

Trust vs Society vs Section 8 Company — Which Legal Structure Is Right for Your NGO?

Before you register your NGO, you will make one decision that shapes everything else: which legal structure to choose. Get it right, and your organisation is set up for efficient governance, smooth compliance, and easy access to funding. Get it wrong, and you spend years working....

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compliance-primer

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India has three principal legal structures for non-profit organisations:

1. **Public Charitable Trust** — registered under the Indian Trusts Act, 1882 (central) or state-specific Public Trusts Acts
2. **Society** — registered under the Societies Registration Act, 1860, with state-level variations
3. **Section 8 Company** — registered under the Companies Act, 2013 with the Ministry of Corporate Affairs

All three can pursue charitable objectives. All three are equally eligible for RNPO registration under the Income Tax Act, 2025 (Sections 332 and 354 — the successors to the old 12A and 80G), DARPAN registration, FCRA registration for foreign contributions, and CSR-1 registration for corporate CSR funds. The differences are not in what you can do — they are in governance structure, compliance burden, cost, and the perception of different funders.

This guide explains each structure honestly, compares them directly, and helps you make the right choice for your specific situation.

Structure 1 — Public Charitable Trust

What It Is

A trust is a legal arrangement in which one or more persons (trustees) hold property, funds, and activities in trust for the benefit of beneficiaries — in the case of a public charitable trust, the beneficiaries are the public or a section of the public. It is created through a Trust Deed — a legal document that defines the objects, powers, and governance of the trust — executed on stamp paper and registered with the local Sub-Registrar.

Governing Law

- **Central:** Indian Trusts Act, 1882 (applies to all states where no specific state Act exists)
- **Odisha:** Indian Trusts Act, 1882 governs public charitable trusts — registered with the Sub-Registrar under the Registration Act, 1908
- **Maharashtra/Gujarat/Rajasthan/Madhya Pradesh:** These states have their own Public Trust Acts with additional compliance requirements (annual accounts to Charity Commissioner)
- **Andhra Pradesh/Telangana:** AP Charitable and Hindu Religious Institutions Act applies

Minimum Requirements

- Minimum **2 trustees** (for a public charitable trust; some states require 3)
- A Settler (the person who creates the trust and contributes the initial corpus)
- A Trust Deed specifying objects, trustees, powers, and governance
- Registered with the Sub-Registrar of the district where the registered office is located

Advantages

- **Simplest structure to establish:** Trust Deed + Sub-Registrar registration. Minimal documentation. In Odisha, registration typically takes 1-3 working days once all documents are ready.
- **Lower compliance burden:** No annual returns to a company registrar. No elections. No quorum requirements beyond your own deed provisions.
- **Founder control:** The Trust Deed can vest lifetime Managing Trustee status in the founder — providing institutional stability and clear leadership through the early growth phase.
- **No minimum corpus requirement:** Unlike Section 8 Companies, there is no prescribed minimum paid-up capital.
- **Fastest path to operations:** From deed to registered trust in one week. From registered trust to DARPAN + PAN in two more weeks.
- **Lower annual cost:** No ROC filings, no MCA fees, no statutory audit requirements beyond income tax (unless state law requires it).

Disadvantages

- **Not a separate legal entity in the strict corporate sense:** The trust acts through its trustees. In some legal contexts, the trust cannot sue or be sued in its own name (trustees sue/are sued on behalf of the trust). This distinction rarely matters in practice for small and medium NGOs.
- **Perceived as less transparent by some large corporate CSR teams:** Because trusts don't file with MCA, their accounts are not publicly available in a searchable database. Some institutional donors prefer the MCA-searchable track record of Section 8 Companies.
- **No democratic governance by design:** There is no elected board or member assembly (unless your deed creates one). For organisations wanting broad community governance, a trust structure may feel limiting.

- **State variations create confusion:** Public trust compliance requirements vary significantly by state. Maharashtra and Gujarat require annual filings with the Charity Commissioner. Odisha does not have a separate Public Trust Act — making it one of the simpler states for trust operation.

