

JUDICIARY AND LEGAL TEXT TRANSLATION¹

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1. Introduction

In the Kingdom of Bhutan, the laws are drafted both in Dzongkha and English. The laws are first drafted either in Dzongkha or in English and then translated accordingly. Judiciary of the Kingdom of Bhutan has been playing an active role in the translation of various Acts. Apart from the Constitution, the Judiciary has translated the Civil and Criminal Procedural Code, 2001; The Jabmi Act, 2003; The Bhutan Penal Code, 2004; The Evidence Act, 2005; The Judicial Service Act, 2006; The Civil Society Organization Act, 2007; The Religious Organization Act, 2007 etc.

Under the Royal Command, the Research and Training Bureau of the Judiciary was established in 1994. It conducts research on sources of Bhutanese laws, Court etiquette and manners, and legal terminologies and concepts.

The translation of legal document is not easy but any translation is an art or craft of an individual. It all depends on the intellect and method used by the translator. As some people presume that there is shortage of words in Dzongkha but it is not true. It all depends on the understanding and the acceptance of the words and the use of it in the particular phrase or sentence.

In various professions, different words are used to express concise idea and convey precise meaning. Similarly, legal language is also different. However, in Bhutan, we tried to keep the legal language simple and understandable. While translating, the judiciary takes cognizance of every word, sentence, phrase and grammar. We did not coin or totally reversed the meaning of the words while translating because words should have certain reliable sources and values.

Schumacher said “First of all, there is language. Each word is an idea...”³ Similarly, the judiciary when translating has looked into each and every meaning of the words before deciphering it into the target language. Words have philosophy and philosophy is an association of idea.

For instance, from Sumtag:-

ཀླུ་མིང་ཚིག་བརྗོད་པའི་རྣམ་གཞག་། ལྷན་པོ་ལྷན་པོ་ལས།
ཡི་གེ་ཁོངས་ནས་མིང་དབྱེད་སྟེ། །

¹ The writing of this paper would not have been possible without the direction, initiation, guidance and materials provided by His Lordship, Lyonpo Sonam Tobgye, the Hon’ble Chief Justice of Bhutan and Rabjam Rinzin Wangdi for material support.

² Judge, Mongar Dzongkhag Court (2005-till date) & Judge, Dagana Dzongkhag Court (2005-till date).

³ E.F Schumacher, *Small is Beautiful*, (1993), p 63.

མིང་གི་ཁོངས་ནས་ཚིག་ལྷུང་ནས། །

ཚིག་གིས་དོན་རྣམས་སྟོན་པར་བྱེད། །

Hence, each and every letter, word and phrase are very important to have a faithful and accurate translation.

Further, in seven principle of Ja-7- under Mepham (*yig bskur rnam gzhang*).

- (༡) དོན་མི་འབྲུག་པ་ཚིག་གི་རྒྱ།
- (༢) ཚིག་ཀྱང་མི་འབྲུག་པ་ཤད་ཀྱི་རྒྱ།
- (༣) ཚིག་དོན་མི་འབྲུག་པ་ལེ་ལུའི་རྒྱ།
- (༤) ཤོ་ལོ་ཀ་མི་འབྲུག་པ་བམ་པོའི་རྒྱ།
- (༥) བམ་པོ་མི་འབྲུག་པ་བམ་པོའི་གངས་ཀྱི་རྒྱ།
- (༦) མཐའ་མི་འཚོལ་བ་སྟེ་ཐིག་གི་རྒྱ།
- (༧) སྟོན་པ་བམ་མི་འབྲུག་པ་གདོང་ཡིག་གམ་སྟུན་ལྗང་གི་རྒྱ།

Similarly, while translating the legal text, the legal translator must divide the document into Parts, Chapters, Articles/Sections, Clauses/Sub-sections, title, sub-title.⁴ Such formulation is to avoid ambiguity, confusion and absurdity, and to have clarity, precision, certainty, conciseness and effectiveness of the provisions. Therefore, the translator should always take refuge in considering and understanding the detail meaning and purpose of such structural formulation before translating the legal text.⁵

2. Quality of legal translator

A translator should:

- (1) Have thorough knowledge of both the “host” and “target” language;
- (2) Understand the context of the “host” article clearly;
- (3) Have enough vocabulary of both the “host” and the “target” language;
- (4) Rightful selection of the words; and

For eg: “Apply” may mean “སྦྱོང་པ་/འཇུག་པ་/འཁྲིལ་/སྦྱོར་འཇུག” but in case of application of law the right word for the context would be སྦྱོར་འཇུག།

- (5) Be familiar with the subject to be translated.

