Lord Marks of Henley-on-Thames

My Lords, the noble Lord ought to be cross-examining himself because he has just secured a concession by excellent advocacy, which I failed to do—or I did, but not in such clear terms. In view of that, I will withdraw the amendment.

I disagree with the noble Viscount, Lord Hailsham, on only one point, which was his assertion that I disagreed with him because I said, when speaking to this amendment, that there may be those rare cases where a dispassionate observer might think the exclusion of a relevant account could lead to injustice and unfair convictions. The point here, and the point we seek to have reviewed, is whether, as a result of the Ched Evans case, there might be cases where the restrictive nature of Section 41 has been or may be watered down. We need to look at how it is operating. It is very important that rape gets reported and that the legislation in place is certainly as restrictive as we always thought Section 41 was and as the textbooks say it is. The public concern is that this case seems to have weakened that protection; I am sure the review will take that point on board. I beg leave to withdraw the amendment.

Amendment 219B withdrawn.

Amendment 219C

Moved by

Baroness Cox

219C: After Clause 143, insert the following new Clause—

"Registration of religious marriages

(1) The celebrant of a religious marriage ceremony must—(a) take all reasonable steps to ensure that the marriage accords with the law relating to marriages in England and Wales; and(b) register the marriage as a legal marriage in accordance with the requirements of the Marriage Act 1949.(2) A person who fails to fulfil the requirements of subsection (1) commits an offence.(3) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for a term not exceeding 3 years."

Baroness Cox

My Lords, I rise to move Amendment 219C in my name and those of the noble Baronesses, Lady Buscombe, Lady Massey, and the noble Lord, Lord Carlile. I am most grateful to them for their support.

At the outset, I emphasise two points. First, this is a probing amendment, seeking to highlight serious concerns and to explore possible solutions. Secondly, this is in no way—as has been indicated by some—an anti-Muslim or Islamophobic initiative. It is motivated by deep concern for many women suffering in this country in ways which are utterly unacceptable, and it has strong support from leading Muslim women scholars, such as the internationally-renowned Canadian Raheel Raza and many Muslim women in this country.

The amendment provides an obligation on the celebrant of a religious marriage to ensure that it is also legally registered. The maximum penalty for failing to do so would be three years in prison. This may seem a severe provision. However, when I hear from women who have suffered horrendously from the religious marriages which are not legally registered, I believe there is an urgent need for effective measures to remedy the situation. The amendment does not identify any specific faith tradition, yet it does have specific relevance for Muslim women who are adversely affected by the discriminatory rulings of many Sharia councils. As Theresa May explained when speaking as Home Secretary,

"there is evidence of women being 'divorced' under Sharia law and left in penury, wives who are forced to return to abusive relationships because Sharia councils say a husband has a right to 'chastise', and Sharia councils giving the testimony of a woman only half the weight of the testimony of a man".

I do not say this happens in every case, but I will highlight two concerns which cause profound distress to many women, some of whom have come to see me to share their pain. The first is the issue of divorce. Under many applications of Sharia law, a husband does not have to undertake the same process as a wife when seeking an Islamic divorce. He merely has to say "I divorce you" three times, without having to give any reasons or justification to any person or authority. The wife, however, must meet various conditions and usually has to pay a fee.

Just two weeks ago, a Muslim lady came to me in tears after the breakdown of her own Islamic marriage. Although a religious ceremony had taken place, the marriage had never been officially registered and was therefore not valid in the eyes of civil law. She was denied access to her children, ostracised by her community and felt so lonely, broken and ashamed that she had attempted to commit suicide. Another lady, who had suffered years of abuse from her husband, showed me a piece of paper she had received through the post. It simply read, "I divorce you", three times. No consent from her was needed, her opinion was not sought and the imam confirmed the divorce. To use her words, and I will never forget the yearning in her voice, "I felt that plain piece of paper was a mockery of my human rights".

7.00 pm

Many noble Lords will have seen the research conducted by the courageous Muslim woman Habiba Jaan, which describes similar experiences from Muslim women in the West Midlands. She found that the majority of women who had had an Islamic wedding ceremony were unaware that their marriage was not officially recognised by English law. Many were deeply disturbed when they discovered their predicament and said they wished they had known the reality of their situation and its implications. Devout Muslim women who had been divorced often faced stigmatisation in their own communities. Many felt trapped, unable to remarry. Once divorced by their husbands, they may be regarded as second-class or broken glass, able to marry again only into a marriage where there is already one wife. Many do not wish to be a second or third wife.

