviations**

SL: source language

TL: target language

SLT: source language text

TLT: target language text



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# *Introduction*

## **Introduction**

### **Statement of the problem**

Communication is what makes the human distinctive. Since people have different languages and cultures; translation becomes the only means for transferring information and events in around and through the whole world.

Translation like other disciplines is diverged into different types such as legal translation, journalistic translation, literary translation, medical translation and so on.

Legal translation has its own terminology, so it can be regarded as a distinctive category in its own right. Translating legal terminology requires particular attention because it contains specific terms embedded in local cultures and traditions. Therefore, the transfer from one legal system to another is not straightforward process. Like in this research, we will deal with two legal systems, and they are totally different.

According to Bell (1991; 6) "translation is the replacement of a text in one language by a representation of an equivalent text in a second language". Therefore, equivalence is one of the most difficult issues within the realm of translation, achieving the equivalence between units of the SL and TL is the foremost aim of the translation, it is not easy to achieve terminological equivalence in Arabic/English translation, particularly, when handling with legal terminology related to Islamic Shari'a concepts.

In this study, we will compare between the English target equivalents and the Arabic source terms in the Iraqi Personal Status Code, that are inspired from the chapters of marriage and divorce. Moreover, we will try to detect a plenty of cultural and contextual differences amongst the two languages. Hence, finding the precise and accurate legal equivalent term is considered as a thorny problem in legal translation.

### **Aims of the study**

This research aims at investigating into achieving terminological equivalence in legal translation, especially, in Islamic Shari'a terms, and how the transfer can be done successfully in these terms. Then, it intends to identify the problems that occur when dealing with these terms and to propose strategies to be considered when dealing with these problems. This study also aims at to detect the best strategy used to achieve terminological equivalence.

## **Research question**

This study is intended to answer the following questions:

1. What are the hindrances behind the achieving terminological equivalence in Islamic legal term? And what are the suggested strategies for those difficulties?
2. To what extent does the target equivalent term reflect the same impact/function of the source term?
3. What is the suitable translation strategy used to obtain terminological equivalence?

## **Hypothesis**

In this research we hypothesize that is no exact terminological equivalence in legal Islamic terms translated into English. Its translation under any strategy other than borrowing will create non hegemony with the original terms that are absent in the target culture and can only be translated via the use of borrowing strategy.

## **Research tools**

Islamic legal terms are selected intentionally from the marriage and divorce chapters of the Iraqi Personal Status code, and their English equivalents suggested in the English translation of this code. In our study we used bilingual dictionaries in Arabic and English languages in the linguistic and legal fields. Also we used monolingual materials in the form of dictionaries to identify the meaning in its context.

## **The structure of the study**

This study is mainly divided into three chapters: the first and the second are theoretical and the third is practical.

The first chapter provides a theoretical framework focusing on legal language and its peculiarities, both the legal English and legal Arabic, and it also includes legal translation, its types and features.

The second chapter will be divided into three parts. The first part will be devoted to introduce the notion of equivalence and its approaches in translation. The second part will be devoted to equivalence at word level and especially terminological equivalence with particular reference to the Islamic terms and the preferable methodology used for rendering them. The third part will be devoted to the problems that arise from achieving terminological equivalence, as well as, the strategies suggested to solve those problems. The final chapter contains analysis, comparison, and criticism of the corpus.

## *First Chapter*

### *Legal Language and Legal Translation*

## **First chapter: Legal Language and Legal Translation**

### **Introduction**

According to Mattila (2006, p. 3), “legal language is based on ordinary language”, therefore, grammar and vocabulary of legal language are the same in the case of ordinary language. However, legal language is a language for special purposes, first of all, it means that a large number of legal terminology differ according to the branches of the law. Secondly, legal languages of different countries and different periods possess, to a varying degree, features that distinguish them from ordinary written language. For these reason, legal language is often difficult to understand especially from the perspective of laymen.

Legal language is called by many linguists as “register”, “dialect”, or “sublanguage”, as Cao said in his book (*Translating Law*) “legal language is a type of register, that is a variety of language adequate to the legal context” (Cao, 2007, p. 09).

According to Mattila (2006, p. 3), (legal language is often characterized as technical language or “technolect”), that is a language used by a professional.

By referring to Kurzon, who distinguishes between the language of the law and legal language. In his point of view, the terms are not synonym: The language of the law is “the language or the style used in documents that lay down the law; while legal language refers to the language that is used when people talk about the law”. In other words, “legal language is meta-language used to talk about the law in a broad sense, and the language of the law is literally just that the language in which the law is written” .e.g. The language of the law is the language used to draw up statutes and contracts, while legal language is the language used in legal textbooks and judges’ opinion. (Silvia Alchini, 2012, p. 32).

Legal texts are texts used for legal purposes in legal contexts. We may distinguish four types of legal texts in the written form: 1- Legislative texts, e.g. domestic statutes and subordinate laws, multilingual laws and other laws produced by lawmaking authorities. 2- Judicial texts produced by judicial officers and other legal authorities. 3-legal scholarly texts produced by academic lawyers, e.g. contracts, leases, wills and also texts written by non-lawyers, e.g. private agreements, witness statements and other documents produced by non layers and used in litigation and other legal situations.(Cao, 2007, p. 09-10).

Also, this chapter reviews the theoretical framework of legal translation which is considered one of the many branches of special- purpose translation.



Legal translation is the translation of all kinds of legal documents.

So, from these considerations, we will analyze what makes legal language and legal translation so special.

## **1. Features of legal English**

Legal English comprises plenty of elements from a various European languages and has also borrowed words from other languages. Legal English owes to this multiplicity of linguistic influences, so it becomes a wealthy and diversified language with a peculiar grammar and many polysemous lexems. (Ropert Hiagh, 2009, p. 01).

### **1.1. The lexical features**

#### **1.1.1. Frequent use of formal words**

Using the dignified and formal words is striking lexical feature of legal English, according to Malinkoff (1963), the language of the law characterized by the frequent use of “formal words”, this was originally done for the sake of completeness and perfectness. Such typical examples include “shall” over “will”, “deem” instead of “consider” and liable” rather than “responsible” and so on. (Fakhouri Maram, 2008, p. 17-18).

#### **1.1.2. Archaisms**

Sanchez Febrero (2003) describes archaisms in his book “Legal English and Translation” as “Archaisms nearly always seem to add a touch of formality to the language in which they occur”.

Archaic words are being rarely used, and have been abandoned for a long time, so they become obscure in everyday language. The goal of its usage is to imbue the legal English with solemn style. For example: adverb (hereinafter), verb (darraign), noun (surrejoinder) and adjective (aforesaid). (Stanojevic, 2011, p. 69).

In archaic adverbs, we refer to a special case in legal English contains compound adverbs by using simple adverbs based on the simple deictics “here”, “there”, “where” and so on, they often indicate to the text or document under discussion, such as:

- Thereunder (by virtue of which, subsequently).
- Hereby (as a result of this).
- Whereby (because of which). (Alcaraz, E, & Hughes B, 2002, p. 9).

### **1.1.3. Terms of art**

Are technical words, phrases and expressions that have accurate and fixed meaning which cannot be substituted by others. e.g. bailment, abatement, affidavit (sworn statement), waiver, restraint of trade, etc. (Rupert Haigh, 2009, p. 04).

Apart from terms of art, there are also common words with uncommon meanings that is to say polysemous lexemes. For examples: attachment, action, consideration, execute, party and so on. (Stanojevic, 2011, p. 70).

### **1.1.4. Legal jargon**

Legal jargon contains special and technical terms familiar to the lawyers who discovered them in order to make their communication more easily, but it is impossible to understand for the lay public. in his famous book “legal English” Rupert Haigh points out that “Jargon words range from near-slang to almost technically precise words. Well-known examples of jargon include boilerplate clause and corporate veil”. He also said that “ Jargon includes a number of archaic words no longer used in ordinary English”. (Rupert Haigh, 2009, p. 04).

### **1.1.5. Repetition of words**

Repeating the same word rather than using the pronoun which is refer to in the legal text or document. For example: The Lessee shall pay to the Lessor at the office of the Lessor. (Sabrah, 2003, p. 37).

If we wish to enlarge on our perspective and have a more inclusive overview by referring to “Stanojevic” in his book “Legal English – changing perspective” we see (the absence of anaphoric reference in legal English prompted the repetition of words. Anaphoric reference is being avoided despite the fact that it is used in other registers by means of personal pronouns, demonstrative adjectives and demonstrative pronouns. The nouns are being repeated instead of the pronouns; for it is not always clear which word in the text a certain pronoun refers to, which legal writing does not tolerate. Therefore, the repetition is used in order to avoid ambiguity. (Stanojevic, 2011, p. 72).

### **1.1.6. Foreign words**

Legal English is mixed in a striking way as a language of interaction between old English, Latin and Old French. (Mattila, 2006, p. 229).

Legal English contains a large account of foreign words which are in particularly Latin and French origin. These foreign words derived from Latin and French underwent the process of transliteration and the direct borrowing process. (Stanojevic, 2011, p. 70).

According to Mattila (2006) “Latin is in evidence everywhere in legal English”. Today, the general principles of law illustrate that legal maxims are often still expressed in Latin. e.g. “ubi jus”, “ibi remedium” (where “there is” a right, there “is” a remedy).

There are a large number of words referring to the position of the parties in a case. e.g. versus (against), pro se (for “him/her” self). (Mattila, 2006, p. 229).

Legal English also borrowed many French words which are used in legal documents by their origins from French character. e.g. contract, proposal, schedule, terms, conditions, policy, alias, quash, etc. (Sabrah, 2003, p. 46).

Also, there are derivation of French origin in the suffix “ee” which denoting a person as a recipient of action. e.g. “lessee” = “the person leased to”. (Stanojevic, 2011, p. 71).

### **1.1.7. Using of doublets and triplets**

Legal English has curious historical tendency to string to gather two or three words in order to classify and precise the meaning and to convey a single legal concept. For example:

- “Fit and proper” = “Fit”.
- “Deem and consider” = “Deem”.
- “Cancel, annul and set aside” = “Cancel”. (Rupert Haigh, 2009, p. 34-35).

## **1.2. The syntactic features**

### **1.2.1. Excessive use of noun clauses**

The over use of nominalization is an explicit feature of legal English, therefore, legal drafters frequently have recourse to nominalization for easier modification. (Fakhouri Maram, 2008, p. 21).

Also using nouns instead of verbs are often used in legal English, such as to give consideration instead of consider, to be in opposition rather than to oppose, to be in agreement instead of to agree. (Stanojevic, 2011, p. 73).

Bhatia (1993, p. 107) expresses his view on the nominal character “Legislative sentences are more nominal in character than the ones generally encountered in ordinary everyday usage...”.

### **1.2.2. Sentence length**

The most obvious feature in legal English is the length and complexity of sentences. Sentences includes a plenty of information, repetition, long noun phrases, peculiar word order and prepositional phrases. (Stanojevic, 2011, p. 72).

### **1.2.3. The use of complex-prepositional phrases**

This feature plays a large role in legal English, it is considered as striking syntactic feature. According to Bhatia (1993, 107), complex prepositional phrases consists of the structure which is P.N.P (Preposition + Noun + Preposition), includes examples of this; for the purpose of, on respect of, in accordance with, in pursuance of, by virtue of, etc.

### **1.2.4. Passive voice**

The extensive use of passive form rather than active form is an inherent in legal English, and it is the predominant marked in all types of legal texts that make them peculiar. In his book “legal English”, Stanojevic states that “Legal drafters instinctively stick to it, so both laws and court decisions generally contain a verb in the passive, especially when obligation or condition is imposed. They tend to create the impression that such rules are infallible as they occur without the influence of the human agent”.

The aim behind the use of passive voice is to allow the legal draftsmen treating with matters more easily, in addition to this, to imbuing the legal English with impersonal style, and solemn touch. (Fakhouri Maram, 2008, p. 21).

## **2. General features of Arabic legal language**

Whereas English depends largely on paraphrasing and organization of sentences in terms of punctuation, capitalization and italicization, Arabic rarely so. Although Arabic has many forms: Kufic, Naskh, Diwani, etc. they have the same way of writing structure and paraphrasing in various texts. The fact that almost all Arabic words are written in cursive and so separate letters are not used (except in some acronyms and abbreviations). Also capitalization is not used. (Fakouri Maram, 2008, p. 26).

