

# Towards building an Islamic Republic

The constitution of the Islamic Republic of Iran approved in a nation-wide referendum on December 2-3, 1979, is a unique document in the contemporary history of Muslims. After a lapse of several hundred years an authentic attempt has been made to present an Islamic alternative to existing political systems. **Mohammed Hassan** explores the power structure in the polity envisaged by the constitution.

CONSTITUTIONALISM has a long history in Iran. The majority of the people of Iran are *Shi'i Itha'asharis* (or twelvers) who believe in a succession of twelve Imams after the Prophet Muhammad (may peace be upon him). The last of these is believed to be in *ghayba* (occultation) to appear towards the end of time. This concept of the appearance of a deliverer (*Mahdi*) towards the end of time is shared by all Muslims, except that the *Sunnis* believe that the *Mahdi* is yet to be born.

The dominant political theme for Iranian Muslims has been the shape of government during the occultation of the twelfth Imam. Given the prevailing monarchical system since the time of the Safavid kings and its increasing degeneration into despotism by the end of the nineteenth century, the constitutional limitation of monarchical power formed the principal goal of the revolutionary movement of 1905-1090. This kind of limitation on authority was seen by the *Ulema* as a means to check

tyranny and foreign domination. Provisions were also made in the resulting constitution for a body of *Ulema* to supervise all legislation and ensure its adherence to Islamic principles.

The attempt was short lived and rapidly degenerated into dictatorship and ultimately Pahlavi despotism. The experience, however, had a decisive influence on the Islamic revolution which succeeded in 1979. This time it was felt that a mere constitutional limitation on power was insufficient and that the *Ulema* as guardians of the people in the absence of the twelfth Imam, were duty bound to oversee the whole political process. Similarly, the power of the *Ulema* to scrutinise all legislation for adherence to Islamic and Constitutional principles was strengthened and legislation made conditional on the approval of this body. Finally, given the long history of despotism, an elaborate network of checks and balances have been provided for to guard against degeneration of the system into

