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BRIEF INTRODUCTION:

ॐ सर्वे भवन्तु सुखिनः सर्वे सन्तु निरामयाः ।
सर्वे भद्राणि पश्यन्तु मा कश्चिद्दुःखभाग्भवेत् । ॐ शान्तिः शान्तिः शान्तिः ॥

May all sentient beings be at peace, may no one suffer from illness,
May all see what is auspicious, may no one suffer. Om peace, peace, peace.

सभी सुखी हों, सभी रोगमुक्त रहें,
सभी मंगलमय घटनाओं के साक्षी बनें और किसी को भी दुःख का भागी न बनना पड़े। ॐ शान्ति शान्ति शान्ति ॥

India's social consciousness is deeply engraved with the generosity of social service, which have evidently existed in various forms since ages, like the concept of Daana, Dakshina, Bhiksha etc. There are many different ways through which individuals, companies etc. can help bring wellbeing, prosperity to one's life as well as society at large. There are innumerable ways for providing social benefits, it is not restricted only to single individuals but individual altogether as society at large can contribute and take active part, the most common structures for providing social benefit is forming a **Non-Profit Organization** such as Trust, Society and Section 8 Companies. These organizations are set up for providing social welfare, hence considered as Not for Profit Organization; this includes schools, colleges, religious organizations, hospitals etc.

Trusts, Societies and Section 8 companies are non-proprietary organizations, which means that they are set up to provide service to the community and not with a profit motive. In India, educational institutions are mandatorily established by a Trust or Society or a Section 8 company.



In this article we will first define what Trust, Society and Section 8 Company are and then discuss key differences. This article aims to aid the aspiring Entrepreneurs to decide which of

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these non-proprietary organizations is most suited to their conditions, constraints and objectives.

To begin with, we shall see what a trust is. A trust is legal arrangement devised in order to legally entrust a person or a group of persons with the property for the use or benefit of some other person or group of persons. On the other hand, a Society is an association of a set of persons who get into the association for the fulfilment of a goal, which is inspired by social or community service and described under the Societies act.

Coming to the Section 8 companies, these are registered under and governed by Companies Act, 2013. A section 8 company may be formed for promoting a charitable object pertaining to art, commerce, science, health and so on. It is to be noted that Section 8 companies enjoy all the privileges and are subject to all obligations that apply to Limited Companies.

The distinction between a Trust and a Society lies in the expression of the purpose of their creation itself. They can be easily differentiated based on purpose of establishment. A Trust requires at least two people (Three in Public Trust) coming together for its formation whereas a Society must have a minimum of seven persons coming together to set it up.

What is a Trust?

Trust is a legal entity, formed by one party, in which assets are entrusted to the second party by the first party, for the benefit of the third party.

Herein, the first party implies the author of the trust or the Settlor; the second party is called the Trustee. The Settlor entrusts the assets to the Trustee on the beneficiary's (third party's) behalf.

The subject matter of the trust is known as *Trust Property*, and the document detailing the terms and conditions is called *Trust Deed*.

Trusts are governed by the Indian Trusts Act, 1882 applicable throughout the country with the exception of the state of Jammu & Kashmir.

What is a Society?

Society is a group of persons who are mutually associated for the fulfilment of a common goal or for serving a shared purpose, such goal or purpose may pertain to the advancement of any literary, charitable or scientific work.

Incorporation of a Society requires an association of a *minimum of seven persons*. The association is formalized by the signing of a Memorandum of Association (MoA) which is

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filed to the Registrar of Companies (ROC). In this way, the society is legally formed under the Societies Registration Act, 1860.

The MoA contains the name and the stated objective of the Society. In addition, it also details the names, addresses and professions of the members of the governing body which is formed by governors, directors, council, and trustees among others.

What is Section 8 Company?

Section 8 Company is named Section 8 of the Companies Act, 2013, which pertains to an established 'for promoting commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object', provided the profits, if any, or other income is applied for promoting only the objects of the company and no dividend is paid to its members. Therefore, Section 8 Company or Section 25 Company (As per old act) is a company registered under the Companies Act, 2013 for charitable or not-for-profit purposes.

A Section 8 Company is similar to a Trust or Society; except a section 8 Company is registered under the Central Government's Ministry of Corporate Affairs. Trusts and Societies are registered under State Government regulations. A section 8 company has various advantages when compared to Trust or Society like improved recognition and better legal standing. Section 8 company also has higher credibility amongst donors, Government departments and other stakeholders.