### **2.1. Lexical features**

#### **2.1.1. Doublets**

Legal Arabic uses paired words as redundancies for emphasis, such as:

This establishment announces and declares.

إن هذه المؤسسة تعلن وتصرح .

### 2.1.2. Binominals

Emery defines them as collocations of antonyms, synonyms or synonyms. Binominals are common in Arabic legal text and other Arabic registers.

Emery's examples are:

- "sooner or later" عاجلا أم آجلا ,
- "peace and security" الأمن والسلام ,
- "round trip" ذهابا وإيابا .

### 2.1.3. Descriptive epithets

Such epithets are intended to lay emphasis on and in addition modify the noun. e. g. The two high contracting parties confirm. يؤكد الطرفان الساميان المتعاقدان.

## 2.2. Syntactic features

### 2.2.1. Nominalization

Like written legal English, the dense use of long difficult nominals is a feature of legal Arabic.

Emery's example:

ما يقرره المجلس بالإجماع يكون ملزما لجميع الدول.

In this example, the nominal group is introduced by the relative "ما".

### 2.2.2. Verbal group

Emery (1989, p. 06) says that the imperfect past verb « كان » is equivalent to « shall » in legal English and it may express condition or stipulation as in:

Those to be recruited in the Jordanian armed forces.

يقبل في القوات المسلحة الاردنية

Should be Jordanian by birth.

من كان أردنيا بالولادة

### 2.2.3. Conditionals

Conditionals and stipulate terms are often crammed in Arabic legal texts. The most common conditional particle is إذا « if ». e.g.

(Should) if any of the two parties terminated the contract.

إذا قام أي من الطرفين بإنهاء العقد

#### **2.2.4. Modality**

It is always expressed by sentences initial lexical verbs as in *يجوز, لا يجوز, يحظر*, also by the preposition “على and ل” for rights and obligations respectively, such as:

للحكومة إنهاء هذا العقد بدون إنذار.

على الموظف كجزء من مهام وظيفته أن يبذل قصارى جهده.

(Fakhouri Maram, 2008, p. 25-28).

### **3. Legal translation**

#### **3.1. Definition**

As a first step in introducing legal translation in this thesis, the umbrella term of legal translation needs to be explicated.

Legal translation is a translation carried out on the legal terms and documents as well as on all kinds of legal texts in different setting. It is also a translation from a source language (SL) into a target language (TL) and it involves the transfer from one legal system into another.

Researchers have described legal translation as a category in its own right. This is because the peculiar nature of the legal language and the ambiguity of the interpretation of legal meaning. In addition, the preciseness of legal terminology. Therefore, the translation of legal texts needs a special care as it entails abstract terms rooted in the legal culture and local tradition of the source language.(Al Shehab, 2003, p. 19).

With respect to Chromá states that, “The primary objective of legal translation is that the target recipient should be provided with as explicit, extensive and precise legal information in the target language as is contained in the source text, complemented (by the translator) with facts rendering the original information fully comprehensible in the different legal environment and culture, and serving the purpose of translation”. (Chromá, 2007, p. 202).

The legal translation involves a special language (LSP) i.e. language for special purpose under a juridical context, therefore, it differentiated from ordinary language and also from special language of other domain ( Alchini, 2012, p. 45).

Another definition, legal translation as a specialized, institutional and culture dependent translation, requires of a translator to be faithfully to the source legal document. (Shiflet, p. 29).

### **3.2. The peculiarities of legal translation**

Legal translation must have the following features:

- It requires a highest precision, accuracy and attention to details than other translation in other domain. (EVS translation Blog, 2010). Consequently, it entails primarily of abstract terms deeply embedded in the local culture and intellectual tradition of the original text (Darani, 2013, p. 02).
- It basically needs two abilities:
  - Knowledge of legal systems, both of the source and the target languages.
  - Depth knowledge and comprehensive understanding of the subject in the legal system intended, in addition, a good legal drafter must be familiar with the domestic culture of target language. (Vittoria, 2007, p. 3-4).
- Confidentiality, security and punctuality, all of them are very important for legal translator in order to convey the message across perfectness.
- According to the contemporarily legal translator “fidelity” is achieving the same equivalent effect on the target reader and respecting the stylistic conventions of the target legal culture as in the original text. So, it is considered as the translator’s first consideration.(M. Harvey, 2002, p. 182).
- Weisflog (1987, quoted by Cao 2007, p. 37) according to him, legal translator must have a through acquaintance of law as the subject matter, including the laws and legal systems of SL and TL countries.(Smejkalova, 2009, p. 4).
- Ambiguity is viewed as an inherent feature in legal translation. So, for legal translators identify the ambiguous meaning. (M. Harvey, 2002, p.181).

### **3.3. Legal Translation Typology**

Many linguistics experts such as (Trosborg 1994, Sarcevic 1997, Cao 2007) have suggested a number of classifications to identify the types of legal translation.

Trosborg (1994) who divides the texts of contracts into three types: directive, commissive and constitutive. (International journal of English. 20).

Legal translation falls under the specialist category, because it entails special language use (LSP) (Cao, 2007, p. 08).

Sarcevic (1997, quoted by Cao, 2007, p. 07-08) classified legal translation with respect to the functions of the source legal text that can be describes as:

1. Primarily prescriptive, e.g. contracts, laws, codes...etc.
2. Primarily descriptive and also prescriptive, e.g. judicial decisions and legal instruments such as actions, requests, pleadings...etc.
3. Purely descriptive, e.g. law textbook, legal opinions belong to legal scholarship. (Cao, 2007, p. 07-08).

As Sarcevic (1997, p. 11) points out in his famous book “New Approaches to legal translation” “Legal text may be divided into regulatory and informative, prescriptive and descriptive. The first group includes the first documents that come to our minds when speaking about legal texts: legislative texts that is to say regularity instruments containing rules of conduct or nouns”.

Cao (2007) defines legal translation as the rendering of legal texts from the SL into the TL. Hence, for her Legal translation can be divided into three categories according to the functions of the TL texts.

- Firstly, there is legal translation for normative purpose.
- Secondly, there is legal translation for informative purpose. It aims at providing the target reader with information as it refers to the translation of statutes, court decisions, scholarly works and other types of legal documents.
- Thirdly, there is legal translation for general legal or judicial purpose, it is mostly descriptive and mainly for information. This includes the translation of legal documents such as statements of claims or pleadings, contracts, agreements, ordinary texts such as business, certificates, and witness statements and so on.

## **Conclusion**

As we mentioned above that legal language has many features which differentiate it from other type of languages. Thus, we conclude that the complexity and difficulty of legal translation is imputed to the nature of law and language that law uses.

So, in legal translation there are several issues that should be taken into consideration when dealing with legal terminology, Therefore, “It is said that the legal translator requires both linguistic skills and some basic understanding of law”. (Cao, 2007, p. 37). So, the legal translator should be acquainted with both source and target cultures.



## *Second Chapter*

### *Translating Terminology*

## **Second Chapter: Translating Terminology**

### **Introduction**

In this chapter, we try to detect the concept of equivalence, which is the most relevant and debated issue in translation and even more in legal translation and to investigate the conundrum of translating legal terminology, especially, Islamic Shari'a terms, in particular terminological equivalence and it reviews the Islamic term and the adequate methodology of translating it. Also it provides the difficulties and suggested strategies of translating legal specific terms.

### **1. Equivalence Forms**

In order to understand the nature of equivalence we must define translation, which is the replacement of a text in one language by a representation of an equivalent text in a second language. (Bell, 1991, p. 6).

The concept of equivalence is seen as a constitutive notion in translation theory, becoming the most problematic and controversial concept in the spectrum of translation studies.

Equivalence is to indicate that “the relationship between a source text (ST) and a target text (TT) that allows the TT to be considered as a translation of the ST in the first place” (Baker, 1998, p. 77).

As we know that equivalence is the core support in translation, that there is no translation if there is no equivalence between the original text and the translated text, hence this term has been critically analyzed and conceptualized by a lot of scholars in the field, namely, Jakobson (1959), Nida (1964) and Baker (1992).

Roman Jakobson (1959) in his essay (on linguistic aspects of translation) distinguishes three kinds of translation: interlingual, interlingual and intersemiotic.

- Intralingual translation: paraphrasing or rewording, it happens within the same language.
- Interlingual translation: (or translation proper) which is an interpretation between languages.
- Intersemiotic translation: (or transmutation) which is between the nonverbal sign systems.

According to him, in all these kinds there is no full and complete equivalence via translation. In addition, he stated that “equivalence in difference is the cardinal problem of language and pivotal concern of linguistics”.

He believes that languages may vary from each other at the grammatical level and cultural context, hence the translator can find deficiency in the translation practice, thus s/he can pass the message by using several procedures which are loan-words, neologisms, circumlocution and so on. (Venuti, 2000, p. 114)

According to Nida, there are two different types of equivalence: formal and dynamic. Nida defines formal correspondence as follows: “formal equivalence focuses attention on the message itself, in both form and content...one is concerned that the message in the receptor language should match as closely as possible the different elements in the source language”. (Venuti, 2000, p. 129).

For him, formal equivalence attempts to produce accuracy and correctness. It emphasizes on the form and aesthetics of the text, so formal equivalence tends to be faithfully to the original text without adding the translator’s ideas and thoughts into the translations. (MR Journals, 2013, p. 02).

“A gloss translation” is typifies formal correspondence, such translation would be supplemented with numerous footnotes in order to make the text more comprehensible. (Venuti, 2000, p. 129).

Whereas, in dynamic equivalence there are an effort is made to convey the same effect and same relationship that existed between the original receptors and the message. For Nida, it is based upon “the principles of equivalent effect”, hence Nida’s dynamic equivalence aims at retaining naturalness of expression and matching the receptor-language message with the relevant context of his own culture. (Venuti, 2000, p. 129).

Mona Baker in her book (In Other Words) (1992) proposed different levels in the issue of equivalence, including all different aspects of translation.

- **Equivalence at word level and above word level**, equivalence at word is the first element to be taken into consideration by the translator, because when the translator looks at the words as single units in order to find a direct equivalent term in the TL. Secondly, equivalence above word level, when words starts combining with other words to form a stretches of language, in this level Baker focuses in collocations and idioms.

- **Grammatical equivalence**, differences in the grammatical categories of the source and target language frequently results in some change in the information content of the message during translation, this type is considered as the diversity of grammatical categories across languages, it focuses on number, gender, tense and aspect, person and voice.
- **Textual equivalence**, thematic and information structures, when referring to the equivalence between a SL text and a TL text in terms of information and cohesion, “A translator should be aware not only of cognitive meanings and basic syntactic structure in his text, but also of his information dynamics”. So, translator produces a cohesive and coherent text in a specific context.
- **Pragmatic equivalence**, Baker concerned with the way utterances are used in communicative situations and the way we interpret them in context. Pragmatic is the study of language in use. Baker focuses on coherence and implicature.

## **2. Equivalence at word level**

As translators, we are primarily need to concern with units and structures which carry the meaning, according to Bolinger and Sears as cited in Baker (1992), the word is "the smallest unit of language that can be used by itself". meaning can be carried by units smaller than the word, e.g. rebuild, there are two different elements of meaning in it, re and built (to build again). Elements of meaning are represented by several orthographic words in one language, also may be represented by one orthographic word in another and vice versa. e.g. Tennis player is one word in Turkish: Tenisci. This means that there is no one-to-one correspondence between orthographic words and elements of meaning within or across languages. (Baker, 1992, p. 10-11).

With respect to the view of Roger Bell (1991, p. 6) who stated in his famous book “Translation and Translating”, that the issue of equivalence is very plain in the translation spectrum.

“Texts in different languages can be equivalent in different degrees (fully or partially equivalence), in respect of different levels of presentation (equivalent in respect of context, of semantics, of grammars, of lexis, etc) and at different ranks (word –for-word, phrase-for-phrase, sentence-for-sentence)”.

Languages are different from each other grammatically and culturally. They have distinct forms. These forms convey different meanings. Hence, there is a belief for a very long time that the ideal of total equivalence is a chimera.

According to Bell (1991) there is no absolute synonymy between languages, since within the same language may discover a lack of synonymy. Additionally, in the translation process sometimes there is a loss or gain. Bell (1991, p. 6), notes that the translator imbues with traitorous nature "...translator can find themselves being accused of reproducing only part of the original and so "betraying" the author's intentions", as the Italian proverb said: « Traduttore Traditore ».

