

Visual Art in Culinary Creations: Venturing into the Negative Spaces of Intellectual Property Rights

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ABSTRACT

Culinary creativity converges itself into unconventional form of “art” that is devoid of any IP right to configure within its realm. Chefs and restaurateurs use the modicum of creativity in either food dressing or instilling a recipe to enunciate their expressions. Like any other form of creation, competing restaurateurs and exploiters discredit the original creator of work by using their creativity content and pirating the menu. As long a resultant work is established in a perceptible form with originality in its expression it conveys a right in its being called copyright.

The vagueness lies around the fact that which among various IP is befitting culinary is a problem to be delved in through laborious research under Patent, Trade dress, Copyright concerning the major IPs. To exemplify-recipes are to be considered procedures and processes which are to be secured by a patent and not copyright weighing through creativity copyright also seems a contestable claim. The expanse of gastronomical industry has grown from being perfunctory to large revenue, multimedia consumer industry. The chefs unlike writers, musicians, painters have no redressal when their work is being exploited because of negative space existing in IP under unconventional works.

The author will therefore attempt to find and finalize a straightjacketed approach required for a functional creation to be placed within the contours of Law and offered protection duly under IP. An enunciation would then be made through encompassing jurisprudence of IP and system of incentivization which is holding back culinary creations from getting recognized as a work made through exercising intellectual choices.

Keyword: culinary creations, intellectual choices, gastronomical industry, copyright, patent.

I. INTRODUCTION

Food forms to be a quintessential part of our lives, as a famished body never efficaciously functions well. Therefore, culinary creations, recipes, plating, dressing collectively referred to and colloquially understood as food requires attention in the legal scheme of affairs. The food and beverage industry revolves around the premise of Intellectual Property. It is through Intellectual Property Rights the creativity and innovativeness flourishes as a fair presupposition made by Utilitarian theory of Jeremy Bentham. The positive space is determined as IP recognizing and protecting by attributing to work of a particular stature offering distinctiveness, innovation or creativity. Whereas, the negative space is a culmination of No-IP zones or Low IP zones. The phrase has been coined by Kal Raustiala and Christopher Sprigman, which is understood as the area of creative activities which are not recognized by intellectual property even though they fulfill the creativity standards. It also becomes necessary to understand whether restraining in copying actually propels more creativity or creativity grows by leaps and bounds regardless of it claiming any rights under the concerned regime.

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Negative space is a low IP creative area much like how Wikipedia functions. Wikipedia doesn't charge for access, doesn't pay contributors, and doesn't take advertising. It relies on voluntary contributions. And, most importantly, Wikipedia invites people to copy and to edit the content that their volunteers create. Essential research lies in finding out the consequential protection regime of IP. Negative spaces aren't recognized or protected by IP, So does it yield healthy innovation, if yes how? And if not then, Why?

That becomes an important reason to investigate what all must come under negative space, does it fulfill the identifiable characteristics for it to be called an IP, thus the incentivization fails or yields more innovation/ creativity to occur.

Under the positive space the public domain is enlarged by creating temporary exclusive private spaces of ownership of individuals exercising their intellectual choices. A profit inducing mechanism is setup for an intellectual investment made by individuals. A sense of control in terms of usage, enjoyment and disposal/ transfer is rendered to the individual to incentivize them for social progress of art science and culture.

Interestingly under the negative spaces without the recognition and rights ascertainment, still manages to thrive and propel the industry and more specifically gastronomical industry. Culinary Creations involves the 3 methodical steps in the making – recipe (listing of items and procedure) preparation, food plating (purely aesthetic). Study also pertains to the – chef's special dishes served in restaurants.

Culinary creation suffers from low IP equilibrium, time and labour that chef sinks into this form of creation represents a substantial investment. Copyright law fails to protect original dishes from the competing chefs. Recipes are thought to be not copyrightable subject matter due to its function and utilitarian nature. But a cultural shift towards modern art form compels the researcher to view that culinary creation could be called “edible art form”

An aesthetically stimulating and capable of ardent artistic contemplation cooking has developed from something required to meet the basic human needs to something that is capable of forming a meaningful expression of the Chef. Art is never static. Intellectual Property is one of the most dynamic and progressive legislative rights offered to individuals globally, still the patches of negative space resurrects the research on which subject matter would culinary creations endorse itself to be IP worthy. Given the close competition, it becomes necessary to designate protective rights to the makers.

