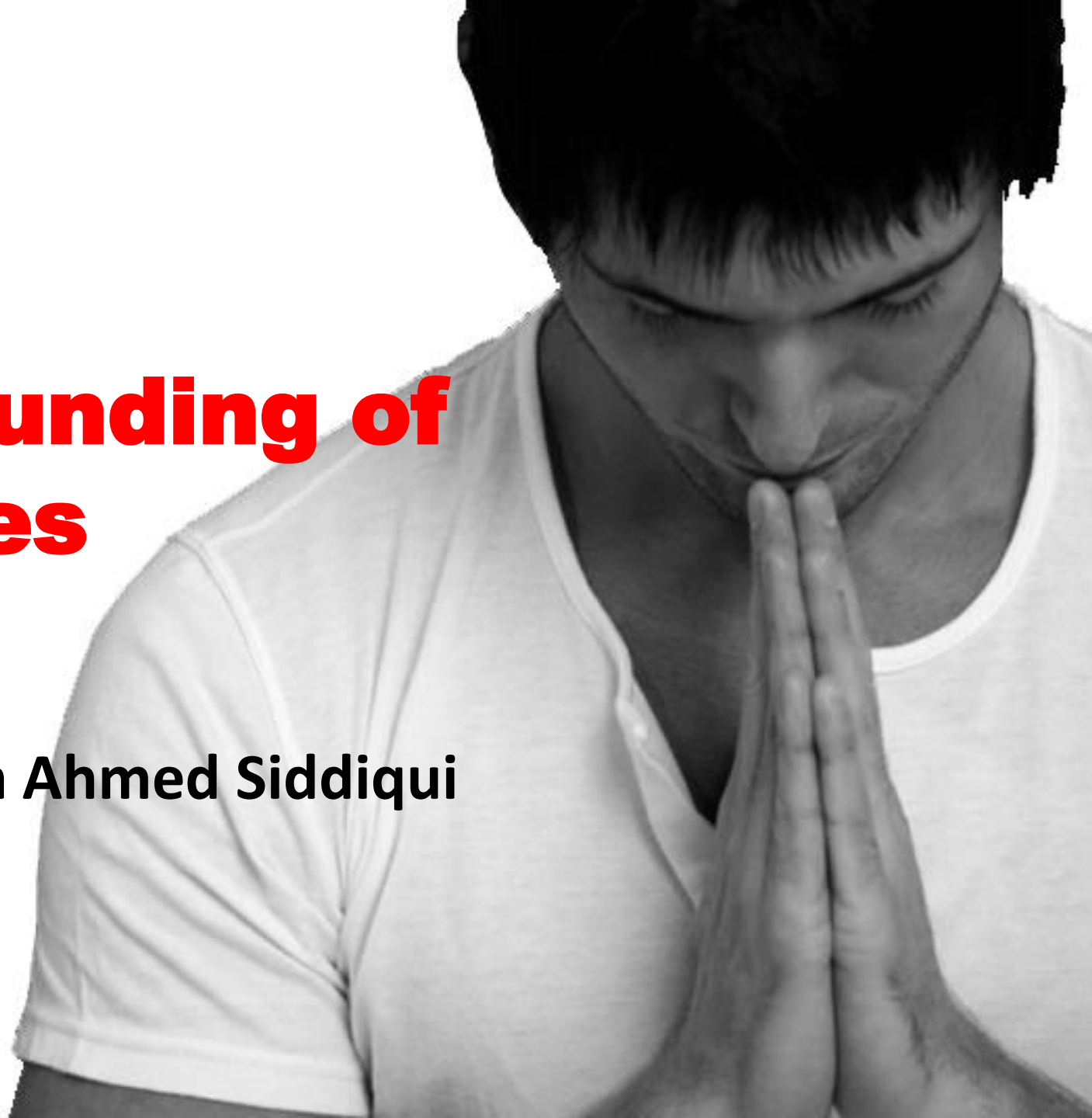


Compounding of Offences

By:

Fahim Ahmed Siddiqui



Offences May Be

- Knowingly
- Recklessly
- Carelessly
- Negligently
- Fraudulently
- Unintentionally



Possible Losses to Victim



Physical Loss

1. Life
2. Disability
3. Injury
4. Liberty
5. Monetary
6. Harassment
7. Reputation
8. Defamation

Mental Loss

1. Insecurity
2. Fear
3. Agony
4. Psychological Injury
5. Mental Trauma
6. Loss of Senses



**What is meant by
Compounding?**

Definition (Dictionary)

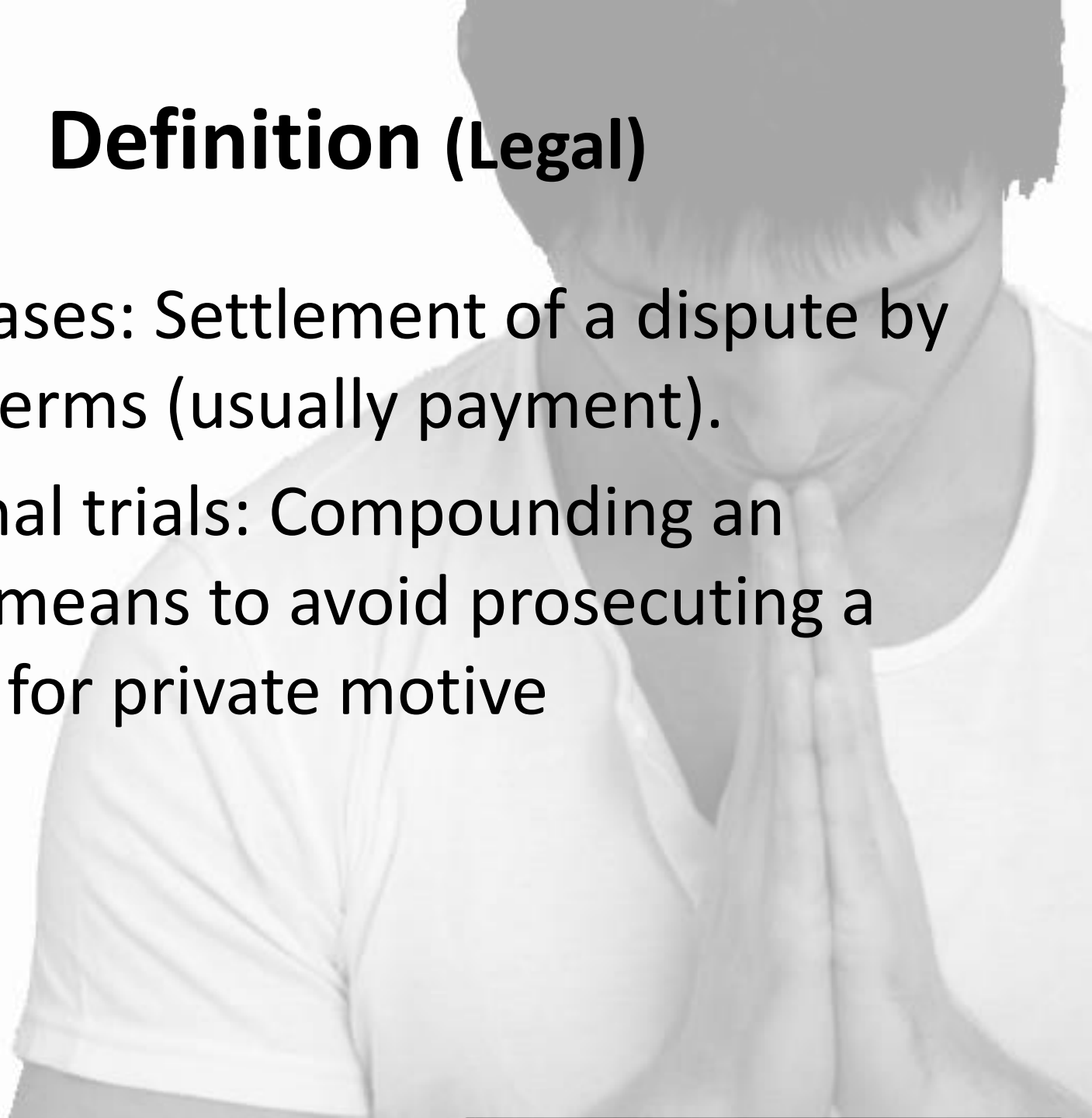
Noun: The act of combining things to make a whole