Catford in his essay "A linguistic Theory of Translation" (1965, p. 24-25), for him, the central problem of translation practice is that of finding TL translation equivalents. Specifically, he stresses on the equivalence at the word level. Hence, he classified translation in terms of the extent, levels, and ranks of translation, (Full vs. Partial translation); (Total vs. Restricted translation); (Rank bound translation vs. Unbound translation). For him, translation equivalence is established in the grammatical rank; Catford claims that the selection of TL equivalents is confined to rank-bound translation, which is word-to-word or morpheme-to- morpheme equivalences.

## **2.1. Terminological equivalence**

Terminological Equivalence is one of keen current interest, as well as, it is considered as one of the most problematic and controversial issue posed by legal translation due to the diversity of legal systems i.e., a particular concept in legal system may have no counterpart in other system.

Each legal system is situated within a complex social, political, cultural, historical, and religious framework. This complex framework is seldom identical from one country to another.

Diana Yankova (2003, p. 53), views that the connotations of the meaning play a secondary role, the referential function is utmost important, and the conceptual content of the specialized term is essential. Hence, Conceptual differences have an important position should be taken into account by the legal translators. Moreover, she gives a definition for legal terms as "a proposition consisting of a predicate and arguments that fulfill varying semantic or thematic roles".

### **2.1.1. Definition of Terminology**

According to the dictionary, Terminology” is a vocabulary associated with a certain field of study, profession, or activity”.

M. Teresa Cabre (1996), defined the terminology “As a discipline, terminology is a subject which is concerned with specialized terms; as a practice it is the set of principles oriented toward term compilation; finally, as a product, it is the set of terms from a given subject field... In this first meaning, terminology is conceived as the discipline concerned with specialized terms”.

Thus, for the purpose of this study, we come to legal Terminology in general, with particular reference to religious terminology inspired from Islamic law.

### **2.1.2. Islamic term**

Expression, or a new concept in Arabic comes from the Holy Quran, Sunnah, and Islamic jurisprudence. This includes three kinds of terms in the Arabic Language:

- New terms were originally not part of the Arabic language vocabulary such as Zakat, Jihad, etc.

- Terms that are already exist in the Arabic language but semantically new such as fasting and pilgrimage, etc.

- There are Islamic terminology that agreed with the Arabic language terms in the form and content such as peace, war, punishment, etc. (Our translation, Hasan Ghazala, 2004, p. 84).

### **2.1.3. Methodology of translating “culture-specific words” with particular reference to religious terms**

The American translation theorist L. Venuti (1995) in his major work "the translator's invisibility" discusses different strategies of translation which are useful devices for translating cultural terms. These strategies are domestication and foreignization. With respect to him, the former one is “an ethnocentric reduction of the foreign text to target-language cultural values, bringing the author back home,...” (1995, p. 20). In this strategy, the translator minimizes the differences and strangeness of the foreign text in order to make the target text easily to comprehend. That is, s/he attempts to produce the same effect in the target language as that produced in the source language. However, foreignization, according to Lawrence Venuti (1995, p. 20) is ”an ethnodeviant pressure on those values to register the linguistic and cultural difference of the foreign text, sending the reader abroad”, he points out

that a translator can resist against the dominant values of the target culture, in this case, this strategy making the cultural differences more visible. Thus, it designates to produce target text by preserving something of foreignness and strangeness which exists in the source text. Venuti (1992) believes that the preferred strategy is “foreignization”. Since it is not only can help to preserve the linguistic and cultural differences of the foreign text, but also makes the translator's work more visible.

Foreginizing is the preferable translation strategy used by the present researcher in the rendering culture-bound terms in particular legal Islamic terms. Because carrying out this approach on terms that have special cultural and religious meanings and connotations. Consequently, it respects the true meaning of the term within its own cultural and religious setting, and also obliges the target reader to make some effort to read and understand explanations that accompany the translation of the source text (Abdallah El-Khatib, 2006, p535). This method is fully applied through borrowing procedure .i.e. retain each term as it is in the source text and to render it phonetically by means of transliteration using beside it short explanation either between brackets or detailed commentaries in the footnotes for achieving the cultural and r\_eligious connotation of the term.

### **3. The difficulties of translating legal specific terms**

#### **3.1. The absence of source term in the target culture (untranslatability).**

In the process of translation the translator encounters problem, particularly, the translator who dealing with religious and creative texts, this problem is “Untranslatability”.

This phenomena is a very plain in translation, it is caused by the difficulty in finding the direct target language word as an equivalent of the source language word (Rizki Gunawan 2011, p. 17). Catford (1965, p. 94) states that untranslatability or translation fails happens when it is “impossible to build functionally relevant features of the situation into the contextual meaning of the TL text”. In addition, Newmark (1988, p. 79) is another famous researcher who argues that untranslatability occurs if “a word whose meaning cannot be rendered literally and precisely by another word...”. According to Catford there are two types of untranslatability. They are:

- Linguistic untranslatability: Is due to differences in the SL and the TL (Bassnet, 2002, p. 39). The reason of this untranslatability is the linguistic side. It occurs “If the TL

has no formally corresponding feature, the text, or the item, is (Relatively) untranslatable” (Catford, 1965, p. 94).

- Cultural untranslatability: It is the untranslatability caused by the cultural level. It refers to when a relevant situational feature for the SL text is absent from the culture of the TL, that is to say, some features imbedded in a culture which has not found in other culture.

Christopher Moore (as cited in journal of king Saudi university-languages and translation 2011, p. 51) makes a list of words which he describes “the most intriguing words around the world”. According to him, in Arabic there are words which have no equivalent such as “halal”, “haj”, “Baraka”, etc. These words are untranslatable, i.e. they are difficult to translate them into English. Hence, he regards Arabic as a language that “must surely come at the summit of the word’s untranslatable tongues”.

### **3.2. Culture-Bound terms**

In the Oxford Advanced Learner’s Dictionary (2004, p. 306) culture defined as “the customs and beliefs, art, way of life and social organization of a particular country or group”.

Newmark in his book “A Textbook of Translation” (1988, p. 94) defines culture as “the way of life and its manifestations that are peculiar to a community that uses a particular language as its means of expression”. Furthermore, Wierzbicka (1992, 1996, 1997) as quoted by (Nader Al-Jallad, p78) “maintains that each culture has key concepts that are essential in understanding it” which means that each culture has a language and this language has specific terms which makes it special from other cultures because language is the heart within the body of culture as Bassnett (1980) viewed, also she emphasized the significance of considering both language and culture in translation process.

Baker in her book “In Other Words” (1992, p. 21) stated that “the source language word may express a concept which is totally unknown in the target culture. It may relate to religious belief, a social custom, or even a type of food”.

Culture-bound terms refer to concepts which are specific to the SL culture, but they are totally unknown in the TL culture. (Palusz Kiewicz, 2005, p. 244).

Cultural words are difficult for the target text reader to understand. According to Harvey (2003, p. 02) “culture-bound terms refer to concepts, institutions and personnel which are specific to the SL culture”. (Rahimkhani and Salmani, 2013, p. 782).



Schwarz (2003, p.14) as quoted by (Pirnajmuddin and Zamani) (2012) defines culture-bound terms as “concepts in any language that are unique to that language or to the culture associated with that language and create a cultural gap between speakers of different languages”.

Bahameed gives some examples of culture-bound concepts from Arab culture that would be difficult to translate into English. E.g. سحور Sahuur (a meal is eaten before the dawn for fasting). تيمم Tayammum (the use of sand for ablution when water is unavailable). (Bahameed, 2008).

### **3.3. The lexical gaps**

A lexical gap as a term is more common than a lexical hole, and it is used by many linguists and translation specialists. Lexical gap in religious translation seem to be too thorny problem. (Mehdi F Al-Ghazali, 2000, p. 01).

According to Cvilikaite (2006, p. 127) the term refers to “a lack of lexicalization detected in a language while comparing two languages or in a target language during translation”. Hence, for him “redundancy” is a lexical gap, because it is a free-word combination.

Darwish (2010), as quoted by (Rahimkhani and Salmani, 2013, p. 783), for him the term lexical gap can occur in several different occurrences during translation:

- Whenever a source language expresses a concept with a lexical unit whereas the translated language expresses the same concept with a free combination of words or with phrases.
- The denotation of the same concept may vary from one language to another, so here may exist a lexical gap.
- It occurs where there is a cultural gap or when the concept is absent in the target language.

In the following example “صلاة الاستخارة” as a term has a lexical gap in the target language, it is rendered into English as “Sallat al-istikhaarah” (the prayer asking God’s guidance to make a good choice). (Shribi, 2012, p. 65).

### **3.4. The problem of reception**

Hans-Robert Jauss is known for his theory of “reception” that appeared in Germany between 1960 and 1980. (Clara Srouji-Shajrawi, 2013, p. 02), Jauss focuses on the reception

of literary works rather than the production, accordingly, the work of art is determined by the nature of the reader's reaction "spontaneous success, rejection or shock, scattered approval, gradual or belated understanding" (Richard L.W. Clarke, p. 02). That is to say, the reader is the only one s/he has the right to give the legitimacy of literary work.

Specifically, this theory has not confined to the field of literature, but also can apply it in translation practice.

In late 80s and early 90s of the 20 century, reception theory was entered to translation study, and the translation researchers started to shed light on the role of the reader in the translation process, moreover, they focus on the acceptance of translations by the target reading public. (Liangqiu LV, puyuning, 2013, p. 114). Hence, the problem of reception when translating religious terms to be established in the kind of the target reader, there are three kinds:

- Arab-Muslim: s/he considered as the source reader, s/he has pillars enable him/her to comprehend deeply the Islamic terms.
- Non-Arab Muslim: s/he has less ability for comprehensive understanding comparable with the first type.
- Foreign non-Muslim: here, there is too thorny problem when translating to him religious terms, because of the differences in culture, language and religious. (Fahima Bousaid, 2011, p. 46).

#### **4. The Strategies of translating legal specific terms**

##### **4.1. Functional equivalence**

Some researches consider this strategy as the ideal and the preferred procedure, while others regard it as "misleading". The term used for translating culture-specific term by a culture-free word. (Newmark, 1988, p. 83).

Newmark (1988) described the functional equivalent as "this procedure, which is a cultural componential analysis, is the most accurate way of translating .i.e. decultrealising a cultural word".

According to M. Harvey, the purpose of using the functional equivalence is to achieve the communicative impact in the target text that the original text did upon the ST audience, thus, the translation "doesn't sound like a translation".(Nida and Taber, 1982, p. 12).

As Sarcevic (1988, 1989) quoted by Darani (2013, p. 05), defined the legal functional equivalent as “a term in the target legal system, designating a concept or institution, the function of which is the same as that in the source legal system”.

## **4.2. Formal equivalence**

Strategy of formal equivalence focuses on the message itself, in both form and content. According to Nida (1964, p. 165) “formal equivalence translation is basically source-oriented; that is, it is designed to reveal as much as possible of the form and content of the original message”

Also Nida claims that formal equivalence strategy is to remain as close to the source text as possible by reproducing various formal elements such as in translating concept to concept, sentence to sentence, idiom to idiom and poetry to poetry.

This strategy is also called literal translation, because it tries to preserve the semantic content of the SL term intact for the TL users. The main advantage of this strategy is the plainness of equivalents but if it is too used, the target text becomes ambiguous. (Januleviciénė and Rackeviciénė, 2011, p. 1078).

According to Harvey, formal equivalent can be a neologism. The legal translator should check the term in TL legal system. This will help to avoid calque.

So, this strategy implies greater respect for the SL system by presenting it on its own form and content rather than superimposing the TL system.

## **4.3. Borrowing**

It is also called (cultural borrowing), this strategy uses an original form of the SL term; it is also called transcription (Januleviciénė and Rackeviciénė, 2011, p. 1078).

According to Vinay and Darbelnet (1958, p. 31-32), borrowing is the simplest strategy, they said that “in order to introduce the flavour of the SL culture into a translation, foreign terms may be used”.

Transcription or borrowing is transliterating the original term. Also, in other cases, especially where the source language is unknown to the reader, transcription is accompanied by a gloss translation. (Harvey, p. 05).

