The Indian Constitution has adopted the system of parliamentary Government as it obtains in England. And parliamentary procedure in India is essentially that which is followed in the British Parliament. The reason is not far to seek. It is beyond the scope of this work to discuss whether parliamentary Government was known in India in ancient times. Parliamentary Government as we know it now is of recent origin and is the outcome of the contact with the British system of Government during the British rule. Although full parliamentary control over the executive was not established till 1947 when the Government of India Act, 1935, was adapted by the Indian Constituent Assembly under powers conferred by the Indian Independence Act, 1947, yet the foundation had been laid by the creation of legislative bodies by Acts passed by the British Parliament from time to time.

The power of legislation in the sense of making laws applicable generally to all persons and situations instead of making ad hoc orders was exercised from almost the very beginning of British rule although legislatures as such, as distinct from executive authorities, did not come into existence till at a much later date.

The power to legislate generally for a territory and its people appears to have been first conferred on the East India Company by the Charter of 1668 which authorised the Company 'to make laws, orders, ordinances and constitutions for the
good government of the port and island (viz., Bombay) and for the inhabitants thereof. The seed for the growth of future legislatures in India was, however, sown by the Royal Charter of 1726 which empowered the Governors and Councils of the Settlements to make by-laws and ordinances etc. not contrary to the laws of England.

As has been observed by Keith:

'The Crown thus established in India itself a subordinate power of legislation which was destined to supersede the authority in this regard vested in the Company itself.'

The Regulating Act of 1773 conferred on the Governor-General in express terms power 'to make laws for the good order and civil government of Fort William and subordinate factories.'

The Charter Act of 1833, for the first time, made a differentiation between the executive authority and the legislative. Until then the laws were made by the Governor-General sitting with the Executive Council. By the Charter Act, the Executive Council was extended by the addition of one member who was not to be a member of the Executive Council and the Governor-General, with this extended Council was empowered to legislate for all British territories in

1 Keith, A Constitutional History of India, 2nd ed., p. 18
the same way as the British Parliament subject to certain restrictions and this may be said to be the first Legislative Council although it was not so called in express terms. From this time on, laws made by the Governor General in (legislative) Council were called 'Acts' while the previous laws were designated 'Regulations'. The Rules of Procedure of this Council are said to have been drafted by Lord Macaulay.

Beginnings of legislative practice are to be found in the Charter Act of 1853 which further increased the number of the members of the Council for the purpose of making laws who were now designated 'Legislative Councillors'. The sittings of the Council were made public and its proceedings were published. The Governor-General was given the power to withhold his assent to any Bill. Standing Orders were framed by the Legislative Council for regulating its own procedure.

The Council for the purpose of making laws (which will hereafter be referred to as the Legislative Council although it was not so called till 1909) began to act as a sort of parliament and wanted to exercise some control over the Executive. This led to some dispute which came to a head
when the Council desired to have some information about the
grant made to the descendants of Tipoo Sultan. The Governor-
General refused to give the information on the ground that
neither the Council nor any of its members ought to ask for
such information as they had no power to interfere in the
matter. A formal motion for the information was moved by
Sir Barnes Peacock, Chief Justice of Bengal, who was a
member and the Vice-President of the Council, and was
carried by the casting vote of the Vice-President. The
result was that the powers of the Legislative Council were
defined by the India Councils Act of 1861 and the Legisla-
tive Council was prohibited from transacting any business
other than legislative business.

The Act of 1861 for the first time made provisions for
the making of rules for the conduct of business of the
Legislative Council. The rules were to be framed by the
Governor-General in Council (Executive Council). The rules
could be amended or altered by the Legislative Council only
with the assent of the Governor-General. The first rules
made under the Act may be said to be the origin of the rules

2 Proceedings of the Leg. Council of India, 1860, cc. 1363
to 1399
of parliamentary procedure in India. Provision was made for the creation of provincial Legislative Councils, their powers and procedure.

It was in 1892 that two important rights were given to the Legislative Councils. The India Councils Act of 1892 empowered the Governor-General and the Governors or Lieutenant-Governors, as the case may be, to frame rules for the discussion of the Budget in the Legislative Councils and for the asking of questions was first conferred in 1909 and then also to the questioner only and not to other members. A further right was also given in 1909, the right to discuss any matter of general public interest.