For example if a translator is translating the “Civil Society Act” then the translator should be familiar with the subject and the concept regarding associations, societies, foundations, charitable trusts, and non-profit organizations.

⁴ For instance: Penal Code is divided into Six Parts, Thirty Five Chapters, and 514 Sections. Each title enshrines a specific issue and each Section deals with a specific offence.

⁵ During the translation of the Constitution, the titles of each provision were translated followed by the main text. There are 13,455 words in English text and 18,074 words in Dzongkha text

Legal translation is a special and specialized area. The translation of legal texts requires specialized translator, as such documents are generally beyond the capabilities of general translator without legal background. It is not just of linguistic translation but involves legal impact and social normative values. It is a type of translation involving special language use that is language for special purpose in context of law, or language for legal purpose. *For example “assault” generally would mean physical attack, beating etc. whereas in Bhutan Penal Code it does not involve “use of physical force”. The use of physical force would be “battery”.*

The wrong translation of any legal document can cause ambiguity, confusion, frustration and huge cost in the requirement of justice. For example: - the word “Civil” when translated may be translated as མི་སེང་/མི་སྡེ་/ཞིབ་ and if the “civil case” is translated as མི་སེང་རྩོད་གཞི་ it would create confusion as “civil” in relation to civil case is ཞི་རྩོད་.

The legal translator must not only have the in-depth knowledge of legal terminology, but also a thorough understanding of legal reasoning and the ability to solve legal problems. Moreover, the translator should have the capability to analyze legal texts, and to foresee how a text will be interpreted and applied by the court. In addition to these basic legal skills, the legal translator should also possess extensive knowledge and understanding of legal principles and detail meaning of the words. *For example:* - Certain terminologies have profound meanings with expressive etymology and class of idea.

Taking the word *brtag dched* བརྟག་དཔྱད། (Examination)

བརྟག་ལས།

བརྟག་པ་གསུམ་ནི་ མཐོང་བ་རྩལ་བརྟག་པ། རིག་པ་གཞུགས་ལ་བརྟག་པ། རི་བ་ངག་ལ་བརྟག་པ།⁶

དཔྱད་པ་གསུམ་ནི་ མངོན་སུམ་ཚད་མས་དཔྱད་པ། རྗེས་དཔག་ཚད་མས་དཔྱད་པ། རིགས་པ་གསུམ་⁷གྱིས་དཔྱད་པ།⁸

3. Basic methodology and rules for legal translation

Generally, the basic methods of translation consist of:-

- (a) Accuracy, consistency and fluency,
- (b) Understanding the text;
- (c) Preview of entire passage to be translated;
- (d) Using dictionaries for definitions for unfamiliar words and phrases;
- (e) Selection of appropriate words and definitions;
- (f) Considering of grammar, idiom, and style.

⁶It can be referred to circumstantial, physical and oral evidence.

⁷ རིགས་པ་གསུམ་ནི་ ཐུབ་སྐབས་པའི་རིགས་པ། ལྟོས་པའི་རིགས་པ། འཐད་པ་སྐབས་པའི་རིགས་པ། །རྩོམ་གྱི་རྟོག་མཁའ་།

⁸ In evidence law:- physical evidence, presumption and expert evidence.

Apart from the above methods while translating legal documents we have to mainly consider:

- (a) The language of the statute (the textual approach)
- (b) The purpose of the statute (the purposive approach)

Textual approach

Every word of a statute must be given significance. In a statute nothing can be treated as surplus. Therefore, a translator has to consider every word of the text while translating. The translator needs to understand the text and consider all the words and article in the text.

For example: *From Evidence Act:-* Evidence means all types of proof or probative matter presented and permitted by the Court at a legal proceeding by the act of the parties or required by the Court on its own through the medium of witnesses, documents inclusive of electronic records and physical evidence in relation to matters under inquiry.