That brings me to the second issue that the amendment seeks to address: polygamy. We know from countless testimonies that many British Muslim women are living in polygamous households. Habiba Jaan's report found that nearly all the women in such marriages said their husband does not support them financially. Some said their husbands had as many as four wives. Some said they were not even aware, when they were married, that there was already another wife. Again, such women are at risk of being ignorant of their vulnerability or duped into believing they are married under the law of the land, only to find upon divorce that they have little or no rights to child custody, finance or property.

While the state must always respect religious freedom, it is unacceptable that women can be denied basic rights consistent with the laws, values, principles and policies of our country. I could give so many more tragic examples of the plight of these women, but I hope I have given enough evidence of cause for concern and the need for action to address the problems of these women, and many more whose stories we cannot hear because they live in closed communities where there is great pressure on them not to speak out, as that would be deemed to bring shame on the family and the community.

I reiterate that the amendment does not specify any faith tradition. If women from different faiths experience comparable problems of systematic discrimination, its provisions would also be available for them. I also repeat that this is a probing amendment, seeking to highlight totally unacceptable situations in our country, with women suffering in ways that I always say would make the suffragettes turn in their graves. I hope the amendment will receive a sympathetic response from the Minister and open up discussion for consideration of urgently needed and effective remedies for the problems it seeks to address. I beg to move.

Baroness Buscombe (Con)

My Lords, I speak in support of the noble Baroness, Lady Cox, and begin by paying tribute to her amazing record of courage and tenacity in confronting some of the most difficult issues in society, including and in particular the rights of women and equality of their rights under the law.

It is important that I repeat what the noble Baroness said concerning context. The amendment does not identify any specific faith tradition, yet it does have relevance for Muslim women who are adversely affected by the discriminatory rulings of sharia councils. The amendment seeks in principle to ensure that all women have access to full rights under the law to confront those many situations referenced so eloquently by the noble Baroness—situations which isolate and separate women and subject them to living in appalling circumstances here in the UK. We have been turning a blind eye to this discrimination for many years, even though the evidence is out there. This has been chiefly because we would be called racist or intolerant of different cultures. In fact, we have been acquiescing in the disrespect, outright abuse and denial of equal access to our rule of law and it is time to put that right.

In addition to the arguments put by the noble Baroness, I have two key points. The first relates to current inquiries into sharia law and the second concerns references to and comparisons with religions other than Islam. On the first, there are currently two inquiries, one of which is by the Home Affairs Select Committee. I have to ask: where has this Committee been on this issue for the last 40-plus years? That we have more than 80 sharia councils across the UK meting out a system of justice that can choose to ignore our rule of law is extraordinary, although I assume that most MPs, if they are active in their constituencies, must have known and know what is going on, or at least have their suspicions, and yet have preferred to promote the rights of women in other parts of the world and in conflict zones. Why, when so much that is wrong is happening here in the UK? In contrast, in Pakistan, family law has been regulated according to its rule of law since 1960 and is not sharia based. I ask my noble friend the Minister: how many sharia councils exist across Europe? I am told none, so can my noble friend confirm that there are no other sharia councils across Europe other than here in the UK? It would be helpful to have that confirmed.

The second inquiry, referred to as a review of sharia councils, launched by the Home Office, while welcome in principle as a step forward, has drawn criticism from various quarters, including Muslim women, mainly on the grounds that its focus is upon the application of sharia law and is seeking examples of "best practice". In other words, its focus is on how sharia is applied and how that application might be incompatible with our public law, not whether sharia itself is incompatible with our public law—a subtle-sounding but fundamental difference. In essence, by accepting sharia law in principle, we are and have been accepting that one body of people living in the UK may ignore the rule of law where it believes it conflicts with its views and beliefs, particularly with regard to the treatment of women. I am not quite sure why we need this review to work that simple fact out.

In addition, there is genuine concern about the make-up of the review panel. Why, it is asked, are there two Muslim religious advisers and no non-Muslim expert on Islam, nor experts on human rights? It is interesting to note that the chairman of the inquiry, a Muslim academic, Mona Siddiqui, makes the following clear in her book *My Way*:

"For a lot of women from Islam even just making their voice heard is a big jihad"—

meaning struggle—

"It means they've gone against so many moral codes".

