112. Provisions of Part XIV can be broken down into three broad categories. First, abolition and merger of existing Tribunals; second, uniformizing and delegating to the Central Government through the Rules the power to lay down qualifications; method of appointment and removal, and terms and conditions of service of Presiding Officers and members; and third, termination of services and payment of compensation to presiding officers and members of certain tribunals that have now become de-funct.

113. Interpretation of Article 110 was made by a coordinate Constitution Bench in ***K.S. Puttaswamy*** (Aadhaar-5) and is relied upon by both sides.

114. The majority judgment in ***K.S. Puttaswamy*** (Aadhaar-5) under the heading 'Money Bill', in paragraph 448 and then in paragraphs 452 to 461, had recorded the submissions made by the learned counsel, including the submission made on behalf of the petitioners relying upon the word 'only' appearing in Article 110 which defines a 'Money Bill'. With regard to the interpretation to be given to the meaning of the word 'only', reliance was placed on ***Hari Ram*** v. ***Babu Gopal Prasad***[27] and ***M/s Saru Smelting (P) Ltd.*** v. ***Commissioner of Sales Tax, Lucknow***[28]. The majority judgment had thereupon referred to the power of judicial review notwithstanding the use of the word 'final' with reference to the power of the Speaker under Article 110(3) of the Constitution, an aspect which we have already answered earlier, and examined Section 7 of the Aadhaar Act to observe *"it is also accepted by the petitioners that Section 7 is the main provision of the Act"*. Thereafter, reference was made to the other provisions of the Aadhaar Act to

[27] (1991) Supp. 2 SCC 608
[28] (1993) Supp. 3 SCC 97

record the majority opinion that the bill in question was rightly introduced as a "Money Bill". The majority judgment, therefore, did not elucidate and explain the scope and ambit of sub-clauses (a) to (f) to clause (1) of Article 110 of the Constitution, a legal position and facet which arises for consideration in the present case and assumes considerable importance.

115. Ashok Bhushan, J., in his concurring judgment, from paragraph 886 onwards, had examined the issue of "Money Bill" and its justiciability and as noticed above, overruled ***Mohd. Saeed Siddiqui*** (supra) and ***Yogesh*** (supra) as not laying down the correct law by relying upon the decisions of this Court in ***Kihoto Hollohan*** v. ***Zachillhu and Others***[29] and ***Raja Ram Pal*** (supra). Referring to the definition of "Money Bill" and the meaning and purpose of the word 'only' used in Article 110(1) of the Constitution, Ashok Bhushan, J. had observed that legislative intent was that the main and substantive provision of an enactment should only be any or all of the sub-clauses from (a) to (f). In the event the main or substantive provisions of the Act are not covered by sub-clauses (a) to (f), the bill cannot be said to be a "Money Bill" {See paragraph 905}. It was further observed that the use of the word 'only' in Article 110(1) has its purpose, which is clear restriction for a bill to be certified as a "Money Bill" {See paragraph 906}. Referring to the Aadhaar Act, it was observed that it veers around the government's constitutional obligation to provide for subsidies, benefits and services to individuals and other provisions are only incidental provisions to the main provision. Therefore, the Aadhaar Bill was rightly certified by the Speaker as a "Money Bill".

[29] (1992) Supp. 2 SCC 651

116. Dr. D.Y. Chandrachud, J., in his minority opinion on the said question, referring to the word 'only' in Article 110(1) of the Constitution had observed that the pith and substance doctrine which is applicable to legislative entries would not apply when deciding the question whether or not a particular bill is a "Money Bill". Referring to sub-clause (e) of Article 110(1), it was held that the Money Bill must deal with the declaration of any expenditure to be charged on the Consolidated Fund of India (or increasing the amount of expenditure) and, therefore, Section 7 of the Aadhaar Act did not have the effect of making the bill a Money Bill as it did not declare the expenditure incurred on services, benefits or subsidies to be a charge on the Consolidated Fund of India. Section 7 mandates Aadhaar for availing services, benefits or subsidies which were already charged to the Consolidated Fund of India. However, this view was not accepted by the majority judgment.