སྐབ་བྱེད་ (Evidence) ཟེང་མི་འདི་ (means) ཁྲིམས་མཐུན་གྱི་ཚུད་བཞེར་ (legal proceeding) ཅན་ ལྷ་ཕན་གྱི་ཁོངས་ལས་ (by the act of the parties) ཡང་ན་(or) ཁྲིམས་འདུན་གྱི་བཞེད་དོན་ལྟར་ (required by the Court) དཔང་པོ་(witness) ཏང་འཕུལ་རིག་འཛིན་ཐོ་རྩིས་པའི་འདྲི་ཚུད་དང་འབྲེལ་བའི་གནད་དོན་(electronic records and physical evidence in relation to matters under inquiry) ཅན་(inclusive) ཡིག་ཆ་དངོས་པོའི་སྐབ་བྱེད་ཐོག་ལས་ཁྲིམས་འདུན་ཅིག་གི་མདུན་རོལ་ལུ་ཕུལ་མི་(present) དང་ གནང་བ་གྲོལ་བའི་(permitted by court) མཛོན་རྟགས་(proof) ཚུ་ཡང་ན་བདེན་འགྱུར་གྱི་གནད་དོན་(probative matter) ཆ་མཉམ་(all types) ཚུད་པ་ཡིན།

Purposive approach

While translating a legal document it is very important to know the purpose of the Act or law. It is important for the translator to know the purpose of that specific provision before translating any statute or legal documents.

The title and preamble of any law are part of it and are intended to assist in explaining its meaning and object.

For example: - Taking a title from Bhutan Penal Code, “Larceny”. In Thrimzhung Chhenmo it is translated as “ཨར་རྒྱུན་” whereby it would mean “double thief” for the word “ཨར་” and the “རྒྱུན་” means one and the same thing and that is “thief”. Therefore, in Penal Code of Bhutan, we have translated the word “theft” as “མ་བྱིན་པ་ལེན་པ་”⁹. In case if we retain word “ཨར་རྒྱུན་” for the term ‘theft’ then it would become the point of legal contention because a person charged with the offence of theft would challenge the meaning of the

⁹ Refer Mani Kabum. མ་བྱིན་པ་ལེན་པའི་རྣམ་གྲངས་³ རྟེན། ¹དབང་གིས་ལེན་པ། ²འཇབ་བྱས་ལེན་པ། ³གཡོ་སྐྱུས་ལེན་པ།

word before the court saying that “I have not committed double theft”. Therefore, while translating the legal terms, the translator should always keep in mind that it deals with only one offence.

4. Legal terminological issues

A word consists of a letter or combination of letters conveying some meaning. A word may consist of only one letter such as ‘A’, ‘I’; or it may consist of more than one letter, e.g. an, man, mortal, etc.

A term is a word, or a combination of words, which by itself is capable of being used as subject or predicate of a logical proposition. For instance, in the proposition ‘man is mortal’, the words “man” and “mortal” are terms because they are capable of being used as the subject or the predicate of a proposition. But the word “is” is not a term because it is not so capable.

Every word is not a term, though every term is a word or a combination of words. Therefore, words are the building blocks of languages. One distinctive feature of legal language is the complex and unique legal vocabulary. In law, words often become the point of legal contention.

For example: the word “attachment” in general would mean “ཞེན་ཆགས་” but it also means “The seizing of a person’s property to secure a judgment or to be sold in satisfaction of a judgment”, which translated as “བཀག་འཛིན་” and not as “ཞེན་ཆགས་” .

Similarly, in Thrimzhung Chhenmo, the Dzongkha term “དམར་བསད་” was used for the English term “murder”. However, we have used the term “སྲོག་གཅོད་” instead of “དམར་བསད་” in the Penal Code of Bhutan, for the reason is that term “དམར་བསད་” literally means “murder with blood” but murder can be committed without shedding the blood also.

Another example is the Dzongkha phrase “བུད་མེད་དབང་བཙོང་” This phrase would be interpreted or translated as “rape of a woman” which excludes “rape of a man”.

Therefore, during the translation of the Bhutan Penal Code, we have used “བཙོན་གཤེན་” so that it applies to both male and female.

Moreover, generally there are three types of words, which a translator should carefully consider while translating the legal text. They are (1) Categorematic, (2) Syncategorematic and (3) Acategorematic words.

A Categorematic word is one which can be used as a term by itself, without the support or other words. A Syncategorematic word is one which cannot be used as a term by itself, but can form term only when joined to one or more Categorematic words.

