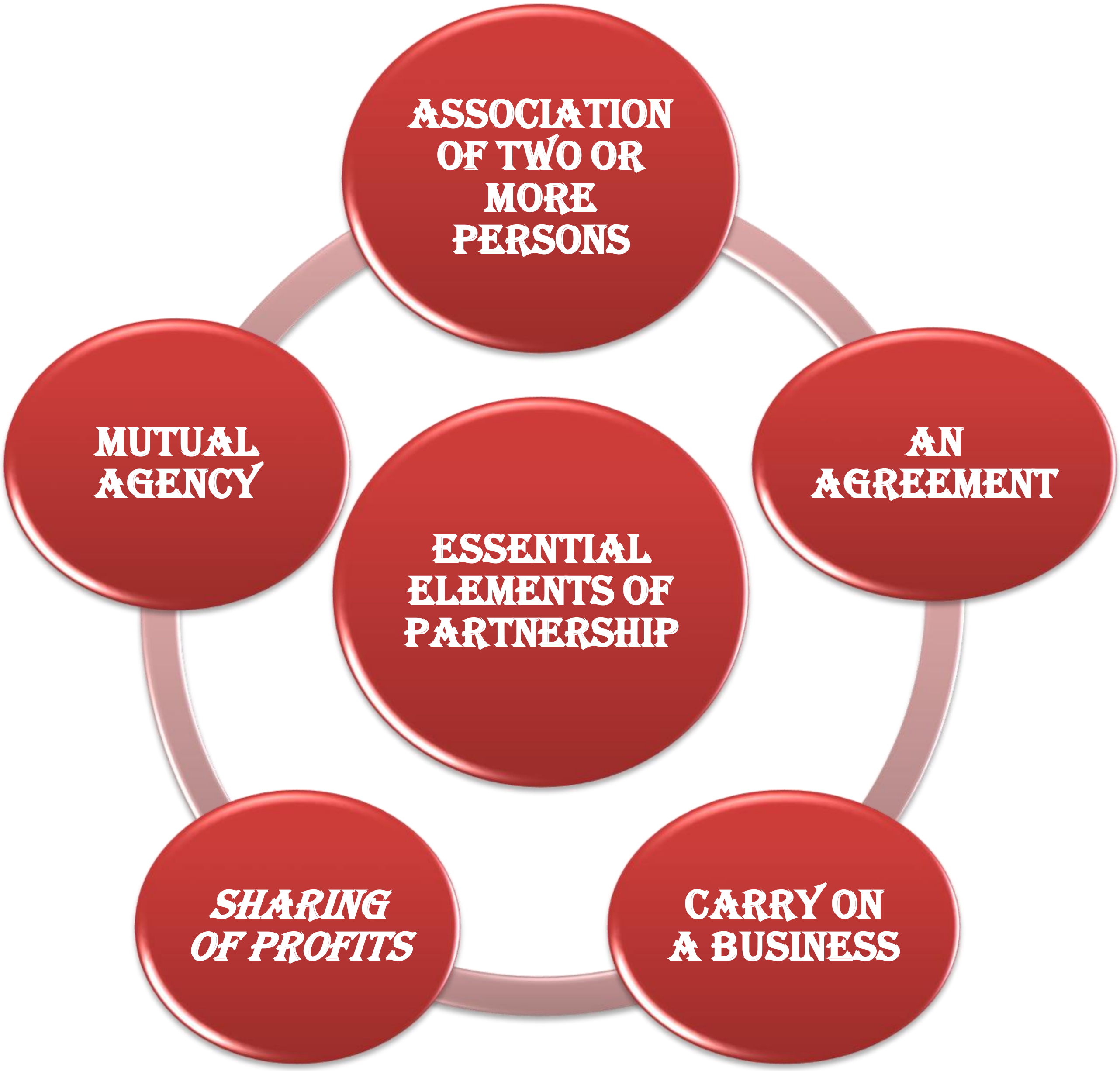
INDIAN PARTNERSHIP ACT 1932

➢ CONCEPT OF PARTNERSHIP

A partnership is a form of business where two or more people share ownership, as well as the responsibility for managing the company and the income or losses the business generates. The Indian Partnership Act, 1932 governs partnership forms of business in India. Section 4 of this Act defines a partnership as the relationship between partners who have agreed to share the firm's profits carried on by all or any one of them acting for all.

➢ ESSENTIAL ELEMENTS OR CHARACTERISTICS OF PARTNERSHIP

A partnership as we know is an agreement between two or more persons to run a business together and share the profits they earn from this business. Now according to the **Indian Partnership Act 1932**, there are five important and necessary elements of a partnership.



(1) **<u>Association of two or more persons-</u>** In order to constitute a partnership legally there must be an association of at least two persons. The current limit of maximum number of partners a partnership firm may have is 50.

