The 123 Agreement between the United States and India has stimulated many political and academic debates all over the world. The majority of these concern its relationship with the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) as well as its global and regional implications. However, this essay concentrates on a different issue - the Indian parliamentary path of the 123 Agreement. It shows that this Agreement has not been enacted without difficulties. There was a strong political opposition against signing this nuclear deal in the Parliament of India and the coalition government had to survive a vote of confidence in the Lok Sabha (the lower house of Parliament). This paper presents standpoints of particular political parties, Members of Parliament and scientists. Moreover, it examines the role and influence of the Indian Parliament during entering into treaties and agreements by the Republic of India. It also looks upon the impact and the attitude of Indian society and mass media towards the 123 Agreement and its final enactment.

The foundation for the U.S.-India nuclear deal was a joint statement by the U.S. President George W. Bush and the Indian Prime Minister Manmohan Singh in 2005 followed by a Civil Nuclear Cooperation Agreement in 2006. According to a joint statement, the United States will work to achieve full civil nuclear energy cooperation and trade with India and will seek an exemption from the Nuclear Suppliers Group (NSG). India, whereas, will indentify and separate its civilian and military nuclear facilities and programs, place voluntarily its civilian nuclear facilities under the International Atomic Energy Agency (IAEA) safeguards, continue its unilateral moratorium on nuclear testing, refrain from transfer of enrichment and reprocessing technologies to states that do not have them and support international efforts to limit their spread. It is worth noting, to explain the background of the issue, that India is not a

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2. The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) 1968, entered into force in 1970; extended indefinitely in 1995; the NPT prevents the proliferation of nuclear weapons and nuclear technology, allows to use nuclear energy for peaceful purposes and aims eventually to nuclear disarmament
3. Joint Statement between President George W. Bush and Prime Minister Manmohan Singh, Office of the Press Secretary, the White House, Washington 18/07/2005
4. Nuclear Suppliers Group (NSG) - controls export and transfer of nuclear weapon’s materials
5. The International Atomic Energy Agency (IAEA)- promotes peaceful use of nuclear energy
signatory to either the NPT or the CTBT⁶ whilst the United States is a party to the NPT and signed the CTBT, but has not yet ratified. Both states admit to possess nuclear weapons, but the first one possesses it legally (as a Nuclear Weapon State⁷), whilst the latter has been outside the international nuclear order until the 123 Agreement.

From the beginning of talks regarding this Agreement, there were mixed reactions among Indian politicians, scholars, scientists and society. The release of the nuclear deal full text in August 2007 raised a rumpus in the Indian Parliament. “Domestic debate in India on the pending U.S.-India nuclear deal triggered the most serious crisis faced by the UPA⁸ government since it came to power in May 2004. In fact, the turmoil nearly led to a collapse of the ruling coalition and early elections as both Prime Minister Singh and the Left Front parties maintained staunch and mutually incompatible positions on the deal”⁹. In September 2007, the Communist Party of India issued an open letter¹⁰ to the Members of Parliament in which expressed concerns and strong opposition to the proposed Agreement on behalf of the Left Front¹¹. Besides that, the National Democratic Alliance (NDA)¹² led by the Bharatiya Janata Party (BJP), the main opposition party, also criticised the Agreement and claimed that renegotiation of deal and vote in the Parliament are necessary. Further opponents of the 123 Agreement belonged to the United Nationalist Progressive Alliance (UNPA) and the Bahujan Samaj Party (BSP) which considered the nuclear deal as anti-Muslim. Notwithstanding, the Left Front and the BSP were the official supporters of the UPA ruling coalition from the beginning of its term, but they were not a part of government. As response to this, the government created in September 2007 a 15-member panel of scientists, politicians and government officials to analyse the 123 Agreement. Over the following months many rounds of talks were held, but none of sides changed its initial position. Subsequently, the BSP (in June 2008) and the Left Front (in July 2008) formally withdrew their support for the UPA over the government’s decision to move forward with the U.S.-India nuclear deal. On the other hand, surprisingly the Samajwadi Party (SP), a part of the UNPA, officially announced that its Members of Parliament will support the Agreement, but without joining to the UPA.

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⁶ The Comprehensive Nuclear-Test-Ban Treaty (CTBT) 1996, has not yet entered into force; the CTBT bans all nuclear explosions for military and civilian purposes in all environments

⁷ The Nuclear Weapon States (NWS) are officially recognised as possessing nuclear weapons by the NPT

⁸ The United Progressive Alliance (UPA)- ruling coalition of centre-left political parties led by the Indian National Congress (INC), formed in 2004

⁹ K.A. Kronstadt, CRS Report for Congress India-U.S. Relations, 12/08/2008, p. 8

¹⁰ The Communist Party of India, Open Letter to MPs on Nuclear Issue, 08/09/2007

¹¹ The Left Front- alliance of Indian left-wing political parties

¹² The National Democratic Alliance (NDA)- coalition of centre-right political parties, formed in 1998
The standpoint of the SP changed after long and arduous consultations with A.P.J. Abdul Kalam.