Also according to Dickins et al. (2002) “the first alternative is to transfer an ST expression verbatim into the TT. This is termed cultural borrowing. It introduces a foreign element into the TT”. (p.32).

In this book also borrowing is so-called transliteration by rendering the culture-specific term for examples: إمام (imam), شيخ (sheikh), الله (Allah).

By using this strategy the translator may add glossary at the end of the book or s/he uses footnotes to make the translation clearer and simpler to the reader, it is sometimes possible to insert an explanation or partial explanation into the TT besides the cultural borrowing term. For example: واعترضت قلة منهم بحجة ان الهلال والنجمة في أمريكا بدعة تخالف الاسلام...

A few of them objected, on the grounds that the American use of the Crescent and Star is bid'a. (“Innovation”, which Islam opposes). (Dickins, Harvey & Higgins, 2002, p. 33-34).

#### **4.4. Description**

Self-explanatory translation uses a short explanation in order to convey the meaning of the term; this concise paraphrase can become a quasi-autonomous term equivalent. (Harvey, p. 06).

By this strategy the target reader can avoid ambiguity and realize the meaning easily without the need for borrowing or any other sources. (Januleviciené and Rackeviciené, 2011, p. 1079).

According to M. Harvey, a descriptive translation can be seen as “a compromise solution, avoiding the extremes of both SL- and TL-oriented strategy”, an example typifies this strategy is the Arabic term نشوز can be rendered into English by the term (unlawful desertion). (Sabrah, 2003, p. 190).

#### **4.5. Calque**

A calque is a translation strategy which is defined as “an expression that consists of TL words and respects TL syntax, but is unidiomatic in the TL because it is modeled on the structure of an SL expression.” (Dickins, Hervey, & Higgins, 2002, p. 31).

A calque is a loan translation, in accordance with Vinay and Darbelnet (1995, p. 32), this procedure refers to “a special kind of borrowing whereby a language borrows an expression form of another, but then translates literally each of its elements”.

Hence, they mention two types of calque: lexical and structural.

#### **4.6. Translation by omission**

Translation by omission, as judged by (Dickins et al., 2002, p. 23), is “The most obvious form of translation loss is when something which occurs fairly frequently in Arabic/English translation”. In fact, the translator can omit a particular item or expression in some context in order to avoid the reader’s distraction with lengthy explanations. (Baker, 1992, p. 40).

Moreover, according to the cultural differences there can be a simple omission, which may be considered as a reasonable strategy. For instance, " الشيخ بيار جميل " translated as "Pierre Gemayel" the word الشيخ is omitted in the target text (Dickins, Hervey & Higgins 2002, p. 23).

Nida (1964, quoted by Binh 2010, p. 47), he claims that this translation strategy is applied when there are a redundancy and awkwardness.

#### **4.7. Translation by addition**

As defined by (Dickins et al., 2002, p. 24), “translation by addition is translation in which something is added to the TT which is not present in the ST. like omission; addition is a fairly common feature of Arabic/English”. Accordingly, they provide their definition with an illustrative example that typifies this strategy:

" منذ الهيمنة التركية ", translated as “ever since the days of Turkish hegemony” instead of “ever since Turkish hegemony” or “time of Turkish hegemony” would also be possible. (Dickins, Hervey & Higgins 2002, p. 24).

### **Conclusion**

Each culture represents specific legal concepts, thus this diversity between legal systems causes the difficulty of legal translation especially achieving terminological equivalence in legal translation that is one of the most important issues in legal translation.

This chapter deals mainly with the difficulties in terms of translating the legal specific terminology from Arabic into English, in addition to the main strategies that may achieve terminological equivalence in Islamic Shari’a terms such as formal equivalence, borrowing, paraphrasing, calque and etc.

So, in the task of legal translation, language knowledge is not enough to conduct translation, culture knowledge is prerequisite for legal translator, because legal texts are so rooted in their culture, therefore, the translator may find it difficult to render them into another language

particularly if the SL and the TL are totally different. S/he should obtain the equivalent that is such a term that also preserves the legal characteristics of the source text in the target language.

## *Practical Part*

*Analytical and critical comparative study of  
the corpus.*

## **Introduction**

This part attempts to confirm that if the terminological equivalence is achieved or not and to suggest strategies in order to solve the problems that arise from the lack of terminological equivalence in Arabic-English translation. The corpus is namely The Iraqi Personal Status Code that contains the Arabic version and the translated version into English; we have randomly chosen the terms that are inspired from marriage and divorce chapters. This chapter analyses, compares and critiques the Arabic terms and the counterparts that translated by the American Bar Association. In legal translation, translators usually face more difficulties and are required to achieve a higher degree of precision than when translating other contexts. This practical part also probes to find terminological equivalent in legal translation. Moreover, it also appraises to introduce the corpus in form of general review.

### **1. A brief account of the Corpus.**

The corpus we have chosen is the Iraqi Personal Status Code in the two versions Arabic and English. We have chosen this corpus because our Algerian does not have any English authentic official version.

Some terms which have been taken from the chapters of marriage and divorce in the Iraqi Personal Status Code are chosen because of their unique use and context which does not have a reliable equivalent in the other language side.

Firstly, we deal with a Personal Status as a term, it is all what the human characterized by each natural and family features which the law affected legally in his or her social life, i.e. the social's private affairs of the individual under subject to the law. (our translation).

The Iraqi Personal Status Code. No. 188 of 1959 was written in Baghdad in 19December 1959, it was frequently amended in 1963, 1978, 1980...etc. It is translated by the American Bar Association Iraq. (Personal Status Code N.188, 1959).

It contains an important set of legal issues that identifies the legal status of a person.

The Personal Status Code is highly progressive law compared to other status in the region. Although it is primarily rooted in Islamic Shari'a and organized different fields of personal status such as marriage, divorce, kinship, bequeathing and the legacy.

This law allows Non-Muslim minorities from being restricted with Shari'a-based laws according to the Article 2 of the law states that the code applies to "all Iraqis, except for those who are exempted by virtue of a special law". (Minorities and the Law in Iraq, June 2011).



Christians, Jews and other minorities are covered partly by the personal Status Law and partly by other legal systems. (Law of Iraq, the free Encyclopedia, June 2010).

We choose Personal Status Law because it is distinct from other branches of law, it contains holistic terms, especially in the chapters of marriage and its dissolution, those terms possess a religious and cultural touch as culturally bound terms. Hence, the absence of those terms in the target language (English) make a thorny problem that translator faced during translating those terms into English.

Specially, we choose the Iraqi Personal Status Code because it is translated into English, so, we need an English translation of the Arabic code which we studied, because we followed method that is analytical comparative between two different languages phonetically, morphologically, semantically and culturally.

## **2. Terms extracted from “the Marriage Chapter”.**

Marriage is a general term used as it is in all over the world, though different it is culturally and traditionally.

Apparently, marriage is a relationship between man and woman that is based on mutual respect and consent. Marriage is the central pillar in personal status. Therefore, it is considered as the best means of reproduction and multiplication. So, the elements of personal status such as: because it is the base that makes all what follows as: divorce, custody, endowment, kinship, etc.

Marriage under Islamic Jurisprudence creates a unit of society that mutually accepts God as an integral part of every situation and decision, and recognizes mutual rights and obligation between spouses. (maha al-khateeb 2002, p. 6).

Thus, marriage in Islam has marital ceremonies which are expressed by terms imbued with Islamic culture.

« marriage »

الزواج

According to Ibn Mandhour, marriage linguistically is:

"الاقتران، والأصل في الزَّوْجِ كلُّ شَيْئَيْنِ مُقْتَرَنَيْنِ، وَزَوْجُهُ بِالشَّيْءِ، وَزَوْجُهُ إِلَيْهِ: قَرْنُهُ".

« حَاكِلَتَ وَزَوَّجْنَاهُمْ بِحُورٍ عِينٍ » سورة الدخان الآية 54.

In the Arabic interpretation of this verse is: “

"الحور: تحار العين في جمالها، الجمال المطلق في الجنة، أي زوجناهم بامرأة كما ينبغي أن تكون في أعلى مستوى".

(Mohammed Al-Nabolsi, 1994).

« So (it will be). And we shall marry them to Hur (fair females) with wide, lovely eyes ». Surah ad-Dukhan, verse 54.

In the Oxford Worldpower dictionary, Marriage is the state of being husband and wife.

In the Islamic Sharia' and according to Maha Al-Kateeb (2012, p. 6) in her definition of the marriage said that “under traditional Islamic jurisprudence, marriage creates a unit of society that mutually accepts God as an integral part of every situation and decision, and recognizes mutual rights and obligations between spouses”.

Pursuant to the third article the term (الزواج) is rendered into English as follows:

<p>-<b>Marriage</b> is a contract between a man and women who is lawfully permissible to him, the purpose of which is to establish a bond for mutual life and procreate children.</p>	<p>- <b>الزواج</b> عقد بين رجل وامرأة تحل له شرعا غاية إنشاء رابطة الحياة المشتركة والنسل.</p>
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In this translation, the term « الزواج » is translated as «*marriage*», also according to Black's law dictionary (1968) marriage is the civil status, condition, or relation of one man and one woman united in law for life, for the discharge to each other and the community of the duties legally incumbent on those whose association is founded on the distinction of sex.

So, in this case both translators use the formal equivalence strategy in the concept of marriage, because this term is a global and have a universal meaning in different cultures in the entire world (**George Mounin**), regardless the societies and their specific beliefs.

Hence we can say that the translators above achieve the real formal equivalence between Arabic and English in this term according to its meaning and use regardless the cultural religious differences

« *Al-Fatiha* »

الفاتحة

According to Ibn Mandhour Al-Fatiha is:

"فاتحة الشيء: أوله. وفواتح القرآن أوائل السور".

Al-Fatiha is the first Surah of the Quran, and reciting al-Fatiha in the marriage ceremonies it is considered as a religious tradition which is known in our Islamic society, and it hasn't any jurisprudence evidence.

« *الفاتحة* » as a term is rendered to English as « *Al-Fatiha* » in the the third article :

<p>- The promise of marriage, the recital of <i>Al-Fatiha</i> (the first Surah of the Holy Quran) and the betrothal are not considered as a contract.</p>	<p>-الوعد بالزواج وقراءة الفاتحة والخطبة لا تعتبر عقدا.</p>
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The term « *الفاتحة* » it hasn't any equivalent term in English, so, the translator here encounter the problem of untranslatability, therefore, the translator borrowed the term as it is

«*Al-Fatiha* », and give a short definition between brackets as a gloss translation, it is rendered by borrowing strategy because it has a cultural religious feature which hasn't found in any other culture except the Islamic culture.

So, the lexical item « *Al-Fatiha* » has been transliterated and then explained in the form of footnotes or comments, since this word has not been lexicalized in English because it is absent in the Christian culture.

**Consummation****الدخول**

With respect to the linguistic definition of the Arabic term « **الدخول** », Ibn Mandhor in his book « Lisan Al-Arab » defined it as:

”الدخول نقيض الخروج، دخل يدخل دخولا“.

Another definition by Al-Fayoumi :

"ودخل بامرأته كناية عن الجماع أول مرة ، وغلب استعماله في الوطاء المباح، و المرأة المدخول بها".

Consummation is when people make a marriage or relationship complete by having sex. (Longman exams dictionary, 2006, p.315).

According to the article twenty one the term « **الدخول** » is transferred to « **consummation** » as follows:

<p>-The wife is entitled to the entire stipulated dowry with the <b>consummation</b> of the marriage or with the death of the spouse. However, she is entitled to half of the stipulated dowry with divorce or before marriage <b>consummation</b>.</p>	<p>-تستحق الزوجة كل المهر المسمى <b>بالدخول</b> أو بموت احد الزوجين و تستحق نصف المهر المسمى بالطلاق قبل <b>الدخول</b>.</p>
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The translator translated the Arabic term « **الدخول** » by using a formal equivalence strategy, « **الدخول** » is rendered into English as « **consummation** ». The term defined in Black’s Law Dictionary as: « the completion of a thing; the completion of a marriage between two affianced persons by cohabitation ». In this expression “the completion of marriage” denotation of the Arabic term « **الدخول** » it means « **الجماع** ». Thus, “consummation” is regarded as an English equivalent for the the Arabic term « **الدخول** ». Moreover, the translator may use the borrowing strategy « **Al-dokhoul** » in order to imbue the term with an islamic touch, the term **الدخول /consummation** is a metonymy for the sexual intercourse at the first time.

