



# PROTECT THE RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, INTERSEX, QUESTIONING, AND GENDER NON-CONFORMING SOUTH ASIANS.

South Asians in the United States who are lesbian, gay, bisexual, transgender, intersex, questioning, or gender non-conforming (LGBTIQ) often face multiple levels of discrimination and unfair treatment in various contexts. In particular, policies relating to hate crimes enforcement, immigration, marriage between same-sex partners, and workplace discrimination have a significant impact on the community.

**Immigration-related policies that have a disparate impact on South Asian LGBTIQ individuals** – including the denial of immigration benefits to same-sex partners; abuse and harassment based on sexual orientation, gender identity, and gender expression in immigration detention centers; and restrictions on HIV-positive individuals from entering the country – must be changed. Furthermore, in order to promote the safety of LGBTIQ South Asians in the United States, **strong hate crimes and anti-discrimination legislation must be enacted** to address violence and unequal treatment occurring, not only on the basis of religion or national origin, but also due to sexual orientation, gender identity, and gender expression. In addition, the **traditional notion of what constitutes a family under federal and state laws must be redefined** to recognize the multitude of family structures that exist within the South Asian LGBTIQ community. Moreover, **health issues affecting the South Asian community must be further researched and addressed** in a manner that is both linguistically accessible and culturally appropriate.

## Immigration Issues

### *Immigration Benefits for LGBTIQ Immigrants*

There are an estimated 63,000 same-sex partnerships in the United States where at least one partner is not a U.S. citizen, including over 35,000 binational same-sex couples where one partner is a U.S. citizen or lawful permanent resident.<sup>1</sup> However, current immigration policies deny many

families headed by same-sex couples the rights to which heterosexual couples are entitled. For example, because the United States does not recognize committed relationships between same-sex partners as legal “marriages” or “families” under federal law and immigration regulations, these individuals are excluded from numerous family-based immigration benefits. As a result, many same-sex binational couples have no choice

but to make significant sacrifices. These hardships include maintaining long-distance relationships across national boundaries; making frequent and expensive trips to visit a partner abroad; resorting to living in exile outside the United States; or overstaying visas.<sup>ii</sup>

In addition to restrictions on family-based immigration benefits, LGBTIQ citizens and lawful permanent residents are prevented from assisting partners who may be facing deportation. Due to legal provisions prohibiting same-sex partners from qualifying as family members, these individuals are unable to support applications for bond (release from immigration detention) or cancellation of removal, both of which can be influenced by familial ties. Even if laws banning marriage between same-sex partners were lifted, immigrant same-sex couples would still be unable to avail themselves of the same immigration benefits that other couples receive. Federal government agencies must specifically issue regulations recognizing same-sex partnerships for the purposes of immigration law.

***Obstacles for LGBTIQ Asylum Seekers*** Under current law, individuals fleeing from abuse suffered in their country of origin as a result of their sexual orientation can be protected. Many LGBTIQ individuals face the threat of persecution on account of their sexual orientation, gender identity, or gender expression. A range of issues in South Asian countries drive many LGBTIQ South Asians to seek refuge in the United States, including laws that criminalize alternative sexual orientations, gender identities, or gender expression; police brutality suffered as a result of alternative identities and orientation; and exile from family.

Specifically, for individuals persecuted as a result of their sexual orientation, asylum case law from the Board of Immigration Appeals (BIA) exists that protects them based upon their membership in a “particular social group.” Yet the definition of this term has been inconsistently applied in various circuit courts, complicating an already difficult asylum application process for LGBTIQ asylum-seekers.

***Immigration Ban on Individuals Diagnosed as HIV-Positive*** Current immigration law restricts the entry of certain HIV-positive individuals into the country because of their medical condition in a variety of ways. In addition, every applicant for lawful permanent residency over the age of fifteen is required to undergo HIV-testing. While HIV-positive individuals who are married to U.S. citizens are allowed to enter the country, many involved in committed same-sex partnerships generally cannot unless they qualify for a limited waiver. For temporary immigrants, if an immigration official suspects an individual of having HIV, the government can require testing. Moreover, asylum-seekers persecuted in their country of origin for being HIV-positive are not explicitly protected because a medical condition is not considered a “particular social group” under asylum law.

