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Prohibition: Between the Linguistic and the Legislative Concepts

Abstract

Comparative studies take the lead among all studies, including modern linguistic studies. They are the means through which researchers get aware of other sciences and find connections among them. Thus, legislative texts are the database of the present study. The legal rule aims at achieving two issues: Doing something, which corresponds to order. What the addressee must avoid, which corresponds to prohibition that has been chosen for the present study. The present study starts with defining prohibition linguistically and grammatically, its meaning among the scholars of origins, and then its concept among those involved in the drafting of texts. The present study aims at identifying methods and expressions indicating prohibition, among which is the important expression "don't". Finally, punishment, which is the common result for not complying, is indicated. Linguistic, legislative drafting books, and some Quranic texts are used as the database for the present study. The Penal Code and the Civil Law are taken from the legal texts. The present study comes up with results; legislators do not use the term prohibition. Instead, they use prohibitive formulas. Legislators do not abide by what grammarians abide to. Grammarians use "don't + the present tense. But, legislators use everything that leads to the meaning of avoiding doing something except the grammarians' formula because it makes legal texts subject to interpretation and diligence.

Keywords: Prohibitions, Prohibitive Formulas, Legislative Texts, Expressions.

Introduction

Linguistic studies have always been limited to the texts of the linguistic heritage, which results in very few and similar topics to be studied. This forms the research problem through which the researcher tries to go into a linguistic study between the linguistic and legislative texts. The research objectives are derived from the objectives of the legal rule that either commands or prohibits an action. Prohibition is selected to be studied in the present study to identify the method followed by legislators. Defining the term of prohibition according to scholars and explaining the methods they adopt in forming it is the starting point of the present study. The significance of the present study is due to the importance of comparative studies that allow researchers to get aware of other sciences and find links among

them to reach conclusions that benefit the two sciences together. As for the procedures, choose the title, developing the plan, providing the necessary books, and making statistics of examples has been due to scientific methodologies. To the best of the researcher's knowledge, no previous independent study has tackled the topic except some studies inside books and researches.

Prohibition

Linguistically

Prohibition is the opposite of commanding. Grammar scholars define it as the negation of commanding. Sibawaih states that "do not hit" is a negation of the action of hitting. It is also said

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that prohibition is the necessity of avoiding doing an action. Thus, the grammatical concept of the term "prohibition" is similar to the linguistic concept as both mean avoiding doing the action. But, scholars of origins differed in defining the concept of prohibition. Depending on the difference in their schools. The present study refers to what they agreed upon and leaves aside what they disagreed about.

It is defined as the statement indicating the command to avoid doing something. Prohibition is also defined as the structural statement referring to the command to avoid doing the action from an authoritative perspective. Al-Ghazali defines it as the statement requiring to leave the action.

It is clear that scholars of origins do not limit their definitions to those proposed by grammarians. But, they expand the formulas of the concept to include the linguists' perspectives.

The interpreters indicate that prohibition is not limited to "don't + the present tense. The following examples approximate what is meant.

Al-Qurtubi mentions that what is meant by "I am prohibited" in the Ayah 56 in Surat Alnissa is that the prophet is prevented by true evidence and Qur'anic Ayahs, Ragheb Al-Isfahani indicates that there is no difference in using any of the ways to indicate prohibition. This means that there are certain expressions used to indicate prohibition.

It is well known that the purposes that the speaker aims are multiple due to the situations in which the speech takes place. This is accompanied by the multiplicity of the indications of request, especially prohibition. The method is one, but its indications are several. Connotations of prohibition and its meanings, such as use and meaning are fields where great efforts have been made by those involved in the sciences of rhetoric, language, and origins. What is important in this regard is the focus that legal texts have adopted to denote prohibition. It is worth pointing out two issues:

Legislators do not use the term prohibition, but they rather use another term.

The function of the legal text is to define what the addressee must do (do an act) and (what the addressee must refrain from doing), the first function (do an action) corresponds to command, and the second (refrain from doing an action) is the true meaning of prohibition. It should be pointed out that resorting to adopting the formula "Do not do" in legal texts does not define the deep significance of the required meaning of the text. Prohibition is multi-purpose. Thus, there will be multiple opinions determining the meaning of prohibition. Hence, other methods are used to make the legal text more acceptable.