(2) **An agreement** - A partnership is contractual in nature. As the definition states a partnership is an association of two or more persons. So a partnership results from a contract or an agreement between two or more persons. A partnership does not arise from the operation of law. Neither can it be inherited. It has to be a voluntary agreement between partners .A partnership agreement can be written or oral.

(3) **Carry on a business-** The third essential element of a partnership is that the parties must have agreed to carry on a business. The object of every partnership must be carrying on a business and sharing its profits. Here, business includes every trade, occupation and profession. The business to be carried out by the firm must be legal.

(4) **Sharing of profits-** This essential element provides that the agreement to carry on business must be with the object of sharing profits amongst all the partners. Impliedly the partnership must aim to make profits because then only profits may be divided amongst the partners. Thus, there would be no partnership where the business is carried on with a philanthropic motive and not for making a profit or where only one of the partners is entitled to the whole of the profits of the business. The partners may, however, agree to share profits in any ratio they like.

(5) **Mutual Agency-** The definition of partnership states that the business must be carried out by the partners, or any partners acting for all of them. This is a contract of mutual agency another one of the five elements of a partnership. Every partner is both a principle as well as an agent for all the other partners of the firm. An act done by any of the partners is binding on all the other partners and

the firm as well. And so every partner is bound by the acts of all the other partners. This is one of the most important aspects of a partnership. It is, in fact, the truest test of a partnership.

➢ IS REGISTRATION OF PARTNERSHIP FIRM COMPULSORY

Under Section 58 of the Indian partnership Act, 1932, *a firm may be registered at any time (not merely at the time of its formation but subsequently also) by filing an application with the Registrar of Firms of the area in which any place of business of the firm is situated or proposed to be situated.*

However, the Registration of a partnership firm **is not compulsory under Part vii of the Indian Partnership Act, 1932,** though it is usually done as registration brings many advantages to the firm. It is **optional** for partners to set the firm registered and there are no penalties for non-registration.

- **STEPS OR PROCEDURE TO BE FOLLOWED FOR REGISTRATION OF PATNERSHIP FIRM**

1] Application to the Registrar of Firms in the prescribed form (Form A). Nowadays this facility is even available online. *Such an application must contain certain basic details about the firm such as-*

- Name of the Partnership Firm
- Name and address of all partners
- Place of business (address of main and branch offices)
- Duration of the partnership
- Date of joining of partners
- Date of commencement of business

2] Signing the Statement- The duly signed copy of the Partnership Deed (which contains all the terms and conditions) must be filled with the registrar

3] Verifying the Statement -The application form shall also be verified by each person signing the form in prescribed manner.

4] Filling the form with required fees- After completion of the required formalities, the application form shall be sent by post or deliver to the Registrar of Firms of the area . Application form must be accompanied by the prescribed fees.

5] Registration - Once the registrar approves the application, the firm will be entered into the records. And the registrar will also **issue a" certificate of incorporation" to the partners**.

STEP 1

- Application to the Registrar of Firms in the prescribed form (Form A)

STEP 2

- Signing the Statement

STEP 3

- Verifying the Statement

STEP 4

- Filling the form with required fees

STEP 5

- Registration

- **EFFECTS/CONSEQUENCES OF NON REGISTRATION OF A FIRM**

(a) No suit against partners and firms-Unregistered firm cannot sue the firm or any partner of the firm to enforce a right arising from the contract or conferred by the Partnership Act. He can do so only if the firm is registered and the person suing is shown as a partner in the register of firms.

(b) No suit against any third party – an unregistered firm cannot sue a third party to enforce a right arising from a contract. The firm can only do so if the firm is registered and the person suing is shown as a partner in the register of firms.

(c) No right to counter claim or to claim setoff – an unregistered firm or any partner thereof cannot claim setoff in the proceedings instituted against a firm by a third party to enforce a right arising from a contract. Setoff means a claim by the firm which would reduce the amount of money payable to the claimant.

➢ RIGHTS AND DUTIES OF PARTNERS

❖ RIGHTS

(a) Every partner has a **right to take part** in the conduct and management of business.

(b) Every partner has a **right to be consulted and heard in** all matters affecting the business of the partnership.

(c) Every partner has a **right of free access** to all records, books and accounts of the business, and also to examine and copy them.

(d) Every partner is entitled to **share the profits equally**.

(e) Every partner has the **right to retire** in accordance with the terms of partnership agreement or with consent with all the partners

❖ DUTIES

(a)Every partner is bound **to diligently carry on the business** of the firm to the greatest common advantage.

(b) Every partner must be **just and faithful t**o the other partners.

(c) A partner is **bound to keep and render true, proper, and correct accounts of the partnership** and must permit other partners to inspect and copy such accounts.

(d) Every partner is bound to **indemnify the firm for any loss** caused by his willful neglect or fraud in the conduct of the business.

(e) A partner **must not carry on competing business, nor use the property of the firm for his private purposes**. In both cases, he must hand over to the firm any profit or gain made by him but he must himself suffer any loss that might have occurred.