Best For

- Small to medium NGOs and individuals starting out
 - Family-founded or individual-founded social sector organisations
 - Organisations where founder continuity and institutional stability are important
 - Organisations focused on Odisha or regional operations (where state-level complications are minimal)
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Structure 2 — Society

What It Is

A society is a member-driven organisation established by a group of people for a common charitable, educational, cultural, scientific, or social purpose. It is registered under the Societies Registration Act, 1860 — a colonial-era law still in force, with state-level amendments in most states.

Governing Law

- Societies Registration Act, 1860 (central, adopted by most states)
- In Odisha: Societies Registration Act, 1860 (as adopted for Odisha) — registration with the Registrar of Societies, Odisha

Minimum Requirements

- Minimum **7 members** for initial registration (Societies Registration Act requirement)
- A Memorandum of Association (MoA) defining objects and membership

- Rules and Regulations (Bylaws) governing the society's functioning
- Elected Governing Body (Executive Committee / Board of Governors)
- Annual elections for committee positions in most states

Advantages

- **Democratic governance:** Multiple members have formal rights — to attend general body meetings, vote on major decisions, elect committee members. This creates broader community ownership.
- **Separate legal entity:** Unlike a trust, a society is a separate legal entity that can sue and be sued in its own name (in states where this is legally provided for).
- **Widely familiar to government counterparts:** Many state government departments, universities, and INGO programme teams have long experience working with societies. The structure is recognisable.
- **Useful for membership-based organisations:** Federations, coalitions, professional associations, and community organisations where multiple stakeholders need formal membership status are natural societies.

Disadvantages

- **Higher minimum members:** 7 members at registration. Maintaining quorum for general body meetings. Annual elections. These add administrative complexity to a small organisation.
- **Annual compliance with Registrar of Societies:** Most states require annual filings, list of office-bearers, and sometimes accounts with the Registrar. Missing these can lead to the society being struck off the register — which is common and creates legal complications.
- **Governance disputes:** Democratic governance creates the possibility of governance disputes — election challenges, faction formation, contested meetings. Trusts and Section 8 Companies (with smaller, nominated boards) face this less.

- **Rebuilding required if Memorandum changes:** Changing the MoA requires special resolution and state Registrar approval — more procedurally complex than amending a trust deed.

Best For

- Community-based organisations with broad membership
 - Federations of NGOs, SHGs, or farmer groups
 - Educational institutions (colleges, schools registered under society)
 - Cultural and professional associations
 - Organisations where democratic governance is core to the mission
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Structure 3 — Section 8 Company

What It Is

A Section 8 Company is a non-profit company incorporated under Section 8 of the Companies Act, 2013 — the most structured, most regulated, and most transparent of the three NGO structures. It has all the features of a private limited company (separate legal entity, limited liability, MCA registration, audited accounts filed publicly) except that it cannot distribute profits to its members.

Governing Law

- Companies Act, 2013 (Section 8)
- Ministry of Corporate Affairs (MCA) — Central registration, not state-level
- Annual compliance through MCA21 portal

Minimum Requirements

- Minimum **2 directors** (for a private form Section 8) — no minimum paid-up capital required
- Memorandum of Association (MoA) and Articles of Association (AoA)

- Central Government licence (Form INC-12) from the Regional Director, MCA — this is an additional step not required for trusts or societies
- Incorporation through MCA21 portal

Advantages

- **Highest credibility with institutional donors:** International NGOs, multilateral development agencies (World Bank, UN agencies, USAID), large foundations (Gates, Tata, Azim Premji), and many corporate CSR teams specifically prefer Section 8 Companies because their accounts are filed publicly with MCA and audited under the Companies Act. Due diligence is straightforward.
- **Separate legal entity with limited liability:** Directors are not personally liable for the company's debts. This is particularly important for large-scale operations and grants.
- **Publicly searchable track record:** All annual filings are available on the MCA21 portal. Any donor can verify the organisation's accounts, directors, and registered address online.
- **Best for international funding:** FCRA applications from Section 8 Companies tend to face less MHA scrutiny because the company's audited accounts and governance structure are publicly verifiable.
- **Cleaner governance for multi-stakeholder organisations:** Board appointments are formal, well-documented, and standardised.