« Polygamy »

التَّعَدُّد

According to Ibn Mandhour Al-Ta'adud is:

« الزَّيَادَةُ، يَتَعَدَّدُونَ عَلَيْهِ، يَزِيدُونَ عَلَيْهِ فِي الْعَدَدِ ».

“Under traditional Islamic law a man can only practice polygamy, no more than four wives, if he able to treat all his wives equally” (Maha Al-Khateeb, 2012, p. 35).

In their book “Polygamy in Islam, 1999, p. 35”, Philips and Jones said that the best example in polygamy typifies in the Sunnah of the Prophet Mohammed (peace be upon him) when was allowed by Allah to marry nine women during the same time period.

قال تعالى:

"فَانْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبَاعًا فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ أَحْسَنُ أَلَّا تَعْوَلُوا".

سورة النساء، الآية 4.

*As Allah has said: "...marry of the women that please you: two, three or four. But if you feel that you shall not be able to deal justly, then only one or what your right hand possesses. That would be more suitable to prevent you from doing injustice". Surah Al-Nisa', verse 4.*

Polygamy literally means many marriages, implies more than two.(Black's law dictionary, 1968).

According to the third article the term «التعدد» is translated as follows:

<p>If justice between wives is feared, <b>polygamy</b> may not be allowed. The issue would then be left to the judge's determination.</p>	<p>إذا خيف عدم العدل بين الزوجات فلا يجوز التعدد ويترك تقدير ذلك للقاضي.</p>
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The translator gave the formal equivalent to the term of «التعدد» by rendering it to polygamy, the translation process is correct according to the form and meaning, but in our culture this term is based on Sharia' rules and At-a'addud has special conditions and in the Islamic world is legitimate and permissible, but in the western culture this term and its use is forbidden and unlawful. Hence, we can say that the difference is in the pragmatic use of this term because it is lawful for us as Muslims but unlawful for the non-Muslims.

« Dowry », « Dower » and « Mahr »

المهر

According to Ibn Mandhour in his famous book “ Lisan Al-Arab” the term Mahr is defined as: "مهر، المهر، الصداق، والجمع مهور؟ وقد مهر المرأة يمهئها ويمهئها مهراً وأمهئها".

In the Holy Quran the term Mahr has been referred to as:

Sadaq صدق, saduqah صدقة, nihla نحلة, ajr أجر, faridha فريضة.

« وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً » سورة النساء الآية 4.

In the book « Safwat al-Tafasiir » al-Zamakhshari gives the interpretation of this verse as:

❖ "صَدُقَاتِهِنَّ جَمْعُ صَدَقَةٍ وَهُوَ الْمَهْرُ".

❖ "نِحْلَةٌ هِبَةٌ وَعَطِيَّةٌ".

❖ "أَيُّ أَعْطَوْا النِّسَاءَ مَهْرَهُنَّ عَطِيَّةً عَن طَيِّبِ نَفْسٍ".

❖ "وَيَقُولُ أَيْضًا أَنَّ الْمَهْرَ لَيْسَ أَجْرًا وَلَا ثَمَنًا وَإِنَّمَا هُوَ عَطَاءٌ يُوَثِّقُ الْمَحَبَّةَ وَيُدِيمُ الْعِشْرَةَ وَيُرْبِطُ الْقُلُوبَ".

« And give to the women (whom you marry) their Mahr (obligatory bridal-money given by the husband to his wife at the time of marriage) with a good heart; ». Surah al-Nisa‘, verse 4.

Whereas the definition of dower according to Islam is “the dower is considered to be an effect of the marriage contract, imposed on the husband by the law as a mark of respect for the subject of the contract- the wife, while others consider that it is in exchange for the usufruct of the wife, and its payment is necessary as upon the provision of support to the wife depends the permanency of the matrimonial connection”.

(Deeb Al- Khudraawi, 2004, p. 484).

According to Ann Black (2010), « **Mahr** » can be a sum of money, material goods, investments or a positive commitment (e.g. to teach her a skill, or a go on a special holiday).

The **dower** is seen as one of the wives’ rights in Islamic countries, and it is a lawful mark for the validity of the marriage contract.

The « **Mahr** » is considered as “the marital gift that is given to the wife”. (Maha Al-Khateeb, 2012, p. 17).

The term «**Dowry**» is mentioned in the article 19 as:

-The wife is entitled to <b>the Dowry</b> stipulated in the contract.	- تستحق الزوجة المهر المسمى بالعقد.
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In this translation, the translator renders the term «المهر» to the English term (the dowry), so s/he uses strategy of formal equivalence, but this equivalent term does not have a cultural-religious denotation. Also it is translated into Dower and it is used by many translators as (Mustanir Mir, 1987), “Dower is the husband’s marriage gift to the wife”.

But dower in English has different meanings such as a provision for a widow on her husband’s death. (Black, H. C, 1968). The term «*Mahr*» is rendered into English as dower although this translation can be problematic and it is perhaps preferred to use *Mahr* instead of dower. So, we can say that translating the term «المهر» to «*Mahr*» and «*Mahar*» in many places by using borrowing strategy and for more clarification; the translator should give a short explanation into the TT besides the cultural borrowing term. For example: in the Holy Quran in the Surah al-Nisa’ which we referred above in the verse 4 as: (*Mahr* (obligatory bridal-money given by the husband to his wife at the time of marriage)). (Muhammad Taqi-Ud-Din Al-Hilali and Muhammad Muhsin Khan).



### **3-Terms extracted from the divorce chapter**

Love and affection are important features of marriage and if those features do not stand the marital tower will sooner collapse which means there disunity and dissent may occur between the spouses, here the divorce is permissible, because there is no alternative choice and continuing the marriage becomes impossible. So, permitting divorce is the last resort.

The prophet (peace and blessings of Allah be upon him family) is reported to have said: “*Of all the things permitted in law, divorce is the most hateful things in the sight of Allah*.” Abu Daud”. (Moulana. M.S. Raza 1998, p. 1).

There are many terms inserted under the chapter of divorce some of them are common and the others are represented specific to the Islamic culture.

## Divorce

## الطلاق

The term Talaq in the language according to Ibn Mandhour :

"طَلَّقَ أَي تَرَكَ، وَالطَّلَاقُ مَعْنَاهُ الْحُلُّ وَالتَّرِكُ وَالتَّخْلِيَةُ وَالْإِرْسَالُ".

"الطَّلَاقُ مَرَّتَانِ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحُ بِإِحْسَانٍ وَلَا يَجِلُّ لَكُمْ أَنْ تَأْخُذُوا بِمِمَّا آتَيْنَاهُمْهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُعْطِيَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُعْطِيَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ" سورة البقرة، الآية 229.

"The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness. And it is not lawful for you (men) to take back (from your wives) any of your Mahr (bridal-money given by the husband to his wife at the time of marriage) which you have given them, except when both parties fear that they would not be able to keep the limits ordained by Allah (e.g. to deal with each other on a fair basis). Then if you fear that they would not be able to keep the limits ordained by Allah, then there is no sin on either of them if she gives back (the Mahr as a part of it) for her Al-Khul' (divorce). These are the limits ordained by Allah, so do not transgress them. And whoever transgresses the limits ordained by Allah, then such are the Zalimun (wrong-doers)". Surah Al-Baqarah, verse 229.

Also, in English in oxford dictionary, divorce is to separate something or somebody from something or somebody.

Also it means to abandon a thing or get rid of a thing. When an animal tied with a string is untied it is called *talaq*. (Shahzad Iqbal Sham, p. 24).

"Divorce means the dissolution of marital relationship between the spouses personally or through an agent or a deputy or a delegate, with specific words or allegorically, immediately or consequently". (Shahzad Iqbal Sham, p. 24).

*Talaq* is not act liked by Allah, this is mentioned in the saying of the Messenger of Allah that: "Among the lawful matters the most disliked in the sight of Allah is the divorce". (Shahzad Iqbal Sham, p. 24).

For the Christian culture divorce is violates the covenant and therefore is not permissible and unforgivable sin. Hence, divorce is to be avoided at all costs.

The term (الطلاق) is rendered in the article thirty four as such:

<p><b>Divorce</b> means to sever the bond of marriage. It is done by the man, the woman, any authorized representative or the judge. The divorce must be performed according to the Shari'a.</p>	<p>الطلاق رفع قيد الزواج بإيقاع من الزوج أو الزوجة وإن وكلت به أو فوضت أو من القاضي. ولا يقع الطلاق إلا بالصيغة المخصصة له شرعا.</p>
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In this translation we see that the term « الطلاق » is transferred to the term « **divorce** » by using the formal equivalent strategy, but by referring to the Shari'a, this term has based on conditions and rules in the Islamic societies such as the number of pronouncements of « *talaq* », and its kinds, whereas in the western culture for non-Muslims people and according to Black's law dictionary, « Divorce is the legal separation of man and wife, effected, for cause, by the judgment, of a court, and either totally dissolving the marriage relation, or suspending its effects so far as concerns the cohabitation of the parties ». So, in this concept, divorce in the western is just legally separation not based on any conditions and rules, so, we can say that there the translator transfer the term « الطلاق » to « **divorce** » as general term.

« Revocable divorce»

«الطلاق الرجعي»

Revocable divorce is that in which the husband has the right to take the wife back, without a new marriage contract, dowry or consent of the wife. The divorce in which the husband has the right to take the wife back is the first or second divorce, before the 'iddah ends.

قال تعالى: "لا جناح عليكم إن طلقتم النساء ما لم تمسوهن أو تفرضوا لهن فريضة ومتعهن على الموسع قدره وعلى المقتر قدره نلتما بالمعروف حقاً على المحسنين، وإن طلقتموهن من قبل أن تمسوهن وقد فرضتم لهن فريضة فنصف ما فرضتم إلا أن يعفون أو يعفو الذي بيده عقدة النكاح وأن تعفو أقرب للتقوى ولا تنسو الفضل بينكم إن الله بما تعملون بصير" سورة البقرة من الآية 236-237.

*"There is no sin on you, if you divorce women while yet you have not touched (had sexual relation with) them, nor appointed unto them their Mahr (bridal-money given by the husband to his wife at the time marriage). But Bestow on them (a suitable gift), the reach according to his means, and the poor according to his means, a gift of reasonable amount is a duty on the doers of the good.236. and if you divorce them before you have touched (had sexual relation with) them, and you have appointed unto them the Mahr (bridal-money given by the husband to his wife at the time marriage), then pay half of that (Mahr), unless they (the women) agree to forego it, or he (the husband), in whose hands is the marriage tie, agrees to forego and give her full appointed Mahr. And to forego and give (her the full Mahr) is nearer to At-Taqwa (piety, righteousness). And do not forget liberality between yourselves. Truly, Allah is All-Seer of what you do". Chapter 2 Surah Baqarah verse 236-237*

**Allah** has given the marriage ties in the hands of the husbands in Islam, and to protect the rights of the wife, **Allah** has Decreed that in any one marriage, a husband may only pronounce and revoke a divorce upon his wife for an absolute maximum of two times; if perchance the husband were to pronounce a third divorce in the same marriage, then that pronouncement of divorce would be absolutely irrevocable and the same couple can never ever legally remarry each other again, unless and until the ex-wife were to marry a new husband, and the new husband, of his own free will and choice were to perchance divorce her, or he dies.

In English this form of marriage does not exist in all its forms. Let us first see the semantic side of the word:

- Revocable, is susceptible of being revoked.

- Revocation: The recall of some power, authority, or thing granted, or a destroying or making void of some deed that had existence until the act of revocation made it void. It may be either *general*, of all acts and things done before; or *special*, to revoke a particular thing (Black, p. 1484).

Revoked divorce in the Western culture does exist; however, not in the same form as it is in Islam:

- Revocable divorce in Islam is just twice.
- Revocable divorce in Western culture can be more than two.
- Revocable divorce is performed by man only.
- Revocable divorce in western culture can also be required by women.
- Revocable divorce in Islam has its own rules that are totally different from the Western ones.

The term «*طلاق رجعي*» is translated into (revocable divorce) in the Article thirty eight:

<p><i>-The revocable divorce</i> which allows the husband to return to his wife during her waiting period (iddat) without a contract.</p>	<p>- رجعي: وهو ما جاز للزوج مراجعة زوجته أثناء عدتها منه دون عقد.</p>
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The compound term (الطلاق الرجعي) does not mentioned, but the term (رجعي) is replaced it and translated into (**the revocable divorce**) by using calque strategy but the meaning is uncompleted when referring to the source culture.

