89595 - He made divorce conditional upon something, and he made an exception in his intention

the question

I am living in an Arab country for work whilst my wife and two daughters are living with my family in my country, and my father is taking care of them. I said to my father on the phone when I was angry: “Tell my wife that if she does not do such and such by such and such a day, she will be divorced.” And I meant a divorce, not a threat. After a while, I got in touch with him and asked him whether she had done it, and he said, “No, because I told her not to do it, because it would affect the girls and my mother.” I told him: “You have my broken my oath, O my father.” But in fact what I said which could mean divorce, usually there is excluded from it in the intention “whatever incurs the wrath of Allaah and His Messenger or is against the law or my parents object to.” But I did not say that.
The one who is asking the question was asked: Did he intend to exclude that to which his parents might object? He answered by saying that he is honours his father and is obedient to him, and if his father objected to this he would give in to his father’s wishes. But his father agreed with what he said, then he changed his mind after that.

Detailed answer

Praise be to Allah.

Firstly:

Your saying about your wife: “If she does not do such and such then she is divorced” is a kind of conditional divorce which takes place if the condition is fulfilled, according to the majority of fuqaha’. Some scholars are of the view that if he intended divorce thereby then it counts as a divorce, and if he intended to warn her, force her or prevent her from doing something, then it is a yameen (oath) for which expiation for breaking an oath must be offered. As you intended a divorce, not a warning, then it counts as a divorce according to all scholars.

Secondly:

Intention is important in this case, as it renders general words specific, so long as it accompanies the words. If you said, “My wife is divorced if she does not do such and such,” but you only intended thereby for your father to prevent her from doing it, and he did prevent her, and so she did not do it, then she is not divorced. This is something that is between a person and his Lord. As for whether this would be accepted in a court or not, there is a difference of opinion among the fuqaha’.

Ibn Qudaamah (may Allaah have mercy on him) said that it is permissible and acceptable to render general wordings specific by means of the intentions, such as if he said “My wives will be divorced” meaning some of them, then this is valid, and the wording is understood by what he intended, not what he did not intend.

One of the conditions of this is that the intention should be accompanied by the words. If the intention was formed after the words were spoken, and he said, “My wives will be divorced,” then after that he intended in his heart that it refer to some of them, then the intention is of no benefit, and they are all divorced. Another example is if he intended to specify a particular time or situation, such as if he said, “You are divorced” but he meant “if you enter the house” or “after one month”. His word may also be accepted with regard to that, and the general meaning may be rendered specific by the intention.

See: al-Mughni (7/319).

It seems to us from your question and your response when you were asked for clarification, that you did not intend to exclude that which would make your parents angry, rather you say: “If my parents object I will agree.” This is not an exception. From the words of Ibn Qudaamah (may Allaah have mercy on him) quoted above it is clear that exceptions are not valid if they come after the words were spoken.

Based on this, this divorce counts as such. If this is a first or second divorce, then you must hasten to take your wife back before the end of her ‘iddah.

We ask Allaah to set our affairs and those of all the Muslims straight.

And Allaah knows best.