It was back in 20th century when food and beverage industry witnessed growing demand in terms of unique savoring. The flashy abundance of cookery shows, magazines and recipe books were inducing the homemakers' statured reputation to chefs. In the wake of such phenomenon it is now that we see spectacular reality shows “Master Chef” with performativity and skill sets possessed by potential chefs being put to test. The paradigm shift from culinary being a mechanical activity to a competitively acquired skill prevalent of intellectual choices, demands and compels to undertake a food protection or incentive-based system to outflow from IP. The concerns arose on the account of exploitation that necessitates the protective measure and must be spelled out from a right bestowed by the State.

The premise here is just not whether culinary is an art or an innovation but whether it possesses originality in its dressing, recipe, flavor, aroma, effervescence cumulatively leading to a definite position under Intellectual Property. Before it is configured to be an Intellectual Property it is important to identify and qualify the need to adjudge through jurisprudential theories its effectiveness as an IP asset.

II. JURISPRUDENTIAL UNDERPINNING

A particular intellectual property regime is an expedition of multiple theories offered by various jurists and philosophers, which is understood with respect to the objectives of each unique regime. The fragments of these ideologies are well reflected in the present copyright regimes all across the globe.

The reasoning behind the quest towards the idea of intangibility, which demands an interest on a property and how shall it subsist; will be enunciated as part of this segment. The incorporation of diametrically opposite schools of thought is chosen to illuminate the governing theories under Copyright and those that remain uniform worldwide are seemingly the most befitted. The most vital form of property that exists is currently IP. It actively supports novel contributions to uplift the general public domain by incentivizing the creators and enriching the scope of existing knowledge for advancement and creativity for prospective creators.

LOCKEAN LABOR THEORY

Principally Lockean dispositions are covered under the Natural Law Theory under jurisprudence, whose basic premise is that “all human beings who create work of the mind are entitled to a specific right embracing protection of their moral and economic interests and covering all the issues of their work”²

The current statement when segregated into elements namely ‘personality right’ and ‘reward for work’ enunciate an individualistic approach towards copyright, wherein reward materializes itself to ‘exploitation rights’ and ‘personality rights’ consists of immaterialized interest of author which are her ‘moral rights’³.

Locke essentially deduced this for physical property, but the theory holds equally relevant and renders meaning to intellectual property in entirety. The denotation of labor translated under IP as intellectual labor diffused to create a work; the right thereby should subsist on the particular creation. Meaning to state that a work created out of intellectual labor must be profiteering to the creator to be able to bear its fruits first. In Le Chapelier’s⁴ words- ‘work is said to be considered as the most personal property of all’.

Under the copyright it was realized that when an individual effort is accompanied by personal gain, it becomes the best way to advance public welfare from the talents of the creators. The creative activities deserve rewards when services are rendered to the public. The labor theory’s justification is furthered with respect to “value added theory” wherein a labor producing something of value to others goes beyond the factum of morality that a labor is asked to produce, which enunciates that benefit must be accrued from the work done.

The existence of labor purports the fact that public values the products of labor, a corollary can be drawn out from labor theory is that regardless of the perishable nature of culinary creations and vulnerability of its presence, its existence is savory and rejuvenated the palette. The effect of a work determines its

²Sterling, 1998 p.306.

³Grosheide 1986 p. 131.

⁴Isaac René Guy le Chapelier was the chairman of the Constitutional Committee, presented to the National Assembly in its final sessions a law restricting the rights of popular societies to undertake concerted political action, including the right to correspond with one another. It passed 30 September 1791. By the virtue of obeying this law, the radical Jacobins, emerged as the most vital political force of the French Revolution.

usability and appreciation bestows recognition. Therefore, labor theory accounts IP to adduce culinary creation the place it deserves among various other original works.

