When disability strikes, who controls your money?

While the joint holder and nomination facilities ensure that funds continue to flow, more durable, long-term tools such as a trust and guardianship are required in the event of disability.

by **Kayezad E. Adajania**

When Mumbai-based Balakrishnan Iyer's mother passed away in June after a fall and post-operative complications, the 50-year-old rushed to his parents' native town in Kerala to settle affairs. His father, suffering from advanced dementia, had been moved to palliative care. Iyer had no idea where his parents kept their money. Searching the house, he found five bank passbooks.

That's when his troubles began. One account was already blocked; his father had missed last year's mandatory KYC (Know Your Client) update and was now bedridden and unable to visit the branch. When a bank official visited him at his nursing care home, his father's fingerprints failed authentication. By early November, his father passed away. Today, four of the five accounts remain blocked due to missing nominees, inoperative status, or funds transferred to the Depositor Education and Awareness Fund with the Reserve Bank of India (RBI).

Most Indians focus on medical care or insurance when thinking about disability. Financial planning is relegated to "later". But when that moment finally arrives, it's often too late—the person lacks the capacity to sign documents, resulting in frozen bank accounts, legal battles, family feuds, and financial exploitation. Iyer's parents didn't divulge their finances to him or to any of their loved ones. Despite having multiple siblings, discussing money was taboo.

Forget about not making a will, many of us do not give a thought about who's going to manage our money if and when disability strikes. Bank accounts and investments get neglected and eventually frozen. The money saved, that was meant to tide over old age, remains out of reach.

"Professional trustees may be appointed. The trusteeship company charges are usually a percentage of AUM, between 1.5% to 2.5% per annum."

RAJAT DUTTA,
FOUNDER, INHERITANCE NEEDS SERVICES

The decline

Disability can strike us either mentally or physically. Medical experts say that for many patients who eventually get clinically diagnosed with dementia or Alzheimer's, the signs have been around for some time. "Many adults have unrecognised cognitive vulnerabilities for a long time, but our brain, much like other organs, tends to mask the early symptoms," says Tanvi Mallya, a neuropsychologist and the Founder of Tanvi Mallya's ElderCare Services (TMECS). Mallya specialises in neurodegenerative conditions such as Alzheimer's disease, various forms of dementia, stroke, and Parkinson's disease.

Dr Naganath Narasimhan Prem, Chief Consultant Geriatrician, Jaslok Hospital, Mumbai, says that increased frequency of unpaid bills and missing payments, poor judgment of financial risk, repeatedly falling prey to scams, unexplained or unnecessary expenditures, and trouble reconciling accounts or managing budgets are classic red flags of early dementia. Repeatedly forgetting to pay rent or utility bills is yet another sign. "Families may start with gentle support, but if decision-making is clearly compromised, formal assessment (possibly via a geriatrician or legal process) and protective arrangements become the appropriate choice," he says.

Here's what's scarier. Physical disability may strike anytime. Mallya adds that, post-Covid-19, the incidence of stroke among young people has been on the rise. Further, "adults can become incapacitated at any age due to sudden events like strokes, accidents, or acute illnesses," says Dr Sachin Kolli, Geriatric Medicine Resident, Mumbai.

Power of Attorney: your first line of defence

Had Iyer's mother or father registered a Power of Attorney (PoA) and submitted it to their banks, their money would have been available when they needed. The branch visit crisis too would not have happened.

A PoA is a document signed by the owner of the asset authorising another person (blood relative or otherwise) to sign on his/her behalf as a legal representative. The authority could include performing specific bank operations, such as signing cheques for payments or withdrawing money, as well as handling other financial matters, such as investments and property transactions. The PoA needs to be registered with the Office of Assurances or a Sub Registrar to confirm its validity. A general PoA gives the designated person the power to perform multiple tasks on your behalf. At the same time, a specific PoA grants the designated person limited rights to complete a specified task assigned to them. For instance, in case you are old and unwell and intend to sell your house in another city, because of your inability to travel, you may decide to trust your family member and register a PoA in his/her favour to enable him/her to execute the house sale deed/documents on your behalf.

