EARLIER STATE OF LAW

Earliest reference of kingship can be read in Aitareya Brahmanda. Gods and demons were at war. Gods were suffering badly in the battles. So Gods met together and decided that they should have a king to lead them in the battles. Gods then appointed Indra as their king, and soon Gods could defeat demons. Taittiriya Upanishad repeats the same story with little difference. It says "they who have no king cannot fight" primarily it seems that king was supposed to be a leader at war.

Though there could have been various forms of governments, we can find the monarchial form of government common throughout the India.

Gradually through the passage of time one can see the concept of king - the Monarch gaining more power, respect and he has grown to the heights of becoming the representative of mortals who has divine sanction, who is supposed to hold super-virtues and powers. According to Manu, he is supposed to be the mortal incarnation of Lord Yama (Dharma) i.e., lord of justice. Further, Manu propagates that the king is absolute ruler deriving his kingship from inheritance and his power from divine authority. It was God who created
him and no power on this earth can face him, less disobey
him\(^8\). He is manifestation of very essence of power of all
the Gods like Indra, V\(\text{\textdegree}\)yu, Varuna etc\(^9\).

Manu has glorified the powers of king as head of justice,
saying the 'Danda' (punishment) is created by the lord him-
self to help king in carrying out his duties to establish
law and order among his subjects\(^10\).

As Dr. R.S. Betai has rightly pointed out, "The rather
over-emphasis on the glory of the king is peculiar chiefly
to Manu... Manu's thus is not the government of ministers
as in Kautilya, but the government of the absolute Monarchial
power while all the ministers and the rank and file derive
their own power from him\(^11\)". It is left to king's will
whether to become an absolute tyrannical, monarch or a
benevolent father and guide to people\(^12\).

Manu though he has glorified the human king up to the
level of divinity, has not forgotten the fine lines which
divide the humans from divine people, the fallible nature
of human from any heights of nobility and the perfectness
in divine characters. Manu is well aware of the dangers of
the absolute monarchial powers in the wrong hands. He does
not want it to happen to any state and any time. Thus he
discusses about the character of the king, his training,
his virtues, higher qualities which will make a good king.
What he sees in his vision is an ideal king having divine virtues and an human heart. Dr. Betai has very clearly stated "Becoming a good king requires a proper training, a clear outlook, a firmness of decision and a towering personality that creates both a sense of security and sense of fear". King was held as custodian of law and order in the state. He has the task to protect people and run the administration successfully. So Manu has discussed about duties, character and personality, his birth and achievements.  

Regarding the legal matters, court law and legal procedure king is the supreme authority. The king has been created to be the protector of castes and orders, who all according to their rank discharge their several duties. Further Manu has strengthened this view. He considers king to be the just inflicter of punishment but he adds that he should be truthful, wise and who knows the value of virtue, pleasure and wealth. No one can transgress the law which king decrees. Manu expects king to be present in the court and hear cases and give judgement. Manu suggests that giving proper justice in consultation with learned Brähmaṇas and experienced councillors be the part of king's daily routine. But when it is not possible for the king to undertake the task himself he should appoint a learned Brähmaṇa and on behalf of king the judge (appointed by king) should dispense justly with the help of his assessors. It
clearly suggests that the judge appointed by king in the royal court and at other places i.e., district level etc., are not above the king or separate entity but they are essentially assistants to the king. As Dr. Betai has pointed out "Judges and the king are not separate authorities, and the king is not the highest but only authority in the matters of justice. All work is done in the name of the king and as assistants to the king.".

Yājñavalkyasmrī deals very briefly about the legal rights and authority of the king. Though Yājñavalkya does not very much differ from Manu about the authority of king, still we can find many developments of thoughts in Yājñavalkya's treatment. In the beginning verses of Rājadharma (i.e., duties of the king) Yājñavalkya says "it is said about the householder having the virtues of being consecrated as king. That itself shows that Yājñavalkya does not hold the king as divine entity with unlimited authority. Yājñavalkya gives list of virtues - good qualities and essential qualities of the king i.e., enthusiastic, alert, grateful, who serves aged people, humble, noble, from a good family, truthful of good character, who takes instant decisions, good memory, hated toward bad qualities, religious and not addict to any thing (i.e., liquőr etc.), brave, learned, skillful in state craft etc. All these qualities are not in born in every person. Some of these may, but Yājñavalkya seems
to suggest that before undertaking the duties as 'Raja' the person should be properly trained to shoulder the responsibility as king. Further, Yajñavalkya does not entrust the complete responsibility to king. In the 'Rajadharma' Chapter and in Legal procedure (i.e., अवलरमार्गवृत्ती) Yajñavalkya repeatedly says that the king should discharge his duties in consultation with the learned Brāhmaṇas and assessors. Assessors (सममर्गक्ष: ) should be well-versed in śrutis and in law and truthful: who are not partial to the friends and foes. And about dissemination at justice Yajñavalkya seems to follow Manu. He also suggests that: king is not free enough to do the work of justice then he should appoint a learned, Brāhmaṇa expert in law and customs with other learned judges (सक्षे. सर्वे. ) so Yajñavalkya also seems to suggest that the justice appointed by king is essentially an assistant to king and not independent. Judges are also appointed by king, though the number of judges or councillors is not mentioned.

Manu and Yajñavalkya seem to stress upon the qualities of justice (आदिविभाग: ) judges and (सम्मान: ) and councillors (सम्मानसद: ), their truthfulness, learnedness, birth (जुरिलो: ) etc. Honour of king is in their hands and responsibility of law and order depends upon them as to how they dispense justice.
This is precisely the development of the status of the king prior to Naradasmṛti. It is necessary to study Narada's concepts about the king in comparison with thoughts of earlier Smṛtikāras.
India has been a multitude of forms of government and her political experience has not been derived from the one form alone.

Law, N. N. in 'Aspects of Indian Polity' p. 2

Manu. VII. 2-7

Ibid., VII. 8

Ibid., VII. 3

Ibid., VII. 6

Ibid., VII. 4,5-7

Manu. VII. 14

Betai, R. S. - 'A Reconstruction of the original interpretation of the Manusmṛti', p. 141.

Jayaswal, "The author of Manava Code made his king a divinity itself, to despise which was to be punished with the powers of absolutism" - Hindu Polity", p. 235.

Betai, R. S. - 'A Reconstruction.....p. 242.

Manu. VII. 1

Manu. VII. 35

Manu. VII. 26

Ibid., VII. 13

Ibid., VIII 1-2

Ibid., VIII. 102

Ibid., VIII. 10

Betai, R. S. - A Reconstruction .....p. 282
22. Yāj. I, 308-310

23. साधारण धर्मानुस्मरितो राज्याभिमेकार मूर्त्वृक्तस्य गृहस्थय वितैखमानाः •

24. Yāj. I, 308-310

25. व्यवहारान्वयं प्रवेषत सम्यः परिचूलोऽन्वयम् ।
   कूले जातिः प्रणिपिच समानु वान्यदानामि ।
   - Yāj. I, 360
   And व्यवहारान्वयः प्रवेषत विद्भन्धः ब्राह्मणः तसं ।
   धर्मस्त्रानुसारे रण कोधिक्षेपवर्जितः ।
   - Yāj. II, 1.

26. अवरपता कार्यवृत्ते व्यवहारान्वयम्युः तु ।
   सम्यः तसं नियोक्तापि ब्राह्मणः सर्वाधिकर्मिः ।
   - Yāj. II, 3.