6. Translation Resources

During the translation of various codes, and statutes by the judiciary, we have used the following resources:

- (a) Legal dictionaries as well as other dictionaries;
- (b) Reference materials such as philosophical texts and religious text;
- (c) Thesaurus;
- (d) Laws books;
- (e) Case laws; and
- (f) Other literatures.

7. Guiding Principles considered in translation by Judiciary

The guiding principles of translation observed by the Judiciary are based on the rules of interpretation. The accurate and precise translation is required in order to avoid any ambiguity during interpretation. Under the legal jurisprudence there are mainly two ways of interpretation: (a) Literal and (b) Functional interpretation.

Literal interpretation does not look beyond what is written in the provision (*litera legis*), while functional interpretation on the other hand is which departs from the letter of law but act upon the true intention of the legislature- the *mens* or *sententia legis*.

For translation, literal interpretation can be made if it is of textual approach translation whereas functional can be made in case of purposive approach.

(a) Specific words

During translation when there is a specific word in “target language” then the literal rule of interpretation is applied (*litera legis*).

For instance: In the draft Constitution “Bhutan is a Sovereign Kingdom and the Sovereign power belongs to the people of Bhutan”.

འཇུག་ལྷན་པུས་ཀྱི་ཚེས་ཉིད་སྐོར་གྱི་མཚན་ཉིད་རིག་པ་ཞིག་ **ཚོད་གནས།** (1) ཚོད་པའི་གནས། (2) ཚོད་པའི་ཅུབ་འཇུག་ཚོད་པའི་འབྲུང་གཞི། **ཚོད་པ་སྐྱབ་པོ་གསུམ།** ལྷ་རྒྱལ་དང། ཕྱི་རྒྱལ་དང། དཔང་པོ་བཅས་གསུམ།
ཚོད་བྱུང། ཚོད་པ་མེད་པ། དང་བདེན་གྱི་ལས་ དོན་ལ་རྒྱལ་ཁབ་འཛོམས་ ལྷ་ཚོད་བྱུང་མེད། **ཚོད་མེད།** བསྟོན་དུ་མེད་པ། སྐྱོད་ཚོད་མེད་ཡིན། **ཚོད་འཇིང།** འཇུག་འཇིང། དུག་པོའི་ཚོད་འཇིང།
འཇུག་ཐག་གཅོད་དཀའ་བའི་ཚོད་འཇིང། **ཚོད་གཞི།** (1) ཚོད་པ་ཡོང་རྒྱུན། (2) རྟགས་གསལ་འགོད་སྐབས་ཀྱི་བསྐྱབ་བྱའི་ཚེས་ བསྐྱབ་པའི་གཞི་ཚེས་ཅན་ནམ་རྒྱུ་ཚོད་པའི་གཞི། དཔེར་ན། ལྷ་རྒྱལ་ཅན་
ཞེས་བཞོན་པ་ལྟ་བུའོ། མིང་གི་རྣམ་གྲངས་ལ་རྗེས་སུ་དཔག་པར་བྱ་བའི་གཞི། དཔག་གཞི། བསྐྱབ་གཞི། ཤེས་འདོད་ཚེས་ཅན་ རྟགས་ཚེས་ཀྱི་རྟགས་རྣམས་སོ། **ཚོད་ཐིང།** ཚོད་པ་མང་བའི་ཟང་ཐིང།
མགོ་རྟོག་ཆེ་བའི་ཚོད་ཐིང་ཐག་གཅོད་དཀའ། **ཚོད་ལྗང།** ཚོད་པ་སྟེ། ཚོད་པ་རྒྱུག་མཁན་ལ་གཏང། **ཚོད་བསྟོག** མགོ་རྟོག་སྐྱབ་ཀྱིས་མཛད་པའི་ དབུ་མ་ རིགས་ཚོགས་དུག་གི་ལྟལ་ཞིག་ **ཚོད་ཡིག**
(1) སྐྱོད་ཚོད་ཚོད་པ་བྱས་པའི་ཡི་གེ། (2) ཚང་མ་སོགས་ཚོད་སྐྱབ་ཀྱི་ཡིག་ཆ། **ཚོད་རིགས།** ཚོད་གཤམས་འབྲེད་པའི་རིགས་པ། **ཚོད་ལན།** ས་པོ་ལོ་སྟུན་འབྲེན་བཞོན་པ་ལ། རྟགས་མ་གྲུབ། མ་གྲུབ།
འདོད་སོགས་ཀྱི་ལན་འདེབས་པའོ། **ཚོད་ཤགས།** ལ་ཚོད་ཀྱི་ཤགས། རྟོད་ལ་ཕན་ཚུན་ཚོད་ཤགས་རྒྱག་པའི་སྤྱོད་པ།