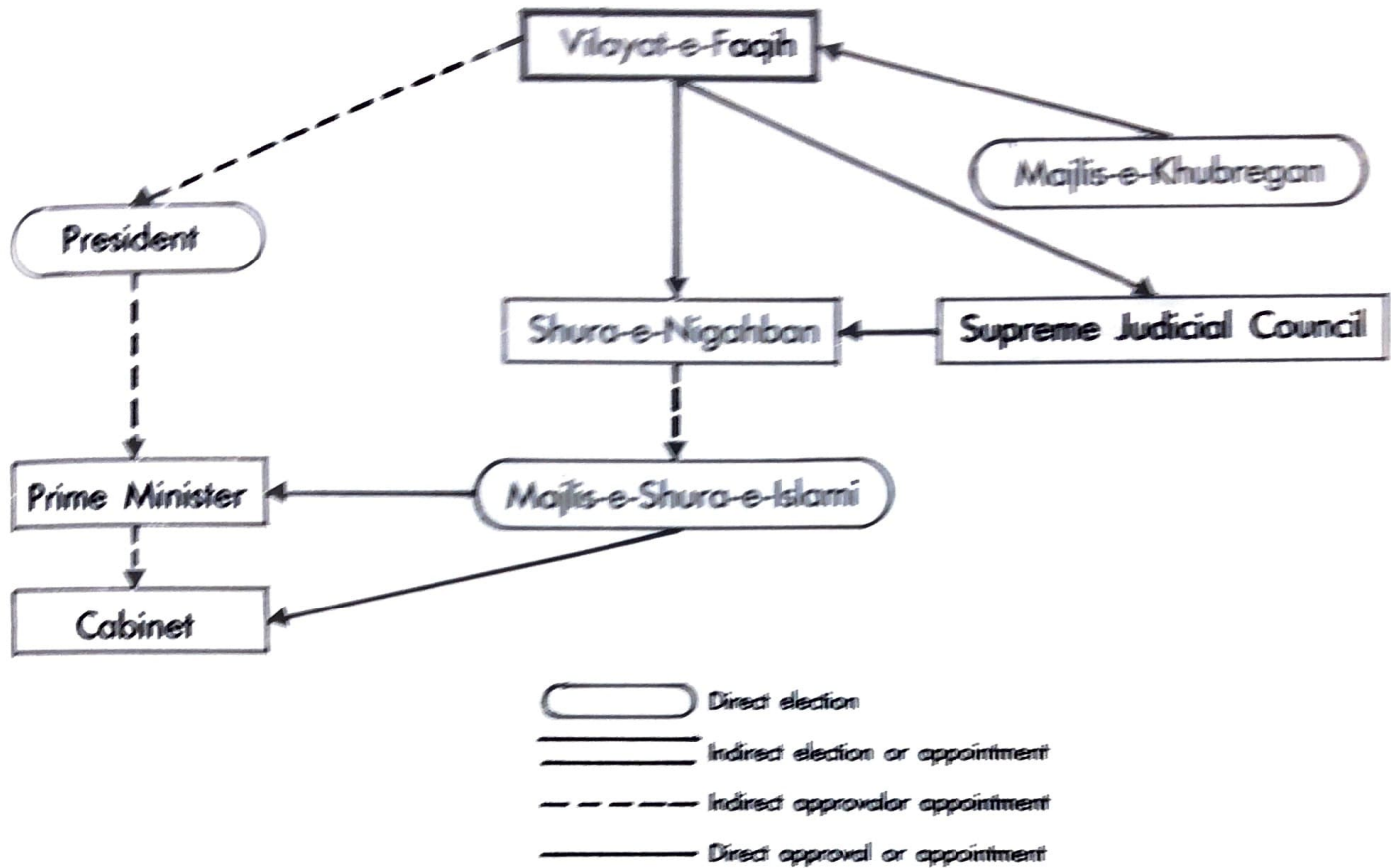
dictatorship.

The system thus emerging has three elected institutions and five nominated or indirectly approved institutions. Contrary to popular belief, at the apex is the *Majlis-e-Khubragan* (The Assembly of Experts). This body elected by popular ballot comprises of over eighty leading jurists and scholars well versed in Islamic law. It is specifically charged with the task of filling any vacancy in the post of the *Vilayat-e-Faqih* (the Leader or the Leadership Council). The present incumbent is, of course, Imam Khomeini. In principle, the post could be filled by one, three or five qualified *fuqaha* (jurists). The *Majlis-e-Khubragan* can also dismiss the Leader or the Leadership Council if they cease to comply with the necessary conditions.

The second elected institution is the *Majlis-e-Shura-e-Islami* (the Islamic Consultative Assembly). This body comprising 270 elected deputies is the main legislative organ of the Islamic state. It is also charged with the task of approving the President's nominee for Prime Ministership and the Prime Minister's choice of ministers.

The final elected institution is the President. The President is elected by a direct ballot but his election must be ratified by the Leader or Leadership Council (*Vilayat-e-Faqih*). The President nominates a Prime Minister but this should be approved by a majority

## The political system of the Islamic Republic



ballot in the *Majlis-e-Shura* (the Parliament).

The prime non-elective body is that of the *Vilayat-e-Faqih* (the Leader or the Leadership Council). However, once a Leader or Leadership Council emerges or is appointed by the Assembly of Experts (*Majlis-e-Khubregan*), the office carries wide-ranging and decisive powers. These comprise of power to declare war, appoint the commander-in-chief of the armed forces, approval of presidential elections, appointment of six *Fuqaha* (jurists) on the Guardianship Council (*Shura-e-Nigahban*), the appointment of the Chief Justice and the appointment of the Prosecutor General. Thus effectively the Islamic direction of the state is dependant on the Leader or Leadership Council.