117. In the context of Article 110(1) of the Constitution, use of the word 'only' in relation to sub-clauses (a) to (f) pose an interesting, *albeit* a difficult question which was not examined and answered by the majority judgment in ***K.S. Puttaswamy*** (Aadhaar-5). While it may be easier to decipher a bill relating to imposition, abolition, remission, alteration or regulation of any tax, difficulties would arise in the interpretation of Article 110(1) specifically with reference to sub-clauses (b) to (f) in a bill relating to borrowing of money or giving of any guarantee by the Government of India, or an amendment of law concerning financial obligation. In the book, "Practices and Procedures of Parliament" by Kaul and Shakdher, it is opined that unless the word 'only' is interpreted in a right manner, Article 110(1) would be a nullity. A liberal and wide interpretation, on the other hand, possibly exposits an

opposite consequence. Relevant portion of the opinion by Kaul and Shakdher reads:

> "Speaker Mavalankar observed as follows: "Prima facie, it appears to me that the words of article 110 (imposition, abolition, remission, alteration, regulation of any tax) are sufficiently wide to make the Consolidated Bill a Money Bill. A question may arise as to what is the exact significance or scope of the word 'only' and whether and how far that word goes to modify or control the wide and general words 'imposition, abolition, remission, etc.'. I think, prima facie, that the word 'only' is not restrictive of the scope of the general terms. If a Bill substantially deals with the imposition, abolition, etc., of a tax, then the mere fact of the inclusion in the Bill of other provisions which may be necessary for the administration of that tax or, I may say, necessary for the achievement of the objective of the particular Bill, cannot take away the Bill from the category of Money Bills. One has to look to the objective of the bill. Therefore, if the substantial provisions of the Bill aim at imposition, abolition, etc., of any tax then the other provisions would be incidental and their inclusion cannot be said to take it away from the category of a Money Bill. Unless one construes the word 'only' in this way it might lead to make article 110 a nullity. No tax can be imposed without making provisions for its assessment, collection, administration, reference to courts or tribunals, etc, one can visualise only one section in a Bill imposing the main tax and there may be fifty other sections which may deal with the scope, method, manner, etc., of that imposition. Further, we have also to consider the provisions of sub-clause (2) of article 110; and these provisions may be helpful to clarify the scope of the word 'only', not directly but indirectly."

118. The majority judgment did not advert to the doctrine of pith and substance whereas judgment of Ashok Bhushan, J. had referred to the dominant purpose. The test of dominant purpose possibly has its own limitation as many a legislation would have more than one dominant objective especially when this prescription is read with reference to sub-clauses (a) to (f) of Article 110(1) of the Constitution. Further, determination of what constitutes paramount and cardinal purpose of the legislation and the test applicable to determine this compunction and incertitude itself is not free from ambiguity. Difficulties would arise with reference to sub-clauses (b), (c), (d) and (e) of Article 110(1), when we apply the principles of dominant or the main purpose of an enactment test. Sub-clause (c) to Article 110(1) refers to payment of monies into or withdrawal of monies from the Consolidated

Fund of India. Sub-clause (d) refers to appropriation of monies out of the Consolidated Fund of India. Sub-clause (e) refers to declaration of any expenditure charged on the Consolidated Fund of India or increasing of the amount of such expenditure. Sub-clause (f) relates to receipt of money on account of Consolidated Fund of India or Public Account of India or issue of such money or the audit of the accounts of the Union or of State. Even clause (b) in its amplitude includes an amendment of the law in respect of a financial obligation undertaken or to be undertaken by the Government of India. Once we hold that the decision of the Speaker under clause (3) of Article 110 of the Constitution though final, is subject to judicial scrutiny on the principle of constitutional illegality, the provisions of Article 110(1) have to be given an appropriate meaning and interpretation to avoid and prevent over-inclusiveness or under-inclusiveness. Any interpretation would have far reaching consequences. It is therefore, necessary that there should be absolute clarity with regard to the provisions and any ambiguity and debate should be ironed out and affirmatively decided. In case of doubt, certainly the opinion of the Speaker would be conclusive, but that would not be a consideration to avoid answering and deciding the scope and ambit of “Money Bill” under Article 110(1) of the Constitution. For example, taxation enactments like the Income Tax Act would qualify as Money Bill under sub-clause (a) to clause (1) of Article 110 and may include provisions relating to Appellate Tribunals which would possibly qualify as incidental provisions covered under sub-clause (g) to clause (1) of Article 110, even if we exclude application of sub-clause (d) to clause (1) of Article 110. The position it could be argued would be different with reference to provisions for constitution of a tribunal under the Administrative Tribunal Act or the National Green Tribunal Act.