The Montagu-Chelmsford Reforms gave an independent status to the Legislatures. So long, the Governor-General or the Governor or the Lieutenant-Governor, as the case might be, was the President of the Council and the laws were made by the Governor-General or the Governor or the Lieutenant-Governor, as the case might be, in the Council (legislative). Under the Government of India Act, 1919, the Governor-General or the Governor or the Lieutenant-Governor ceased to be associated with the legislatures. Provision was made for the appointment of Presiding Officers and for the voting of grants. Rules of procedure were divided into two classes, rules and standing orders. Rules for the Central and Provincial Legislatures were framed by the Governor-General in Council with the
approval of the Secretary of State and were not liable
to be amended or altered by the legislatures. Standing
orders were framed by the Governors in Council for the
provincial legislatures and could be amended or altered
by the provincial legislatures with the consent of the
Governors.

The Government of India Act, 1935, conferred on
the provincial legislatures the power of full parliamentary
control over the executive except with regard to certain
matters in regard to which the Governor was vested with
special responsibility. But there was no responsible
Government at the Centre although the legislature had
power to refuse any grant of money for expenditure except
those which were charged. The legislatures were empowered
to frame rules for the conduct of their own business subject
to certain restrictions. Rules relating to the financial
procedure and certain other matters for which the Governor-
General or the Governor had special responsibility were
made by either of them as the case might be.

The history of the Rules of Procedure from 1861 to
1947 when India attained independence is a history of tardy
recognition, accompanied by some jealousy and want of trust,
of the legislature as a part of the Governmental machinery
apart from the Executive Government. Because the Government
might not command a majority in the House, powers were
reserved to the Executive Government to interfere with the
business of the House, e.g., even in 1937, the Governor had the power to disallow questions, resolutions, adjournment motions, etc. Rules of Procedure had been divided into two classes in 1921 - Rules and Standing Orders. The rules were framed by the Governor-General in Council but the Standing Orders made by the Governor (which were of minor importance) could be amended or altered by the Legislative Council with the consent of the Governor. Even under the Government of India Act, 1935 the Governor had the power to make rules regarding certain matters, e.g., financial business. The policy which dictated these precautions was expressed by the Joint Committee of the House of Lords and the House of Commons on Rules in one paragraph of their report\(^3\) which is as follows:

"The Committee think it desirable that a Governor's intervention in the proceedings of his Legislative Council should be confined to cases in which control by the executive (which for these purposes the Governor must represent) is essential, having regard to the fact that the Government will not command a majority in any Council, or to cases in which the President will not be in a

\(^3\) Report of the Joint Parliamentary Committee, 1921
position to give the requisite ruling. In all other cases they think that the last word should lie with the President of the Council. Following this principle, they have substituted the word "President" for "Governor" in rules 3, 7 and 11. But with regard to the last-mentioned rule, they think it necessary to retain for the Governor the power proposed by the Government of India to disallow a motion for adjournment even though it may have received the consent of the President, and of the Council if time permits of reference to the Governor before the adjournment takes place and if the Governor is of opinion that the proposed discussion cannot take place without detriment to the public interest. They have accordingly added a second paragraph to rule 22 to secure this power. The power to curtail public discussion in these newly constituted legislative bodies will obviously call for great discrimination in its use if it is not to prejudice their success, and to result, not in closing discussion, but in transferring it to less appropriate channels. But the Committee agreed with the Government of India that the power is one which the Government must have at its command, and they feel no doubt that the Governor-General and the provincial Governors will use their discretion in this matter wisely."
The Constitution of India has effected a radical change in the conception of the governmental machinery. The legislature is now the supreme authority to which the Executive Government, the Council of Ministers, has been expressly made responsible. The legislature by itself has of course no executive power but each and every action of the Executive Government can be scrutinised and questioned by the legislature and is subject to its ultimate control, and if it thinks necessary it can even remove the Council of Ministers. The Legislature and the Executive are not, however, as in pre-independence days arrayed against each other - the one to obstruct or to evade the other. Each is a part of the same governmental machinery and if the legislature is endowed with the right to control the Executive, it has also the duty of seeing that the country's government goes on. The guiding principle should therefore be that the rules of procedure should be such as not only to ensure effective parliamentary control over the Executive but also to ensure the smooth and expeditious running of the executive machinery.

The Indian Constitution has conferred upon the legislatures the power to regulate their own business. But the procedure in regard to certain matters, e.g., voting of demands for grants or the passing of bills, has been, to some extent, enunciated in the Constitution itself. Parliamentary procedure as it now obtains in India will be discussed in the following chapters.