The second non-elective body is the *Shura-e-Nigahban* (the Guardianship Council). This comprises of twelve members - six

*fuqaha* (jurists) and six lawyers. The six *fuqaha* are nominated by the Leader or Leadership Council and the six lawyers are elected by the parliament (*majlis*) from among those introduced by the Supreme Judicial Council. Matters of Islamic principle are determined by a majority vote of the six *fuqaha* and those of constitutional compliance by a majority vote of the twelve-member body.

The *Shura-e-Nigahban* is the second most powerful body after the *Vilayat-e-Faqih*. It should approve all the candidates proposing to stand for presidential and parliamentary elections. It should also approve all legislation passed by the *majlis* - indeed without its approval all such legislation is void. Provisions are made for the Guardianship Council to work to a strict timetable to avoid undue delays in enacting legislation.

The Supreme Judicial Council is also non-elective. It is at the apex of

the independent judiciary of the state. As mentioned, the Leader or Leadership Council appoints the Chief Justice and the Prosecutor General. The rest of the Council comprises of three *fuqaha* (jurists) elected from amongst the judges throughout the country.

The other two non-elective bodies are the Prime Minister and the Council of Ministers. Both should be approved by the *majlis* and together form the main executive organ of the state.

The structure thus envisaged has been thoroughly tested in the four and a half years since the promulgation of the Constitution. Initially, the election of Abol Hassan Bani Sadr as President and a *Majlis* opposed to his views led to a great deal of friction. In this phase, the primacy of the *majlis* over the presidency was clearly established. After a prolonged battle, Bani Sadr was forced to accept Muhammad Ali Rajai as Prime Minister. The friction