This recognition of the difficulty among Muslims of speaking out gives me hope that evidence to the inquiry will not just be accepted at face value. However, I am less encouraged by Ms Siddiqui's admission that if she had had any daughters, she would have been more conservative with them than she is with her sons. That is a worrying bias.

I hope my noble friend the Minister will not feel constrained in her response to the amendment by deferring to either of the inquiries, particularly given that, while the latter was announced in May of this year, for some extraordinary reason it is not due to complete its deliberations until next year.

My second key point in support of the amendment relates to the often-used erroneous references to other religious practices when seeking to defend the existence of sharia councils, in particular Beth Din. Jewish couples who wish to complement a civil marriage with a religious one, or couples undergoing a civil divorce who wish to complement this with a Jewish law divorce, can ask Beth Din to oversee this. I have been assured by several experts that in neither circumstance can Beth Din override our public law. I understand that the same applies for the Quaker religion and Quaker ceremonies, in that all religious ceremonies must be ratified by our public law. Anything else is subordinate and any arbitral awards remain subject to English law.

In her otherwise excellent article in the *Evening Standard* on 3 November, Rosamund Urwin, in highlighting this issue, said of sharia law that its rulings,

"are sometimes at odds with the spirit of British law".

With respect, I beg to differ: sharia law breaks our law.

Take the existence here of polygamy, to which the noble Baroness, Lady Cox, referred. If my husband, who happens to be a Christian, committed bigamy—never mind polygamy—he would be in prison. What are we doing allowing this absurd situation to continue here in the United Kingdom? How can we have the nerve to try to tell others across the world how to live their lives when we let these illegal, disgraceful practices happen here? We are, in effect, legitimising violence against women.

This important amendment is about equal rights and equal treatment under the law—our rule of law. There is absolutely no point in talking about, or spending yet more taxpayers' money on, efforts and projects to improve integration, social cohesion or social mobility. It will not happen as long as we stand by and allow these practices that subjugate women's rights to continue.

Lord Alton of Liverpool (CB)

My Lords, I welcome this amendment and congratulate my noble friend Lady Cox both on her persistence in raising these issues and on her courage. I have had the privilege of travelling with my noble friend to some out-of-the-way places such as North Korea; but—perhaps more importantly in the context of this debate—before my daughter went up to university, I told her that the person she should travel with, and get to know a little of, if ever she wanted to think about going into public or political life, was my noble friend Lady Cox. She therefore accompanied my noble friend to Nagorno-Karabakh—a war zone—and I hope that she will one day be a chip off my noble friend's block.

The House might not be aware of it, but my noble friend has arrived back today from Nigeria, which is not such a bad place to start, because we know that my noble friend travels to dangerous places to see things for herself. In Nigeria, look how Boko Haram—words that mean "eradicate western education"—treats young women. Look at what happened in Chibok. Look at the seizure of those girls. Look at the denial of education for young girls, such as those who were seized in Chibok, and then ask yourself some serious questions, as the noble Baroness, Lady Buscombe, has rightly done in her remarks a few moments ago. Look at the nature of sharia law, and ask, "Is that something we would want to have operating as a parallel law system in the United Kingdom?" It is a system, after all, that says that a woman's evidence in a court of law is worth only half that of a man. That is surely intolerable in our society and we should resist it with every means available to us.

I attended a meeting organised by my noble friend Lady Cox a few weeks ago and became interested in this issue as a result of that meeting, which was held here in your Lordships' House and was addressed by some formidable Muslim women and others. They highlighted the risks of having parallel systems of law in the same jurisdiction, a situation that put at risk the equality of Muslim women and failed to protect them. The principle of equality before the law should always be a central pillar of our democracy, yet we know from countless testimonies—such as those I heard that evening and others alluded to today by my noble friend—that many Muslim women in Britain are not experiencing the legal rights by which they should be protected. We heard that in the context of things such as polygamy a few moments ago. They are not treated equally; they are not living freely, and they are inhibited from getting the help they really need.

Take, for example, the story of A'aisha—a pseudonym, of course—from the West Midlands. Upon the breakdown of her own Islamic marriage, she discovered that she was not entitled to the same rights afforded to other British divorcees. Like so many others, she had wrongly assumed that, because her religious wedding ceremony had taken place in the UK, it did not need to be accompanied by a civil marriage in order for it to be recognised under English law. As my noble friend Lady Cox has already said, this amendment seeks to protect women such as A'aisha, and to help those who might be duped into believing that they were married under the law of the land, only to find upon divorce that they have few rights in respect of finance or property. It is intolerable that women should be treated in this way.

