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# Rights at Risk:

## South Asians in the Post-9/11 United States

Sangay Mishra

### Summary

South Asian Americans, one of the fastest-growing and most diverse immigrant communities, have experienced increased discrimination and hate crime during the post-9/11 period. South Asians bore the brunt of racial hostility triggered in the immediate aftermath of the attacks, with Muslims and Sikhs bearing the greatest burden. The domestic security policies inaugurated after 2001 further impacted both South Asian and Arab communities adversely. These official policies ranging from surveillance of mosques and communities to delayed naturalization and restricted immigration have severely encroached upon the civil liberties of the groups. The ten-year anniversary of the 9/11 attacks should be an occasion to review some of these policies in order to ensure that South Asian and Arab communities are not being profiled and targeted in the name of domestic security.

### Introduction

South Asians<sup>1</sup> are one of the most diverse and fastest-growing groups in the United States.<sup>2</sup> They not only trace their origin to different nation states but also belong to different religious faiths such as Hinduism, Islam, Buddhism, and Christianity. Although the history of South Asians in the United States can be traced to the migration of peasants from Punjab during the late nineteenth and early twentieth centuries, the immigration reform in 1965 has led to the creation of a community of highly educated and skilled members, which include Silicon Valley entrepreneurs, software professionals, academics, doctors, engineers, and scientists.<sup>3</sup> The affluent segment of the community, however, exists alongside a significant population of cab drivers, gas station attendants, and other low-income service workers.

## South Asians and 9/11: Racialized Identity

South Asians have faced a long history of discrimination in the United States but September 11, 2001, was a turning point for the community.<sup>4</sup> The terrorist attacks on September 11 were followed by virulent racial targeting of South Asians and Arabs. Within hours of the attack on the twin towers, a Brooklyn-based Sikh was chased down the streets of Manhattan (Sengupta, 2001). The first death due to the racial hate crimes following the attacks was of a Sikh South Asian who was shot in Mesa, Arizona. Another killing followed on October 4, 2001, when a Hindu immigrant from India was shot dead at his convenience store in Mesquite, Texas (Singh, 2002). The killings and attacks on Sikhs and Hindus alongside Muslims in the initial days pointed to the targeting of all South Asian communities irrespective of their religion, nation of origin, and other distinctions. The all-encompassing racial lumping of South Asians was also accompanied by a selective targeting of Muslims by the public as well as by the law enforcement agencies (Mishra, forthcoming).

The government threw a wide net on the Muslim community and a large number of people who were not connected with any kind of militancy or terrorism were detained (Prashad, 2005). The American Civil Liberties Union (ACLU) reported the harrowing details of indiscriminate arrests, police abuse, lack of legal support, and family separations resulting from a large number of deportations in that period (ACLU, 2004). Even the Office of Inspector General's (OIG) report conceded that the arrests were "indiscriminate" and "haphazard" (OIG, 2003). The national security policies introduced after the 9/11 attacks, mostly contained under the broad rubric of the PATRIOT Act, seriously eroded the civil liberties of South Asian and Arab communities. The recurrent renewals of the PATRIOT Act and subsequent executive orders to prevent possible terror attacks have impacted the community in a disproportionate manner. Thus it is important to briefly discuss the most important policy measures that continue to impact the civil liberties of South Asians.

One of the most infamous policies, which exclusively targeted Muslims, was the program introduced in August 2002, known as the National Security Entry-Exit Registration System (NSEERS), which mandated all male nonimmigrant aliens from twenty-five

countries (all of them Muslim majority countries except North Korea) to physically report and register with their local Immigration and Naturalization Service office. The policy, presented as neutral and benign, unfolded in a way that created an environment of unprecedented fear among Muslim communities across the United States (Aizenmann and Walsh, 2003).

When the process of special registration was completed, thirteen thousand men out of the total eighty-three thousand who complied with the special registration were facing deportation charges (Swarns, 2003). In particular, Pakistani and Bangladeshi communities were hit hard by this law. The selective targeting of Muslims in NSEERS made it comparable to the historical parallels such as Chinese Exclusion Act of 1882 and Japanese internment during the World War II. The program was modified in 2003 and finally suspended in April 2011. However, the law still remains on the books and could be potentially brought back (Dickinson School of Law, 2009).

Even as we approach the ten-year anniversary of the 9/11 attacks, South Asian and Arab communities continue to face the consequences of a number of policy measures announced as a part of the “war on terror.” South Asian communities – particularly Bangladeshi, Pakistani, and Indian Muslims – have been under the dragnet of constant surveillance. Recent policies include the infiltration of ethnic and religious communities through the use of informants and agent provocateurs and they have expanded the ability of law enforcement agencies to initiate national security investigations with virtually no preliminary evidence required (ACLU, 2009).

As a part of the new policy approach, the Federal Bureau of Investigation (FBI) often infiltrates mosques through informants in order to track activities in Muslim communities. The policy even allows the informants to encourage terror plots that ultimately lead to the entrapment of Muslim youth who may be sympathetic to Jihadist Islamic ideology but are not involved with terrorist organizations or terror plots. One of the most well-known examples of this approach is Lodi, a small California town with a significant Pakistani Muslim population, where agents of FBI, Immigration and Customs Enforcement, and Customs and Borders Protection (CBP) paid a Pakistani immigrant nearly \$230,000 to infiltrate a mosque (South Asian American Leading Together, 2010). The paid informant not only engaged in routine surveillance but also ag-

gressively encouraged a community member, Hamid Hayat, to attend a terrorist training camp in Pakistan. Hayat was subsequently cleared of any charges by the court but only after a long ordeal (*Frontline*, 2006).

