1. Define rights.

**Ans:** Positive and negative rights are rights that oblige either action (positive rights) or inaction (negative rights). These obligations may be of either a legal or moral character. The notion of positive and negative rights may also be applied to liberty rights.

To take an example involving two parties in a court of law: Adrian has a negative right to x against Clay if and only if Clay is prohibited from acting upon Adrian in some way regarding x. In contrast, Adrian has a positive right to x against Clay if and only if Clay is obliged to act upon Adrian in some way regarding x. A case in point, if Adrian has a negative right to life against Clay, then Clay is required to refrain from killing Adrian; while if Adrian has a positive right to life against Clay, then Clay is required to act as necessary to preserve the life of Adrian.

Rights considered negative rights may include civil and political rights such as freedom of speech, life, private property, freedom from violent crime, freedom of religion, habeas corpus, a fair trial, and freedom from slavery.

Rights considered positive rights, as initially proposed in 1979 by the Czech jurist Karel Vasak, may include other civil and political rights such as police protection of person and property and the right to counsel, as well as economic, social and cultural rights such as food, housing, public education, employment, national security, military, health care, social security, internet access, and a minimum standard of living. In the “three generations” account of human rights, negative rights are often associated with the first generation of rights, while positive rights are associated with the second and third generations.

Some philosophers disagree that the negative-positive rights distinction is useful or valid. Rights are often spoken of as inalienable and sometimes even absolute. However, in practice this is often taken as graded absolutism; rights are ranked by degree of importance, and violations of lesser ones are accepted in the course of preventing violations of greater ones. Thus, even if the right not to be killed is inalienable, the corresponding obligation on others to refrain from killing is generally understood to have at least one exception: self-defense. Certain widely accepted negative obligations (such as the obligations to refrain from theft, murder, etc.) are often considered prima facie, meaning that the legitimacy of the obligation is accepted “on its face”; but even if not questioned, such obligations may still be ranked for ethical analysis.

Thus a thief may have a negative obligation not to steal, and a police officer may have a negative obligation not to tackle people—but a police officer tackling the thief easily meets the burden of proof that he acted justifiably, since his was a breach of a lesser obligation and negated the breach of a greater obligation. Likewise a shopkeeper or other passerby may also meet this burden of proof when tackling the thief. But if any of those individuals pulled a gun and shot the (unarmed) thief for stealing, most modern societies would not accept that the burden of proof had been met. The obligation not to kill—being universally regarded as one of the highest, if not the highest obligation—is so much greater than the obligation not to steal that a breach of the latter does not justify a breach of the former. Most modern societies insist that other, very serious ethical questions need come into play before stealing could justify killing.

Positive obligations confer duty. But as we see with the police officer, exercising a duty may violate negative obligations (e.g. not to overreact and kill). For this reason, in ethics positive obligations are almost never considered prima facie. The greatest negative obligation may have just one exception—one higher obligation of self-defense—but even the greatest positive obligations generally require more complex ethical analysis. For example, one could easily justify failing to help, not just one, but a great many injured children quite ethically in the case of triage after a disaster.

This consideration has led ethicists to agree in a general way that positive obligations are usually junior to negative obligations because they are not reliably prima facie. Some critics of positive rights implicitly suggest that because positive obligations are not reliably prima facie they must always be agreed to through contract.

2. Discuss the criteria for granting patent for an invention under Indian Patents Act, 1970

**Ans:** In India as per the Patent Act of 1970, an application for a patent may be made by the actual inventor of the invention, or an assignee of the right to make an application or a legal representative of either. It is the person who first applies for a patent who is entitled to the grant. A prior inventor of the invention who applies subsequently will not get the patent as against the first applicant. A person who has merely communicated the idea to another, who actually gave practical shape to the idea and developed the invention, cannot claim to be the first and true inventor. A foreign national resident abroad is not prohibited from making an application and obtaining a Patent in India.

An application for a patent in the prescribed form along with the prescribed fee should be filed in appropriate office of the patent office. An application is required to be filed according to the territorial limits where the applicant or the first mentioned applicant in case of joint applicants for a patent normally resides or has domicile or has a place of business or the place from where the invention actually originated. If the applicant for the patent or party in a proceeding having no business places or domicile in India, the appropriate office will be according to the address of service in India given by the applicant or party in a proceeding.

Sections 3 and 4 of the Indian Patents Act, 1970 specifically state exclusions to what can be patented in India. Our previous blog post has comprehensively explained what cannot be patented in India. That brings us to the question; what can be patented in India?

At the outset, it has to be mentioned that the answer to this is not set in stone. There isn’t any definitive list as to what can be patented. There are, however, certain criteria that are required to be met in order to make an invention patentable. The patentability of an invention is determined by its ability to meet the criteria.

Even before delving into the criteria, it is important to understand the invention meaning and patented meaning. According to Section 2(j) of the Indian Patents Act, 1970 an invention means “a new product or process involving an inventive step and capable of industrial application.”, such invention protected under the patent law refers to patented.

The following criteria determine what can be patented in India:

1. **Patentable subject matter:**
   The foremost consideration is to determine whether the invention relates to a patentable subject-matter. Sections 3 and 4 of the Patents Act list out non-patentable subject matter. As long as the invention does not fall under any provision of Sections 3 or 4, it means it has patentable subject matter (subject to the satisfaction of the other criteria).

2. **Novelty:**