### **DID YOU KNOW?**

The requirement that those seeking asylum must file their application within one year after arriving in the United States forces many LGBTIQ immigrants escaping persecution to avoid seeking relief. They are often unaware of the asylum process and its filing deadlines or are afraid to come forward to pursue it due to concerns about homophobia. *HIV and Immigration: The Basics*, Immigration Equality/Lambda Legal; *Queers and Immigration*, Queers for Economic Justice (2007).

***Harassment of LGBTIQ and HIV-Positive Individuals by Immigration Officials*** South Asian immigrants have been increasingly subjected to harassment by immigration officials upon entering the country and in immigration detention, particularly after 9/11. For LGBTIQ and HIV-positive South Asians, the trauma suffered is even greater, as many endure additional mistreatment due to their HIV-positive status, sexual orientation, gender identity, and/or gender expression. Transgender immigrant detainees face additional hardships, including

being placed in gender-segregated facilities that may not conform to their own gender identity and frequently being denied medically necessary hormone therapy.<sup>iii</sup>

### **Discrimination and Hate Crimes**

***Discrimination Against LGBTIQ South Asians*** South Asians across the country have long experienced discrimination at the workplace, at school, and at places of business as a result of their national origin, religion, accent, and/or attire. LGBTIQ South Asians often face additional discrimination based on their sexual orientation, gender identity, and/or gender expression. A recent report showed that among LGBTIQ Indians surveyed across the country, 84% experienced discrimination and/or harassment based on race or ethnicity and 69% experienced discrimination

and/or harassment based on sexual orientation.<sup>iv</sup> Another needs assessment survey of LGBTIQ South Asians in Southern California found that 77% of survey participants reported experiencing discrimination because of their sexual orientation or gender identity and 69% reported experiencing racism in mainstream society.<sup>v</sup> Seven out of ten participants in the same survey reported facing discrimination by other South Asians based on their sexual orientation, gender identity, or gender expression.<sup>vi</sup> Moreover, current anti-discrimination policies at the federal and state levels, in some cases, fail to adequately address such unfair treatment on the basis of sexual orientation, gender identity, and gender expression.

***Hate Crimes Against LGBTIQ South Asians*** Hate crimes are a serious concern for LGBTIQ South Asians. According to the Federal Bureau of Investigation (FBI), fifteen percent of all hate crimes perpetrated in 2006 (regardless of race or ethnicity) were motivated by the victim's sexual orientation.<sup>vii</sup> However, current federal legislation does not provide adequate protection or resources for investigating bias-related incidents and hate crimes perpetrated on the basis of sexual orientation, gender identity, and gender expression. Furthermore, anti-homophobia trainings both within and beyond the South Asian community are necessary to ensure that hate crimes against LGBTIQ South Asians are prevented and addressed.

### **Family Issues**

#### ***Right to Civil Marriage***

Currently, federal law does not permit individuals in committed same-sex relationships the right to marry. Following the enactment of the *Defense of Marriage Act (DOMA)*, individual states are not required to recognize marriages between same-sex couples (even if recognized in other jurisdictions), and the federal government is mandated to only recognize marriages between one man and one woman. Many states have also enacted legislation and constitutional amendments banning marriages between same-sex couples denying a fundamental right to LGBTIQ individuals.

***Domestic Partner Benefits and Recognition of Self-Defined Families*** While legalization of

marriage for same-sex couples is a crucial step, many couples, regardless of sexual orientation, may choose not to participate in the institution of marriage, and instead, seek to expand the definition of what constitutes a family.<sup>viii</sup> There are a variety of configurations of what constitutes a family in South Asian communities that extend beyond the “traditional” nuclear family, such as extended families living in one household; single-parent households; caregivers providing assistance to the elderly; and families headed by same-sex couples. Given the diversity that exists among South Asian family structures, it is important to ensure that benefits currently associated with married couples—such as tax incentives, health care, Social Security and pension plans, unemployment insurance, and welfare assistance – be expanded.