I recognise, as my noble friend has said, that this is a probing amendment. It may well indeed need tweaking and improving, but I trust it will promote a positive response from the Front Bench. I hope that when the Minister replies, we might at least start to think about how we can bring forward more comprehensive measures to address effectively concerns such as those raised by my noble friend Lady Cox and the noble Baroness, Lady Buscombe, in your Lordships' House this evening.

7.15 pm

Baroness Deech (CB)

My Lords, I did not put my name to this amendment because there were enough people already, but I used to teach family law, including the law of marriage. In this country, it is very easy to get married in a registry office or in a properly registered religious place. You can get married in a hotel if you want to or you can have a civil partnership. There are all sorts of official unions that you can make very easily, but the worst of all possible worlds is to be duped into believing that you are married in a religious ceremony and then find that you are not, because you lose any protection that English law gives you, while at the same time, stereotypically, your husband—if he is really your husband—can abandon you or take another wife.

This is not just a question of running parallel systems of law: it is about the protection of women and the need to preserve transparency and regularity in people's marital status. All that is necessary is for more mosques to become registered as proper places of marriage, just in the way that synagogues are, and all would be resolved. I see no arguments against this amendment at all. It is overdue.

Baroness Chisholm of Owlpen (Con)

My Lords, I have listened carefully to the arguments made by the noble Baronesses, Lady Cox and Lady Deech, my noble friend Lady Buscombe—who made an excellent speech—and the noble Lord, Lord Alton. As has been said, the noble Baroness, Lady Cox, has done so much to raise in this House the problem of marriages that are not legally binding and that therefore do not carry the legal rights and responsibilities of a legally binding marriage. I recognise that she has spoken to many women in this situation and has sensitively presented their evidence to your Lordships this evening and on other occasions. There is particular cause for concern if one or both of the parties is unaware of their lack of rights or coerced into a marriage.

There is a strong tradition of religious marriages in England and Wales, with a long-established right that couples are able, in their place of worship, to enter into a marriage that is legally contracted, provided that the requirements of the law are met. Some people, for religious or other reasons, have preferred to enter into a marriage that is not capable of legal recognition. To make it illegal to conduct, or enter into, religious marriages that are not legally contracted is likely to be an overly complex solution and one that restricts personal choice. It is also unclear how many unregistered religious marriages would take place in breach of any change in legislation, since, by their nature, public notice of these marriages would not be given. I am sure that noble Lords appreciate the complexity of legislating in people's private and religious lives.

We are conscious that there are complex issues behind religious marriages that are not legally valid, including where people use a religious ceremony to give recognition to an additional spouse, and so we do not consider that any one approach to Muslim or other faith communities can work in isolation. Of course, we are also aware of concerns that some women can be put under pressure to use the services of religious councils, including sharia councils, to arrange matters on the break-up of the relationship and that these women are not always treated equally when recommendations are made.

One of the issues that the noble Baroness highlighted was that of child custody, a matter raised by women to whom she has spoken. In fact, it is not the case that women have few or no rights in this matter, although they may well not be aware of their rights. In England and Wales, where there is any dispute between parents about arrangements for their children, either parent may apply to the family court for one or more types of order under the Children Act 1989. Most commonly, this will be a child arrangements order determining who a child is to live with or spend time with, and where and when this is to happen, referred to respectively as custody and access in many other jurisdictions. These proceedings are free-standing. This means that a parent is entitled to make an application to the court at any time, simply by virtue of being the parent of the child concerned and regardless of the status of their relationship with the other parent. There is no distinction for this purpose between legally married parents, unmarried parents, parents in a religious marriage that is not legally binding, parents who are otherwise cohabiting or, indeed, parents who are living apart.

On the issue of polygamy, noble Lords will be aware that polygamous marriages cannot be legally contracted in the UK. Attempting to enter into a polygamous marriage under the law of England and Wales is a criminal offence which carries a maximum sentence of seven years in prison. Nor is it possible for anyone domiciled in the United Kingdom to enter into a polygamous marriage abroad. Where a polygamous marriage is contracted within the law outside the United Kingdom between parties neither of whom is domiciled in the United Kingdom, it will be recognised by the court. The Government continue to support the law preventing polygamous marriages from being entered into in England and Wales.