12 **བཤེར་གྱི་རྣམ་གྲངས་ ༡༠་ བཤེར་ཁང།** ལྷ་རྒྱལ་ལ་གནས་སྤོང་གཞུང་སྐབས་ལ་མཚུའི་སྐོར་ བདེན་ཇུན་དག་བཤེར་བྱེད་སའི་ལས་ཁུངས་ཤིག་ **བཤེར་ལྷ།** སྐྱོད་ཚོད་ཀྱི་ཚོད་སྐྱོང་ཐག་གཅོད་བྱས་ཚར་བའི་དུད་མཚམས་ཡི་གེ།
བཤེར་རྒྱག རྟོད་ལ་ཕན་ཚུན་ལ་ཤགས་ཚོད་བཤེར་རྒྱག་པ། **བཤེར་དཔང།** ཞལ་ལྟེ་གཅོད་པ་པོ་འཇུག་མཚུའི་དཔང་པོ་འཇུག་བཤེར་ཁང་གི་འགོ་བྱེད། **བཤེར་བ།** ཤེར་བའི་འདས་པ་དང་མ་འོངས་པ། **བཤེར་རྫོན།**
བདེན་ཇུན་དག་བཤེར་བྱེད་མཁན་གྱི་ལས་བྱེད་མི་སྣ། **བཤེར་ཚག** རྟོད་ཆ་ཞིབ་ཚགས། **བཤེར་འཚོལ།** ཞིབ་བཤེར་བྱས་ནས་འཚོལ་བ། **བཤེར་གསུང།** གང་མ་གང་ལ་བཅོལ་ནས་འཇིན་བསུང་བྱས་པ། **བཤེར་ལེན།** (1)
ལ་མཚུ་རྒྱག་མའི་ས་ནས་ལུ་ཞིག་ལེན་པ། (2) དུལ་སོགས་གྲངས་ཀྱི་བཤེར་བ་དང་ལེན་པ།

13 **ཞིབ་མཁུག་ཁུང་ཚེན་མོད།** མང་སྤུང་ཞིབ་མཁུག་ཁུང་འདོད་དོན་ཀུན་གསལ་འདིའི། རིང་ལྷགས་ཅི་མེད་ཉིན་འབྲེད་མཁའ་ལ་ཤར།

The provision can be directly translated as: འབྲུག་(Bhutan)འདི་(is)རང་བཙན་གྱི་ (sovereign) རྒྱལ་བརྒྱུད་རྒྱལ་ཁབ་(Kingdom)ཅིག་(a)དང་(and) རང་བཙན་གྱི་ (sovereign) དབང་ཚད་ (power)འདི་འབྲུག་པའི་མི་མེད་(people of Bhutan)ལྟུ་ (to)བདག་དབང་(belongs)ཡོད་པ་ཡིན།

(b) Non-specific words

When the words are not too expressive or has allegorical meaning then the rule of contextual interpretation is applied. In contextual interpretation, the meaning of the word is affected by its context. Hence, a legal maxim *noscitur a sociis* shall be applied, which means “the meaning of a word is to be judged by the company it keeps”. The context may even give the word a meaning which is not to be found in the dictionary. In such cases, the translator should refer to the words of the text recognized and accepted.

For instance:

- (1) The word “adjudicate” in English means དབྱེ་བཞེས། in Dzongkha. ཀོང་སྐུལ་རིན་པོ་ཆེ་གིས་ རྒྱལ་པམ་ཚུགས་ལྷུང་མེད་པ་ཡི། དབྱེ་ཞིང་རེ་བསྐོང་འགྱུར་ཅིག། This word is taken out from Thrimzhung Da 1-6.
- (2) Similarly, the phrase “Hot pursuit”:- If directly translated it may be written as ཚོ་རྒྱལ་བདའ་ནི་ but for proper translation referring to the context, it should be translated as རམ་འདེད་ which means legitimate chase after somebody has violated the law of the pursuing state while within that state’s jurisdiction.