***Challenges in Adoption for LGBTIQ Couples*** For many LGBTIQ immigrants, expanding their families involves adopting children either within the

United States and from abroad. Yet such adoption can be complicated by various federal and state laws; in fact, states may completely restrict or significantly limit the ability of same-sex couples to adopt children. Laws must be implemented to ensure all families that can provide safe and stable environments for children be allowed to adopt.

### **Health Issues**

***Awareness Regarding LGBTIQ Health Issues*** Often, health care service providers are not aware of the South Asian LGBTIQ community's unique health care needs. A recent survey of the South Asian LGBTIQ community in Southern California showed that

90% of respondents experienced mental health issues, which can manifest into suicidal thoughts, abuse in the family, substance abuse, and unsafe sex.<sup>ix</sup> Utilization of health services is also relatively low among LGBTIQ individuals, especially for mental health and sexual health issues, even among those who have access to these services.<sup>x</sup> Often, this is a result of the social stigma surrounding homosexuality within South Asian cultures and religions, which forces many LGBTIQ individuals with health concerns to remain isolated and reluctant to seek health care.<sup>xi</sup>

HIV/AIDS issues are also a growing concern for South Asians. Misconceptions about how the

### **DID YOU KNOW?**

In addition, many South Asian LGBTIQ individuals report discrimination in health care settings due to multiple factors, including sexual orientation, gender non-conformity, ethnicity, nationality, and immigration status. Yet instances of such discrimination are often underreported due to internalized homophobia within the South Asian community.<sup>1</sup> *No More Denial! Giving Visibility to the Needs of the South Asian LGBTIQ Community in Southern California*, Satrang/South Asian Network (2007).

disease is transmitted exist within the community; for example, 54% of South Asians surveyed in a recent study conducted in New York City incorrectly believed that diaphragms, birth control, pills, and patches provided effective protection against HIV/AIDS during sex.<sup>xii</sup> Religious and cultural beliefs about HIV/AIDS as a “punishment” also affect the perception of the disease; in fact, the same study showed that 45% of South Asians surveyed believed that individuals afflicted with HIV/AIDS “deserved to get it because of their lifestyle.”<sup>xiii</sup> This stigma prevents many South Asians from obtaining accurate information, seeking testing, and obtaining treatment.<sup>xiv</sup>

## **KEY RECOMMENDATIONS**

### ***Support legislation that provides the same immigration benefits to LGBTIQ individuals as to other immigrants.***

- Congress should amend immigration law to permit U.S. citizens and lawful permanent residents in binational same-sex relationships to sponsor foreign-born partners for the same immigration benefits that heterosexual married couples receive.
- Congress should amend immigration law to ensure that same-sex family ties are treated the same as heterosexual relationships for purposes of relief from immigration detention and deportation, including bond and cancellation of removal.

### ***Ensure that LGBTIQ South Asians persecuted due to their sexual orientation are able to obtain asylum relief.***

- Congress should amend immigration law to explicitly establish persecution on account of sexual orientation, gender identity, and gender expression as protected grounds for asylum applicants.
- Congress should eliminate the one-year filing deadline for asylum applicants that prevent many LGBTIQ South Asians from seeking relief.

### ***Eliminate immigration restrictions against HIV-positive immigrants.***

- Congress should enact legislation that would declassify HIV as a “communicable disease of public health significance” and allow HIV-positive immigrants to enter the country without having to seek a discretionary waiver.
- Congress should eliminate HIV-testing requirements for immigrants seeking to enter the country or adjust their status, including green card applicants.

### ***Investigate and prevent harassment by immigration officials of LGTBIQ and HIV-positive immigrants.***

- Immigration and Customs Enforcement (ICE) should provide mandatory trainings for immigration officials and immigration detention personnel on how to appropriately work with LGBTIQ immigrants.
- ICE should amend immigration detention standards to prohibit discrimination and harassment against LGBTIQ and HIV-positive detainees.
- ICE should implement a complaint process in South Asian languages for LGBTIQ and HIV-positive immigrants to report incidences of

harassment by immigration officials and detention abuse.