Verb: Make more intense, stronger or more marked. **(The efforts were compounded)**

- Put or add together **(Compound resources)**
- Calculate principle or interest
- Create by mixing or combining
- Combine so as to form a whole **(Compound the ingredients)**

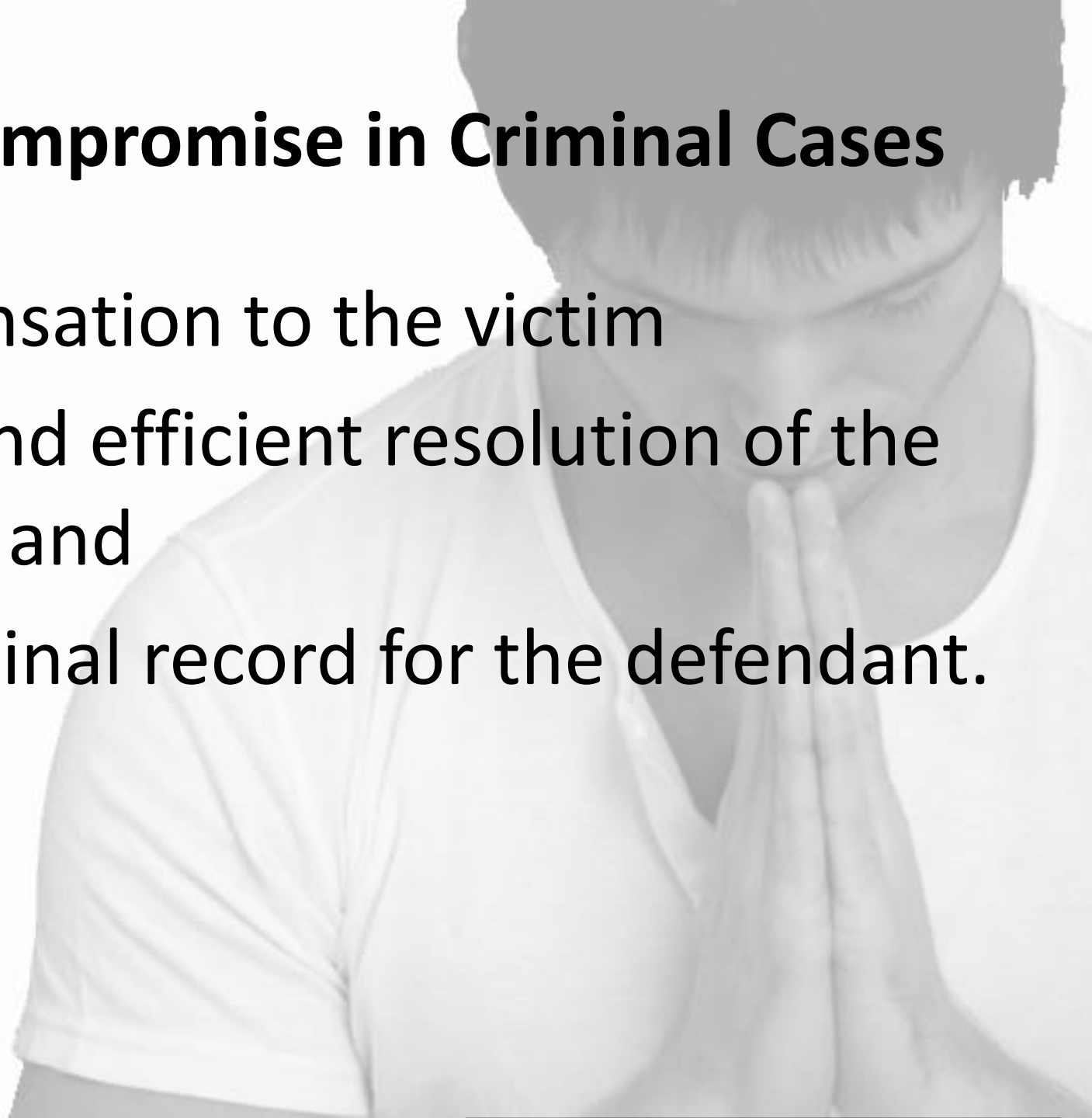
Definition (Legal)