Disadvantages

- **Highest compliance burden:** Annual filing with MCA (AOC-4 and MGT-7), statutory audit under the Companies Act, board meetings with proper minutes, director DIN (Director Identification Number), DSC (Digital Signature Certificate) for filings. This adds approximately Rs. 30,000-80,000 in annual compliance costs even for a dormant company.

- **More expensive and time-consuming to incorporate:** The Central Government licence (Form INC-12) adds 1-2 months to the incorporation timeline. Total timeline from decision to incorporation: 4-8 weeks typically.
- **Winding up is complex:** Unlike a trust (which can be dissolved by the trustees) or a society (Registrar-based winding up), winding up a Section 8 Company involves the NCLT (National Company Law Tribunal) — a lengthy process.
- **Less flexible governance for family-founded organisations:** The Companies Act requires proper corporate governance processes that can feel onerous for a small, founder-led organisation.

Best For

- Large-scale social sector organisations receiving significant institutional and international funding
- Organisations intending to apply for FCRA registration early and work with international donors
- Organisations with multiple institutional promoters (companies, foundations, universities)
- Social enterprises running significant revenue-generating activities alongside charity

The Direct Comparison

| Dimension | Trust | Society | Section 8 Company |
|------------------------|--|--------------------------------------|-----------------------------------|
| Governing Law | Indian Trusts Act, 1882 + Registration Act, 1908 | Societies Registration Act, 1860 | Companies Act, 2013 |
| Registration Authority | Sub-Registrar (district level) | Registrar of Societies (state level) | MCA / Regional Director (central) |

| Dimension | Trust | Society | Section 8 Company |
|----------------------------|---|--|---|
| Minimum Members | 2 trustees | 7 members | 2 directors |
| Time to Register | 3-7 working days | 15-30 days | 30-60 days |
| Cost to Register | Rs. 2,000-10,000 (stamp duty + fees) | Rs. 5,000-15,000 | Rs. 10,000-25,000 (includes MCA fees) |
| Annual Compliance Cost | Rs. 8,000-20,000 (CA audit + ITR-7) | Rs. 10,000-25,000 (CA audit + ITR-7 + Registrar) | Rs. 30,000-80,000 (CA audit + Companies Act filings) |
| Separate Legal Entity | No (acts through trustees) | Yes (in most states) | Yes |
| Founder Control | High (lifetime Managing Trustee possible) | Moderate (subject to elections) | Moderate (board structure governed by Articles) |
| Public Accounts Visibility | No (only with Income Tax dept.) | Partial (with Registrar) | Yes (full MCA public database) |
| RNPO / 12A + 80G | Eligible | Eligible | Eligible |
| FCRA Eligibility | Eligible | Eligible | Eligible (preferred by MHA) |
| CSR-1 Eligibility | Eligible (after 3 years + RNPO) | Eligible (after 3 years + RNPO) | Eligible (after 3 years + RNPO) |
| Best For | Small-medium, founder-led, Odisha-focused | Member-based, democratic, education/community | Large-scale, international funding, high credibility |

The IT Act 2025 Change — What It Means for Your Choice

From 1 April 2026, the **Income Tax Act, 2025** replaces the Income Tax Act, 1961. All charitable trusts, societies, and Section 8 Companies are now uniformly treated as **Registered Non-Profit Organisations (RNPOs)** under Chapter XVII-B (Sections 332-355) of the new Act.

This is important: **the new Act makes all three structures identical for tax purposes.** The old distinction where trusts used Sections 12A/12AA/12AB and Section 8 Companies sometimes used Section 10(23C) has been eliminated. Every charitable entity — regardless of structure — now registers under Section 332 (the RNPO registration replacing 12A/12AB) and Section 354 (the 80G equivalent for donor tax deductions).