BENTHAM'S UTILITARIANISM

The stability of human institution is derived largely from the deliberation given by various jurists and their school of thought. Bentham's utilitarianism deals with the "utility- maximization" of individuals so that the welfare of the society is achieved, which is the means to its end. He also argues regarding the free market⁵ that it leads to increase in productivity.

The important rationale here, that provides the theory of incentives wherein the fruits of labor are borne by the individuals working towards it. This also identifies what could be claimed from the resources available that appropriates the fruits of the labor.

The primary objective of copyright is to promote social good by encouraging creative intellectuals to contribute to the pool of creations. The utility of any action is determined by assessing it from the pedestal of "pleasure" or "pain", the former should be sought and latter to be prevented through minimization. Hence, the most favorable action has to be preferred by the government to seek pleasure for the largest number of the people.

The premise of IP is justified through both moral and utilitarian economic arguments. The purpose of copyright is to ensure that profit is realized by the originator or the creator of the work of art⁶. In respect to the fine arts the economic basis of copyright might be debatable as back when Picasso created his work the copyright didn't exist and he was able to exploit the market and command enormous price for his work. The serious art wouldn't get entirely affected as the artist will still continue to express themselves, under any social constraint but the publishers, impresarios and galleries who would want to appeal to public with respect to the work must not be readily willing to take up the financial risk.

Encouragement of individual effort through personal gains will necessitate the public welfare. The balance has to be sought between the aspects of common good that are served by the means of intellectual property rights so that the public domains is preserved and information is disseminated under the creative pool so that advancement is achieved at every step of the process from the prior state of existence.

As for the culinary creations, it is the expressions effectively thought out mirroring a chef's mind and capacities of creativity and imaginative thought process. The arrangements, selectivity in choice of colors, arrangement, shredding, garnishing are similar choices exercised as that of a painting on a canvas by an artist.

⁵Although free market is only defensible on utilitarian grounds in so far that it maximizes welfare of the greatest numbers, and this is an empirically contestable issue. If it can be demonstrated that a common or public property system can maximize more welfare than an alternative free market economy then the former becomes justifiable on utilitarian grounds. Since property rights are to be justified in terms of general benefit, there doesn't appear a clear cut case against public and common property too, as long as they can be legally and unambiguously defined. Property may be more or less private, or more or less public; the only issue is how to define, legally, the rights of ownership. Many regard a purely utilitarian formula to have sufficiently egalitarian implications.

⁶M Spence, 'Justifying Copyright' in D McClean and K Schubert (eds) *Images art, Copyright and Culture* (London, Ridinghouse/ICA, 2002) 402-3.



Figure.1

Chef Vikramjit Roy draws his inspiration from American artist Jackson Pollock and treats each dish like a new canvas⁷

HEGEL'S PERSONALITY THEORY

The origin of moral rights is essentially drawn from the Personality Theory. The notion of “self-actualization” is pressed upon to manifest the expression, dignity and recognition as an individual person. The idea belongs to the creator because it is a reflection of creator’s personality⁸.

The essence of this theory revolves around the individual existence and the importance of individual will governing the existence, seeking the actuality and effectiveness in the world. Will is placed at the pinnacle of an individual’s mental construct amidst the hierarchy of other elements⁹. The elements enunciating freedom in terms of Hegel consists of mind, impulse, thought and heart. The truest value of freedom is bereft of external restraint from any source.

According Hegel the will of an individual interacts with the world on various levels which includes-classifying, explaining, remembering¹⁰ is how the external world is appropriated by the insights developed by the mind.¹¹

⁷Available at <https://www.telegraphindia.com/culture/art-on-a-plate/cid/1322198>.

⁸William Wallace, A. V. Miller (Translators), Hegel’s Philosophy of Mind (Hegel’s Encyclopedia of the Philosophical Sciences), 1971, p.382.

⁹W. J. Gordon, “A Property Right in Self-Expression: Equality and Individualism in the Natural Law of Intellectual Property”, Yale Law Journal, Vol. 102, 1993, p. 1533.

¹⁰Justin Hughes, “The Philosophy of Intellectual Property,” 77 Georgetown L.J. 287, 330-350 (1988).

