EDITORIAL

We thank the President of the Indian Law Institute, the Hon'ble Shri S. R. Das, Chief Justice of India, for formally introducing the Journal to its constituency.

On an occasion like this, though we may be tempted to be expansive, the objectives of the Journal, as expressed in the suggestive foreword of the Chief Justice, are so sobering that enthusiastic promises are ruled out.

A steady supply of standard legal contributions to the Journal from students of law generally is not forthcoming in India today. The Journal will have to depend on the Law Institute for sustenance. One might, therefore, state that the success of this Journal should be a sign of the vitality and growth of the Indian Law Institute.

Since the assured future of the Journal can only be built on the success of the research work of the Institute, it is necessary to refer to a condition on which that success depends. All the well-known American and English enquiries into administrative procedure and management were official. In America, the Attorney-General's Committee on Administrative Procedure as well as the Benjamin Report in the State of New York on Administrative Adjudication and the Wisconsin Report on Administrative Rule-making, to mention only a few, have been sponsored by the respective governments. In England, the Committee on Ministers' Powers (1929-32) and the recent Committee on Administrative Enquiries (1955-57), commonly known as the Franks Committee, were appointed by the Lord Chancellor. Even when the study is undertaken by academic bodies, the American governments generally co-operate to the maximum extent possible. There used to be a feeling that the British Civil Service had a negative attitude in this matter. However, there is no such attitude now. For example, the departmental help to a recent survey by a Study Group of the Royal Institute of Public Administration on the organisation of British Central Government, 1914-1956, is thus acknowledged:

"Each major government department contributed a

> memorandum on the changes which have taken place in its own field during the period since 1914.... Liaison Officers appointed by each of the major departments gave invaluable aid—indeed the Group is most grateful to departments generally, for much official help, most willingly extended."

In India, the change-over into a welfare state has created widespread interest not only in government circles, but also in the public about the working of official tribunals and government departments. The Indian Law Institute has launched, besides other research projects, a scheme for the study of Administrative Procedure. We are looking forward to all encouragement and co-operation from the Government of India and State Governments in this matter.

The articles in this Journal are mostly the corrected texts of the contributions to the Seminar of the Institute held in December, 1957. The publication of the important papers and speeches contributed to the Seminar is planned to be completed by the next issue of the Journal. The main aim of that Seminar was to focus attention on problems of Public Law in India with special reference to administrative law, and this fact explains the special character of the contributions.

No explanation, much less apology, is needed today for emphasizing Public Law. In the feudal state, land law developed; the 'laissez faire' state nurtured commercial law and the welfare state has given immense impetus to administrative law. The predominance of Public Law does not, as some fear, mean the predominance of government over individual. On the other hand, it indicates the re-affirmed determination of law to keep government so regulated as to preserve the liberty of the individual. How far planning and freedom are irreconcilable has become a recurrent topic of debate today. It is felt that the available data do not lead to any inference that 'rule of law', (which is the legal equivalent to the political word 'freedom') is impossible of realisation in a planned state, or, to use another term, welfare state. What exactly is the essence of the welfare state? Looked at its serious substance, the welfare state attempts by legislation to minimise the evils of

economic disparity that now exists between the various sections of the community. And what is rule of law? The real core of the phrase 'rule of law' is a negation of uncontrolled discretion in public authority when dealing with the rights of private individuals. We cannot overlook the close relation of official discretion to administrative efficiency, nor can we deny the need for authority to be commensurate with the duties that modern India expects of its government. Still, as a freedom-loving nation, we cannot also forget that for the efficiency of the machine created to achieve it we cannot sacrifice that end itself; and the end of all human institutions is service of individual men and women of flesh and blood. The burden of twentieth century law is to reconcile administrative discretion with individual freedom. This burden, the law can discharge only by devising machinery to ensure that the administrative process is protected from stultification by too many and too much checks and that the wielders of power do not abuse it. If a government of checks and balances was deemed the secret of the success of the liberal democratic state, we venture to suggest that the success of a welfare state will depend to a great extent on balanced checks. For example, one of the checks envisaged to safeguard delegated legislative powers from being abused is a legislative committee to be consulted before any rule is drafted Experience has shown that such a committee, if it does not proceed under studied self-restraint, will, by attempting to dictate the policy that should underlie delegated legislation, not only destroy all those benefits that are to be derived from delegating rule-making power but also delay the very formulation of the rules. If the legislature and the judiciary proceed to check the activity of the executive without balance, the progress of the welfare state will be impeded. What should therefore be the real approach? It appears to us that there is one among others. The processes which precede the decisions of public authorities are to be so organized that they have the consent of the public which is affected by such decisions. In other words, the focus of attention today should be on fairness in administrative procedure, whether it is the action of a tribunal or a department or an independent public corporation or government, Union, State or local.

Studies that point out reforms that would ingratiate the administrative process with the people are, therefore, specially opportune today though we welcome all learned opinion on legal problems. In the pages of this Journal, one may read heated discussions, criticisms of court decisions, legislations, original and subordinate, tribunal procedures and juristic writing. However, we will always strive to shed light on, and render legal, apart from political, criticisms of, the law under which the people of this Republic live.

The influence of law Journals is steadily increasing in the common law world. Time was when a very learned judge, Justice Holmes, referred to law review as the work of boys and thought the limit had been reached when one of the boys approved an opinion of his with the observation that it presented a "correct statement of the law." Today, as one of Holmes' compatriots, Chief Justice Hughes wrote, it has become the fashion for a "wide-awake and careful judge" when confronted with a serious problem to look around to see if the subject has been discussed or the authorities collated and analysed in a good law periodical.

We shall endeavour to make the Journal of the Indian Law Institute "a good law periodical."