Prohibition Methods in Legal Texts

The first method is by adopting terms stating the meaning of prohibition, such as:

Prevention

This term is adopted to indicate the meaning of prohibition. It is used 55 times in the articles of the civil law to indicate prohibition and its derivations. It is used twelve times in the past tense form. Whereas the present tense form is used Nine times. Examining all the examples referred to, it is clear that the texts adopting this expression refer to the meaning of prohibition. Indeed, these two texts prove what is meant; Article 116 The husband has the authority over his wife. If he beats her or prevents her from visiting her family... Article 222/1 If an animal harms the property of a person and the owner sees it and does not prevent it, he is a guarantor. The penal law contains the term prevention and its derivations 29 times. 19 of which are in the nominative form. Whereas, 6 of them are in the form of the verb.

Prohibition

The texts of the Iraqi Penal Code use this formula in 18 positions. 13 of which are in the nominative form, 2 are in the present tense, and 3 are in the past tense.

All the examples denote an increase in prohibition. The action prohibited has included another indication added to prohibition which is prohibition that is associated with a punishment. The provisions of the Civil Law do not adopt this formula.

"It is forbidden". This term is mentioned in the Penal Code 28 times. But, only once, in Article 100, it denotes the meaning of prohibition. The articles of the civil law contain 11 terms derived from prohibition.

The second method of indicating prohibition is through the use of negation. The word "negation" is used a lot in legal texts. It is used 546 times in the form of negating the verb in the present tense. Whereas, it is used 103 times in the form of negating the verb. 87 times to negate origin. All previous examples indicate the meaning of prevention from doing the action as one of the methods used in legal texts to denote prohibition. There is nothing prohibited according to the grammatical concept, but it is possible to state that prohibition is understood according to the rule established by the fundamentalists; prohibition means the statement to leave doing the action. The addressee is prohibited from carrying out a behavior when the legal text does not state that it is permissible. It is important to point out that there are many examples in the

Iraqi and some Arab laws used to indicate the meaning of prohibition. It is a form of prohibition of doing the action.

In the first article of the Penal Code, it is stated that there is no punishment for an act or not doing it except on the basis of a law. So, punishment is not valid except according to a law. The following scheme illustrates this method;

A negation article + the present tense = meaning of prohibition.

The third method of indicating prohibition is through using a negating article before the present tense. The meaning of prohibition is implicitly understood from the legal text.

The fourth method is through stating some phrases indicating punishments for some acts. This method is the most used method in legal texts. Legal texts, whether in the Penal Code or in the Civil Code, have set the pronouncement of the sentence and the amount of the punishment followed by the completion of the sentence. This method is not odd for legal language. On the contrary, it is very familiar.

The Glorious Quran, in many ayahs, specifies the amount of punishment of the adulterer. Al-Zamakhshari mentions that the interpretation of the glorious ayahs is that Whoever commits adultery should be punished. There are many generous verses that mention the crime and the amount of punishment. This type is the most method used in legal text. Those texts mention the amount of punishment and the act that requires it. Article 2 52 of the Iraqi Penal Code states that whoever requests, takes, or accepts a gift or promises something to give false testimony, he and whoever gave is punished with the penalties prescribed for bribery or false testimony, whichever is more severe. The verb "punished" is used as a consequence on request, taking or accepting the gift. The effect of the action is the specific prohibition. There are many examples referring to prohibition in this way. Prohibition in this form implies an inner meaning which is warning; mentioning the punishment for a specific act means warning Whoever commits that act. In this sense, Sibawayh states that prohibition is a warning.

The Results

Having presented what legal texts use to indicate prohibition, the present study comes up with the following results.

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| 1. | Lawmakers do not use the term "prohibition". They rather use certain methods to indicate prohibition, which is broader than prohibition as it includes all expressions carrying its meaning. |
| 2. | Grammarians are restricted to certain structural methods to form prohibition. Whereas, legislators and fundamentalists expand to include all terms and methods from which the request to cease the act is understood. |
| 3. | Lawmakers are more affected by scholars of origins than linguists. |
| 4. | Legal texts do not use a negating article + the present tense to express prohibition as it makes legal texts a group of prohibitions and allows diligence in determining the inner purpose of prohibition and its time. |
| 5. | Legal texts use the method of stating the punishment of every illegal act, which is a way that is acceptable and more effective Than the other methods which state groups of orders and preventions depending the use of structure. |

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