What this means for choosing a structure: Your choice of trust, society, or Section 8 Company now no longer affects your tax exemption access. All three start on an equal footing from 1 April 2026. The differences that remain are governance, compliance cost, and funder perception — not tax treatment.

The Decision Framework — Five Questions

If you are still unsure, answer these five questions:

Question 1: How many people are starting this organisation together?

- 1-3 people: Trust (simpler governance, fewer minimum requirements)
- 4-10 people with equal stakes: Society or Section 8 Company
- Institution + individuals: Section 8 Company (cleaner multi-institutional governance)

Question 2: What is your primary funding ambition in the first 5 years?

- Domestic donors, Indian CSR, government grants: Trust or Society — both work fine
- International foundations, INGO sub-grants, overseas donors: Section 8 Company (preferred by international donors and MHA for FCRA)
- Both domestic and international: Section 8 Company gives you both

Question 3: How important is public accountability and governance transparency to your mission?

- Not critical (and you value operational flexibility): Trust
- Important but manageable: Society
- Central to your credibility and fundraising: Section 8 Company

Question 4: How much administrative bandwidth do you have?

- Limited (1-2 person operation): Trust (lowest compliance burden)
- Moderate (small team with a CA relationship): Society
- Adequate (dedicated admin + CA): Section 8 Company

Question 5: Where will you operate?

- Odisha (no separate state Public Trusts Act): Trust is simplest
- Maharashtra/Gujarat (Charity Commissioner requirements): Section 8 may actually be simpler
- Pan-India operations: Section 8 Company (central registration works everywhere)

The Odisha-Specific Answer

For most NGO founders in Odisha, a **Public Charitable Trust** is the right starting structure. Here is why:

Odisha does not have a separate state Public Trusts Act (unlike Maharashtra, Gujarat, or Rajasthan). This means a trust in Odisha registers once with the Sub-Registrar, files

its income tax return annually, and has no separate state-level charity commissioner compliance. The sub-registrar registration is fast (3-7 days), inexpensive (stamp duty of Rs. 200-500 on a Rs. 21,000-25,000 corpus is common), and gives you a registered document with immediate legal force.

The RNPO registration (Section 332 + Section 354 of IT Act 2025 — the new 12A and 80G equivalents) and DARPAN registration are identical for trusts, societies, and Section 8 companies. You are not giving anything up by starting as a trust.

If, after 3-5 years of operations, your organisation is receiving significant institutional funding, working with international donors, or bidding for large government contracts, you can assess whether to create a **Section 8 Company alongside the trust** — which is a common model for mature social sector organisations in India that want the compliance simplicity of a trust for domestic operations and the credibility of a Section 8 for institutional relationships.

What If You Already Have a Trust or Society and Want to Switch?

You **cannot convert** a trust directly into a Section 8 Company or a society. The structures are governed by different laws and have different legal personalities. If you want to switch:

- **From Trust to Section 8 Company:** Incorporate a new Section 8 Company separately. The existing trust can transfer assets and activities to the company over time, then potentially wind up once the company is established. This requires legal advice.
- **From Society to Section 8 Company:** Similar — incorporate new Section 8 Company, transfer, wind up society.
- **Adding a Section 8 Company alongside an existing Trust:** This is the most common evolution path for growing Indian NGOs. The trust continues for certain activities; the Section 8 Company handles activities requiring higher

credibility or international funding.

Contact JaBaSu for NGO Structure Guidance

If you are setting up an NGO in Odisha and want advice on which structure suits your specific situation, JaBaSu's Government Interface and Compliance service can help you navigate the decision, connect you with a qualified CA, and support the registration process.

Contact: knowledge@jabasu.org | jabasu.org/contact

Last verified: June 2026. The Income Tax Act, 2025 (effective 1 April 2026) replaces the Income Tax Act, 1961. References to RNPO registration (Section 332) and 80G-equivalent approval (Section 354) reflect the current law. Stamp duty and Sub-Registrar fees vary by district in Odisha — verify current rates with your local Sub-Registrar.

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