Hegel connoted that the creature of the universe always inspires freedom, is a social being, and must find her freedom within the ethical universe. Therefore, the ethical universe must deliver the consistent rights to exercise one's freedom as part of speech, expression through whichever means possible.

The Hegelian personality theory applies easily because intellectual products, even the most technical, seem to result from the individual's mental processes. As for Hegel's interests in using property rights to secure recognition for the individual, intellectual property rights are a powerful instrument to this end because the result is not merely seized by the individual, but rather it is a product of the individual. Culinary Creations are skillful application of cognitive faculties and therefore as an extension to one's personality remains to be an asset to the artist producing it. In furtherance of the philosophical justification of Culinary Creations to be significant to the approach of Intellectual Property, it becomes relevant to read into the law would motivate the expansion of gastronomic industry. Therefore, as art resonates most with Culinary, Copyright remains in the hindsight to be delved in to project potential affirmation.

III. DOES COPYRIGHT ANSWER IN AFFIRMATIVE?

In the process of an expedition it is important to gather whether there was previously a normative system of unwritten rule for chefs, they seem to have observed ethics of their practice of not copying recipes and not using the same without permission of the originator of the work. Despite the norms were self-imposed, they still are devoid of sanctions or ostracizing the copier. Expanse of geographical locations makes it improbable in tracing any remote commercial exploitation and restraining thereof.

Thus, cultured policing never goes a long way and therefore, we turn towards Intellectual Property Rights with a lot of hopes giving culinary creations the space it truly deserves.

Initially there was a factum of unease by IP scholars and practitioners with the proposition of placing IPR in the hands of chefs for their dishes. In the changing times of this profusely leisure activity that has changed into a lucrative business profiteering restaurateur, celebrating gastronomic industry as one, demands and stirs up the discussion of safeguarding intellectual creations and innovations of the human minds.

Copyright sublimates the expressions to be strictly original¹², developed by the author of the work and doesn't scale up to check its novelty in creation. It extends the originality to six such categories of work under Indian Copyright Act, 1957. In India, Copyright qualifies - any work either "artistic"¹³ "literary"¹⁴ "dramatic"¹⁵

¹¹Hegel writes Mental aptitudes, erudition, artistic skill, even things ecclesiastical (like sermons, masses, prayers, conservation of votive objects), inventions, and so forth, become subjects of a contract, brought on to a parity, through being bought and sold, with things recognized as things. It may be asked whether the artist, scholar, is from the legal point of view in possession of his art, erudition, ability to preach a sermon, sing a mass, &c., that is, whether such attainments are "things." We may hesitate to call such abilities, attainments, aptitudes, &c., "things," for while possession of these may be the subject of business dealings and contracts, as if they were things, the thing is also something inward and mental about it, and for this reason the Understanding may be", Hegel goes on to say that "[attainments, eruditions, talents, and so forth, are, of course, owned by free mind and are something internal and not external to it, but even so, by expressing them it may embody them in something external and alienate them."

proximity about how to describe such possession in legal terms.

¹²The Copyright Act, 1957 Section 13(a)

¹³The Copyright Act, 1957 Section 2(c)

¹⁴The Copyright Act, 1957 Section 2 (o)

“cinematographic”¹⁶ “sound recording”¹⁷ “musical”¹⁸— prerequisites to it is that it must have arisen out of original thoughts or idea. The Act derelicts processes, procedure, principles, methods, facts and ideas. The commandment establishes expressions to be alone recognizable feature. Since there are various medium of producing culinary creation – through cooking, plating, denoting recipe into tangible medium. There are a host of cases looming into both artistic and literary nature of the works collectively connoted as culinary work.