- In civil cases: Settlement of a dispute by agreed terms (usually payment).
- In criminal trials: Compounding an offence means to avoid prosecuting a criminal for private motive



Civil Compromise in Criminal Cases

- compensation to the victim
- quick and efficient resolution of the matter, and
- no criminal record for the defendant.



Civil Compromise in Criminal Cases

- The same act results in criminal and civil liability
- **Before the case goes to trial**, during trial and/or after trial the victim formally states that he or she is satisfied by the compromise.
- The judge (and sometimes the prosecutor) must consent to the compromise.
- **The crime is a misdemeanor and not felony**

Meaning and Purpose

- In dictionary sense, it means to bring closer the offender and offended.
- In legal sense, it means to avoid punishment by acknowledge the wrong done by offender and restore the loss of offender.

Theories of Criminal Law

- **Crime as conduct that is prohibited by the state because of its harm to society, necessarily eliciting state response in terms of retribution**
- **Utilitarianists view punishment as a deterrent to potential offenders, creating a criminal-focused system**
- **Rehabilitationists view punishment as a way to reform or cure the offender, again focusing on the offender rather than the victim**

Criminal Justice



- Retributive Justice—Given or inflicted **Requital** according to merits or deserts (An eye for an eye)
- Restorative Justice—Restore the wrong done by wrong doer

Restorative Justice



Restorative Justice



- Restorative Justice is an approach to dealing with conflicts that is not punitive but emphasizes accountability and reconciliation of the offender with the larger community

Restorative Justice



▣ **Restorative Justice seeks to develop community-based responses to crime and violence by using**

- **dialogue**
- **repair of harm**
- **peace-building**

to heal victims and bolster social harmony

Restorative Justice



- **Restorative Justice is NOT a method or program but relies on basic principles of**
 - **Repentance**
 - **Forgiveness**
 - **Reconciliation**
- **All three are central to many religions and can help mediate between the criminal justice system and multi-religious, pluralist societies**

Restorative v/s Retributive

● Restorative Justice

- What is the harm that was done?
- How can that harm be repaired?
- Who is responsible for this repair?

● Retributive Justice

- What is the law (rule or policy) that was broken?
- Who broke that law?
- How should they be punished?

Critical Issues in Restorative Justice

- Bad behavior is defined best as a violation of people, not law or rule.
- Offenders should be accountable not only to authorities but to those whom they have harmed.
- Victims and communities are given a direct role in seeking justice.
- Justice should balance the needs of victims, offenders, communities and authorities.

Restorative Justice in Islam

- ▣ **Human nature and Society derive from the nature of God – which is restorative in essence:**
 - **“If anyone does evil or wrongs his own soul, but afterwards seeks Allah’s forgiveness, he will find Allah oft-Forgiving, most Merciful.” (al-Nisa:110)**
 - **“If you stretch your hand against me, to slay me, it is not for me to stretch my hand against thee: for I do fear Allah, God of the Universe.” (al-Maidah: 28)**
 - **“The recompense for an injury is an injury equal thereto (in degree); but if a person forgives and makes reconciliation, his reward is due from Allah.” (al-Shura:40)**

Islamic Concept of Restorative Justice



▣ Idea of Restorative punishments

- **Complete Forgiveness:**
requires victim to forgive before death

- **All other cases require *Diyya* and *Sulh* and are victim-initiated:**
 - *Diyya* – offender agrees to monetary payment to victim
 - *Sulh* – negotiated reconciliation in the presence of a *Wali Amr* – appointed guardian