But a PoA has limitations. First, it becomes legally effective the moment it is submitted to the bank or financial institution. If you are currently able-bodied and hope to use a PoA only when a future disability arises, this can be problematic. Technically, the day you submit it to the bank or any financial counterparty, you must be fit, healthy and mentally competent. A PoA signed much earlier may lose its significance if submitted later. Also, you may not be able to time your disability, and if you submit the same to the bank, the end moment (disability) may not occur. "In many countries, citizens are allowed to formulate PoAs that get triggered on a medical contingent event. In India, we do not have such PoAs," says Sneha Makhija, Head of Wealth Planning at Sanctum Wealth.

Another limitation is that "a PoA works only as long as you remain mentally capable. The moment you become mentally incapacitated, the PoA ceases to be valid," says Jitendra Solanki, a Sebi (Securities and Exchange Board of India) registered investment adviser. In many countries, this gap is addressed through Durable PoAs, which continue to remain effective even after loss of mental capacity. However, such instruments are not recognised in India. Trust forms the fulcrum of a PoA. Experts say the adoption of PoA as a tool has witnessed a decline due to numerous instances of misuse.

Before it's too late...

A comprehensive guide to financial planning for future incapacity

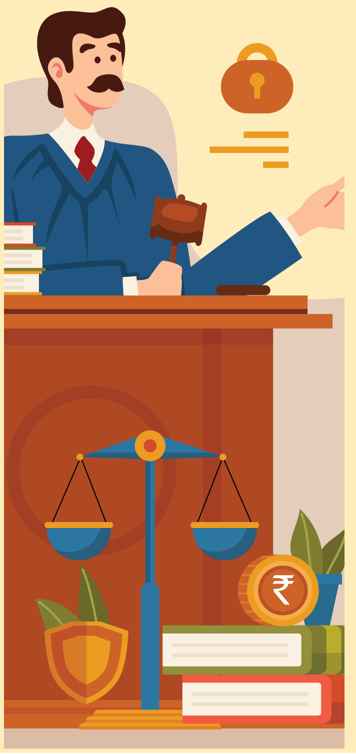
The reality check

Physical disability can happen overnight (stroke, accident)

Mental decline is gradual but often unrecognised for years

Without planning: Frozen accounts, 6+ month court battles, financial exploitation

Your planning tools



Power of attorney (PoA)

First line of defence, but with limitations

- Works for physical disability
- Fails once you are mentally incapacitated
- Takes effect immediatley (misuse risk)

Note: Must execute while healthy; active immediately upon signing

Private family trust — Strongest option

The gold standard for disability planning

- Works for both **physical & mental incapacity**
- **Myth-busted:** Start with just ₹**10,000**
- Add money via SIP; multiple trustees for safety
- Ringfenced from creditors (irrevocable)

Best for: Singles, elderly without family support

Court-appointed guardian

Works independently or with Trust

Always handles: Medical decisions, surgeries, caregivers, food, living arrangements

Without Trust: Also manages your frozen financial assets

6+ months court process (disability certificate + petition)

Cannot be pre-designated; court appoints after incapacity

Trust, when PoA isn't enough

For those who wish to plan for future disability, a trust works best. You can form a trust and assign a portion of your assets to it. This works especially for those who are single and have no dependants to look after them in future, if they were to be disabled.

Broadly, there are two types of trusts: revocable and irrevocable. A revocable trust is one in which you (the settlor/creator) remain the sole beneficiary and is formed with a definitive purpose. Upon attainment of the purpose, the trust dissolves, with its assets returning to the settlor through distribution. Hence, for taxation, the income of a revocable trust is clubbed with the income of the settlor and taxed. Therefore, both by design and form, a revocable trust serves no purpose other than creating an entity for parking assets with a limited purpose.

Here's where revocable trusts can get dangerous. The money you set aside in these trusts isn't ringfenced. In simple words, if you fall on hard times later and creditors come knocking, they can take away your trust money as well.

An irrevocable trust, therefore, makes more sense. Once you create such a trust and, as the settlor, transfer your wealth as corpus to a private family trust for the benefit of your chosen family members, that wealth is ringfenced. As the initial settlor, your assets/funds on being ceded to the trust form the trust corpus. You, as a settlor, can be one of the trustees (minimum 2 are required) and also one of the beneficiaries, along with other family members. "The trust deed enables investing the trust corpus effectively and utilise the income to meet all stipulated and necessary, well-identified expenses including those of beneficiaries, and household expenses, maintenance cost of the residence, medical expenses, educational, skill and hobby expenses, as well as meeting other lifestyle expenses like foreign travel and costs of holidaying, and so on, of the beneficiary; with the settlor being one of the beneficiaries, even if you remain able-bodied during your lifetime," says Rajat Dutta, Founder, Inheritance Needs Services.