Around 1924, the courts in United States began to hear disputes on matters related to copyright-ability of recipes, in *Fargo Mercantile Co. v. Brechet & Richter Co.*¹⁹, the manufacturer of fruit extract filed against defendant selling the extract born out of the same recipe and recognizable emblem. The recipe was pasted on the bottle of the product with directions on it. It was alleged that copyright was infringed that led to speculate on the determination of rights, that being the case. The court segregated the issue into two parts, one being the emblem used and the other being the recipe getting replicated. Regarding the recipe the courts had an observational comment that “they are an original composition and serves a useful purpose”²⁰ According to the Judgement anything that uplifts culinary advancements could be considered an Art within the meaning of Copyright. Back then in *Fargo* court didn’t agree to the argument that recipes are mere procedure enlisted to be performed as they are directional in nature. Unlike later, in 1996, *Publications International. Ltd. v. Meredith Corp.*²¹, the seventh circuit court addressed if copyright could be afforded; here both the claimant and the infringing party had published magazines on recipes. Meredith, who had filed the suit initially, had issued its cookbook with recipes of yogurt which was accorded with copyright as a “collective work”. The defendant had produced series of publications out of which one of them was identical with the compilations of Meredith. Meredith contested that copyright must be extended to individual recipes.²²

At that point in time the modicum of creativity was testified over bundle of copyright cases brought before the court, since the work of Meredith was treated as “collective work” – compilation, necessarily its arrangement, presentation that gives it an overall look must be considered. Therefore, its individual elements that actually are brick and mortar of the entire work could not be given protection under copyright. The reasoning the courts provided with was that list of ingredients and direction that constitutes the methodology is merely the process to achieve the flavor, color, specifications of a food item being cooked.

With Meredith case been decided in late 90s brought the expedition to procure protections back to square one. As recipe was a collection of facts as any other arithmetic formula illustrated through exercises. Further, in *Lambing v. Godiva*²³ Lambing was of the view that a dark truffle recipe was misappropriated and thus is in violation of copyright. Court provided an inclusive approach in this case, the functional aspect of recipe was decided not to be copyrightable whereas musings, commentary, advices would be treated differently. Much later, in Texas, *Barbour v. Head*²⁴ which was again a case of copying the recipes already published as a work by plaintiff. It contested that literary expressions are above and beyond the mechanical description of

¹⁵The Copyright Act, 1957 Section 2(h)

¹⁶The Copyright Act, 1957 Section 2(f)

¹⁷*Id.*,

¹⁸The Copyright Act, 1957 Section 13- Works in which copyright subsists

¹⁹*Fargo Mercantile Co. v. Brechet & Richter Co.*, 295 F. 823 (8th Cir. 1924).

²⁰*Id.*

²¹*Publications International. Ltd. v. Meredith Corp* 88 F. 3d 473 (7th Cir. 1996).

²²*Id.*

²³*Lambing v. Godiva* 142 F. 3d 434 (6th Cir. 1998).

²⁴*Barbour v. Head* 178 F. Supp. 2d 758 (S.D. Tex. 2001).

preparation procedures. The book published by plaintiff contained several anecdotes that were unique and corroborated as person's expression²⁵. Adding one's own exclamations and experiences perforates the stature of creative if not given due consideration in the eyes of law. Although the question raised under this case to consider the position of recipes under copyright didn't materialize, it still left scope to ponder and find corollaries from the present state of affairs. It leaves a room for work of substantial literary expressions yet to be confirmed.

On account of originality the standardization took place with *EBC v. D.B. Modak*²⁶ in India, the work is deemed fit to be called original if it born out of the skill, labor and Judgement of an individual with a tinge of creativity accomplished. Further, if it restructures a pre-existing work, then Copyright demands at least – selection, arrangement, presentation to be the original contribution of the author, of the work in the making.

Art, albeit is an inspirational activity of self-fulfillment, mostly are determined to be derivative of each other as they are processed and presented. The risk in assumption is the set criteria of originality will only lead to singular creations with slightest of the changed texture leading to fulfillment of the abovementioned standards. Thus, the understanding of originality in the context of Culinary Creations certainly requires to be revisited if granted a copyright.

More severity and filtered contextualization of newly devised ways of texturing, garnishing, plating or food dressing should be upheld to accord copyright. Where basics must be negated, as applied under *Scène à faire* doctrine, what remains unique and distinctive should be sieved out to decide if a fair contribution has been made to existing domain of knowledge.