Islamic Concept of Restorative Justice

- “We ordained therein for them life for life, eye for eye, nose for nose, ear for ear, tooth for tooth and wounds for equal. *Anyone remits the retaliation by way of charity, it is an act of atonement.*” (al-Maidah:45)
- “O ye who believe the law of equality is prescribed to you in cases of murder: the free for the free, the slave for the slave, the woman for the woman. *But if any forgiveness is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude. This is a concession and a mercy from God.*” (al-Baqarah: 178)

Sulha

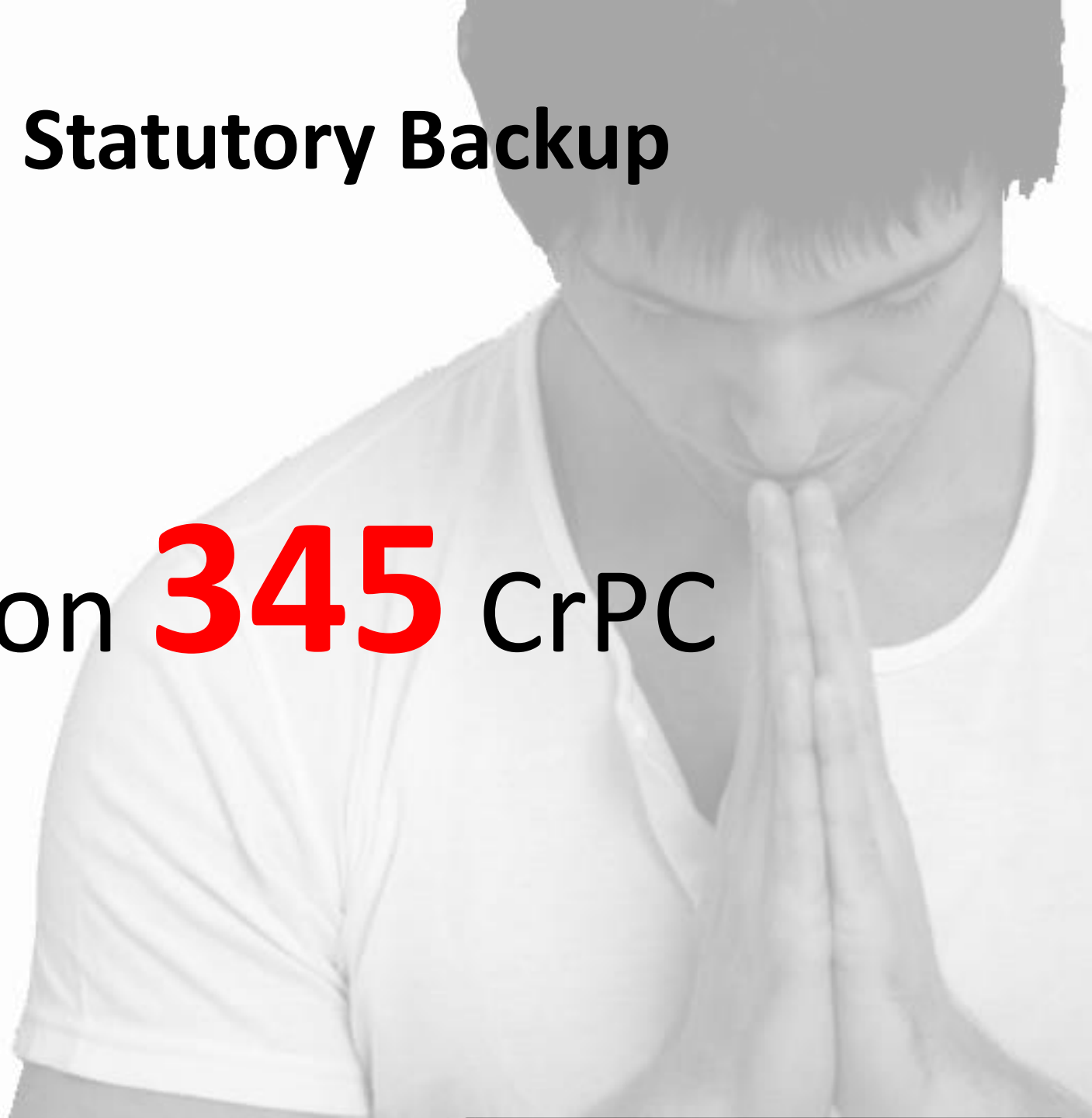


- ▣ **From the Arabic word for reconciliation (*musalaha*), Sulha is a process used in various parts of the Islamic World including Pakistan**

- ▣ **Sulha built around principle that reconciliation is possible if victim and offender approach each other with**
 - **musamaha, forgiveness;**
 - **musafaha, shaking hands;**
 - **and mumalaha, mutual partaking of bread and salt**

Statutory Backup

- Section **345** CrPC



Categories



Compoundable

- The offender caused personal damage
- Personal damage is reparable by repentance or/and partaking

Non-compoundable

- Damage to society and cannot be reparable even if offender remorse to direct loser

Purpose

- Initially, the Policy of legislatures regarding **S. 345 CrPC** is that in the case of minor offence, where the interest of the public are not vitally affected; the complainants should be permitted to come to terms with the accused.
- After insertion of Q & D in PPC, the scope of **S.345 CrPC** has considerably widen.

Compounding Offences (S. 345)

There are two categories of compounding:

1. Compounding of offences without seeking permission of trial court
2. Compounding of offences after seeking permission of trial court.

Brainstorming!



Why there are two categories of offences?



Brainstorming!



**Whether court may
refuse compromise in
cases where permission
is not necessary?**



Points to be Noted

- Compounding is for permissible penal sections only.
- Only authorized person can compound.
- Permission of court is necessary for Minor and Insane victim.
- Leave of Appellate Court is needed during pendency of appeal.
- Appellate court may accept compromise

Permission to Compromise