For all the previous and above mentioned reasons the equivalent " Revocable divorce" as a term that substitutes "*talaq raj'i*" cannot totally stand to mean all what "talaq raj'i" may mean in the source.

And hence, the borrowed term "*talaq raj'i*" is the best -to the best of our knowledge- equivalent of the term in Islamic shari'a.

«Irrevocable divorce»

الطلاق البائن

Irrevocable divorce means that after the divorce, the husband is not entitled to take back his wife, that is, he is not entitled to take her as his wife.

After one divorce if husband does not see any chances of reconciliation, he can give her wife the second divorce and wait for Iddah period, if in that Iddah period things go normal, the marriage is safe .Whoever, after third divorce, there is no turning back now it is irrevocable.

قال تعالى " فإن طلقها فلا تحل له من بعد حتى تنكح زوجا غيره فإن طلقها فلا جناح عليهما أن يتراجعا إن ظنا أن يقيما حدود الله وتلك حدود الله يبينها لقوم يعلمون " سورة البقرة، الآية 30.

*Allah* Says in the Holy Quran Chapter 2

*"So if a husband divorces his wife (irrevocably for the third time) he cannot after that remarry her until after she has married another husband and he has divorced her. In that case there is no blame on either of them if they reunite provided they feel that they can keep the limits ordained by Allah. Such are the limits ordained by Allah which He makes plain to those who understand." Surah Baqarah, verses: 230*

The problem we have already mentioned with revocable divorce is the same for the irrevocable.

The two terms do have no common points and are different at many levels:

- Irrevocable divorce does have no legal base in the Western society; a man can revoke his wife any time they want.
- Irrevocable divorce in Islam is limited to number (no more than two).
- Irrevocable divorce can be revocable in Islam if the woman gets married from a man another than her ex-husband and get divorced.
- Irrevocable divorce in Western society can occur without this condition.

The term «*طلاق بائن*» is translated into «*irrevocable divorce*» in the Article Thirty eight:

The <i>irrevocable divorce</i> is of two kinds as well...	بائن وهو قسمان...
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Like **in irrevocable divorce**, also here the compound term «الطلاق الهائن» is not mentioned fully, but the term represents it, the translator gave the formal equivalent term «*irrevocable divorce*» but it does not carry the real meaning and the cultural connotation of «*At-talaq alba'in*» of the source culture. Hence, we may say that the term «*irrevocable divorce*» is just a formal equivalent for "*At-talaq alba'in*" and never can be its full equivalent in any sense.

«**Khulaa**», «**Khul'**»

الخلع

في مختار الصحاح قال الرازي: "خَلَعَ ثوبه ونعله وقائده خُلِعاً. وَخَلَعَ عَلَيْهِ خُلْعَةً, وَخَلَعَ امْرَأَتَهُ خُلْعاً بِالضَّمِّ". قال ابن فارس في كتابه معجم مقاييس اللغة "الغاء واللام والعين أصل واحد مطرّد, وهو مُزايلة الشيء الذي كان يشتمل به أو عليه", تقول: "خلعت الثوب أخلعه خُلِعاً, وَخُلِعَ الْوَالِي يُخْلَعُ خُلْعاً". الخلع بضم الخاء وسكون اللام, وهو طلاق الرجل زوجته على مال تيزله له.

*Khulaa* in "As-sihah dictionary" is (to take off one's garment and shoes and to oust the leader and to bestow a robe (of honor) upon someone and 'khalaa imraatoho' to divorce her conditionally". (Our translation).

Ibn Faris said, Phonetically, speaking the two phonemes "khaa" , "laam" and "aayn" denote in Arabic separating the contained from the container. We say "khalaato athaouba" means I took off my garment" Khalaa alwali" to oust the governor" Alkhul' linguistically is separation i.e. to divorce the woman conditionally upon a sum of money given back to the husband.

This separation is called Khulaa according to Alazhari because Allah made women as garment to the men and vice versa. (Our translation).

الخلع فراق الزوج لزوجته بعوض بألفاظ مخصوصة، سمي بذلك لأن المرأة تخلع نفسها من الزوج كما تخلع اللباس قال تعالى: {فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ} ويسن للزوج أن يجيبها حينئذ، وإن كان الزوج يحبها، استحباب لها أن تصبر ولا تفتدي منه.

Legally speaking, khulaa is to divorce the woman using some given expressions. It is called *khulaa* because the woman leaves her husband as she leaves her garment when she took it off.

Al-khul' is:

- An agreement concluded for the purpose of dissolving marriage.
- The release from the marriage tie obtained by a wife upon payment of a Compensation or consideration
- Divorce at the instance of the wife who pays compensation.
- The arrangement in which the wife seeks divorce through making a deal with her husband divorce (of wife) for consideration (payable by her).
- Divorce at the instance of the wife, who must pay compensation.



The problem that we may encounter here is the harmony that may be lost in the English version of the term because in the Western world the term as it is with all its features does not exist.

### **Meaning in English**

#### **Redemptive Divorce**

أي الطلاق التخليصي /الخلاصي...

Redemptive Divorce: A Biblical Process that Offers Guidance for the Suffering Partner, Healing for the Offending Spouse and the Best Catalyst for Restoration.

In Black's Law Dictionary we read: "The right of redemption. An agreement or paction, by which the vendor reserves to himself the power of taking back the thing sold by returning the price paid for it." (Black, p1443)

The power of taking back the thing sold by returning the price paid for it.

This one is exclusively restricted for the biblical marriage where divorce is prohibited and can never occur. However, in Islam *Talaq* is not so and hence redemptive divorce is not the only solution may be offered.

Redemptive Divorce can be used as the best exit for restoration because the husband here does not treat his wife justly and makes her suffer physically; while *Khulaa* can be used by the wife even if the husband does nothing and treats her justly and loves her.

#### **Divorce by compensation**

أي طلاق بالتعويض...

A lot of translators do adopt this term highlighting that the wife is the one who compensate. This term is general because it does not denote which one will compensate the husband or the wife. Terms should be precise and very clear which is not the case with divorce by compensation

#### **Divorce with mutual consent**

أي طلاق عن رضا الطرفين...

The mutual consent occurs one the two: husband and wife agree to get divorced. This kind of divorce is found in the legal form of the European divorce and it is the same in our Shari'a, however in the biblical rules, it is prohibited and can only occur under some strict conditions with another form which is the redemption that we have already explained.

To the best of our knowledge, all the above mentioned terms do not totally equate with what is meant by *Khulaa* in the Shari'a.

The term (الخلع) rendered into (khul') in the article forty six as follows:

<p><i>-Khul'</i> is to sever the bond of marriage by pronouncing the formula of '<i>khul'</i>' or words of the same meaning, it is to be carried out before the judge through an offer and an acceptance taking into consideration the provisions of article 39 of this law.</p>	<p><b>الخلع</b> إزالة قيد الزواج بلفظ الخلع أو ما في معناه وينعقد بإيجاب وقبول أمام القاضي مع مراعاة أحكام المادة التاسعة والثلاثين من هذا القانون.</p>
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In this translation the term (الخلع) is transliterated into (khul') because there is no equivalent term in the target language. So, the only translation strategy that should be used is borrowing.

## «Iddah», «Waiting period»

## العِدَّة

Ibn Mandhour has defined the term Iddah as:

"عدة المرأة، أيام قروئها، وعدتها أيضا أيام حدادها على بعلها وإساکها عن الزينة شهورا كان ت أو أقراء أو وضع حمل حملته من زوجها".

قال تعالى: «وَالْمُطَلَّقاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنَنَّ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَهُنَّ أَحْسَنُ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِخْلَاقًا وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ

وَاللرِّجَالُ مَعْلُومُونَ حُرَّةً وَاللَّهُ عَلِيمٌ حَكِيمٌ" سورة البقرة، الآية 228.

«And divorced women shall wait (as regards their marriage) for three menstrual periods, and it is not lawful for them to conceal what Allah has created in their wombs, if they believe in Allah and the Last Day. And their husbands have the better right to take them back in that period, if they wish for conciliation. And they (women) have rights (over their husbands as regards living expenses) similar (to those of their husbands) over them (as regards obedience and respect) to what is reasonable, but men have a degree (of responsibility) over them. And Allah is All-Mighty, All-Wise». (Al-Baqarah, verse 228).

In Islamic law, **Iddah** is a waiting period of woman who is separated from their husbands due to death or divorce before engaging in any other marital relationship. It is for three months in the case of divorce and four months and ten days in the case of death of the husband. (NJFDHL. Vol. 2, 2009, p 85).

In the book of "Nikah" for At-Tuwaijiry (2000, p. 34), defined **Iddah** as "the Iddah, the interval of time which a woman must observe after divorce or after the death of her husband, before she can remarry. The Iddah is obligatory on every woman upon divorcement or widowhood".

According to the article forty seven the term «العِدَّة» is rendered to waiting period and **Iddat** as follows :

<p>-The wife must observe a <b>waiting period</b> called <b>iddat</b> in the two following cases:</p> <p>1-If she, and her husband are separated after consummation, whether through revocable divorce, minor or major irrevocable divorce, legal separation, annulment, peaceful suspension, or choice of termination.</p> <p>2-If her husband died, even in such death occurred before consummation.</p>	<p>تجب العِدَّة على الزوجة في الحالتين الآتيتين:</p> <p>1-إذا وقعت الفرقة بينها وبين زوجها بعد الدخول سواء كانت عن طلاق رجعي أو بائن بينونة صغرى أو كبرى أو تفريق أو متاركة أو فسخ أو خيار بلوغ.</p> <p>2-إذا توفى عنها زوجها ولو قبل الدخول بها.</p>
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In this translation, the term «*العدة*» is rendered to (waiting period) and (iddat), here the translator uses a description strategy by translating it into compound term (waiting period), but this term hasn't carry the exact meaning of «*العدة*», hence s/he added the borrowed term «**Iddat**» for clarifying it to the target reader. So, we can say that this term is untranslatable, because it express notion which do not exists in the English language, and it is embedded in Arabic. Specifically, in the Islamic culture, and it hasn't any kind of equivalents in English language and culture. Hence when translating this term, and until the translator be satisfied by his translation, s/he must borrowed the term directly from the source language and give a short definition or description beside it.

## **Conclusion**

After the examination of the chosen terms in this study, we observed that the Islamic legal terms were translated using borrowing strategy like Mahr, Iddah, Kulaa, Al-fatiha. However, according to common terms as marriage, divorce, consummation and polygamy, the translators adopted the formal equivalents in legal English but such equivalents do not reflect the same effect and function like in source language, since they have in our culture, specific conditional contexts and traditions are deeply rooted in Islamic Shari'a and some of them are mandatory as marriage, Mahr and Iddah.

While in the western culture those general concepts, e.g. marriage, divorce are just civil affairs and do not have any religious effects.

During our analysis we found that some terms are not fully defined in the Iraqi Personal Status Code within marriage and divorce chapters as consummation (الدخول), dowry(المهر), polygamy (التعدد), Iddah (العدة), because the legal texts shall contains just a short explanation to clarifying the term.

So, the translators of the Iraqi Personal Status Code used common terms as equivalents when the opportunity is permitted, also they used the borrowing technique when the terms are not found in the target language as Iddat, Al-fatiha and Khulaa.

All the above mentioned translations do prove that the Islamic legal terms can only be translated via the foreignization method ( applied through transliteration with some comments), despite the difficulties but we could have found a tool by which we rely to have approximate translations that are acceptable.

# *Conclusion*

## **Conclusion**

Translation as a human activity, whereby man can overcome the language barriers; language is closely connected with culture. However, there are many differences between cultures which cause several hindrances in translating culture-bound terms. This thesis sheds light on identifying the problems that come across by legal translator while s/he is searching for terminological equivalence in legal translation. Nevertheless, translation is not impossible but it is not easily carried out. In fact, there are some terms translatable while others are untranslatable.

The main reasons behind the lack of achieving terminological equivalence are cultural differences and also the nature of legal systems of the Arab world and English-speaking world is completely different. Further, we must bear in mind the fact that the differences in legal systems are not implied in the language itself. So, achieving the equivalence at the term level is concerned with the extent of relatedness of the legal systems. Additionally, this study highlights to solve the problems resulted from the lack of an established terminology in the English legal language.