The stiff political opposition against the 123 Agreement claimed that the deal is against India’s interest. It could harm India’s indigenous nuclear program and the sovereignty of India’s foreign policy. Some feared that this Agreement could “gift the US the power to blackmail India for the next 40 years, arm twist the government into amending the country’s labour laws, allow Wal-Mart to run riot in India and jeopardise the projected Iran gas pipeline. What any of this necessarily has to do with the 123 Agreement is by no means clear”

Moreover, the government was accused of hiding particular points of the deal from the mass media and the BJP even said that “the government is practising deceit”. Besides that, the BJP called upon the establishment of a Joint Parliamentary Committee to examine the text of the Agreement in detail and ratification of the nuclear deal and all future treaties by the Parliament (more about this issue later in the essay). Concerns regarding this Agreement were not only among Indian political parties, but also among scientists. Some of them believe that Indo-US nuclear deal could be used as a diplomatic instrument of pressure if Indian foreign policy was not in compliance with particular US interests. “It is naive to judge the merits of the deal based purely on the language of the text. The underlying undercurrents and intentions of the controlling party are important and cannot be wished away as hypothetical or as their internal matter when they do actually have serious repercussions on our long-term interests. There has been a careful balancing of US commercial interests with the goal of bringing India into the non-proliferation hold”

In 2006 nine leading nuclear scientists, all former heads of nuclear-related organisations, issued an appeal to Parliamentarians where they “urge MPs to ensure that decisions taken today do not inhibit India’s future ability to develop and pursue nuclear technologies for the benefit of the nation”.

However, regardless of those negative standpoints, the majority of the Indian Parliament and society were supportive to the 123 Agreement. In 2007 twenty-three former Indian military

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13 Avul Pakir Jainulabdeen Abdul Kalam- President of India 2002-2007, scientists, professor of Aerospace engineering, first Chancellor of the Indian Institute of Space Science and Technology Thiruvananthapuram
16 A.N. Prasad, Nuclear Deal: India has no leverage, Rediff India Abroad, 06/08/2007
chiefs, senior bureaucrats and scientists issued an open letter to the Members of Parliament urging approval of the deal and expressing their support to it. Moreover, in spite of many pending questions, the mass media were also favourable to the nuclear deal.

Due to the withdrawal of support for the United Progressive Alliance ruling coalition by the Left Front and the Bahujan Samaj Party, the UPA faced its first vote of confidence since election in the Lok Sabha. The ruling coalition needed 272 votes for the government to win in the 543-member Lok Sabha. Each vote was very crucial. The UPA, the NDA and other parties tried to summon all their Members of Parliament “from their sick beds and even from prison cells to take part in the vote”20. “As the date neared and the anticipated outcome remained unclear, the Congress Party used the advantages of incumbency to entice wavering parliamentarians. Such efforts reportedly included offering ministerships and other perquisites to gain the support of smaller regional parties, some of them comprised of but one Lok Sabhan”21. After two days of fierce parliamentary debate, on 22th of July 2008, the government survived a confidence vote by receiving 275 votes and 256 against. Unfortunately, immediately after voting allegations of bribery appeared and included claims by the Members of the BJP that “they had been offered huge sums of cash to abstain from voting”22. The Speaker Somnath Chatterjee called the police chief in New Delhi to investigate the bribery claims. In addition, a Joint Parliamentary Committee was formed to also examine the bribery issues. The Committee stated in its report in December 2008 that there was no evidence against accused of bribery the Members of Parliament23. However, in 2011 after Wikileaks’ revelations24 the police finally made few arrests concerning the allegations of bribery during a vote of confidence in July 2008.

As it was mentioned before in the essay, the Bharatiya Janata Party called upon ratification of the 123 Agreement and all future treaties by the Parliament. According to the Indian practice the Agreement could be brought into effect only after government approval - no parliamentary approval is needed. It is well known that India has been following the British practice in