The Law Commission has also given initial consideration to the issue of religious marriages that are not legally valid. It published its scoping study in December last year setting out the parameters of a potential review of the law concerning how and where people can marry in England and Wales, following consultation with a wide range of religious organisations and other interested parties. The scoping study concluded that this was one of a number of issues that might be ameliorated through a fairer and more coherent framework for

marriage. The Law Commission also considered that offences relating to the celebration of marriage should be reviewed. It would not make sense for the Government to introduce a new criminal offence, such as that proposed by this amendment, without evidence of the scale and nature of the problem and without consideration of how the new offence would fit within existing marriage law.

The Government are carefully considering the Law Commission report and will respond in due course. We will also wish to consider the issue of unregistered religious marriages in light of the findings of the independent sharia review, launched in May by the current Prime Minister. The Government share the noble Baroness's concerns and take them very seriously indeed. These concerns are central to the independent sharia review and involve the equalities, justice and faith and integration agendas across government. I thank the noble Baroness for raising again this important issue and the very real consequences for people's lives.

My noble friend Lady Buscombe asked how many sharia councils there are across Europe. I do not have a number; I will have to go away, look into it further and write to my noble friend. I trust that the noble Baroness, Lady Cox, will understand the need to wait for the Government's response to the Law Commission report and the sharia review and, on that basis, will withdraw her amendment.

Baroness Cox

My Lords, I am very grateful to all noble Lords who have contributed to this debate and those who have supported this amendment and made some very powerful additional arguments. I thank the Minister for the sympathy that is there in her response, but I feel some concern over the apparent lack of a sense of urgency about the need to address the real suffering that is going on at the present time. To wait for the outcomes of the reviews leaves these women in a terrible situation. The gap, the chasm, between the de facto realities and the de jure realities is one into which these women are falling and suffering in ways that should not be allowed in our country today. These issues are urgent: women are suffering on a large scale. I intend to take this debate back to my colleagues, with whom I am sharing these concerns, to consider the most appropriate ways forward. I am very grateful for what has been said tonight; we can learn from it ways to proceed to help the women suffering in these appalling situations. In the meantime, I beg leave to withdraw the amendment.

Amendment 219C withdrawn.

Amendment 219CA not moved.

Clause 144 agreed.

Amendment 219D

Moved by

Lord Kennedy of Southwark

219D: After Clause 144, insert the following new Clause—

"Information relating to the online abuse of children

(1) Section 11 of the Police Reform and Social Responsibility Act 2011 (information for public etc) is amended as follows.(2) In subsection (2), at end insert "subject to subsection (2A)."(3) After subsection (2) insert—"(2A) "specified information" shall include but not be limited to information that relates to the online abuse of or offences against children—(a) that take place through social media, online channels including messaging services and electronic communications;(b) that are repeated by sharing through social media, online communications including messaging services and electronic communications;(c) that are orchestrated, planned or organised through social media, online channels including messaging services and electronic communications;(d) that are recorded and uploaded online (for personal use or for distribution or sharing with others) howsoever; or(e) for the purpose of which the internet is used as a means of exploitation or contact.""

Lord Kennedy of Southwark (Lab)

My Lords, Amendment 219D, in my name and that of my noble friend Lord Rosser, would be an important step in enabling police and crime commissioners to tackle online abuse of children. Only once local police forces begin systematically collecting these data can we know the prevalence of the issue. Only once the prevalence of the abuse is known can commissioners begin to tackle it and to provide adequate resources and appropriate services. Digital technology has fuelled an explosion in these crimes over the last two decades, including children being forced to commit sexual acts online and children being groomed online for the purpose of abuse and exploitation in the real world. The impact of these horrendous crimes can be devastating, and children can be repeatedly revictimised as images of their sexual abuse are viewed online by offenders all over the world.

At a national level, progress on tackling these crimes has been made, such as the Child Abuse Image Database. The centralised expertise of the National Crime Agency also plays a key role in keeping children safe in the most severe cases, but we remain concerned about the ability of police forces to respond adequately to online offences committed against children at a local level. The recent HMIC child protection report found that there is a huge local variation in the response to these offences, including delays of up to 12 months in forensically examining devices. Such delays can have serious implications for the safeguarding of children, including children not being promptly identified and safeguarded and reoffending taking place while a device is still being analysed.

An NSPCC freedom of information request found that police use of cyberflags to monitor online sexual crimes against children is worryingly patchy. A small number of forces said they were not using this or did not know about mandatory cyberflags. It is imperative that this failure to cyberflag offences is addressed. Requiring local forces to collect these data, in addition to the data collection outlined in