With respect to the corpus of this present work namely “Iraqi Personal Status Code” that has been translated into English by American Bar Association. The chosen terms devoted to Marriage and Divorce. Then, we made an analysis accompanied with comparison after that we found out the translation strategies used by the legal translators such as: formal equivalence, calque and borrowing.

From this comparative study we explored the following points:

- Carrying out the translation on terms inspired from Islamic jurisprudence is not a straightforward process.
- Some selected terms are inexistent in target language; here the target receiver will face a cultural constraint, and also the discrepancy of foreign terms with Islamic one. The best example of this difficulty is the term ”polygamy” in the Western culture is regarded as an offense and a crime inserted under the criminal law, however, in Islamic culture it seen as a one of the husband’s right and it is permissible.
- Some terms are translatable like marriage and divorce; they are regarded as universally shared notions. Nevertheless, these terms have equivalents but they do not carry the same impact as the original terms.

▪ Last but not least, we can say that from the comparison and analysis that we have carried out between the source terms and the translated one. We detected that there are some difficulties and hindrances that stand against the legal translator making him/her unsatisfied and in a state of chaos.

▪ The ideal translation strategies which the translator carried out in the case of untranslatability are borrowing accompanied by a short comment or explanation added between brackets beside to the translated terms. This strategy is preferred by legal translators in order to elucidate the term for the target reader and for introduce the local culture of the source term. In addition, using paraphrase strategy plus lexical equivalent.

▪ Based on the findings of this research, the following recommendations seem to be in order:

▪ Cultural contrast is the main cause of the problems that the translator encounter while translating. So, it will be helpful for the translator to be acquainted with the target culture approach.

▪ It will be quite helpful for the translator referring to a specialized books and dictionaries.

▪ Translator should be aware of the method that s/he uses in dealing with Islamic legal terms in order to enhance the process of translating such special terms.



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## ملخص البحث

تبحث هذه الدراسة عن صعوبات تحقيق التكافؤ المصطلحاتي في الترجمة القانونية ونحاول من خلالها المقارنة بين مصطلحات الشريعة الإسلامية المستمدة من بابي الزواج والطلاق في قانون الأحوال الشخصية العراقي في العربية وفي نظائرها في النسخة الانجليزية. بداية تبحث هذه الدراسة في الإطار النظري الذي يكشف خصائص اللغة القانونية والترجمة القانونية، ثم عن التكافؤ المصطلحاتي و الصعوبات التي يواجهها المترجم عندما يتعامل مع المصطلحات القانونية الخاصة -والتي تتعلق بثقافة ما كالمصطلحات الإسلامية والتي هي موضوع دراستنا- وطرق الترجمة التي يمكن استخدامها للوصول الى المكافئ المصطلحاتي، وبناء على النتائج المقدمة من خلال هذه الدراسة استنتجنا أن طبيعة الأنظمة القانونية هي السبب الرئيسي في صعوبات إيجاد المكافئ المصطلحاتي، فالمصطلحات الثقافية وخاصة الدينية منها هي الأكثر صعوبة عند ترجمتها. أخيرا توصي هذه الدراسة - حتى يتم التغلب على هذه الصعوبات- المترجم أن يكون مطلعاً على طبيعة القانون المترجم منه وإليه وأن يعتمد الطريقة المناسبة التي تمكنه من تحقيق التكافؤ المصطلحاتي بين نصي اللغة المصدر واللغة الهدف.

الكلمات المفتاحية: اللغة القانونية، الترجمة القانونية، التكافؤ المصطلحاتي.

## Abstract

This study intends to investigate the difficulties in achieving terminological equivalence in legal translation. It analyses the comparison between Islamic Shari'a terms inspired from marriage and divorce chapters in the Iraqi personal status Law in Arabic (SL) and English (TL). It first exposes the theoretical framework in the features of legal language and legal translation, terminological equivalence and the difficulties of translating legal specific terms as well as the suggested strategies by theorists to solve those difficulties. According to the comparison and analysis of the selected terms in the document, we conclude that the nature of legal systems in the main reason behind the difficulties in achieving terminological equivalence, hence culture-bound terms, especially, Islamic Shari'a terms are the most problematic terms to be translated, this study recommends that the translator must be acquainted with the target culture approach, also s/he should be aware of choosing adequate strategy which enables him/her to achieve the terminological equivalence between the SLT and TLT.

Key words: *legal language, legal translation, terminological equivalence.*

تتفرع الترجمة إلى عدة فروع نذكر منها على سبيل المثال الترجمة القانونية، الصحفية، الأدبية و الطبية و غيرها. وتعتبر الترجمة القانونية فئة مستقلة بذاتها وذلك لأنها تملك مصطلحات ذات خصوصية قانونية تتطلب منا عناية و دقة فائقة عند نقلها إلى اللغة الهدف. و في هذه الدراسة سوف نقارن بين مصطلحات الشريعة الإسلامية المستمدة من قانون الأحوال الشخصية العراقي وتحديدًا في فصلي الزواج والطلاق. حيث يهدف هذا البحث إلى تحقيق التكافؤ المصطلحاتي في الترجمة القانونية خصوصًا مصطلحات الشريعة الإسلامية وكيف يتم نقل هذه المصطلحات بنجاح كما أنها تعنى بتحديد المشاكل التي تواجه المترجم القانوني عند التعامل مع هذه المصطلحات واقتراح استراتيجيات لأخذها في عين الاعتبار عند التعرض لهذه الصعوبات وتهدف أيضا هذه الدراسة إلى الكشف عن الإستراتيجية الأمثل لتحقيق التكافؤ المصطلحاتي. وتنقسم هذه الدراسة إلى ثلاث فصول حيث يحتل الجانب النظري فصلين فالأول يكشف النقاب عن اللغة القانونية الانجليزية والعربية وذلك بذكر الخصائص التي تميز كلتاها و أيضا تطرقنا إلى الترجمة القانونية و خصائصها. أما الفصل الثاني فهو يعرض أشكال التكافؤ في الترجمة ثم يركز على التكافؤ على مستوى الكلمة و بالأخص التكافؤ المصطلحاتي مع الإشارة إلى المصطلح الإسلامي و المنهجية الأمثل لترجمته. وأخيرا يخصص الجزء الثالث من هذا الفصل للمشاكل التي تنشأ عن تحقيق التكافؤ المصطلحاتي و كذلك الاستراتيجيات المقترحة لحل لهذه الصعوبات. أما الفصل الأخير فهو تطبيقي يشتمل على دراسة مصطلحية تحليلية مقارنة مع النقد.

## الفصل الأول: اللغة القانونية والترجمة القانونية

### 1. لغة القانون

هي لغة تقنية بحتة خاصة بمجال القانون فللمصطلحات القانونية وتركيباتها تمنح اللغة القانونية خصوصيات تجعل منها لغة تقنية و متميزة عن اللغة العادية و تعتبر أيضا الأسلوب المعتمد في كتابة الوثائق القانونية وتشمل هذه اللغة أساليب كتابية مختلفة و هي كما يلي:

لغة التشريع وهي لغة القوانين التي يصدرها البرلمان والوثائق الدستورية والهدف منها هو تحديد مجموعة من الالتزامات والمحظورات كل حسب القانون.

اللغة القانونية الأكاديمية وهي لغة البحوث والمجلات والكتب الأكاديمية القانونية.

لغة القضاء وهي لغة الأحكام التي تصدرها المحاكم.

### 2. خصائص اللغة القانونية الإنجليزية

#### 1.2. الخصائص المعجمية

و هي الخصائص المتعلقة بمفردات اللغة وتعتبر اللغة القانونية الإنجليزية بأنها معقدة و متعددة المصادر لغويا.

▪ الاستخدام المتكرر للكلمات الرسمية ذات الطابع القانوني وتعد هذه الميزة كسمة بارزة للغة القانونية الإنجليزية.



- استخدام الأساليب و الألفاظ المهجورة الغير مألوفة وذلك من أجل إضفاء سمة القدسية التي تكمن في لغة القانون.
- استخدام الكلمات الفنية و المثال على ذلك الرطانة القانونية وهي التي يستخدمها رجال القانون فقط لتسهيل التواصل فيما بينهم.
- تجنب استعمال الضمائر و الاستعاضة عنها بتكرار الاسم لان استعمال الضمير يؤدي إلى الغموض.
- تمتاز اللغة القانونية باستعارة العديد من المفردات و العبارات من اللغات الأخرى كالفرنسية و اللاتينية.
- استخدام العبارات المزدوجة و المتلازمات اللفظية.

## 2.2. الخصائص المتعلقة بالتركيب

- استخدام التراكيب المطولة للجملة.
- الاستعمال المفرط لأشباه الجمل الاسمية.
- الميل إلى استخدام صيغة المجهول عوضا عن المبنى إلى المعلوم.

## 3. خصائص اللغة القانونية العربية

وهي كذلك مثل اللغة الانجليزية لها خصائص معجمية وخصائص تركيبية

### 1.3. الخصائص المتعلقة بالمفردات

- تستعمل بكثرة المترادفات اللفظية و يعد هذا الإطناب في اللغة القانونية من أجل التأكيد.
- الأسماء الذات حدين في اللغة أيضا تستعمل بوفرة مثل الأمن و السلام.
- النعوت الوصفية تستعمل لهدف التوضيح و تأكيد المعنى.

### 2.3. الخصائص المتعلقة بالتركيب

- استعمال الجمل الطويلة المعقدة و ذلك لاحتوائها على بعض العبارات المبطنة لجعلها أكثر تعقيدا.
- استعمال "كان و أخواتها" مثل من كان أردنيا بالولادة.
- استعمال الصفات الملازمة مثل بلاغ ميبين.
- استعمال الأفعال التالية "يجوز" و "لا يجوز" و "يحضر" لإعطاء معنى الوجوب و الالتزام.

## 4. تعريف الترجمة القانونية و خصائصها

الترجمة القانونية هي ترجمة النصوص و الوثائق ضمن مجال القانون، و تعتبر موضوعا قائما بحد ذاته لا يتمكن منه إلا المترجم المحترف و المتخصص. و هذا ما يجعلها في غاية الصعوبة لأنها لغة تقنية غير قابلة للتعريف. و على المترجم القانوني أن يضع الأمور التالية نصب عينيه : أن يكون على اطلاع شامل و عميق بالنظام القانوني لكلتا اللغتين المصدر و الهدف. يجب أن تكون الترجمة القانونية واضحة و محددة و دقيقة. وعلى المترجم

القانوني الجيد أن يستعين بالقواميس القانونية المتخصصة خصوصا ثنائية اللغة منها. و يجب أن تتوفر فيه أيضا الصفات التالية و هي الأمانة و الثقة و السرية المعلوماتية لكي ينقل الرسالة على أكمل وجه ممكن.

## 5. أنواع الترجمة القانونية

وفقا لسارسييفيك فإن النص القانوني ينقسم إلى نص نظامي وإجباري و أمري و وصفي .

وهناك آخر قسم العقد القانوني إلى ثلاثة أقسام؛ توجيهي و تنفيذي و تأسيسي.

## الفصل الثاني: ترجمة المصطلحات

### 1. أشكال التكافؤ

حتى نتضح لنا فكرة التكافؤ ينبغي أن نعرّف الترجمة أولا حيث هي إبدال نص في لغة ما إلى مكافئه الممثل له في لغة أخرى. إذا التكافؤ في الترجمة قضية مثيرة للجدل، حيث هناك الكثير من الباحثين درسوا على هذه القضية المهمة في الترجمة ويرون أنها فكرة قائمة بذاتها لها أسس وقواعد تقوم عليها.

التكافؤ في الترجمة له مستويات وأنواع كثيرة تمت دراستها من قبل أشهر الباحثين والمنظرين في علم الترجمة ومنهم رومان جاكبسون وبوجين نايدا ومنى باكر .

وبناء على رأي رومان جاكبسون أنه لا يوجد تكافؤ كلي خلال الترجمة لذلك قال بأن التكافؤ مشكلة متأصلة في اللغة وهي مركز اهتمام كل اللغويين.

ثم نتطرق إلى بوجين نايدا الذي يرى بان التكافؤ نوعين وهما تكافؤ وصفي وتكافؤ معياري.