It is then we can possibly construe it meaning within the meaning of “work”. Work is mere a process of objectifying “in a bounded expressive form of human creativity”²⁷ The Berne Convention provides the very bedrock for the purposes of Copyright of what must ‘work’ be²⁸ - :

“The expression literary and artistic work shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression”

A work is different from its underlying ideas which are initially employed in a specific arrangement then a propertised domain is made useable for “socially unified intellectual commons”²⁹ This becomes extremely important because of the pervasive nature Copyright and IP in general which limits the scope of public domain, if protection is granted to ‘work’ that goes well beyond the base level set by the Berne Convention then is said to interfere with ability of the individual creator and stifle her to build on the creativity of others. While in India³⁰, an indicative list is provided to welcome unlike in Berne Convention which does not prescribe list of works. The above discussion is relevant to Culinary Creation because it is contested for considering its categorization into both the artistic and literary works categories.

²⁵ *Id.* “Heat oil in heavy skillet. Add sugar and let it brown and bubble. (This is the secret to the unique taste!),” and it exclaimed that the “Crazy Horse Cranberry Sauce with Raisins” is “Great with all your meats!” This “light hearted or helpful commentary”.

²⁶ *EBC v. D.B. Modak*, (2008) 1 SCC 1 at pages 114-15.

²⁷ A Barron, ‘ Copyright, Art, and Object hood’ in D Mc Clean and K Schubert (eds)

²⁸ Berne Convention, Art 2(1)

²⁹ Lockean on Intellectual Commons

³⁰ “Work” within the meaning of Section 2(y) of The Copyright Act, 1957.

An extension of what artistic work relates under Section 2 (c) (iii) of Copyright Act, 1957, as classified manifests the understanding of what could ‘work of artistic craftsmanship’ be under Copyright and an assessment has to be made thereafter, whether Culinary Creations could be desirable to be examined.

Determination of artistic craftsmanship in deciding whether an article is a “work of artistic craftsmanship”, two questions arise: First, what does the word artistic denote? Secondly, how does a court reach a decision as to whether the character of being artistic was possessed?. It was states by Lord Morris in House of Lords³¹

“In deciding whether a work is one of artistic craftsmanship, it was consider that the work must be viewed and judged in a detached and objective way. The aim and purpose of its author may provide a pointer but the thing produced must itself be assessed without giving decisive weight to the author's scheme of things. Artistry may owe something to an inspiration not possessed by the deftest craftsman. But an effort to produce what is artistic may, if forced or conscious, for that very reason fail.”

It is necessary to understand if, it has the character or virtue of being artistic, first. As the words have their own satellite of meaning when it comes to being called aesthetic in nature, or satisfying the notions of beauty.

It is misleading to equate artistic craftsmanship with ‘work of art’. The whole concept of artistic craftsmanship appears to be to produce things which are both useful and artistic in the belief that being artistic doesn’t make them any less useful. But the work presupposes special training, skill and knowledge of production³². For who could possibly make a claim under this, a dental mechanic, a plumber or a pattern maker, while none of these could contest merely on the utility ground of what they produce, certainly, maker of hand painted tiles, fits well within its ambit as her craftsmanship would be described as artistic and her products as ‘work of artistic craftsmanship’. But a line has to be drawn to not stack a bulk of the products to be labelled under it. The statutory phrase is not ‘artistic work of craftsmanship’ but ‘work of artistic craftsmanship’ although it follows that artistic merit is irrelevant.

In the case of *re Aananda Expanded Italics*³³ the interpretations were made with respect to the essence ‘work of artistic craftsmanship’ draws into account. The ‘ejusdem generis’ rule was applied to understand the scheme of definitions which concerns the ‘work of artistic craftsmanship’ under which it was deliberated that:

*“meaning of any other work of artistic craftsmanship gets restricted by the specific definitions given in 2 c (i) and 2 c (ii); as the word artistic work is preceded by the word other it certainly indicates that it is intended to refer to something other than the ones mentioned in 2 c (i) and 2 c (ii) but of the same generis.”*³⁴

In *Rajesh Masrani v. Tahiliani Design*³⁵ while there was no dispute as to the authorship, originality of the work and also of the fact that the defendant’s works were substantial reproductions, the moot question, remained as to whether the plaintiff’s designs would qualify the test of being ‘artistic works’ under the Copyright Act, thus not requiring registration. The Court accepted the plaintiff’s averments “drawings which are artistic work under Section 2 (c) of the Copyright Act are made in the course of developing both the garments and accessories as such and of patterns for printing and / or embroidering on the fabric use. The