- Prior to compromise, application for permission to compromise should be granted
- It should contain certain directions for guidance of intervening respectable (Nek Mard)
- It is better the permission Order is either passed in Urdu or Sindhi or give a translated copy of it.

Brainstorming

**Whether court can accept
compromise in non-compoundable
offshoot case(s)**



Compromise in Offshoot

- Parties had compromised outside the Court in the case in which some offences were compoundable whereas other offences were not compoundable---If the main offence was compoundable and the parties had compromised, then the small offences should be treated as compromised though under the statute the same were not compoundable---Compromise having taken place between the parties outside the Court, it was not proper to uphold the conviction of accused, specially when the complainant did not want to pursue his case anymore---Accused were acquitted on the basis of compromise in circumstances. (**P L D 2008 Karachi 420**)

Compromise in Offshoot

- Accused were convicted and sentenced for imprisonment of various terms by Trial Court -Accused sought their acquittal on the basis of compromise effected between the parties. Offence under S. 495, P.P.C. was an independent offence which had its own punishment in addition to punishment for causing Qatl or causing hurt or attempt to cause Qatl or hurt therefore, such offence could not be merged into main offence -When one was tried for two different offences and awarded punishments in both of them, then competence of one to compound one offence could not affect legality of sentence awarded for other independent offence by competent court of law. Likelihood of failure of prosecution to prove charge was no ground to make a non-compoundable offence as compoundable **(2016 M L D 580)**

Compromise in Offshoot

Attempt to compound an offence, even if failed, could not bring any consequence on merits of the case however, failure of prosecution or complainant to establish charge could give certain rights to accused against complainant or prosecution. High Court accepted compromise to the extent of convictions awarded under Ss. 302(b), 337-A(i) & 337-F(i), P.P.C. while for the offence under S. 495, P.P.C. the same was declined **(2016 M L D 580)**

کچھ پوچھنا ہے تو پوچھئے؟