Makhija says that a trust works better than a PoA because, unlike a PoA, a trust is ringfenced. The money is used only as stated in the trust deed. "You should have more than one trustee (which is usually yourself), who can govern the trust. You can even appoint successor trustees to take over if and when you become incapacitated," says Makhija.

> "You can form a trust even with initial capital of ₹10,000. Any middle-class family can get a trust formed."
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> **JITENDRA SOLANKI,** SEBI REGISTERED INVESTMENT ADVISER

Many think of a trust as a tool of the rich and famous. "That's not true," says Solanki. He says you can form a trust with a corpus as low as ₹ 10,000. "After setting aside the initial corpus, you can also set up a Systematic Investment Plan (SIP) where money can go from your regular income or salary bank account into your trust account," says Solanki. In case you do not have any family member, or anyone in your immediate circle of friends, colleagues or acquaintances to be a trustee of your private family trust, you have the option to appoint professional trusteeship companies. "Their charges are usually a percentage of the asset under management, which could range between 1.5% to 2.5% per annum," says Dutta.

The guardianship route

A trust can manage your financial corpus—investments, accounts, taxes and related tasks. But you still need someone to handle personal and day-to-day decisions if you become incapacitated. Where you live, appointing caregivers and paying them, approving medical treatment—these are decisions a trust cannot make. A guardian must take these calls on your behalf.

The question is, who can act as your guardian? Parents are natural guardians only until a child turns 18. But once you cross the age, only the courts can appoint guardians for you, especially if you are disabled. A guardian becomes crucial even if you haven't created a trust before disability strikes. Unlike many countries where you can legally designate a future guardian, India does not allow you to officially choose one in advance. Once you become incapacitated, someone must approach a competent court to be appointed as your guardian. "If you have family, a member can step in immediately. But if you live alone, you can alert trusted people beforehand and even record your preference in your trust deed, if you have one. In such cases, a co-trustee may also act as your guardian, provided they agree and are informed well in advance," says Solanki.

Your guardian needs a disability certificate which is obtained only from a government hospital. Once you get the certificate, which can take at least three month, s/he needs to hire a lawyer to file a petition in the appropriate court.

In India, a Guardianship Certificate is issued by the Local Level Committee appointed under the National Trust Act, 1999, for individuals with disabilities like autism, cerebral palsy, intellectual disability, and multiple disabilities. For other cases, the district court issues a certificate. After the court hearing is done, s/he gets to be your legally-appointed guardian. The entire legal process for your guardian's official appointment can take at least six months to a year.

The banking reality check

If a customer is unable to sign, banks accept a thumb or toe impression. But customers must visit the branch whenever they need to give a thumb or toe impression, and one or two bank officials must witness it. Some banks, such as Bank of Baroda and Kotak Bank, told *ET Wealth* that they offer doorstep banking services, though not all banks do. It also depends on your relationship with your bank. Disabled people can also access internet banking.

Your legal guardian can operate your bank account in case you are mentally incapacitated. They need a Guardianship Certificate, as discussed earlier, issued by the court. "Banks require a guardian only in situations where it is evident—either based on documentary evidence or the bank's own assessment—that the individual is mentally incapacitated and unable to enter into a valid and legally binding contract," says a Bank of Baroda spokesperson. Since a guardianship takes time to be put in place, "the most critical step before any disability occurs is to maintain a joint account with an 'either or survivor' mode of operation and ensure that a valid nomination is registered. This arrangement helps prevent delays in accessing funds," says Reynold D'souza, President & Head - Branch Banking, North and TASC, Axis Bank.

If you take the PoA route, your PoA holder must register with the bank account. Tarun Sharma, Senior Executive Vice President and Head, Liability and Payment Products, Kotak Bank, cautions that PoA holders often face issues with the bank because government-issued disability proof may be missing, leading to disputes over private doctor certificates. Date of birth proof could be unavailable, requiring additional documents from the customer and internal approvals."

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