(c) Mischief Rule

The words have ideas that encompass certain situation that of the mischief making rules. Therefore, we apply the text explaining the situation. For instance, “Provision”:- Generally, it is written as མཁོ་ཆས་ but legally it is translated as དགོངས་དོན། རྒྱུ་མཁན་དོན། which means sections, articles and clauses.

In such cases, the letter of law need not be taken as conclusive, as the literal interpretation would lead to absurdity and unreasonableness as to make it self evident that the legislature could not have meant what it said. The court will go much further into the interpretation of the statutes in order to avoid the absurdity. This is called as “Golden Rule of interpretation”.

In *Gorris vs Scott*¹⁴ the court was concerned to interpret a statute providing that animals carried on board ship should be kept in pens. The defendant carrier had failed to enclose in pens the plaintiff’s sheep which had accordingly during a storm been washed abroad. Had they been safely penned, this could not have

¹⁴ (1874) 9. L.R. (Exch) 12J.

happened. However, the plaintiff's suit for breach of statutory duty was rejected by the court on the ground that this statute had been enacted in order to prevent infection spreading from one owner's animal to those of another, and should not therefore be used to provide a remedy for a totally different case.

In such cases, Judges vary, however, in the extent to which they make use of this rule which allows a more functional approach to legislation.

(d) Purposive Use

We look for the words that enunciate purposive interpretation according to the situation so that the scholars and judges when confronted with certain difficult situation they can look into the purpose and interpret the word. The legal maxim applied here is "*expressio unius est exclusio alterius*" which means "A canon of construction holding that to express or include one thing implies the exclusion of the other, or of the alternative."

Suppose for example, a speaker who is talking about men and women proceeds to make some statement about men, the natural implication is that he intends his statement to refer to men only and not to women.

Similarly, in the law if it is referred to "a Bhutanese citizen" shall exclude "a foreigner".

(e) Creativity

While translating the legal text, the translator in certain context should be creative but creativity does not mean changing or altering the nuisance of the word. Cavell said, "In modernist art the issue of the artistic intention has taken on a more naked role in our acceptance of his work than in earlier period". That change reflects and contributes to the growth in those periods of the romantic conviction that art has the value. However, creating new words without values and proper source is wrong because such practice would lead to conversational interpretation.

(f) Legitimacy and Acceptance

The words have stories and values. Consequently, we look into the text that which transmit values for legitimacy and acceptance. For instance, words from the Buddhist text and philosophical text¹⁵.

(g) General constructions of the statutes

(1) While translating any of the legal statutes or related document one has to be careful of the use of words. A single mistake of such word may create a legal error. For example:-

¹⁵ The word མཛོད་མཐོ། in Dzongkha text means "supreme" in the English text. ཚོས་རྒྱལ་ཤེས་རབ་དབང་ལྷན་ཁོས་ ཚོས་སྲིད་ཁྲིམས་ཀྱིས་མཛོད་མཐོར་གདོང་ལྡེའི་ཁྲིར། བཀྲིས་དགེ་མཚན་འབྲུམ་གྱིས་དབང་བསྐྱུར་བ།

“Shall” or “May”- We have used “དགོ” for “shall” and “ཚོག” for “May”. In legal sense “Shall”- means “Has a duty to; more broadly, is required to. <notice shall be sent> while “May” means "permissive" or "discretionary". But sometime the courts often interpret as “should”.

Similarly, “Commencement” or “Come into Force”- For “commencement” we have used “འགོ་འཛུགས་” and for “Come into Force” we have used “ཚག་ནས་”. Therefore, we tried to use different word of dzongkha for different English words according to the circumstantial use.

- (2) In any law gender specific terms include both genders and include corporations.
- (3) In any law words in the singular include the plural, and words in the plural include the singular.

(h) One word having different meaning to be translated in context with the text

- (1) “Apply” when translated required to be written as “སྤྱོད་པ་/འཇུག་པ་/འཁྲིལ་/སྤྱོར་འཇུག།
- (2) “Commission” may refer to “བསྐྱར་བ” and also to “ལྷན་ཚོགས་”

(i) Circumstantial translation

- (1) “Competent”:- When directly translated it means “ཕྱོགས་གྲུབ་ཅན།” but however in some legal context it may be written as “དབང་རུས་ལྷན་པའི” in case of referring to “competent jurisdiction” or “competent court”.