³¹ George Hensher v Restawile Upholstery (Lancs) [1975] RPC 31 at pp. 57-58 (HL)

³² Cuisenaire v Reed [1963] VR 719

³³ *reAananda Expanded Italics* 2002 (24) PTC 427 CB

³⁴ *Id.*, at 36

³⁵ *Rajesh Masrani v. Tahiliani Design* AIR 2009 Delhi 44

Website: <http://www.modern-journals.com/>

garments or accessories themselves are works of *artistic craftsmanship* under Section 2 (c) (iii) of the Act, while the patterns printed or embroidered on the fabric are artistic works in their own right”³⁶.

Under the current U.S. copyright statute, works of artistic craftsmanship are included “insofar as their form but not their mechanical or utilitarian aspects are concerned.”³⁷

The statute further provides:

*“the design of useful articles... shall be considered a pictorial, graphic or sculptural work (and thus afforded copyright protection) only if and only to the extent that such design incorporates pictorial, graphic or sculptural features separately from, and are capable of existing independently of the utilitarian aspects of the article”*³⁸.

The Indian Court drew a distinction between paintings in the sense of the works of M.F. Hussain³⁹ and designs on fabrics stating that only the former could be considered as ‘painting’ under the definition of artistic work. It might be relevant to note that Section 2(c) specifically excludes the requirement of ‘artistic quality’ in paintings.⁴⁰ In view of this, it might not be entirely correct to state that only paintings of the nature of M.F. Hussain’s work form part of artistic work under the Copyright Act. The Court also made reference to the definition of ‘design’ under Section 2(d) of the Designs Act to observe that “in a design the features are merely ornamental and are applied to another article” unlike an artistic painting which has independent existence.

The craftsmanship is the presence of aim and impact- what STEWART J. called ‘the intent of the creator and its result’- which will determine that the work is one of the artistic craftsmanship. This essentially becomes a question of fact, adduced through expert evidence. Since Culinary Creations are artistic in its presentation but possess a utilitarian value, it becomes necessary to view as an applied art with a functional utility.

This leads to the final take on Copyright Law concerning Culinary Creations that original contributions can partake as “work of artistic craftsmanship” and copyrights seems to befit this genre of creations that has still remains exploratory of the determination of rights.

IV CONCLUSION

The views upheld under this research bents towards Copyright alone, as it is remains with the artist/ author as the case may be until the longest term, which can 60 years even after lifetime. The solutions can be fetched under patent, only if they are not mere an admixture of two individually existed component known. Nevertheless, the process may still be protectable but the recipe and the resultant dish may not find its space in patent law. Qualifying for a patent is an uphill task because of its stringent requirement of novelty and inventiveness that only necessitates 20 years of protection granted by law. Trade secrets rather are yet to be codified, in India although KFC, Mc Donald’s have essentially incorporated their staples into it.

³⁶*Id*, at 18, the Court extracts certain paragraphs in the Complaint and states in 22 “...it is clear that there is hardly any denial made by the defendant of alleged infringement of copyright by him and it appears that it is a flagrant case of piracy of copyrights.”

³⁷H.R. Rep. No. 94-1476, at 55 (1976).

³⁸ This provision is considered to be codification of the principle laid down in the landmark case *Mazerv.Stein*, 347 U.S. 201 (1954).

³⁹ M.F. Husain v. Raj Kumar Pandey, 2008 SCC OnLine Del 562

⁴⁰Marx, Karl and Frederick Engels.Collected works, vol. 41. Moscow: Progress Publishers, 1983.

Copyright's viability is most befitting and as proven the work qualifies both as "work of artistic craftsmanship" and for the cookbooks as literary but stringent substantial expression involved. Although the courts lack technical parameters to adjudge the taste/flavor/aroma of a dish worthy of Copyright. Legal ramifications are awaited in this regard as guidelines and directions in furtherance will establish the unconventional works acceptability in India and globally.