The bill could however state that the expenditure would be charged on the Consolidated Fund of India.

119. Another aspect which would arise for consideration would be the legal consequences in case a Non-Money Bill certified by the Speaker as a Money Bill, when presented before the Rajya Sabha is specifically objected to on this count by some Members, but on being put to vote no recommendations are made in respect of “Non-Money” Bill related provisions.

120. The petitioners had argued on the strength of the concurring opinion by Ashok Bhushan, J. holding that in addition to at least one provision falling under Article 110(1) (a) to (f), each of the other remaining provisions must also be incidental to such core provision(s), and hence must satisfy the requirement of Article 110(g). Such an interpretation, it was contended, would make the insertion of the word ‘only’ under the prefatory part of Article 110(1) purposeful, which was said to have been glossed over by the Union. Further, it was contended that the manner in which the majority correlated Section 7 of the Aadhaar Act to Article 110(1)(e) was erroneous, for it only regulated procedure for withdrawal by imposing a requirement for authentication and did not declare any expenditure to be a charge on the Consolidated Fund of India. They had contended that the interpretation of the enactment by the majority judgement was constitutionally inexact and that a similar analysis ought not to be made in the present case. The petitioners, therefore, contend that every impugned provision be individually examined and brought either under Article 110(1)(a) to (f) or be incidental thereto, as permitted by Article 110(g). In case even a single provision did not satisfy either of the aforementioned two categories, then the entire Finance Act, 2017 would be an

affront to the prefatory phraseology of Article 110(1) and must be declared as being unconstitutional.

121. However, the learned Attorney General has propounded that constitutionality of the Finance Act, 2017 would be safe if its dominant provisions, which form the core of the enactment, fall within the ambit of Article 110(1)(a) to (f). Other minor provisions, even if not strictly incidental, could take the dominant colour and could be passed along with it as a Money Bill. As per such interpretation, provisions ought not to be read in a piece-meal manner, and judicial review ought to be applied deferentially.

122. Upon an extensive examination of the matter, we notice that the majority in ***K.S. Puttaswamy*** (Aadhaar-5) pronounced the nature of the impugned enactment without first delineating the scope of Article 110(1) and principles for interpretation or the repercussions of such process. It is clear to us that the majority dictum in ***K.S. Puttaswamy*** (Aadhaar-5) did not substantially discuss the effect of the word 'only' in Article 110(1) and offers little guidance on the repercussions of a finding when some of the provisions of an enactment passed as a "Money Bill" do not conform to Article 110(1)(a) to (g). Its interpretation of the provisions of the Aadhaar Act was arguably liberal and the Court's satisfaction of the said provisions being incidental to Article 110(1)(a) to (f), it has been argued is not convincingly reasoned, as might not be in accord with the bicameral Parliamentary system envisaged under our constitutional scheme. Without expressing a firm and final opinion, it has to be observed that the analysis in ***K.S. Puttaswamy*** (Aadhaar-5)

makes its application difficult to the present case and raises a potential conflict between the judgements of coordinate Benches.

123. Given the various challenges made to the scope of judicial review and interpretative principles (or lack thereof) as adumbrated by the majority in ***K.S. Puttaswamy*** (Aadhaar-5) and the substantial precedential impact of its analysis of the Aadhaar Act, 2016, it becomes essential to determine its correctness. Being a Bench of equal strength as that in ***K.S. Puttaswamy*** (Aadhaar-5), we accordingly direct that this batch of matters be placed before Hon'ble the Chief Justice of India, on the administrative side, for consideration by a larger Bench.

124. There is yet another reason why we feel the matter should be referred to a Constitution Bench of seven judges. ***L. Chandra Kumar*** (supra), which was decided by a Bench of seven Judges, had also interpreted on the ambit of supervision by the High Courts under Article 227(1) of the Constitution to observe that the Constitutional scheme does not require all adjudicatory bodies which fall within the territorial jurisdiction of the High Courts should be subject to their supervisory jurisdiction, as the idea is to divest the High Courts of their onerous burden. Consequently, adding to their supervisory functions vide Article 227(1) cannot be of assistance in any manner. Thereafter, it was observed that different tribunals constituted under different enactments are administered by the Central and the State Governments, yet there was no uniformity in administration. This Court was of the view that until a wholly independent agency for such tribunals can be set up, it is desirable that all such tribunals should be, as far as possible, under