- ICE should investigate incidences of harassment and detention abuse against LGBTIQ and HIV-positive immigrants.
- ICE should ensure that HIV-positive and transgender detainees have access to needed medical care while in detention.

### ***Expand anti-discrimination and hate crimes policies to cover LGBTIQ individuals.***

- Congress and state legislatures should expand current federal and state hate crimes legislation to cover incidents motivated by a victim's actual or perceived sexual orientation, gender identity, or gender expression.
- Congress and state legislatures should provide state and local law enforcement additional resources to investigate hate crimes against LGBTIQ individuals.
- Federal and state civil rights agencies should track hate crimes against LGBTIQ individuals.
- Congress should enact legislation making it illegal to fire, refuse to hire, or refuse to promote employees based solely on sexual orientation or gender identity.
- Federal and state civil rights agencies should establish and provide funding for *Know Your Rights* programs and materials that are linguistically and culturally appropriate for South Asian LGBTIQ victims of discrimination and hate crimes.
- Federal and state civil rights agencies should engage with community-based organizations in developing programs that eliminate homophobia and promote tolerance of LGBTIQ South Asians both within and outside of the South Asian community.

### ***Support the right to civil marriage, domestic partner benefits, and recognition of self-defined families.***

- Congress should repeal the *Federal Defense of Marriage Act* and state legislation that do not recognize marriage between same-sex partners.
- Federal and state agencies should allow for individuals in committed relationships who may not elect to marry to be able to avail themselves of the same rights and benefits as married couples.
- Congress and state legislatures should enact policies that ensure the right of LGBTIQ couples to adopt children.

### ***Promote awareness and services related to LGBTIQ health issues.***

- Federal and state health agencies should develop programs relating to mental health, sexual

health, gynecology, HIV testing and treatment, safe sex education, and intimate or family abuse grounded in an understanding of the specific needs faced by LGBTIQ South Asians.

- Federal and state health agencies should implement collaborative outreach and awareness efforts involving South Asian community organizations, religious institutions, and government public health agencies to combat discrimination against patients based on sexual orientation, gender identity, and gender expression.
- Health care service providers should implement trainings around cultural competency and sensitivity when addressing the medical needs of the South Asian LGBTIQ community.
- The Office of Minority Health, the Center for Disease Control, and the Health Resources and Services Administration should collect and disaggregate data by ethnicity, primary language, and country of origin on LGBTIQ health issues affecting different South Asian communities.
- Federal and state health agencies should promote the visibility of South Asian LGBTIQ organizations and develop programs addressing the medical needs of this community.

<sup>i</sup> *Family, Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples under U.S. Law*, Human Rights Watch/Immigration Equality (2006).

<sup>ii</sup> *Id.*

<sup>iii</sup> *HIV and Immigrants: The Basics*, Immigration Equality/Lambda Legal; *Queers and Immigration*, Queers for Economic Justice (2007).

<sup>iv</sup> Daing, A. and Vianney, C., *Living in the Margins: A National Survey of Lesbian, Gay Asian and Pacific Islander Americans*, National Gay and Lesbian Task Force Policy Institute (2007).

<sup>v</sup> *No More Denial! Giving Visibility to the Needs of the South Asian LGBTIQ Community in Southern California*, Satrang/South Asian Network (2007).

<sup>vi</sup> *Id.*

<sup>vii</sup> *2006 Hate Crimes Statistics*, (Table 1: Incidents, Offenses, Victims, and Known Offenders, by Bias Motivation), Federal Bureau of Investigation (2007).

<sup>viii</sup> *Building a Movement from the Ground Up: A Report from the Family, Community, and Sexuality Project*, Western States Center (2006).

<sup>ix</sup> See *supra* note v.

<sup>x</sup> *Id.*

<sup>xi</sup> *Id.*

<sup>xii</sup> *South Asian Women's HIV/AIDS Related Issues: An Exploratory Study of New York City*, Asian & Pacific Islander Coalition on HIV/AIDS, Inc. (2004).

<sup>xiii</sup> *Id.*

<sup>xiv</sup> Bhattacharya, G, Health care seeking for HIV/AIDS among South Asians in the United States. *Health & Social Work* (2000).