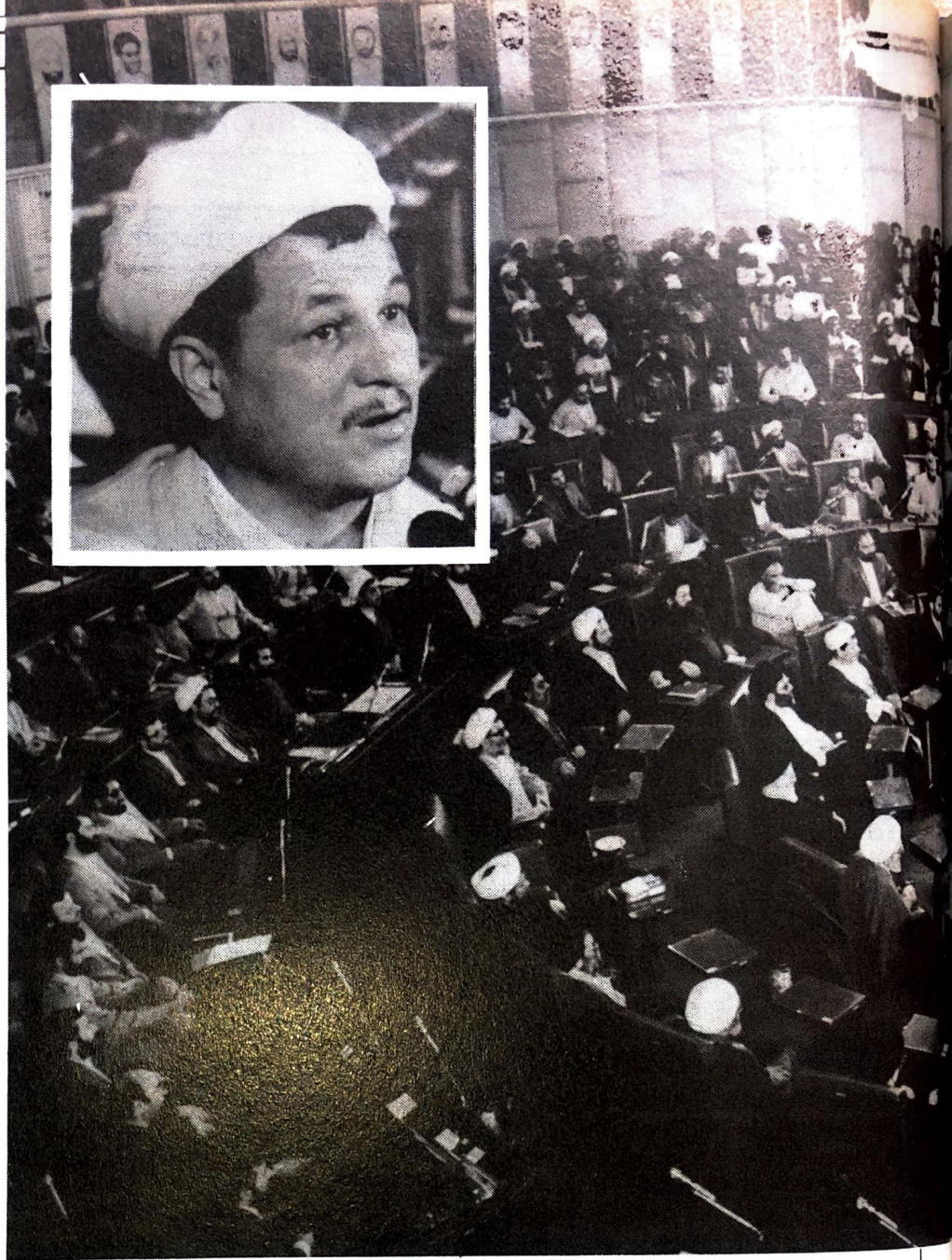
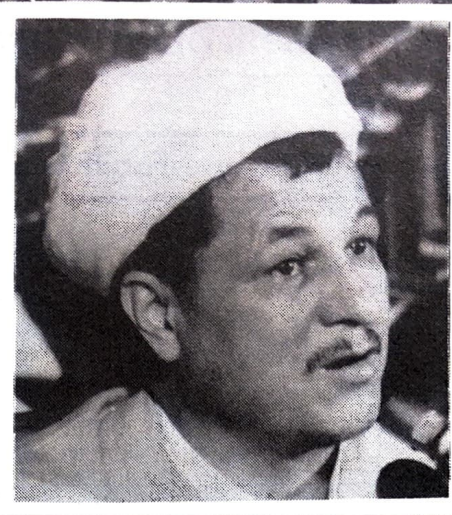
## IRAN

persisted and Bani Sadr tried to by-pass the *majlis* and the Prime Minister. This pass eventually led him to resort to extra-constitutional means to enforce his will. The *majlis* again prevailed by impeaching him.

The second phase commenced with a sustained terrorist campaign by the *Mujahedeen-e-Khalq* organisation. This resulted in the assassination of the Chief Justice, Ayatullah Muhammad Hussein Beheshti, the new President Muhammad Ali Rajai and the new Prime Minister Mohammad Javad Bahonar, the Prosecutor General - Ayatullah Quddusi and several deputies of the *Majlis*. This happened when the country had been invaded by Iraq and large tracts of its territory were occupied. All the posts becoming vacant were filled speedily as per the relevant constitutional provisions. Not having to resort to any emergency powers testified to the veracity of the constitutional provisions and the primacy of the constitution. Henceforth, it would be difficult to resort to extra-constitutional powers given the strong precedent established in the most trying circumstances.

In the third phase a new President - Sayyid Ali Khamenei - has been elected. The *Majlis-e-Khubragan* (Assembly of experts) has also been elected and has commenced work on devising its internal protocols under the Chairmanship of Ayatullah Mishkini. After the expiry of its four-year term, elections for the second *Majlis* were held in April and May 1984, and the new *majlis* has just started functioning.