(j) One to one word translation

In translating a legal statute or law, a translator should consider the each and every word and should not use same Dzongkha word for the different English word.

Most translators do not bother the nuisance of the slight difference of meaning of every word.

For example: - (a) Change, amendment, revision, alteration, modification, variation, etc.

The term “amendment” means a formal revision or addition proposed or made to a statute, constitution, or order instrument. The term “revision” means a re-examination or careful review for correction or improvement, whereas the term “alteration” means a substantial change. Therefore, though the words are of synonymous they may be of different meaning.

Change འཕོ་འགྱུར་/བརྗེ་སོར་ Amendment འཕྲི་སྒྲོན་ Revision ཕྱིར་ལོག་ བསྐྱར་ཞིབ་ Alteration
 རྩོ་བཟུང་ བསྐྱར་བཀོད་ སོར་བཅོས་ འགྱུར་ལྡོག་ Modification ལེགས་བཅོས་ སྐྱར་བཅོས་ བཅོ་བཅོས་
 variation ལྷན་པར་བཅོ་བ

Similarly, the words “བར་བཅོང་” and “དབང་བཅོང་” have different meaning “བར་བཅོང་” means “use of force” and “དབང་བཅོང་” means use of force through power.

8. Difference between legal translation and other translation

- (1) Legal translation should be of literal translation as much as possible.
- (2) Translating legal document, the translator should always avoid explanatory translation.
- (3) Words, articles, verb, nouns, adjectives, Pronouns, Adverbs, Conjunctions etc. should be careful and accurately placed.

འབྲུག་པའི་མི་སེར་ཅིག་ལུ་ རྒྱ་དངོས་ (noun) བདག་བབྱང་ (verb) གི་ (article) རྩོ་བཟུང་ཡོད་པ་མིན་ཅུང་
 སྤྱི་ཚོགས་(noun) གྱིས་བརྒྱུ་མཁས་པའི་ཁྲིམས་དང་ (conjunctions) འབྲེལ་ཏེ་མ་གཏོགས་ འབྲུག་པའི་མི་སེར་མིན་པའི་
 མི་གཅིག་ལུ་ ས་ཆ་ ཡང་ན་ བསྐྱུལ་མེད་ཀྱི་རྒྱ་དངོས་གང་ཅུང་ཅིག་བཅོང་ནི་ ཡང་ན་ མིང་སློ་སྤྱིའི་རྩོ་བཟུང་མེད།¹⁶

- (4) Basically in legal translation, a sentence may consists of - subject+object+ verb. For example:- A Bhutanese citizen shall have the right to information¹⁷ is translated as:-

འབྲུག་པའི་མི་སེར་(Subject) ཅིག་ལུ་ གནས་ཚུལ་གྱི་(object) རྩོ་བཟུང་ཡོད།(verb)

- (5) Mostly “direct speech” is favoured. Taking a provision of the Bhutan Penal Code: A defendant shall be guilty of the offence of battery, if the defendant purposely uses physical force of an adverse nature on another person.

Translation: - གཤམ་གྱིང་ (if) བསམ་སྦྱོར་(purposely) རྫོལ་ས་ཚོད་ཟླ་ཞིག་གིས་(the defendant)
 དྲག་ལྷགས་ཐོག་(force) ལས་ མིང་(person) གཞན་ (another) ལུ་(on) ལགས་བཀལ་བ་ཅིན་(uses
 physical) ཚོད་ཟླ་དེ་ འཐབ་འཛིང་གོད་འགེལ་གྱི་ཉེས་སྦྱོན་ཡིན་པར་བརྟེན་གོ།

Conclusion:

¹⁶ Article 7(9) of the Draft Constitution of Bhutan.

¹⁷ Article 7(3) of the draft Constitution of Bhutan.

This generation, particularly the distinguished participants, have the historic responsibility to be precise with words and clear with the objectives. Legal words have separate entity and objectives. Words are not generally replaceable one by the other and the use of synonyms could have catastrophic results. Invention of words without epistemological history and objective will create tension in the society, vitiate the right, restrain the liberty and curtail freedom. Creativity of human mind and vastness of human nature must be supplemented and complimented by the wisdom and mastery of words.

Words should not create dispute between family members and inculcate lingering doubts in the minds of the individual.

Thank you and Trashi Delek