فالتكافؤ الوصفي يركز على الرسالة في حد ذاتها من حيث الشكل والمضمون ومدى اقترابها من العناصر المختلفة للغة الهدف.

لذلك يعتبر نايدا أن هذا النوع من التكافؤ أمينا للنص الأصلي لأن المترجم يهتم بالرسالة وقيمتها الجمالية دون إضافة أي أفكار لترجمة النص الأصلي.

أما عن التكافؤ المعياري فهو يركز على نفس التأثير ونفس القيم التواصلية الموجودة بين قارئ اللغة المصدر والرسالة وهو قائم على مبدأ التأثير المكافئ الذي يرى بأن العلاقة بين المتلقي في اللغة الهدف والرسالة ينبغي أن تشبه إلى حد كبير العلاقة القائمة بين المتلقي في اللغة المصدر والرسالة.

أخيرا نتطرق إلى الباحثة منى باكر التي اقترحت خمس مستويات للتكافؤ نشير إليها باختصار كما يلي:

- التكافؤ على مستوى الكلمة حيث أن الكلمة هي الوحدة التي يركز عليها المترجم لإيجاد كلمة مكافئة لها مباشرة في اللغة الهدف.
- التكافؤ على مستوى أعلى من الكلمة وهنا عندما ترتبط الكلمات ببعضها البعض لتشكل متلازمة لفظية أو عبارة اصطلاحية.

- التكافؤ على المستوى النحوي أي تشعب الفئات النحوية بين اللغات كالتركيز على العدد ، الجنس ، الزمن والمبني للمعلوم والمبني للمجهول .
- التكافؤ النصي بالنظر إلى الترابط والتلاحم النصي في سياق النص الخاص.
- التكافؤ التداولي وهو يتعلق بالتكافؤ على مستوى السياق التواصلية للغة.

## 1.2. التكافؤ على مستوى الكلمة

التكافؤ على مستوى الكلمة، وفقا لما تراه منى باكر فنحن كمتترجمين، يجب علينا أولا تسليط الضوء حول هذا النوع من الوحدات والبناءات التي تحمل المعنى، من هنا نجد أن الكلمة هي الوحدة الأصغر للغة التي يمكن أن تكون وحدة قائمة بذاتها.

أيضا يمكن القول أن المعنى ينقل أيضا بوحدات أصغر من الكلمة والعكس هناك عناصر من المعنى يتم تمثيلهم بكلمة واحدة أو كلمات مختلفة ، إذا هنا يمكن القول أنه لا توجد علاقة تبادلية بين اللفظ والمعنى داخل لغة واحدة أو بين اللغات.

وننتقل إلى باحث آخر ألا وهو روجر بيل (1991) الذي قال بأن مشكلة التكافؤ هي قضية شائعة جدا في مجال الترجمة.

النصوص يمكن أن تكون متكافئة في لغات مختلفة على درجات مختلفة ( تكافؤ كلي أو جزئي ) أيضا فيما يتعلق بالتمثيل بمستويات مختلفة ( مكافئ متعلق بالسياق، بالنحو وباللفظ وإلى غير ذلك وعلى طبقات مختلفة كلمة لكلمة ، عبارة لعبارة ، جملة لجملة ).

باختلاف اللغات عن بعضها البعض نحويا وثقافيا وشكليا لذلك فإن هناك اعتقاد قديم أن التكافؤ الكلي المثالي حلم لا سبيل إلى تحقيقه

وحسب رأي روجر بيل أيضا أن عملية الترجمة أحيانا تكون فيها ربح أو خسارة، فوفقا للطبيعة الخائنة للمترجم في تضليله لنية الكاتب في النص الأصلي. يقول المثل الإيطالي ( المترجم خائن ).

وقد ركز أيضا كاتفورد على أن اختيار المكافئ الهدف مقتصر على الطبقات كالكلمة والمورفيم، فالتكافؤ اللفظي يعتبر كقضية مثيرة للجدل خاصة في الترجمة القانونية نظرا لاختلاف الأنظمة القانونية ويعني ذلك أن إذا كان مصطلح خاص في نظام قانوني ما لا يمكن أن يكون له مكافئ في نظام قانوني آخر لأن لكل نظام قانوني طابع ثقافي ديني وسياسي خاص به.

## 2.2. التكاثر المصطلحاتي

وهو من الاهتمامات الحالية للباحثين حيث يعتبر القضية المثيرة للجدل الأكثر طرحا في الترجمة القانونية وهذا بسبب تنوع الأنظمة القانونية. فمثلا مفهوم معين في نظام قانوني ما ليس له نظير أو مكافئ في نظامي قانوني آخر. فكل نظام قانوني قائم على بنى دينية وتاريخية وثقافية واجتماعية وسياسية معقدة. وهذه البنى نادرا ما تكون متطابقة بين الدول.

1.2.2. علم المصطلحات وهو علم يختص بمصطلحات فنية خاصة بمجال معين.

2.2.2. المصطلح المستمد من الشريعة الإسلامية وهو كل مصطلح أو مفهوم جديد في اللغة العربية مصدره القرآن الكريم و السنة النبوية و الفقه. و يشمل ثلاث أنواع وهي المصطلحات الجديدة؛ تحمل مفاهيم جديدة من الدين الإسلامي تتفرد بها و تشكل خصوصيتها الدينية مثل الزكاة والحج والجهاد. المصطلحات الموجودة هي مصطلحات موجودة لكن يبعد دلالي جديد. أي هي مصطلحات مزدوجة الانتماء حيث تحمل بعض كلمات اللغة العامة التي توضع في سياق خاص شحنة معنوية قانونية إسلامية مثل مصطلح الشوز. و مصطلحات إسلامية وافقت مصطلحات اللغة العربية شكلا و مضمونا أي أنها تستعمل بدلالة واحدة في المجالين مثل الجزية والعذاب.

### 3.2.2. منهج التغريب لترجمة المصطلحات ذات خصوصية ثقافية:

بما أن المصطلح الإسلامي يحمل شحنة دينية ثقافية لذلك فمحاولة نقله من لغة إلى أخرى عملية ليست سهلة. فقد شكلت المصطلحات المتأصلة في الثقافة و الأعراف و الدين جدل كبير في عملية ترجمتها و ظهور العديد من الدراسات في الترجمة. حيث أن لورانس فينوتى في كتابه "اختفاء المترجم" ( 1995 ) في إطار مناقشة نمطين من أنماط الترجمة وهما التغريب و التوطين. حيث انه يرى أن منهج التغريب هو المنهج المفضل في ترجمة المصطلحات ذات خصوصية ثقافية. بالإضافة إلى ذلك يرى بعض الباحثين المعاصرين أن هذا المنهج هو الأفضل في ترجمة المصطلحات المتأصلة في صميم الثقافة العربية و الدين الاسلامي إلى اللغات الأخرى و ذلك لأنه يبرز الاختلافات الدينية و الثقافية التي تكمن بين اللغتين اللغة المصدر واللغة الهدف. و أيضا لأنه يحافظ على الدلالة الدينية و الثقافية التي تتعلق بالمصطلح في حد ذاته.

### 3. إشكاليات ترجمة المصطلحات القانونية الخاصة

1.3. عدم قابلية الترجمة: هي مشكلة يواجهها المترجم خاصة عند تعرضه لمصطلحات وثيقة الصلة بقانون أو دين أو ثقافة محددة. وهذه المشكلة حسب رأي كاتفورد تحدث عند استحالة وجود خصائص تكافئ وظيفيا الوضعية السياقية للمعنى في اللغة الهدف وهي على نوعين؛ عدم قابلية الترجمة لغويا وعدم قابلية الترجمة ثقافيا.

### 2.3. المصطلحات وثيقة الصلة بالثقافة: كل ثقافة لها لغة خاصة بها وهذه اللغة تحوي مصطلحات تجعلها متميزة عن

اللغات الأخرى، لذلك يجب الاهتمام باللغة والثقافة معا في عملية الترجمة. المصطلحات الثقافية تكون صعبة على قارئ النص الهدف أن يستوعبها لأنها تمثل مفاهيم وأعراف خاصة بثقافة اللغة الهدف.

**3.3. الفجوات اللفظية:** تعتبر الفجوات اللفظية في الترجمة الدينية مشكلة عويصة. و يتوضح هذا في انعدام الألفاظ عند المقارنة بين لغتين. أو في الترجمة انعدام الألفاظ التي تتعلق باللغة الأصل في اللغة الهدف وهذا ما يجعلنا كمترجمين نلجأ إلى أسلوب الإطناب من أجل محاولة سد هذه الثغرة الثقافية.

**4.3. مشكلة التلقي:** تعنى هذه المشكلة بالقارئ لأن مدى قبولية النص يقررها قارئ النص وليس المترجم.

#### **4. أساليب واستراتيجيات لترجمة المصطلحات القانونية الخاصة**

**1.4. التكافؤ الوظيفي:** يتمثل في الحصول على نفس التأثير التواصلي في النص الهدف الذي يملكه جمهور النص المصدر. فهو حسب رأي سارسفيك مثلا مصطلح في النظام القانوني الهدف يحمل نفس التأثير والوظيفة التي يحملها المصطلح في النظام القانوني الأصلي.

**2.4. التكافؤ الشكلي:** يركز على الرسالة في حد ذاتها من خلال الشكل والمضمون، وهي إعادة إنتاج وحدات شكلية كترجمة مصطلح لمصطلح ، جملة لجملة... الخ لذلك سمي بالترجمة الحرفية.

**3.4. الاقتراض:** نقل الشكل الأصلي للمصطلح في اللغة الأصل حرفيا بنفس حروف اللغة الهدف. لذلك كانت الطريقة الأسهل في الترجمة، وعندما يكون المصطلح المقترض غير معروف فإننا نضيف ترجمة شارحة له كهامش أو تعليق أو تعريف بجانبه بين قوسين.

**4.4. الوصف أو ما يسمى بإعادة الصياغة:** يستعمل المترجم شرح قصير أو تفسير لتوصيل المعنى بسهولة دون اللجوء إلى الاقتراض.

**5.4. النسخ:** هو تعبير يتعلق بالمصطلح في اللغة الهدف مع مراعاة التركيب أيضا في اللغة الهدف وتركيب العبارة في اللغة الأصلية وتترجم عناصر هذه العبارة حرفيا.

**6.4. الترجمة بالحذف:** تمثل الشكل الواضح للخسارة في الترجمة، يحذف المترجم بعض العناصر حتى يتجنب تلهية القارئ مع شروح طويلة.

**4.7. الترجمة بالإضافة:** وهي إضافة عناصر إلى نص اللغة الهدف لا وجود لها في نص اللغة الأصلي من أجل توضيح مفهوم ثقافي غير مألوف في اللغة الهدف. فهي خاصية شائعة في الترجمة من العربية إلى الانجليزية.

#### **الفصل التطبيقي: دراسة تحليلية نقدية مقارنة للترجمة.**

وفي الجزء التطبيقي لهذه الدراسة التحليلية المقارنة والمتمثلة في مصطلحات مستمدة من قانون الأحوال الشخصية العراقي ، باب الزواج وانحلاله، لاحظنا أن المصطلحات الوثيقة الصلة بالشريعة الإسلامية والتي ليست موجودة أصلا في اللغة الهدف ترجمت باستخدام تقنية الاقتراض كالمصطلحات التالية : العدة ، الفاتحة ، الخلع ، لكن هناك أيضا مصطلحات مرتبطة بالشريعة لكنها تعد مصطلحات شائعة ولها مكافئ في اللغة الهدف مثل: زواج ، طلاق ، فهي ترجمت بالتكافؤ الشكلي لكنها لم تؤدي نفس الوظيفة ولم تحمل نفس التأثير الذي تمثله في الثقافة الإسلامية.

أيضا لاحظنا أن مترجمي قانون الأحوال الشخصية العراقي قد استخدموا مصطلحات شائعة كمكافئات لمصطلحات النص الأصلي كلما سمحت الفرصة بذلك.

إذا نستنتج من خلال دراستنا أن المصطلحات التي درسناها هي دليل على أن المصطلحات القانونية الإسلامية تترجم وبالرغم من الصعوبات إلا أنها ترجمت ولو بترجمة تقريبية لكنها تعد مقبولة وذلك باستخدام تقنية الافتراض مع تفسير المصطلح المقترض.