One of the most intriguing aspects of the new political structure has been the flow of legislation from the *majlis* to the *Shura-e-Nughaban* (Guardianship Council) and back from the Council to the *majlis*. It is here that the mammoth task of providing an Islamic context for present day society is gradually being enacted. Legislation like the one providing for land reform or the nationalisation of sectors of the economy or the Islamisation of the banking system, which has a far-reaching impact on the shape of the future polity has been debated and amended by the Guardianship Council over a prolonged period of



## Key Concepts

### **Vilayat-e-Faqih**

Guardianship of the Jurisconsult  
The supreme authority of the Islamic State

### **Majlis-e-Shura-e-Islami**

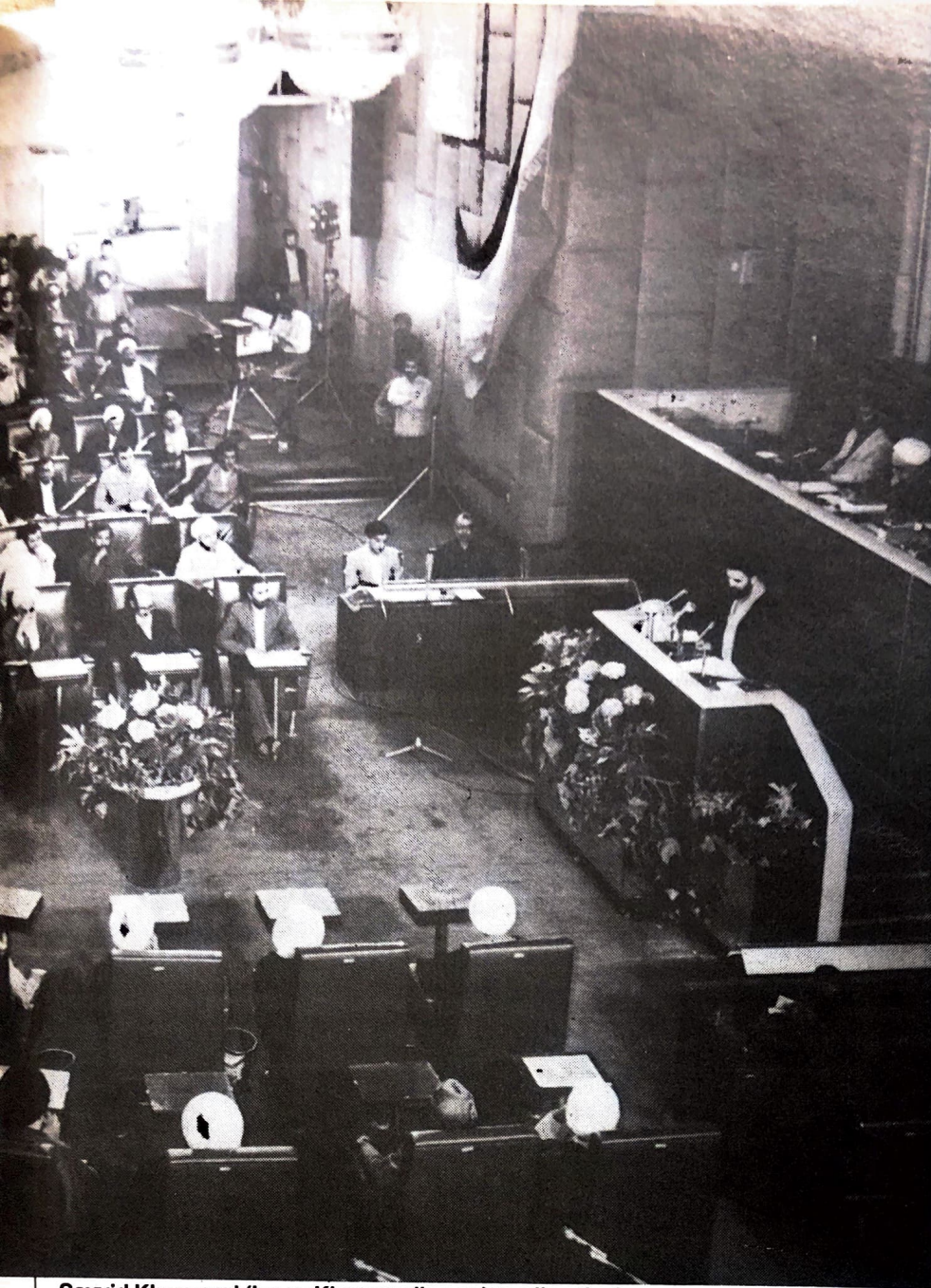
Islamic Consultative Assembly - the elected parliament of the country