The heightened surveillance of ethnic and immigrant communities has been made even easier by the revised FBI guidelines issued by the U.S. Department of Justice in 2008. The guidelines relaxed restrictions on federal law enforcement to conduct threat assessment, collect data, and monitor activities using factors based on race and ethnicity (Berman, 2011). The guidelines also lowered the threshold to initiate threat assessments without requiring an adequate factual basis or supervisory approval for national security cases. These policy changes opened the doors for practices, which are dangerously close to racial and religious profiling.

Another important area in which the civil liberties of South Asian, Arab, and Muslim Americans have seriously eroded during the post-9/11 period is the freedom to travel nationally and internationally. After September 11, 2001, the screening procedures at airports were changed and the government initiated a set of policies, which resulted in disproportionate targeting of South Asians: Sikhs, Muslims, and those appearing to be Muslims. They were subjected to increased pat downs and questioning, and people were often asked to remove articles of religious faith such as turbans and headscarves. A revised 2007 “bulky clothing” screening guideline left it to the individual officer’s discretion to determine whether a head covering was bulky or not (Transportation Security Administration [TSA], 2007). Muslims, Arabs, and South Asians continue to be frequently pulled aside by CBP and questioned about their family, origins, faith, and community. In addition, the guidelines of CBP released in 2008 also lowered the standards for questioning and searching documents of those who are entering or reentering the United States (ACLU, 2009). The continued reliance of the law enforcement agencies on religious and ethnic profiling was reflected in the TSA’s policy change after the attempted Christmas Day attack in 2009. The TSA required passengers, including U.S. citizens, traveling from Pakistan and thirteen other primarily Muslim-majority countries to receive a full body pat down and to allow a search of all carry-on items. The policy was eventually scrapped because of its ineffectiveness, implicit profiling, and diplomatic concerns (Arab American Institute, 2010).

Finally, the process of naturalization for South Asians and Arabs has been impacted by excessive scrutiny and surveillance during the post-9/11 period. A study by Center for Human Rights and Global Justice at New York University found that both Arab and South Asian Muslims face long delays in naturalization even after fulfilling all the requirements (Center for Human Rights and Global Justice, 2007). The Department of Homeland Security routinely matches the names of naturalization applicants to their existing security database. However, in the case of applicants with Muslim or Muslim-sounding names there are long delays due to the screening process. Many of Muslim applicants' names are similar to those who are already on different bulky security lists being maintained by various agencies. As a result, many of these applicants are being sent for follow-up security checks, which delay the process of naturalization.

### Policy Recommendations

The South Asian community continues to face the negative impact of the post-9/11 security policies initiated by the PATRIOT Act and subsequently enhanced by other governmental measures. Based on the analysis presented here, the following broad policy changes are recommended to address some of the major civil-rights concerns of South Asian, Arab, and Muslim communities:

- As the ten-year anniversary of the 9/11 attacks draws closer, it is imperative that the government orders a systematic evaluation of the impact of its post-9/11 security policy on the lives of South Asian, Arab, and Muslim communities.
- Even though the infamous NSEERS was suspended in 2011, the community advocacy and civil-rights organizations have rightly demanded an inquiry into the cases in which people were unjustly detained and deported, often resulting in family separations. Formal restitution and compensation are very important because these measures will not only ensure due process and justice but also go a long way in preventing the recurrence of policy measures that target groups on the basis of religion, race, and nation of origin.
- The heightened surveillance of ethnic and immigrant communities, particularly Muslim communities, and aggressive use of informants and agent provocateurs

by the FBI and other law enforcement agencies have adversely impacted South Asians, Arabs, and Muslims. These policies border on racial and religious profiling of South Asian and Arab communities for the purposes of law enforcement and should be carefully evaluated to ensure that there is no profiling and unethical use of informants to frame false cases.

- The delay in processing naturalization applications of Muslims applicants and those with Muslim-sounding names has placed undue burden on South Asian and Arab communities. The Citizenship and Immigration Services should ensure that decisions regarding citizenship applications be made within 120 days of the naturalization examination, as required by the law. A broader congressional oversight of the delays caused by profiling on the basis of religion and nation of origin will go a long way in addressing the issue.

If history is any guide, our propensity to target particular racial and ethnic groups during or in response to national crises, be it the Chinese Exclusion Act or Japanese internment during the World War II, has always ended up putting question marks on the nation's commitment to racial equality. As the ten-year anniversary of the 9/11 attacks draws closer, it is important for the federal government to evaluate the impact of its security policy changes on the lives of South Asian and Arab communities.

## Endnotes

1. The term *South Asian* in the United States is defined as people tracing their origin to seven countries, namely Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka (Dave et al., 2000).
2. Based on the ACS 2007 data, there are approximately three million South Asians in the United States.
3. The socio-economic profile of the community is reflected in the fact that Indian immigrants have the highest average household income among all ethnoracial groups in the United States (ACS, 2007).
4. Historically, South Asians, along with other Asian immigrants, were not only seen as inferior races but also were barred from naturalization. The 1790 naturalization law had stipulated that whiteness was a prerequisite for naturalization, and the Supreme Court ruled in 1923 (*Bhagat Singh Thind v. United States*) that Asian Indians could not become U.S. citizens because they were not white (Lopez, 1997).

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