19 Vote of confidence- a motion proposed in a Parliament to give Members the chance to express their confidence in a government
20 http://news.bbc.co.uk/1/hi/world/south_asia/7519860.stm
21 K.A. Kronstadt, op.cit., p. 9
22 Ibid.
23 Report of the committee to inquire into the complaint made by some members regarding alleged offer of money to them in connection with voting on the motion of confidence, 15/12/2008
24 S. Varadarajan, Satish Sharma aide showed U.S. Embassy employee cash to be used as ‘pay-offs’ in confidence vote, The Hindu, 17/03/2011
relation to the treaty-making process. “Within the British Empire there is a well-established rule that the making of a treaty is an executive act, while the performance of its obligations, if they entail alteration of the existing domestic law, requires legislative action”25. However, it does not mean that under the Constitution of India Parliament has not right to enter the treaty. According to Article 246 of the Indian Constitution- “(...) Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the ‘Union List’)”26. Entries 13 and 14 of the Union list in the Seventh Schedule are as follows: 13- Participation in international conferences, Associations and other bodies and implementing of decisions made threat, 14- Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries27. It shows that treaty-making power is not within the exclusive competence of the executive. Moreover, Article 253 provide certain exceptional situations in which the Parliament can legislate with respect to matters included in the State List: “Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, associated or other body”28. Granting of this power to the Parliament is unquestionably in line with the power conferred upon it by Entries 13 and 14 of List I. However, by virtue of Article 7329, “the Executive power of the Union extends, in the absence of parliamentary legislation, to the matters with respect to which the Parliament has power to make laws subject, of course, to constitutional limitations. It is well known that the Parliament has not so far made any law regulating the procedure concerning the entering into treaties and agreements nor with respect to their implementation. Equally clearly, no law has been made regulating the manner in which the Government shall sign or ratify the international conventions and covenants”30. The outcome of this situation is that the Union government, taking advantage of the Article 73, is totally left to not only enter into agreements and treaties without any reference to the Parliament, but also to decide the way in which they should be implemented (with exception where such implementation requires a

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26 The Constitution of India 1949, article 246 (1)  
27 Ibid., Seventh Schedule, List I- the Union List, entry 13 and 14  
28 Ibid., article 253  
29 Ibid, article 73 (1) “Subject to the provisions of this Constitution, the executive power of the Union shall extend- a) to the matters with respect to which Parliament has power to make laws (...)”  
30 National Commission to review the working of the Constitution, Treaty-making power under our Constitution, New Delhi, 08/01/2001
law made by Parliament). This is a fault of the Indian Parliament which has chosen not to make any law regulating the treaty-making process. So far no bilateral treaty or agreement has ever been assented by the Parliament of India. Perhaps an amendment of the Constitution is needed that introduces a compulsory ratification by the Parliament treaties concerning, *inter alia*, military and political issues, sovereignty and membership in international organisations. In similar tone spoke the representative of the the Bharatiya Janata Party: “the BJP would like the Constitution to be amended to bind all future governments and ensure that all agreements that affect the country’s sovereignty, territorial integrity, and national security shall be ratified by Parliament”\(^31\).

After surviving a vote of confidence in the Indian Parliament, the government pursued further steps to bring the 123 Agreement into force. In August 2008 the IAEA approved the safeguards for India and in September the NSG granted historic waiver that allowed India to begin civilian nuclear trade- to buy reactors, fuel and technology from other states. The Indo-US nuclear deal was signed by the U.S. President George W. Bush on 8\(^{th}\) of October 2008 and named ‘The United States – India Nuclear Cooperation Approval and Non-proliferation Enhancement Act’\(^32\). Two days later it was signed by the U.S. Secretary of State Condoleezza Rice and the Indian External Affairs Minister Pranab Mukherjee. The enactment of the 123 Agreement caused many positive reactions across India and in other parts of the world. The majority of Indian mass media has been emphasising a positive aspects of the nuclear deal. “As India opens its doors for nuclear trade, it will generate worldwide business worth $40 billion, allow Indian companies to supply components to foreign N-plant makers, offer power-generation opportunities to Indian firms and increase the nuclear power level in the country to 52,000 megawatt by 2020 from the present 4120 megawatt”\(^33\). Additionally, it will open business doors for many Indian companies. According to a representative of the Confederation of Indian Industry: “(...) the NSG green signal has now directly opened up business opportunities worth Rs 1,20,000 crore\(^34\) for global and Indian firms in the next 15 years”\(^35\).

\(^{31}\) N. Vyas, *123 agreement an assault on nuclear sovereignty: BJP*, The Hindu, 05/08/2007

\(^{32}\) President Bush signs H.R. 7081, *the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act*, Office of the Press Secretary, the White House, Washington 08/10/2008

\(^{33}\) S. Laxman, *N-trade: It’s a $40 billion opportunity*, The Times of India, 11/09/2008

\(^{34}\) 1 crore= 10,000,00; it is a unit in the South Asian numbering system

\(^{35}\) S. Laxman, *op. cit.*
In conclusion, the Indian parliamentary path of the 123 Agreement was not as smooth as many would predict. Although most of the Indian commentators celebrated it as the end of “nuclear apartheid”\textsuperscript{36}, there were still many of them very opponent to this deal. This essay aimed to present obstacles that appeared from the Indian site during negotiation of the Agreement. The stiff political opposition (especially from the Left Front and the Bharatiya Janata Party) and the uncertain confidence vote caused a lot of perturbations for the ruling coalition which was permanently supportive to the Indo-US nuclear deal. Moreover, this essay shows that there is a real and urgent need to amend the Indian Constitution and democratise the treaty-making process by involving the Parliament in it. Eventually, the enactment of the 123 Agreement might turn out to be a ‘gold opportunity’ for the Indian society and boost already booming Indian economy.

\textsuperscript{36} I. Bagchi, \textit{End of nuke apartheid against India}, The Times of India, 04/08/2007
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