### **Majlis-e-Khubragan**

Assembly of Experts - the elected body charged with filling any vacancy in the post of Vilayat-e-Faqih

### **Shura-e-Nigahban**

The Guardianship Council - the body charged with vetting all legislation for compliance with Islamic and constitutional principles



**Sayyid Khumayni (Imam Khumayni's son) reading the Imam's message to the first majlis. Inset: Hojjat-ul-Islam Hashemi Rafsanjani, the Speaker of the Parliament and Imam's representative on the Supreme Defence Council.**

time. Perusing the debates one becomes aware of the enormity of the issues which have to be considered before definitive legislation can be passed.

Indeed, it is fair to say that the *Shura-e-Nigahban* has proved to be a conservative and moderating force for much of the new and radical legislation proposed by the *majlis*. The elective nature of the *majlis* leads it to expediency and the urge to enact legislation as speedily as possible. The presence of the *fuyūha* (jurists) on the Guardianship Council leads to extreme caution and conservatism. It is fascinating to watch legislation emerging out of this strait-jacket. There

seems little other choice if a functioning Islamic polity is to be devised in present day society.

The other interesting aspect of the emerging political structure is the success of the electoral process. Several elections have been held during the course of the last five years. To organise elections for a population of nearly 40 million - a population unused to a real ballot - and get voter turn-outs of nearly 75 percent is a remarkable feat. Broadly speaking, the elections have been free from let and hindrance.

The electoral process has thrown up two very independent and determined parliaments. Indeed, were it not for the *Majlis'* liking for the

present President, Sayyid Ali Khomeini, the checks and balances in the constitution may have put the system under great strain. Even so, the President's nominees for the post of Prime Minister have been turned down by the *majlis*. Mir Hussein Moosawi, has also had difficulty in getting *Majlis* approval for quite a few of his ministerial nominees. The primacy of the *majlis* - a key factor in the ouster of Bani Sadr - has been even more firmly established.

The second *majlis* elections have also thrown up issues which will need deliberation by the country's leadership in the months to come.

In particular, little regard has been paid to electoral ethics. During the second *majlis* election cases emerged of improper use of funds and devious interests hiding behind innocent faces. The Council of Guardians responsible for the electoral process was forced to nullify several results. It became clear that limitations on spending and provisions for declaration of conflicts of interest will have to be enshrined in electoral law to prevent abuse and lack of faith in the electoral process.

The difficulty stems from the fact that the Islamic ethic does not envisage individual self-promotion and encourages humility and modesty. Thus whilst the majority of the candidates adhere to these dictums, a few self-seeking individuals projecting themselves can capture the attention of the electorate and thus get elected. Thus rules about publicity, media coverage and nomination of candidates will have to be devised to circumvent this difficult problem.

Generally speaking, it can be said that a firm foundation has been laid for a functioning Islamic polity and that once the teething problems are over, it will provide a model for many other Muslim states to emulate. It should also be pointed out that the Guardianship of the Jurisconsult (*Velayat-e-Faqih*) approximates closely in its political impact to the institution of *Khilafat* in *Sunni* political theory and thus provides an important bridge to transcend the historic differences between the two major groups of Muslims