1 HISTORICAL BACKGROUND

The first attempt at enacting a systematic code in Russia was the *Ulozhenie* (Code) of 1649. Primary sources of this Code are said to be the indigenous law of Russia, which included the *Sudebniki* of 1497 and 1550, but mostly customary law with some influence of Byzantine law and Lithuanian law. It comprised 25 chapters with 967 provisions including some chapters on civil law – mainly on property relations.\(^1\) Successive tsars, including Peter the Great and Ekaterina II, attempted to enact a new *Ulozhenie*, but all these attempts failed.

In the late 18th century, another commission was set up to prepare the laws. There seem to have been two different schools of thought. One was aimed at the enactment of a new *Ulozhenie*, while the other sought the codification of the existing law. M.M.Speranskii, who was an active member of this commission, actually prepared a draft of part one of the Civil Code (persons) and submitted it to the State Council. This was followed by parts two (property) and three (contracts) in 1810. There was a very strong influence of the French Code civil. However, the draft code was met with opposition; the State Council was not convinced that the new Code should be modelled on the Code civil.\(^2\) After Speranskii fell into disgrace and was expelled, it was decided that instead of borrowing from foreign codes, they should turn afresh to the investigation of law in the past, based upon the idea that the “laws which survived the years would best serve the state”.\(^3\) The 1649 *ulozhenie* as well as separate legislation which had been enacted since then were compiled, first organised in a chronological way in the Complete Collection of Laws (*Polnoe sobranie zakonov*) and then in

\(^1\) “Ulozhenie”, in F.A.Brokgauz *et al.* eds., *Entsiklopedicheskii slovar’,* vol 34-a, St.Petersburg 1902, p.685.


\(^3\) Fillipov, *ibid.,* p.567.
a more systematic way. After his return from exile to Siberia in 1823, Speranskii was instrumental in this enormous undertaking, which finally culminated in the 15 volume Svod zakonov of 1832. In fact, Speranskii’s idea was that the Svod zakonov should be a first step in the future enactment of the new Code, and not only a compilation of the existing law. Even in the process of preparing the Svod zakonov, Speranskii often exceeded his “humble” role as a person compiling and systematising existing law and became, occasionally and unintentionally, “the genuine creator of many of our legal norms, particularly in the area of civil law”.

The first part of Volume 10 of the Svod zakonov was devoted to civil law. Since the total 15 volumes were revised from 1842 and 1857, there have been two editions of Volume 10; 1887 and 1900. Russian Civil Law as incorporated in the Svod zakonov was primarily based upon the 1649 Code with the addition of various laws enacted at different times. It was arranged in a way similar to the Code Civil. Speranskii was familiar with Roman law, French law, Prussian law as well as Austrian law, and actually used the concepts and definitions of foreign laws in the process of compiling and editing the then existing laws. However, despite Speranskii’s efforts, the fact remained that the law was obsolete, inconsistent, full of loopholes, and casuistic. The law lacked fundamental “guiding ideas”. In fact, it was hoped that the problems which were left unsolved in the Svod zakonov would be solved in the future ulozhenie.

Shortcomings of the civil law part of the Svod zakonov were being recognised as early as the mid-19th century. In 1869, a commission for the preparation of rules on contracts and obligation was established, followed by a commission for the preparation of the Civil Code (grazhdanskoe ulozhenie) which was set up in 1882. By 1903, five volumes of the draft Civil Code had been published. The draft Code was not entirely different from the existing Russian law. Basic principles of Russian law were preserved, insofar as they were not obsolete or failed to match the needs of modern times. In order to fill the gaps in the existing

4 Ibid., pp.573-574.
7 A.M.Guliaev, Russkoe grazhdanskoe pravo, St.Petersburg 1907, p.5. In fact, in the Russian Empire, there was no unified system of civil law. In the early 20th century, in addition to the Svod zakonov, there were the Civil Code of the Kingdom of Poland based upon Code civil, civil codes of the Baltic states, Belarus and the Kingdom of Finland. Ibid., p.3. See also Grazhdanskoie ulozhenie: proekt visooshashche uchrezhdienie Redaktionsnnaia Kommisiiia po sostavleniiu grazhdanskogo ulozhenii, St.Petersburg 1905.