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DIFFERENCE BETWEEN TRUST, SOCIETY & SECTION 8 COMPANY

S. NO	Basic of Difference	Trust	Society	Section 8 Company
1.	Statute/Legislation	Trusts governed by the Indian Trust Act, 1882	Societies are governed by the Societies Registration Act 1860, which is an all-India Act. Many states, however, have variants on the Act.	Section 8 Companies are governed by the Indian Companies Act, 2013.
2.	Jurisdiction	The trusts are under the jurisdiction of Deputy Registrar/Charity Commissioner of the relevant area.	The power to register a society lies in the hand of Registrar of societies	The power to register a section 8 Company lies in the hand of Regional Director & Registrar of Companies of concerned state.
3.	Nature of Control	One Man Control i.e., settlor / founder trustee / board of trustees	Decisions are made by voting power	Governed by the Board of Directors
4.	Registration Document	For Registration of Trust main instrument is Trust deed.	For Registration of society main instrument is Memorandum of Association and rules & regulations.	For registration of Section 8 Company main instrument is Memorandum and Articles of Association.
5.	Stamp Duty	Trust deed to be executed on non-judicial stamp paper, vary from state to state.	No stamp duty required for memorandum of association and rules and regulations.	No stamp duty required for memorandum and articles of association.

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6.	Members Required	At least Two (three in case of Public Trust) trustees are required to register a public charitable trust. In general, Indian citizens serve as trustees, although there is no prohibition against non-natural legal persons or foreigners serving in this capacity.	Minimum: - Seven members are required for formation of state level society. - Eight members required from separate states for formation of national level society.	Minimum 2 for a private company and 7 for a public ltd company.
7.	Board of Management	Trusts are governed by their trustees or by board of trustees.	Societies are usually managed by a governing council or managing Committee.	It is managed by the board of directors.
8.	Area of Activities	Applicable to whole of over India no matter from which state trust deed belongs	In case society is formed within particular state with 7 or more members then within that particulars state it is applicable, for all over India with different state 8 or more members has to be present.	As registered by central processing centre (CPC), applicable all over India
9.	Legal Title	Legal title of the property of a trust vests in the hands of trustees	In a society, all properties are held in the name of the society.	In section 8 Company, all properties are held in the name of Company.
10.	Time Period involved in registration/formation	15-20 days	30-45 days	10-15 days
11.	Possibility of Amendment	Can be done through supplementary trust deed	Relatively difficult as both the memorandum & bye laws has to be amended	Restricted without approval of CG

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12.	Annual Compliance	There is no Requirement of annual return filing except Income Tax return	Societies must file annually, with the Registrar of Societies, a list of the names, addresses and occupations of their managing committee members.	There is requirement of annual compliance by filing of annual accounts and return of company with the RoC.
13.	Cost Efficiency factor	Low Cost & Less Transparent	Low Cost & Less Transparent	Comparatively Higher Cost & More Transparent
14.	Registration with Income Tax u/s. 12A & 80G as NGO	At par with society & Section 8 Company.	At par with trust & Section 8 Company.	At par with trust & Society.
15.	From the point of view of Grant of subsidy by the government	Moderately preferred	Moderately preferred Read more	Most preferred
16.	Winding Up	Generally irrevocable, hence cannot be easily wound but, as per the trust deed can be wound up	Societies may be Dissolved and the Dissolution must be approved by at least three-fifths of the society's members.	A section 8 Company may be dissolved.

WHAT'S BETTER- TRUSTS, SOCIETIES OR SECTION 8 COMPANIES??

From the above discussion it is clear that all the organizations i.e. Trusts/ Society/ Section 8 Co. are meant to provide social benefit, relief to poor's and providing social welfare to society at large, they cannot do any other work apart from providing social benefits and what is prescribed in the main documents, the surplus from their business cannot be applied in any other object, i.e. Non-Profit Organization. There is no evident particular situation under which one can choose what to form, like in case of providing social benefit to one individual/family (in case of private trust) or to society at large (in case of public trust) wherein it can be properly managed, the trustee to hold office for his or her lifetime without the need for an election. Privacy in activity as well as flexibility in the division of benefits.

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Now, in case if person wants more organized, structural way managed through elected bodies to provide social benefits to public at large then formation of societies is the ideal choice. If one desires to provide social welfare as a legal structure of a company, to gain reliability and credibility as it is an approved establishment by the central government, with no requirement of higher, more benefits of government subsidies, foreign contribution, more transparency. Hence, it is evident from the above discussion that there are no specific criteria that one must follow to decide which Not- for- profit organization is better. Section 8 company is the best as this facility is not granted in trusts/ societies.

Thanks & Regards

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